

Corporate Procurement Service Standard Terms and Conditions of Contract for Passenger Transport

Document Reference Number

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Version:	1.1	Last Update:	March2024
Issued by:	Thomas Adamson	Review date:	March2025
Equality and Diversity Impact Assessment date:	n/a	Assessed by:	n/a

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1. DEFINED TERMS

Under this Contract the following terms shall have the following meanings.

DEFINED TERMS	
<i>Approved Operator</i>	means the person or persons (being in partnership), firm, limited company or other organisation which the Council has approved as meeting the specified criteria set by the Council to provide passenger transport contracts.
<i>Breach of Contract</i>	means any breach of the obligations of either Party (including but not limited to a fundamental breach or breach of a fundamental term) or any default, act, omission, negligence or statement of either Party, its employees, agents or sub-contractors in connection with or in relation to the subject matter of the Contract and in respect of which such Party is liable to the other.
<i>Breach of Contract Notice</i>	means the document entitled Breach of Contract Notice which is issued to an Operator by the Council in the event of the Operator failing to perform the Service satisfactorily.
<i>Business Continuity Plan</i>	means a plan generated by the Operator detailing contingency for the delivery of service in adverse circumstances.
<i>CCTV</i>	means Closed Circuit Television.
<i>Conditions of Contract</i>	means this document, including the Schedules
<i>Contract</i>	means the formal agreement between the Council and Operator, consisting of the Tender, Specification, Schedules and Conditions of Contract.
<i>Contract Price</i>	Means the price payable by the Council to the Operator in terms of the Contract.
<i>Council</i>	means Scottish Borders Council, including Establishments operated by the same (e.g. Schools).
<i>Data Protection Laws</i>	means any law, statute, subordinate legislation, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body which relates to the protection of individuals with regard to the Processing of Personal Data to which a party is subject including the Data Protection Act 2018 and any statutory modification or re-enactment thereof and the GDPR.
<i>Data Controller', 'Data Processor', 'Data Subject' and 'Data Subject Access Request'</i>	have the meanings given in the Data Protection Laws.
<i>Disclosure Scotland</i>	means the executive agency of the Scottish Government, providing criminal records disclosure services for employers and voluntary sector organisations.
<i>Driver</i>	means an authorised and licensed person to drive the vehicle specified in the contract specification.

<i>Duly Authorised Officer</i>	means a person authorised by the Operator or the Council either generally or specifically to act in matters of any kind or in any specified matter relative to those conditions.
<i>Establishment</i>	means schools, colleges, further education sites, social care facilities, respite facilities, healthcare sites and community facilities.
<i>Force Majeure</i>	means any event or occurrence which is outside the reasonable control of the Party concerned, and which is not attributable to any act or failure to take preventative action by the Party concerned, including (but not limited to) governmental regulations, fire, flood, violent storm, pestilence, explosion, malicious damage, armed conflict, acts of terrorism or any other disaster but, excluding any industrial dispute occurring within the Operators or any sub-contractor’s organisation or the failure by any sub- contractor to perform its obligations under any sub – contract.
<i>GDPR</i>	means General Data Protection Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the Processing of Personal Data and on the free movement of such data as it forms part of the laws of England, Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018 as amended by Schedule 1 to the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019
<i>Incident Report Form</i>	means the document entitled Incident Report Form to be completed by the Operator and submitted to the Council in the event of an incident taking place during the performance of the Service.
<i>Local Bus Contract</i>	means a contract between the Council and Operator for the provision of Local Bus Service for the carriage of persons as defined in Section 2 of the Transport Act 1985.
<i>Mainstream Education Contract</i>	means a Contract between the Council and Operator for the carriage of school children and/or students to/from mainstream educational establishments and other venues.
<i>Minimum Cost</i>	The Council will pay the contract price less (1) all on bus revenue and (2) revenue received by the Operator in respect of concessionary payments and multi operator tickets.
<i>Minimum Subsidy</i>	All on bus revenue and revenue received in respect of concessionary fares and multi operator ticket reimbursement retained by the Operator; the Council will pay the contract price.
<i>Month</i>	means calendar month.
<i>Operating Licence</i>	means the Operator’s Public Service Vehicle Operator Licence issued under The Public Passenger Vehicles Act 1981, Taxi or Private Hire Car Licence issued under the Civic Government (Scotland) Act 1982, or Permit issued under sections 19 or 22 of The Transport Act 1985.

<i>Operator</i>	means the person or persons (being in partnership), firm, limited company or other organisation whose tender has been accepted by the Council and includes the Operator's successors and permitted assignees.
<i>Owner Driver</i>	means any person who owns the vehicle they drive as a part of their job.
<i>Party or Parties</i>	means the Council, and Operator.
<i>Passenger</i>	means all persons who are authorised by the Duly Authorised Officer to travel on a Mainstream Education Contract or an Additional Support Needs Contract or a Social Care Contract, any person paying a fare or presenting a valid authority to travel on a Local Bus Contract.
<i>Passenger Assistant</i>	means a duly authorised person engaged by the Operator/ the Council to assist the Passenger or Passengers as required by and in compliance with the Specification.
<i>Personal Data</i>	has the meaning given in the Data Protection Laws.
<i>Processing</i>	has the meaning given in the Data Protection Laws and cognate expressions shall be construed accordingly.
<i>Purchase Order</i>	means the document issued by the Council setting out its specific requirements for each contract and shall include any subsequent variations.
<i>PVG</i>	means The Protecting Vulnerable Groups Scheme.
<i>Risk Assessment</i>	means an assessment to identify potential health and safety hazards in respect of the delivery of the Service and upon which an Operator is then required to act to minimise risks to staff, Passengers, or anyone else involved in the provision of the specific service.
<i>Service</i>	means a Local Bus Contract or a Mainstream Education Contract or an Additional Support Needs Contract or a Social Care Contract or a Contract to be provided by the Operator in accordance with the Conditions, the Schedules and the Specification.
<i>Schedules</i>	means the Schedules at the end of these Conditions of Contract.
<i>Social Care Contract</i>	means a Contract between the Council and Operator for the carriage of social care users to/from Establishments or venues as required by the Council.
<i>Specification</i>	means the Service required as contained in the Tender and relevant Schedule included but not limited to routes, timings, stopping points, waiting arrangements, vehicle type, accessibility and capacity, signage, staffing requirements and technical abilities, fares or other charges, publicity, reporting, communication arrangements and Passenger details.
<i>Staff</i>	means any person employed by or otherwise engaged by the Operator, including those persons in administrative and other roles supporting operation of the Service.
<i>Supervisory Authority</i>	has the meaning given in the Data Protection Laws.
<i>Tender</i>	means the Tenderer's Tender which forms part of the Contract.

<i>Tenderer</i>	means the person or persons, firm, company or other legal entity submitting the Tender.
<i>TUPE</i>	means Transfer of Undertakings (TUPE) (Protection of Employment) Regulations 2006.
<i>Vehicle</i>	means: <ul style="list-style-type: none"> • Passenger Carrying Vehicle (PCV) • Private Hire Vehicle • Hackney Carriage Vehicle • Vehicle carrying a Community Bus Permit.
<i>Working Days</i>	means a day (other than a Saturday or Sunday) on which banks are open for business.

In these Conditions of Contract where the context permits:

- a) reference to the singular number shall be taken to include the plural number and vice versa;
- b) reference to any person shall include natural persons, partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees; and
- c) headings used in the Conditions of Contract are for assistance only and shall not affect the meaning of, or otherwise be used to influence the interpretation of, the Conditions of Contract.

For the avoidance of any doubt the General Conditions (including this interpretation clause) are those conditions contained in Clauses 1 to 46 inclusive.

2. LEGAL REQUIREMENTS

- 2.1. The Operator shall be in possession of and keep in force an Operator's Licence appropriate to and for the number and size of Vehicles to be operated (as required by Section 12 of the Public Passenger Vehicles Act 1981) or a Private Hire Car Operator's Licence or a Hackney Carriage Licence as appropriate unless the Contract is in an area or of a type that is exempt from licensing. Valid PSV operator's licence or section 19 or 22 permit must be held or obtained prior to any Contract commencement.
- 2.2. The Operator shall ensure that all Vehicles used under the Contract shall comply with all requirements of the law relating to Passenger carrying vehicles including licensing, insurance, testing, operation, construction and use regulations, fitness, equipment, safety, maintenance and use of CCTV equipment.
- 2.3. The Operator shall ensure that each and every Driver and Passenger Assistant used in the provision of the Services under the Contract is a fit and proper person and that each and any Driver and Passenger Assistant complies with all requirements of the law relating to licensing, driver's hours, medical fitness and training, and maintains records of all checks undertaken.
- 2.4. The Operator will allow the Council's Duly Authorised Officers to inspect all records held in relation to clauses 2.1, 2.2 and 2.3 as, and if, required.

3. VEHICLES

- 3.1. The Operator shall ensure that all Vehicles used under the Contract will be clean, comfortable, properly heated and ventilated and operationally fit for the purpose.
- 3.2. The Operator shall at all times provide a Vehicle of the capacity and type stipulated within the specification. Other Vehicle types may be provided with the prior written approval of the Council.
- 3.3. The Council shall have the right to reject any Vehicle as being unsuitable for transportation of Passengers; any Vehicle so rejected shall not thereafter be used for the purposes of the Service.
- 3.4. The Operator must ensure at all times that appropriate contingency arrangements exist for the provision of the Service(s) in accordance with Clause 6.
- 3.5. No more Passengers shall be carried by the Operator than is stipulated in the Specification and in accordance with the construction and use and licensed capacity of the Vehicle. Where there are more Passengers than seats, the Council should be informed and the Vehicle should not move until there are sufficient seats for all Passengers.
- 3.6. The Council reserves the right to require the Operator to meet any special requirements for the Vehicle including for example low floor access, tail-lift facilities, webbing for restraining wheelchairs, child seats, booster cushions, restraints, safety belt requirements, or features that comply with any regulations made under the Public Service Vehicle Accessibility Regulations 2000 (or as amended) and in compliance with the Equality Act 2010 and on these acts all provided and maintained in good condition in accordance with the Specification. In such cases, Drivers (and Passenger Assistants where provided) must be given appropriate training in the safe and appropriate use of such equipment prior to their engagement of any Contract. Such training will be provided at the Operators expense. The Operator shall ensure that evidence of all qualifications and/or accreditations attributed to the Driver, Passenger Assistant, or company are available for the Council's inspection.
- 3.7. Any special equipment that has been provided and paid for by the Council for use by a Passenger(s) must be returned to the Council when it is no longer required for the Passenger(s). Under no circumstances may equipment provided for use by an individual Passenger be used for another Passenger(s) without the prior written confirmation of the Council. The Operator must report promptly to the Council any worn or defective equipment owned by the Council so that a replacement can be provided.
- 3.8. Any Vehicle fitted with tail-lift equipment must be tested and certified in accordance with the Lifting Operations and Lifting Equipment Regulations 1998 (LOLER) (or as amended). Test certificates and documentary evidence shall be provided to the Council on request to show such equipment has been serviced and maintained in accordance with those Regulations.

- 3.9. Vehicles with more than 16 passenger seats must have a powered passenger entrance door that can be directly seen and operated by the driver from the driver's seat. On vehicles not fitted with a power door, the door shall be operated solely by the Driver or Passenger Assistant (if any).
- 3.10. For Vehicles of 8 or more passenger seats at least one fire extinguisher must be carried being compliant in all respects with the specifications for portable fire extinguishers issued by the British Standards Institution (numbered BS 5423:1977 or BS 5423:1980 or BS5423: 1987) and as described within Schedule 7 of the Road Vehicles (Construction and Use) Regulations 1986 (SI 1986/1078) as amended by SI 1989/2360.
- 3.11. The Operator shall as required by law and by the Council under the Contract provide and display in or on any Vehicles used by the Operator upon the Service any such notices as may be specified or required. Any such notice shall be displayed in the Vehicle in a prominent position.
- 3.12. Where the Operator is required to provide or in any event elects to provide Vehicles with CCTV equipment, the equipment shall be operated in accordance with Good Industry Practice and comply with government issued guidance available via <https://ico.org.uk/>
- 3.13. All Private Hire Vehicles and Hackney Carriage Vehicles and any other Vehicle as stipulated in the Contract shall be fitted with child locks and such child locks shall be activated as stipulated in the Specification.
- 3.14. The Operator shall allow Duly Authorised Officers of the Council or nominated representatives to inspect (without any requirement to give notice) the condition of any Vehicle used by or on behalf of the Operator on the Contract. If requested by the Duly Authorised Officer, the Operator shall, either make available its own workshop facilities for inspection or, at its own expense, take any Vehicle to and make the Vehicle available at a location nominated by the Council for an engineer's inspection. Any inspection will be carried out by an appropriately qualified person nominated by the Council and the Operator shall give all co-operation and assistance reasonably required of it during the undertaking of such an inspection.
- 3.15. If, in the Duly Authorised Officer's view or that of a nominated representative appointed pursuant to clause 3, the condition of any Vehicle is unsafe or unsuitable for Passengers to be conveyed in, the Operator shall immediately provide a replacement Vehicle or Vehicles. In any case the Operator shall allow the Duly Authorised Officer (without any requirement to give notice) to examine and copy any records relating to the Service, repair, and maintenance of any Vehicle and permit an inspection by any person nominated by the Council at the Operator's premises, or other location. Any Vehicle which is, in the opinion of the Duly Authorised Officer, considered unroadworthy may result in the immediate termination of the Contract and the Operator shall be liable to the Council for all losses and costs incurred and or suffered by the Council as a result of such termination.
- 3.16. The Operator shall immediately notify the Council in writing of any action taken against the Operator by the Traffic Commissioner, Driver and Vehicle

Standards Agency (DVSA), Police, licensing authority or other such body which imposes any prohibition on any Vehicle used to provide the Service or issues any formal warning or notice or qualification of the Operator's licence or any other permit or permission required to enable the Operator to perform any part of the Service. Such notification to be made within one (1) Working Day of a notice, prohibition or qualification being issued.

If the Operator is unable to provide any Service due to any action taken against it as referred to in this clause the Council may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Operator.

- 3.17. For vehicles of all capacities the provision of first aid equipment must comply with the requirements of the relevant licensing authority e.g. DVSA.
- 3.18. Any advertising on the Vehicles used under the Contract must not be such as to cause offence to any reasonable person.
- 3.19. The Operator shall ensure that Vehicle Passenger air bags are operational at all times when operating the Service unless the Council provides prior written agreement that they should be de-activated.
- 3.20. All public service Vehicles provided by the Operator under the Contract shall, as may be applicable and within statutory timescales, comply with the Public Service Vehicle Accessibility Regulations 2000, (or as amended). Information and guidance being available from the Department for Transport at: www.dft.gov.uk.
- 3.21. Smoking (including the use of e-cigarettes and vaporisers) will not be permitted in the Vehicle by Drivers, Passenger Assistants or Passengers and no-smoking signs shall be displayed in a prominent position(s) in accordance with relevant legislation. Smoking is also not permitted in any of the Council Establishments. Drivers and Passenger Assistants must not smoke in or outside the Vehicle whilst waiting to pick up Passengers or at any time whilst present at any Establishment.

4. DRIVERS, PASSENGERS AND PASSENGER ASSISTANTS

- 4.1. The Operator shall ensure that all Drivers and Passenger Assistants comply with the law, fully understand the nature of their duties and carry out their responsibilities in accordance with a general duty of care and safe methods of working.
- 4.2. The Operator shall ensure that the licence of any Drivers used to deliver the Contract have been checked not more than six (6) months prior to commencement and are checked at least every six (6) months during the Contract.
- 4.3. The Operator shall ensure that every bus and/or coach Driver used under the Contract will hold and maintain a Driver Certificate of Professional Competence (DCPC) and can evidence this upon request.

- 4.4. Where the Contract requires the transport of children under the age of 16 (or under the age of 18 for children with additional support needs) or vulnerable adults the Operator must take all reasonable steps to ensure that Drivers and Passenger Assistants (where the latter are employed by the Operator) used to deliver the Contract are suitable to work with individuals in these groups.
- 4.5. The Operator shall ensure that all Drivers and Passenger Assistants are appropriately trained to carry out the duties as required in the Contract, such training to be undertaken solely at the Operator's expense.
- 4.6. In the interest of Passenger safety and welfare the Operator must ensure that all persons engaged as Drivers or Passenger Assistants are able to communicate effectively with Passengers and their representatives. This requirement applies to all Drivers and Passenger Assistants irrespective of their race and ethnic origin for some of whom English may not be a first language.
- 4.7. The Operator must ensure that all Drivers and Passenger Assistants are trained to undertake emergency evacuation procedures and to take control in emergency situations. The Operator must notify the Council of any incident as soon as practicable using the following email address
PLACETransport@scotborders.gov.uk
- 4.8. Drivers and Passenger Assistants shall take all reasonable precautions to ensure the safety and good and proper conduct of Passengers while boarding, alighting and within the Vehicle, and supervise the opening, closing and properly securing of the doors of the Vehicle before and after any Passenger enters or alights. Operators will report to the Council concerns arising for boarding/alighting arrangements using the following email address
PLACETransport@scotborders.gov.uk
- 4.9. Drivers and Passenger Assistants must assist Passengers as required including provision of assistance reasonably anticipated in accordance with the Specification where applicable.
- 4.10. Without using force or physical contact, Drivers and Passenger Assistants must ensure that whilst the Vehicle is in motion Passengers are appropriately seated and wearing seatbelts (where fitted). Additionally, Drivers and Passenger Assistants must at all times ensure that any other bespoke seats, seat supports or restraints stipulated in the Contract including booster cushions, harnesses etc are used as specified by the Council. If any Passenger refuses to wear a seatbelt or seat restraint or to use a booster cushion when required to do so, the Driver and Passenger Assistant shall follow the guidance contained in the Support/Action plan published by the Council where applicable. The Operator must also notify the Council as soon as practicable using the Council's Incident Report Form. The Council will advise the Operator on the course of action to be taken in the future in respect of the Passenger concerned. For guidance, please refer to <https://www.rac.co.uk/drive/advice/road-safety/car-seat-laws/>
- 4.11. Any Passenger who holds a seatbelt exemption certificate issued by their GP must not be carried on a Vehicle on which seatbelts are fitted before a risk

assessment has been carried out by the Council. In such cases the Operator will be advised by the Council of the specific requirements of that Passenger.

- 4.12. The Operator shall at all times only employ persons of sufficient ability and qualifications to perform the Services, as defined in the Contract.
- 4.13. The Operator shall not deploy any Driver or Passenger Assistant who, by the consumption of alcohol, illegal substances, prescription or non-prescription drugs in any period prior to or during the operation of the Service shall impair their ability to safely, effectively and legally discharge their duties ensuring the safety and wellbeing of Passengers.
- 4.14. Should any Driver employed by the Operator be informed by the Police that a charge has been made for any offence arising as a result of the operation of the Service, the Operator must notify the Council immediately and confirm this in writing within 5 working days.
- 4.15. If the Operator becomes aware of any actual or intended prosecution of a Driver for an offence against any person, or is given any other reason to doubt the suitability of any individual Driver, the Operator must consult immediately with the Council and follow the Council's directions.
- 4.16. The Operator shall notify immediately the Council by telephone should any Driver used under the Contract receive a fixed penalty Notice issued by an officer of the DVSA in accordance with sections 54 and 75 of the Road Traffic Offenders Act 1988 (as amended). Any such notification will be confirmed in writing via post, facsimile transmission or email within twenty four (24) hours.
- 4.17. The Operator shall notify immediately the Council by telephone should any Driver or Passenger Assistant approved by the Council be arrested, cautioned and/or reprimanded by the Police; or any other Authority or convicted by a court of law. Any such notification will be confirmed in writing via post, facsimile transmission or email within twenty four (24) hours.
- 4.18. The Operator shall immediately notify the Council in writing should any Driver or Passenger Assistant employed on the Contract be dismissed from the Operators employment upon disciplinary grounds, or where the Driver or Passenger Assistant has received a formal warning for his/her conduct.
- 4.19. The Operator must on request provide the Council with the names and training records of all Drivers or Passenger Assistants, deployed on the Contract.
- 4.20. The Council reserves the right to make decisions in respect of the suitability of Drivers and Passenger Assistants with reference to information presented via enhanced Disclosures, telephone and panel interviews with the Operator and Driver or Passenger Assistant and from other sources with the Operators prior written agreement.
- 4.21. The Driver or Passenger Assistant must at all times be physically fit so as to discharge effectively the duties detailed in the Contract. Where concern arises as to the capability of a Driver or Passenger Assistant the Council reserves the

right to suspend the Driver or Passenger Assistant from any contracted duties pending resolution of the concern, typically via medical referral/report, the costs of which are to be borne by the Operator.

- 4.22. The Council reserves the right to require individuals employed as Drivers or Passenger Assistants to attend any Council promoted training or refresher training programmes or, if required, provide a person(s) to undertake Council provided training for the purpose of transferring the skills acquired to the company's Driver(s) and Passenger Assistant(s). Operators shall, if requested, send Drivers and Passenger Assistants or other company representatives to a nominated location at no additional cost to the Council to attend such training programmes at a date to be agreed between the Parties. Any such agreement is not to be unreasonably withheld by the Operator.
- 4.23. The Council reserves the right, by verbal communication with the Operator, to reject any Driver or Passenger Assistant provided by the Operator under the Contract. Any such rejection shall be confirmed in writing by the Council, wherever possible explaining the reason(s) for such rejection.
- 4.24. The Operator shall be responsible for ensuring that in accordance with Clause 6 it has at all times sufficient reserves of suitable staff to satisfy the requirements of the Contract.
- 4.25. The Council shall in no circumstances be liable either to the Operator or to any Staff of the Operator in respect of any liability, loss or damage occasioned by the withdrawal, suspension or removal of a Driver or Passenger Assistant by the decision of the Council.
- 4.26. The Council reserves the right in such circumstances described in Clause 4.23 above, where the Operator is unable to offer promptly an alternative Driver or Passenger Assistant to undertake duties under the Contract, to terminate the Contract without payment.

5. STANDARD OF SERVICES

- 5.1. The Operator shall at all times comply with the standards as set out in the Contract. The Operator, where applicable, shall maintain accreditation with the relevant Quality Standards authorisation body. To the extent the standards have not been specified, the Operator shall agree the relevant standards with the Council prior to the delivery of any Services.
- 5.2. The Operator must at all times comply with school/college and other Establishment site management plans including direction for the movement of Vehicles and supervision, boarding and alighting of Passengers.
- 5.3. The introduction of new methods or systems by the Operator which affect the provision of any Services shall be subject to prior written consent of the Council.

6. BUSINESS CONTINUITY PLAN

- 6.1. Operators must have in place and be able to demonstrate, and upon request provide, a Business Continuity Plan which includes but is not limited to:

Service continuity arrangements providing contingency for premises, Vehicles, Drivers/ Passenger Assistants, maintenance, communications, IT/information, equipment (e.g. Passenger restraints), vandalism, loss of key suppliers etc. and emergency situations (e.g. pandemics, fire, flood etc.) to the Operators operations and those of sub-contractors to the Operators however caused.

- 6.2. The Operator must ensure at all times that they operate an up to date and robust exit strategy in accordance with clause 24.

7. COMPLAINTS

- 7.1. The Council reserves the right to obtain from the Operator upon request details of any Operator's 'Operator Standing Compliance Risk Score' (OCRS) as compiled by DVSA.
- 7.2. The Operator shall operate a complaint and suggestions procedure whereby all complaints and suggestions received in connection with the performance of the Contract are recorded and investigated. The Operator shall provide the Council with details of all complaints received about the Service or its performance, together with any reply made, within five Working Days of the complaint being received by the Operator.
- 7.3. The Operator shall keep a record of all suggestions received from customers and employees regarding the Contract and shall forward the relevant suggestions to the Council for consideration.
- 7.4. Failure to respond to complaints will be treated as a breach of Contract.
- 7.5. The Operator is required to give all necessary assistance to the Council in the investigation of any complaint, and to comply with any reasonable direction given by the Council to ensure compliance with the terms of the Contract.
- 7.6. At any reasonable time, a Duly Authorised Officer or representative of the Council shall have access to any documents which relate to the Service or delivery of the Service and will be permitted to travel without charge upon any Vehicle to inspect Passenger tickets, check authorisation to travel, in support of independent travel training initiatives, conduct surveys or carry out such enquiries as it may reasonably require. The Duly Authorised Officer shall at all times carry identification and display it upon request.

8. PERFORMANCE

- 8.1. If the Operator fails to perform any part of the Service to the satisfaction of the Council, the Council may issue a Breach of Contract notice to the Operator for each such failure or deduct sums payable to the Operator.
- 8.2. In the event of the Operator being unable to operate the Service, the Operator remains liable in all respects for the provision of the Contract. In the event of

the Council having to find a replacement Operator, any additional costs incurred by the Council shall be recovered from the Operator.

- 8.3. Where a connecting service fails to arrive within a specified time the Driver shall take all reasonable steps to return any connecting Passengers to their pickup point, failing that, to an Establishment as appropriate and handed to the care of a responsible adult. In no circumstances should Passengers be left to await a connection which has failed to turn up. It is advisable that all Drivers be issued with a mobile phone to be used in such emergencies. However, mobile phones should be only used where it is safe and legal to do so.
- 8.4. The Operator must send immediate notification to the Duly Authorised Officer of the Council and to staff of each Establishment on any occasion when the Operator fails for any reason to uplift Passengers from their specified collection point or return Passengers to their specified set-down points.
- 8.5. In case of breakdown or accident the Driver shall instruct the Passengers to stay in the Vehicle whilst assistance is summoned, except in the exceptional circumstance that remaining in the Vehicle would put the Passengers in more danger than exiting the Vehicle. The Council must be made aware of any breakdowns as soon as reasonably practicable.
- 8.6. In periods of adverse weather Drivers must use discretion to decide whether a road is passable or not. Drivers shall endeavour to choose a route which gives the greatest number of Passengers a reasonable chance of getting to their destination in safety. If a Driver is in doubt, they should seek advice from their manager or supervisor.
- 8.7. At their discretion Drivers may abandon a morning journey due to adverse weather conditions and immediately consult with their manager or supervisor. The manager or supervisor will then implement emergency plans and notify the Council accordingly.
- 8.8. In the event of a morning journey being cancelled by the Operator because of severe weather conditions, the Operator shall not be responsible for operating the afternoon journey unless otherwise advised by a Duly Authorised Officer of the Council.
- 8.9. In the event of a decision by the Council not to run a Service due to adverse weather conditions or a change to the Contract at short notice, the Operator will be paid 50% of the contracted daily rate.
- 8.10. Additional payments shall not be made to the Operator for road closures along the route, unless previously agreed with the Council.
- 8.11. Journeys cancelled for the first day or attempted but not completed due to adverse weather conditions will be paid 50% of the contracted daily rate. Subsequent journeys will not be paid.
- 8.12. Operators may be asked to provide evidence that a journey was attempted prior to any payments being made by the Council.

- 8.13. The Operator must make available to the general public, a telephone number and email address that they may contact for enquiries other than timetable information, for example to make complaints and for lost property.

9. INDEMNITY

- 9.1. Without prejudice to any rights or remedies of the Council, the Operator shall indemnify the Council against all actions, suits, claims, demands, losses, charges costs and expenses which the Council may suffer or incur as a result of or in connection with any damage to property or in respect of any injury (whether fatal or otherwise) to any person which may result directly or indirectly from any negligent or wrongful act or omission of the Operator (provided that where any extent of the loss, damage or injury is caused by the negligent or wilful act or omission of the Council, or any servant or agent of the Council, the said indemnity shall be reduced accordingly).

10. INSURANCE

- 10.1. The Operator shall:

effect and maintain at its own cost a motor insurance policy with an approved insurance company to cover the liability of the Operator in respect of any act or default for which it may become liable and to indemnify the Council under the terms of this Contract. The Operator shall provide the Council with copies of all such motor insurance policies. The minimum limit per third party property damage claim under that policy shall be arranged at £5,000,000;

effect and maintain at its own cost a Public Liability Insurance policy with an approved insurance company to cover the liability of the Operator in respect of any act or default for which it may become liable and to indemnify the Council under the terms of this Contract. The minimum limit per claim under that policy shall be arranged at £10,000,000;

if there is a requirement as detailed in the Specification that medication may need to be given to any Passenger during the operation of the Service, arrange that the Public Liability Insurance policy maintained under clause 10.1.2 provides cover for medical intervention by the Driver or Passenger Assistant. In these circumstances, the minimum limit per claim under that policy shall be arranged at £2,000,000;

effect and maintain at its own cost an Employers' Liability Insurance policy of not less than £5,000,000 per claim with an approved insurance company in respect of Staff in accordance with any legal requirement for the time being in force;

- 10.2. If the Operator engages an Owner Driver(s) to fulfil any Contracts let to the Operator by the Council, the Operator must ensure that Motor Vehicle and Public Liability Insurances are maintained by or on behalf of the Owner Driver(s) at the values stipulated in clauses 10.1.1, 10.1.2 and 10.1.3.
- 10.3. Furthermore, the Operator will maintain Employers Liability insurance to the value stipulated in clause 10.1.4 in respect of any Owner Driver(s), Passenger Assistant(s) or any other employee of the Operator for whom the Operator

- provides material support (e.g. the provision of equipment, training or supervision);
- 10.4. The Operator shall produce to the Council, on request, copies of all insurance policies referred to in Clause 10 or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies. This requirement extends to the provision of 'Owner Driver' insurance details.
 - 10.5. If, for whatever reason, the Operator fails to give effect to and maintain the insurances required by the Conditions of Contract, the Council may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Operator.
 - 10.6. The terms of any insurance or the amount of cover shall not relieve the Operator of any liabilities under this Contract.
 - 10.7. In the event of any incident involving loss of life, injury and/or damage to property during the performance of this Contract, the Operator must notify the Council verbally as soon as reasonably practicable and no later than the end of the day if the incident occurs before noon and no later than noon of the next Working Day if the incident occurs after noon. The Operator will provide a full written report of the incident within two (2) Working Days of the incident using the Council's 'Incident Report Form' and when legally required to do so under The Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013 (RIDDOR) (or as amended) also report the incident in the required legal timescale to the Health & Safety Executive (HSE). Incidents should also be reported as necessary to the (DVSA) or other appropriate agency.
 - 10.8. The Operator shall notify the Council immediately of any alteration, cancellation or change of cover as provided for the Operator's Insurance and confirm this in writing within 2 working days.
 - 10.9. All policies of insurance effected by the Operator to which this clause 10 is applicable shall be effected for periods of not less than three months at their commencement and at the time of each renewal.
 - 10.10. The Operator undertakes that it shall secure the acceptance of any proposal for insurance to which this Clause 10 is applicable and provide proof of insurance to the Council not later than 5 working days prior to the policy's commencement date and shall have by that date paid the premium or any initial instalment due at the time the policy has effect or upon the policy renewal date.
 - 10.11. Where insurance expires on either a Saturday or Sunday the Operator will provide proof of insurance to the Council not later than 12 noon of the Friday preceding the seven (7) Working Days threshold or in the event that the Friday or preceding days fall upon a public holiday, no later than 12 noon of the earliest day preceding the seven (7) Working Days threshold. The Council may require the Operator to produce promptly upon demand evidence of the

payment of any premiums due under any policy to which this Clause 10 is applicable.

11. WARRANTIES AND REPRESENTATIONS

11.1. The Operator warrants and represents that:

- a) The Operator has the full capacity and authority and all necessary consents (including, but not limited to, where its procedures so require, the consent of its parent company) to enter into and perform this Contract, executed by a duly authorised representative of the Operator;
- b) the Operator shall discharge its obligations hereunder with all due skill, care and diligence including but not limited to Good Industry Practice;
- c) all obligations of the Operator pursuant to the Contract shall be performed and rendered by appropriately experienced, qualified and trained staff with all due skill, care and diligence; and
- d) the Operator is not in default in the payment of any due and payable taxes or in the filing, registration or recording of any document or under any legal or statutory obligation or requirement which default might have a material adverse effect on its business, assets or financial condition or its ability to observe or perform its obligations under this Contract.

12. VARIATIONS TO THE SPECIFICATION

- 12.1. The Council may at any time notify the Operator (and such notification shall be confirmed in writing) to modify or change its requirements as detailed in the Specification. The Operator shall not unreasonably withhold its consent to any variations that the Council may require.
- 12.2. The Operator shall advise the Council of any significant changes in demand for any Service. The Council will consider any recommendations from the Operator in relation to any variations or efficiency opportunities during the term of the Contract.
- 12.3. The Council reserves the right to terminate the Contract in accordance with notice periods (Clause 21 refers) if the Contract rate derived from tendered mileage variation, or negotiation, does not in its opinion represent continued value for money, or where demand for the Contract or Service is materially changed e.g. in response to school/college closure or relocation, increased or decreased Passenger numbers, changes to legislation or the Council policies etc.

13. SUBCONTRACTING AND SUBLETTING

- 13.1. The Operator may not without prior agreement of the Council subcontract an alternative Operator to fulfil all or part of the Contract.
- 13.2. Where the Operator is seeking to assign the Contract to another Operator, they will supply to the Council, ordinarily within twenty-eight (28) Working Days prior, a written request from each Party. Any assignment agreeable to the Council will be confirmed by the Council to each Party in writing.

- 13.3. Where an Operator wishes to change entity, it shall notify the Council and provide evidence to the Council that control of the Operator remains unchanged. If the Council are satisfied that control of the Operator remains unchanged it will amend the Operator on the Contract accordingly. Where the Council are not satisfied that control of the Operator remains unchanged it will notify the Operator and provide reasons for not changing the Operator on the Contract.
- 13.4. Sub-contracting any part of the Contract shall not relieve the Operator of any obligation or duty attributable to the Operator under any such Contract.
- 13.5. The Operator shall be responsible for the acts and omissions of its sub-contractors as though they are its own.
- 13.6. Any failure on the part of the sub-contracted Operator to meet the Council's requirements relating to the maintenance or quality of Vehicle, their mode and method of operation, insurance, legislation or to meet the requirements of any Contract awarded under this Contract may lead to the Council taking action for breach of this Contract against the Operator and this clause shall accordingly entitle the Council to instigate proceedings against the Operator or against the sub-contractor for breach of Contract or delict as if the Contract had been entered into by them jointly and severally.
- 13.7. If the Operator enters into a sub-contract with an alternative Operator for the purpose of performing its obligations under the Contract, it shall ensure that a provision is included in such a sub-contract which requires payment to be made of all sums due by the Contractor to the sub-contractor within a specified period not exceeding thirty (30) days from the receipt of a valid invoice.

14. FREEDOM OF INFORMATION AND ENVIRONMENTAL INFORMATION REGULATIONS

- 14.1. Subject to the provisions of Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004, all information supplied by the Council in connection with the Contract shall be treated as confidential except that such information may be disclosed for the purpose of obtaining sureties and quotations necessary for the preparation and submission of the Tender.
- 14.2. All information submitted to the Council may need to be disclosed and/or published by the Council. The Council may disclose information in compliance with the Freedom of Information (Scotland) Act 2002, or the Environmental Information (Scotland) Regulations 2004 (the decisions of the Council in the interpretation thereof shall be final and conclusive in any dispute, difference or question arising in respect of disclosure under its terms), any other law, or, as a consequence of judicial order, or order by any court or tribunal with the authority to order disclosure.
- 14.3. In the event that the Council receives a request for information under the Freedom of Information (Scotland) Act 2002 or the Environmental Information (Scotland) Regulations 2004, and in connection with that request requires the

Operator to provide information which the Operator holds on behalf of the Council, the Council shall notify the Operator. The Operator shall provide any relevant information to the Council as soon as practicable as and in any case no later than 5 Working Days from the date of notification by the Council.

- 14.4. Further, the Council may also disclose all information submitted to the Council to Scottish or United Kingdom Parliament or any other department, office or agency of His Majesty's Government in Scotland or the United Kingdom, and their servants or agents. When disclosing such information to either Scottish Parliament or the United Kingdom Parliament or their executive bodies, it is recognised and agreed by both Parties that the Council shall, if they see fit, disclose such information and are unable to impose any restriction upon the information that they provide to Members of the Scottish Parliament, or Members of the United Kingdom Parliament; such disclosure shall not be treated as a breach of this Contract.

15. PUBLICITY AND MEDIA

- 15.1. Without prejudice to the Council's obligations under the Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004 and the mutual interest to promote the Contract awarded, neither Party shall make any press announcements without the consent of the other Party (such consent not to be unreasonably withheld or delayed).
- 15.2. Both Parties shall take all reasonable steps to ensure the observance of the provisions of clause 15.1 by all their servants, employees, agents, professional advisors and consultants. The Operator shall take all reasonable steps to ensure the observance of the provisions of clause 15.1 by its sub-contractors.

16. PAYMENT

- 16.1. The Operator shall submit an invoice for payment no later than one (1) month of any Service being provided. The invoice must quote the purchase order number, the identity and address of the Operator, the Service provided, (the journey/or route reference) the period covered by the claim, the amount claimed, the VAT registered number (where applicable), days operated and any information required by the Council to accompany the invoice in accordance with the Schedules. Such payment will be made within 30 days of receipt and agreement of invoices.
- 16.2. Any incomplete invoices, or those found to be incorrect bearing VAT charges, will not be paid and will either be returned to the Operator, or by agreement destroyed pending the submission of a complete and correct invoice.
- 16.3. Excepting those invoices bearing VAT charges (that will be treated in accordance with clause 17.3) any incorrect invoices may be paid by the Council to an amended and correct value following which the Operator will receive written notification of the amendment made.

- 16.4. Payment will only be made in accordance with the Contract Price less any deductions or with increases allowed under the Contract as detailed in the Specification.
- 16.5. The Operator shall provide details of both live and dead mileage operated under any Contract.
- 16.6. Payment will only be made for the days on which the Service is required to operate and in accordance with the Specification.
- 16.7. Whenever under the Contract any sum of money shall be recoverable from or payable by the Operator, the same may be deducted from any sum then due to the Operator, or which at any time thereafter may become due to the Operator under any such Contract with the Council.
- 16.8. For any period of suspension under clause 7, 18 and 20 of these Conditions of Contract the Operator will receive no payment or compensation from the Council.

17. VAT

- 17.1. All sums payable under the Contract unless otherwise stated are exclusive of VAT and other duties or taxes.
- 17.2. Any VAT or other duties or taxes payable in respect of such sums shall be shown separately on all invoices as a strictly net extra charge.
- 17.3. Operators registered for VAT must submit a valid VAT invoice.

18. SUSPENSION

- 18.1. In the event of serious and/or persistent failures to meet the requirements set out in the Specification, or any other breach of these Conditions of Contract, the Council may suspend the operation of the Contract. Such suspension may not last longer than six months. During such suspension, the Operator will not operate the Contract(s) and will not be entitled to any payment or compensation from the Council, whether or not the Contract(s) is reinstated following the period of suspension.
- 18.2. Where the Council believes there is no requirement for operation of a particular Contract for a fixed or indefinite period, including the situation where it is possible for the Council to transfer Passengers to one or more alternative means of transport, the Contract may be suspended. Such suspension shall except with the agreement of the Operator, require at least seven Working Days' notice. This notice will not be required when the suspension is for a fixed period, the end of which is notified at the time of notification of the suspension.

19. TERMINATION ON CHANGE OF CONTROL AND INSOLVENCY

- 19.1. The Operator shall notify the Council immediately in writing when any change control occurs, and the Council may terminate the Contract by notice in writing with immediate effect where:
- a) the Operator undergoes a change of control, within the meaning of section 450 of the Corporation Tax Act 2010 which impacts adversely and materially on the performance of the Contract; or
 - b) the Operator is an individual or a firm and a petition is presented for the Operator's bankruptcy, or a criminal bankruptcy order is made against the Operator or any partner in the firm, or the Operator or any partner in the firm makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignment for the benefit of creditors, or if an administrator is appointed to manage the Operator's or firm's affairs; or
 - c) the Operator is a company, if the company passes a resolution for winding up or dissolution (otherwise than for the purposes of and followed by an amalgamation or reconstruction) or an application is made for, or any meeting of its directors or members resolves to make an application for an administration order in relation to it or any Party gives or files notice of intention to appoint an administrator of it or such an administrator is appointed, or the court makes a winding-up order, or the company makes a composition or arrangement with its creditors, or an administrative receiver, receiver, manager or supervisor is appointed by a creditor or by the court, or possession is taken of any of its property under the terms of a fixed or floating charge; or
 - d) the Operator is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (or as amended); or
 - e) any similar event occurs under the law of any other jurisdiction.
- 19.2. The Council may only exercise its right under clause 19.1 within six months of:
- a) being notified that a change of control has occurred; or
 - b) where no notification has been made the date that the Council becomes aware of the change of control.
- 19.3. If the Operator being an individual, shall die or be adjudged incapable of managing his or her affairs within the meaning of section 1 of the Adults with Incapacity (Scotland) Act 2000 (or as amended), the Council shall be entitled to terminate the Contract by notice to the Operator or the Operator's Representative with immediate effect.
- 19.4. The Council reserves the right to periodically seek company credit and risk scores, director information and financial data including filed accounts and annual returns relating to the Operator.

20. TERMINATION FOR BREACH

- 20.1. A breach in the Conditions of Contract will result in a Breach of Contract notice being issued. The Council may terminate, with immediate effect, if:

- a) the Operator has not remedied the Breach to the satisfaction of the Council after issue of a written notice specifying the Breach and requesting it to be remedied; or
 - b) the Breach is not, in the opinion of the Council, capable of remedy; or
 - c) the Breach is a material breach of the Contract.
- 20.2. In the event that through any Breach of the Operator, data transmitted or Processed in connection with the Contract is either lost or sufficiently degraded as to be unusable, the Operator shall be liable for the cost of reconstitution of that data and shall provide a full credit in respect of any charge levied for its transmission and shall reimburse the Council for any costs charged in connection with such Breach of the Operator.
- 20.3. A material breach shall be:
- any breach of law;
 - any breach of the insurance obligations provided for in Clause 10 of the Contract;
 - persistent breach of standards of performance;
 - failure to provide a Driver or Passenger Assistant who is a member of the PVG Scheme;
 - if the Operator provides a Driver or Passenger Assistant whom the Council has instructed shall not be deployed on the Contract in accordance with clause 4.7;
 - without proven mitigating circumstance, failure to provide all or part of the Contract;
 - setting down of Passengers not at the agreed set down point or place of safety;
 - failure to act in accordance with any feeder transport arrangements as specified;
 - any action or inaction by the Driver or Passenger Assistant which in the view of the Council compromises the safety of the Passenger(s) or any Vehicle used in the provision of any of the Services or any actions which are deemed by the Council to be inappropriate or unreasonable;
 - operation of a Vehicle which is considered by a Duly Authorised Officer, DVSA, licensing authority or any other such body who has inspected the Vehicle and considers that it fails to meet Clause 3.1;
 - if the Traffic Commissioner, licensing authority or any other such body revokes or suspends the Operator's Licence or Private Hire Car Operator's Licence or Hackney Carriage Licence as appropriate;
 - failure by the Operator to notify the Council within the time periods set out in clause 10.7 of any road traffic accident occurring whilst performing the Service in which a fatality or an injury is sustained;

failure of the Operator to allow, with or without prior notice, a Duly Authorised Officer of the Council to undertake Passenger, route or Vehicle checks either on site, en-route or whilst travelling on any contracted Vehicle or Service;

failure to comply with any requirement relating to the provision of seatbelts, car seats, booster cushions, or Passenger restraints, or the use and restraint of wheelchairs;

if the Operator makes a fraudulent claim for payment or falsifies any document concerning the sum to be paid;

any material breach by the Operator of the obligations that the Operator has under the Data Protection Laws.

if there is (in the Council's opinion) an irretrievable breakdown in the relationship between the Driver or Passenger Assistant, and Passenger(s) carried under the Contract, or their carers, in circumstances where no acceptable remedy can be found;

any anti-competitive conduct by the Operator pursuant to clause 29 of these Conditions of Contract;

any material breach (as determined by the Council) not otherwise referred to above.

- 20.4. The Operator may terminate the Contract if the Council is in material breach of its obligations to pay undisputed charges by giving the Council sixty (60) Working Days' notice specifying the breach and requiring its remedy.

21. TERMINATION BY NOTICE

- 21.1. The Council shall have the right to terminate the Contract, or to terminate the provision of any part of such Contract in accordance with the Schedules for the type of Service provided.
- 21.2. Subject to any statutory requirements, the Contract may be terminated at shorter notice than that contained in the Schedules and clause 21.1 by mutual agreement between the Parties.

22. TERMINATION CONSEQUENCES

- 22.1. Where the Council terminates any Contract under clause 20, or terminates the provision of any part of any Contract under that clause 20, and then makes other arrangements for the provision of Services, the Council shall be entitled to recover from the Operator any additional expenditure incurred by the Council up to a maximum of thirty (30) Working Days operation of the Contract. The Council shall take all reasonable steps to mitigate such additional expenditure. Where the Contract is terminated under clause 20, no further payments shall be payable by the Council to the Operator in respect of any Contract until the Council has established the final cost of making those other arrangements.

- 22.2. Where the Council terminates any Contract under clause 21, the Council shall indemnify the Operator against any commitments, liabilities or expenditure which would otherwise represent an unavoidable loss by the Council by reason of the termination of any such Contract, provided that the Operator takes all reasonable steps to mitigate such loss. Where the Operator holds insurance, the Operator shall reduce its unavoidable costs by any insurance sums available. The Operator shall submit a fully itemised and costed list of such loss, with supporting evidence, of losses reasonably and actually incurred by the Operator as a result of termination under clause 21.
- 22.3. The Council shall not be liable under clause 22.2 to pay any sum which:
- a) was claimable under insurance held by the Operator, and the Operator has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy; or
 - b) when added to any sums paid or due to the Operator under any Contract, exceeds the total sum that would have been payable to the Operator if any such Contract had not been terminated in accordance with clause 21.

23. DISRUPTION

- 23.1. Both Parties shall take reasonable care to ensure that in the execution of the Contract does not disrupt the operations of the other Party, or any other Operator engaged by the Council.
- 23.2. The Operator shall immediately inform the Council as soon as they become aware of any actual or potential industrial action, whether such action be by their own Staff or others, which affects or might affect its ability at any time to perform its obligations under any such Contract.
- 23.3. In the event of industrial action by its own Staff or of the Operator's suppliers the Operator shall seek the Council's approval to its proposals for the continuance of the performance of any Services in accordance with its obligations under any such Contract.
- 23.4. If the Operator's proposals referred to in clause 23.3 are considered insufficient or unacceptable by the Council acting reasonably, then any such Contract may be terminated by the Council by notice in writing with immediate effect.

24. EXIT STRATEGY

- 24.1. Termination of this Contract will be without prejudice to any rights, remedies or obligations accrued under any other Contract awarded to the Operator and nothing in any such Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry.
- 24.2. Termination of the Contract shall not affect the continuing rights and obligations of the Operator and the Council under all other clauses.
- 24.3. At the end of the term stated in the Contract the Operator shall forthwith deliver to the Council upon request all the Council's Property (including but

not limited to equipment, materials, documents, and information) relating to the Contract in its possession or under its control or in the possession or under the control of any permitted suppliers or sub-contractors. In default of compliance with this clause by the Operator, the Council may recover possession thereof and the Operator grants licence to the Council or its appointed agents to enter (for the purposes of such recovery) any premises of the Operator or its permitted suppliers or sub-contractors where any such items may be held.

- 24.4. In the event that the Council's property cannot, either wholly or in part be recovered within 90 (ninety) Working Days of the termination of the Contract (howsoever arising) the Council reserves the right to recover from the Operator monies to the value of property being withheld and recover such monies as per clause 16.8 of these Conditions of Contract.
- 24.5. At the end of the term stated the Contract the Operator shall provide assistance to the Council and any new Operator appointed by the Council to continue or take over the performance of any such Contract in order to ensure an effective handover of all work then in progress. Where any such Contract is terminated due to the Operator's breach, the Operator shall provide such assistance free of charge. Otherwise, the Council shall pay the Operator's reasonable costs of providing the assistance, and the Operator shall take all reasonable steps to mitigate such costs.

25. DISCLOSURE SCOTLAND AND PROTECTING VULNERABLE PEOPLE

- 25.1. The Operator shall ensure that all Drivers and Passenger Assistants are PVG scheme members through their current employer and have had their criminal record checked and received confirmation from the Council that they have been deemed suitable to be employed on the Contract.
- 25.2. Drivers and Passenger Assistants who are foreign nationals or who have lived abroad during the last five years will be required to supply additional criminal record information relating to their time abroad. The Council shall specify what information is required. Drivers and Passenger Assistants who fail to provide this information within an agreed timescale will not be permitted to be employed on the Contract.
- 25.3. If the Operator uses a Driver and/or Passenger Assistant who has lived abroad during the last five years and has not supplied the criminal record information requested by the Council, the Operator will be in material breach of the Contract and the Contract will be terminated.
- 25.4. Where information on a PVG or Disclosure Check shows that the applicant Driver or Passenger Assistant may be unsuitable for the role, they will be invited to attend a panel interview at Scottish Borders Council to give an explanation. The Driver or Passenger Assistant must not be employed on the Contract until they have met with the panel and received a decision.
- 25.5. Further guidance and training materials on the PVG Scheme are available from the Disclosure Scotland website at <http://www.disclosurescotland.co.uk/>

26. DISCRIMINATION

- 26.1. The Operator shall not discriminate either directly or indirectly on such grounds as race, disability, sex or sexual orientation, gender reassignment, marriage or civil partnership, religion or belief, pregnancy or maternity, or age and without prejudice to the generality of the foregoing the Operator shall not unlawfully discriminate within the meaning and scope of the Disability Discrimination Act 1995, the Employment Equality (Sexual Orientation) Regulations 2003, the Employment Equality (Religion or Belief) Regulations 2003, the Employment Equality (Age) Regulations 2006, the Equality Act 2010, the Human Rights Act 1998 or other relevant or equivalent legislation, or any statutory modification or reenactment thereof.
- 26.2. The Operator shall take all reasonable steps to secure the observance of this clause by all Staff and representatives of the Operator.

27. SUSTAINABILITY

- 27.1. The Council has a sustainability vision as detailed in Schedule IH. The operator shall exercise all reasonable efforts to act in an ethical, environmental and socially responsible manner in conducting their business.

28. TRANSFER OF UNDERTAKINGS (TUPE)

- 28.1. It is a material condition under this Contract that the Operator complies with all relevant obligations under TUPE.
- 28.2. The Parties agree that the provisions of TUPE may apply on this Contract. Tenderers should, prior to submitting their Tender, take their own specific legal advice to ascertain whether TUPE could be held to apply to such undertakings and, if so, how that would impact on their Tender.
- 28.3. The Council cannot verify the accuracy of any information supplied to Tenderers in respect of personnel currently employed by the incumbent Operator, and therefore the Council have no liability in respect of such information. It is for each Operator to ensure that they have sufficient TUPE information to submit a compliant Tender. The Council accept no liability for any costs incurred as a result of TUPE either during the Tender process or post Contract award.
- 28.4. On the occasion of a relevant transfer (other than a relevant transfer on expiry of any Contract), the Operator will ensure that it supplies information required to ensure that any replacement service Operator can comply with its obligations under TUPE in respect of transferring employees.

TUPE Compliance on Termination or Expiry:

- 28.5. During the twelve (12) months prior to the expiry of the Contract or after the Council has given notice to terminate any such Contract and within twenty one (21) Working Days of being requested to do so, the Operator shall fully and accurately disclose to the Council all information in relation to all persons

engaged in providing the services as required by TUPE including but not limited to the following:

- a) a list of all staff employed by the Operator in the provision of the Service;
 - b) for each employee details of age, gender, salary and pay settlements covering that person which relate to future dates but which have already been agreed and their redundancy entitlements, details of all warnings or other disciplinary sanctions which are current at the time of provision of the information, details of all ongoing disciplinary investigations, details of any potential disciplinary investigations, details of any grievance procedure taken by an employee within the previous two years, details of any claims being made by the employee against the Operator (including the potential value of the claim, an assessment of the prospects of success of the claim and where an application has been made to a court or employment tribunal copies of any papers lodged with the court or tribunal), details of any potential claims that the employee may have against the Operator (including the potential value of the claim and an assessment of the prospects of success of the claim) (the names of individual members of staff do not have to be given);
 - c) the total payroll bill (i.e. total taxable pay and allowances including employer's contributions to pension schemes) of those persons; and
 - d) the terms and conditions of employment of such staff.
- 28.6. The Council may give the information provided to it by the Operator in accordance with this clause 28 to any firm, company, person or other legal entity invited to Tender in respect of any such Contract for the provision of the Services, or any part thereof, for any period commencing after the expiry or earlier termination of any such Contract.
- 28.7. During the twelve (12) months prior to expiry of any such Contract or where notice to terminate any such Contract for whatever reason has been given, the Operator shall not without the prior written consent of the Council:
- a) vary or purport or promise to vary the terms and conditions of employment of any employee employed in connection with the Services;
 - b) materially increase or decrease the number of Staff employed in connection with the Services; or
 - c) assign or re-deploy any employee employed in connection with the Services to other duties unconnected with the Services.
- 28.8. Where any of the events referred to in clause 28.6 have occurred in the ordinary course of business said written consent shall not be unreasonably refused.
- 28.9. The Operator irrevocably consents to the disclosure of the information provided by it in terms of this clause 28 and irrevocably waives any right of confidentiality which it may have in respect of the said information and any other right which it may have in respect of the said information which would enable it to prevent the disclosure or publication of the said information by it or the Council. The Operator shall ensure and procure that the conditions of employment of each person involved in the provision of the Services shall be such that the Operator shall be entitled to release to the Council information

which may otherwise be confidential as between such persons and their respective employers.

28.10. The provisions of clauses 28.1 to 28.8 shall apply during the existence of the Contract and after its expiry or termination howsoever arising.

29. CARTELS

29.1. The Operator shall not be a Party to a Cartel involving or including any commercial or other arrangement between individuals and/or corporations which is intended or organised so as to share or control marketing arrangements or prices (whether or not that arrangement is a concealed or hidden commercial venture) and in the event of the Operator being a Party to such a Cartel the Council shall be entitled to cancel the Contract and to recover the amount of any losses, damages, charges or costs which it may directly or indirectly sustain by reason of such cancellation.

30. PREVENTION OF CORRUPTION

30.1. The Operator shall not offer or give, or agree to give, to any employee, agent, servant or representative of the Council any gift or consideration of any kind as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Contract or any other contract with the Council or for showing or refraining from showing favour or disfavour to any person in relation to the Contract or any such contract. The attention of the Operator is drawn to the criminal offences under the Bribery Act 2010.

30.2. The Operator warrants that it has not paid or agreed to pay any commission to any employee or representative of the Council by the Operator or on the Operator's behalf.

30.3. Where the Operator or Operator's Staff, servants, sub-contractors, suppliers or agents or anyone acting on the Operator's behalf, engages in conduct prohibited by clauses 30.1 or 30.2 in relation to the Contract, the Council has the right to:

- a) terminate the Contract between the Operator and the Council and recover from the Operator the amount of any loss suffered by the Council resulting from the termination, including the cost reasonably incurred by the Council of making other arrangements for the provision of the Services and any additional expenditure incurred by the Council, or
- b) recover in full from the Operator any other loss sustained by the Council in consequence of any breach of this clause, whether or not the Contract has been terminated.

31. AUDIT

31.1. The Operator shall at all reasonable times (including following termination for whatever reason of the Contract) provide to, or procure for, or allow access to any auditor or representative of the Council) conducting an audit (whether an internal audit, an external audit, an inspection, an audit of best value

performance plans, or in carrying out relevant statutory functions or the Data Protection Laws) any records, information and data in the possession or control of the Operator which in any way relates to or have been used in connection with the provision of the Service including (but without limitation) the Council's data and information stored on a computer system operated by the Operator. This access shall include permission to copy and remove any copies and remove the originals of such documents, provided always that the Council provides reasonable prior notice of any such access required and endeavours to minimise any disruption caused during such access period.

- 31.2. The operator shall keep and maintain until 2 years after the Contract has been completed records to the satisfaction of the Council of all expenditures which are reimbursable by the Council and of the hours worked and costs incurred in connection with any Staff of the Operator paid for by the Council on a time charge basis. The Operator shall on request afford the Council or the Council's representatives such access to those records as may be required by the Council in connection with any such contract.
- 31.3. The provisions of this Condition 31 shall apply during the continuance of the Contract and after its termination howsoever arising.

32. FORCE MAJEURE

- 32.1. Neither Party shall be liable to the other Party for any delay in or failure to perform its obligations under the Contract (other than a payment of money) if such delay or failure results from a Force Majeure event. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations hereunder for the duration of such Force Majeure event. However, if any such event prevents either Party from performing all of its obligations under the Contract for a period in excess of 3 months, either Party may terminate the Contract by notice in writing with immediate effect.
- 32.2. Any failure or delay by the Operator in performing its obligations under any such Contract which results from any failure or delay by an agent, sub-contractor or operator shall be regarded as due to Force Majeure only if that agent, sub-contractor or operator is itself impeded by Force Majeure from complying with an obligation to the Operator.
- 32.3. Clause 32 does not affect the Council's rights under clause 22.
- 32.4. If either Party becomes aware of circumstances of Force Majeure which give rise to or which are likely to give rise to any such failure or delay on its part as described in clause 32.2 it shall forthwith notify the other by the most expeditious method available to perform the Contract and shall inform the other of the period which it is estimated that such failure or delay shall continue.
- 32.5. For the avoidance of doubt, it is hereby expressly declared that the only events which shall afford relief from liability for failure or delay of performance of the Contract shall be any event qualifying for Force Majeure hereunder.

33. NOTICES

- 33.1. Any notice under the Contract may be delivered personally or sent by email or by prepaid recorded delivery to the email or postal address specified in writing by the Council and the Operator at the commencement of any such Contract (or such other address in the United Kingdom as is otherwise notified from time to time). Any such notice or other written communication shall be deemed to have been served:
- a) if delivered personally, at the time of delivery;
 - b) if posted, at the expiry of two Working Days after it was posted; and
 - c) if sent by email, the next Working Day after it was sent.

In proving such service, it shall be sufficient to prove that personal delivery was made, or that such notice or other written communication was properly addressed (including by email), and if sent by post properly stamped and posted.

34. HEALTH AND SAFETY

- 34.1. The Operator shall ensure that all operations under the Contract shall comply with all legislation, codes of practice, policies, directions and other guidance issued from time to time by the Council and other public authorities.
- 34.2. The Operator shall nominate an Officer who will notify a Duly Authorised Officer of the Council immediately of any Health and Safety issue which arises prior to the commencement of the Contract or during the period of the Contract.
- 34.3. The Operator shall promptly (and within 24 hours of it coming to the Operator's attention) notify the Council of any health and safety hazards which may arise in connection with the performance of the Contract.
- 34.4. The Operator shall comply with the requirements of the Health and Safety at Work Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Staff and other persons working in the performance the Contract.
- 34.5. The Operator shall ensure that its health and safety policy or statement (as required by the Health and Safety at Work Act 1974) is made available to the Council on request and provide the Council with any revised versions thereof.
- 34.6. The Operator will co-operate with officers of the Council, or its representatives, investigating any Health and Safety matter.
- 34.7. Prior to the commencement of the Contract and subsequently in the event of any changes the Operator shall be responsible for undertaking a risk assessment of the route, stopping places, suitability of the Vehicle for its route and purpose, suitability and competence of the Driver, and Passenger Assistant, (if required), to provide the Service and any other matter which in the Operator's judgment may present a risk to the safety of Passengers. The Operator will notify the Council accordingly of any risks identified.

35. ARBITRATION

- 35.1. All disputes, differences or questions between the Parties with respect to any matter or thing arising out of or relating to the Contract, other than a matter or thing as to which the decision of the Council is under the Contract to be final and conclusive, and except to the extent to which special provision for arbitration is made elsewhere in any such Contract, shall be referred to a single arbiter to be mutually chosen by the parties or, failing agreement, nominated by the President of the Law Society of Scotland for the time being on the application of either party.
- 35.2. Any such reference to arbitration shall be deemed to be an agreement to refer to arbitration within the meaning of the Arbitration (Scotland) Act 2010 (or as amended).

36. WAIVER

- 36.1. The failure of either Party to insist upon strict performance of any provision of the Contract or the failure of either Party to exercise any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the Contract.
- 36.2. No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing.
- 36.3. A waiver of any right or remedy arising from a breach of the Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Contract.

37. AMENDMENTS

- 37.1. Except for any variation to the Specification made in accordance with clause 12, no amendment to the Contract shall have effect unless otherwise agreed in writing and signed on behalf of the Council and the Operator.

38. ACCRUED RIGHTS AND REMEDIES

- 38.1. Neither the expiration nor the termination of the Contract shall prejudice or affect the right of action or remedy which shall have accrued or shall thereafter accrue either to the Operator or the Council.
- 38.2. The rights and remedies to which either Party is or may become entitled to enforce under or in connection with the Contract or by law may be enforced from time to time separately or concurrently with any other right or remedy given by this Contract or by law so that such rights and remedies are not exclusive of the other or others but are cumulative.

39. PARTIAL INVALIDITY

- 39.1. If any provisions of the Contract is invalid under any applicable statute or rule of law, such provision shall be deemed to be amended as necessary to make it valid or if the provision cannot be rendered valid then it shall be deemed to be omitted from any such Contract.

40. ENTIRE AGREEMENT

40.1. The Contract contains the entire agreement between the Parties hereto in relation to the subject matter thereof and supersedes all previous agreements and understandings between the Parties.

41. GOVERNING LAW

41.1. These Conditions shall be governed by and construed in accordance with the law of Scotland and the Operator hereby irrevocably submits to the jurisdiction of the Scottish courts. The submission to such jurisdiction shall not (and shall not be construed so as to) limit the right of the Council to take proceedings against the Operator in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not

42. STATUTORY MINIMUM WAGE

42.1. The Operator shall ensure that all persons employed as an approved Driver or Passenger Assistant on any Council Contracts/Services shall, where applicable, be paid at least the UK statutory minimum wage.

43. FAIR WORK/LIVING WAGE STATEMENT

43.1. The Council expect all operators to adopt Fair Work practices which include fair pay and equal pay policy. Operators are encouraged to make a commitment to supporting the real Living Wage including, for example being a Living Wage Accredited Employer <https://scottishlivingwage.org/>

44. COMMUNITY BENEFITS

44.1. The Council is committed to maximising community benefits from its procurement activities. To this end the Council may place a requirement on the supplier (or service provider) to deliver appropriate social, economic, and environmental benefits relating to the subject matter of the Contract.

45. NOVATION

45.1. The Council shall be entitled to assign, novate or otherwise dispose of its rights and obligations under these Conditions of Contract or any part thereof to any Contracting Authority, private sector body, charitable or third sector body, or any other body established under statute ("the Transferee") provided that any such assignment, novation or other disposal shall not unreasonably increase the burden of the Operator's obligations under these Conditions of Contract.

45.2. Each Party shall at its own cost and expense carry out or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents) the other Party reasonably requires from

time to time for the purpose of giving that other Party the full benefit of the provisions of these Conditions of Contract.

- 45.3. The Council shall be entitled to disclose to any Transferee any Confidential Information of the Operator which relates to the performance of these Conditions of Contract by the Operator. In such circumstances the Council shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of these Conditions of Contract and for no other purposes and shall take all reasonable steps to ensure that the Transferee accepts an obligation of confidence.

46. ACCOUNTING INFORMATION

- 46.1. The Supplier shall provide to the council (when requested) and no later than the 31st of March in each fiscal year, such information in relation to the contract that is required for statutory accounting purposes (but not limited to just that purpose). Any data required for accounting for arrangements within the scope of International Financial Reporting Standard 16 (IFRS 16) shall be made available at the request of the council.

47. DATA PROTECTION

- 47.1. The Operator acknowledges that any Personal Data described in the scope of the Table - Data Protection, below, may be Processed in connection with the Contract. For the purposes of any such Processing, the Parties agree that usually the Operator acts as the Data Processor and the Council acts as the Data Controller.
- 47.2. Both Parties agree to negotiate in good faith any such amendments to the Contract and/or these Conditions of Contract that may be required to ensure that both Parties meet all their obligations under Data Protection Laws. The provisions of this clause 46 are without prejudice to any obligations and duties imposed directly on the Operator under the Data Protection Laws and the Operator hereby agrees to comply with those obligations and duties.
- 47.3. The Operator will, in conjunction with the Council and in its own right and in respect of the Contract, make all necessary preparations to ensure it will be compliant with the Data Protection Laws.
- 47.4. The Operator will provide the Council with the contact details of its data protection officer or other designated individual with responsibility for data protection and privacy to act as the point of contact for the purpose of observing its obligations under the Data Protection Laws.
- 47.5. The Operator must:
- a) Process Personal Data only as necessary in accordance with its obligations under the Contract and any written instructions given by the Council (which may be specific or of a general nature), including with regard to transfers of Personal Data outside the European Economic Area unless required to do so by European Union or Member state law or Regulatory Body to which the Operator is subject; in which case the Operator must,

- unless prohibited by that law, inform the Council of that legal requirement before Processing the Personal Data only to the extent, and in such manner as is necessary for the performance of the Operator's obligations under this Contract or as is required by the Law;
- b) subject to clause 46.5(a) only Process or otherwise transfer any Personal Data in or to any country outside the European Economic Area with the Council's prior written consent;
 - c) take all reasonable steps to ensure the reliability and integrity of any Operator's Staff who have access to the Personal Data and ensure that the Operator's Staff:
 - 1) are aware of and comply with the Operator's duties under this clause;
 - 2) are subject to appropriate confidentiality undertakings with the Operator or the relevant sub-contractor;
 - 3) are informed of the confidential nature of the Personal Data and do not publish, disclose, or divulge any of the Personal Data to any third party unless directed in writing to do so by the Council or as otherwise permitted by this Contract; and
 - 4) have undergone adequate training in the use, care, protection, and handling of Personal Data.
 - d) implement appropriate technical and organisational measures including those in accordance with Article 32 of the GDPR to protect Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration, or disclosure, such measures being appropriate to the harm which might result from any unauthorised or unlawful Processing accidental loss, destruction, or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected.
- 47.6. The Operator shall not engage a sub-contractor to carry out Processing in connection with the Services without prior specific or general written authorisation from the Council. In the case of general written authorisation, the Operator must inform the Council of any intended changes concerning the addition or replacement of any other sub-contractor and give the Council an opportunity to object to such changes.
- 47.7. If the Operator engages a sub-contractor for carrying out Processing activities on behalf of the Council, the Operator must ensure that the same data protection obligations as set out in this Contract are imposed on the sub-contractor by way of a written and legally binding contract, in particular providing sufficient guarantees to implement appropriate technical and organisational measures to protect the Personal Data. The Operator shall remain fully liable to the Council for the performance of the sub-contractor's performance of the obligations.
- 47.8. The Operator must provide to the Council reasonable assistance including such technical and organisational measures as may be appropriate in complying with Articles 12-23 of the GDPR. The Operator must notify the Council if it:
- a) receives a Data Subject Access Request (or purported Data Subject Access Request);
 - b) receives a request to rectify, block, or erase any Personal Data;

- c) receives any other request, complaint, or communication relating to either party's obligations under the Data Protection Laws;
 - d) receives any communication from the Supervisory Authority or any other regulatory authority in connection with Personal Data Processed under this Contract; or
 - e) receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by law or regulatory order; and such notification must take place as soon as is possible but in any event within 3 working days of receipt of the request or any other period as agreed in writing with the CPP from time to time.
- 47.9. Taking into account the nature of the Processing and the information available, the Operator must assist the Council in complying with the Council's obligations concerning the security of Personal Data, reporting requirements for data breaches, data protection impact assessments, and prior consultations in accordance with Articles 32 to 36 of the GDPR. These obligations include:
- a) ensuring an appropriate level of protection through technical and organisational measures that take into account the circumstances and purposes of the Processing as well as the projected probability and severity of a possible infringement of the law as a result of security vulnerabilities and that enable an immediate detection of relevant infringement events;
 - b) notifying a Personal Data breach to the Council without undue delay and in any event no later than 24 hours after becoming aware of a Personal Data breach;
 - c) assisting the Council with communication of a Personal Data breach to a Data Subject;
 - d) supporting the Council with preparation of a data protection impact assessment; and
 - e) supporting the Council with regard to consulting the Supervisory Authority on various data protection matters including any Personal Data breaches.
- 47.10. At the expiry or termination of the Contract the Operator must, on written instruction of the Council, delete or return to the Council all Personal Data and delete existing copies unless EU or Member State law requires storage of the Personal Data and provide the Council with confirmation of deletion within two Working Days of the deletion.
- 47.11. The Operator must:
- a) provide such information as is necessary to enable the Council to satisfy itself of the Operator's compliance with this clause 46;
 - b) allow the Council, its employees, auditors, authorised agents, or advisers reasonable access to any relevant premises, during normal business hours, to inspect the procedures, measures, and records referred to in this clause 46 and contribute as is reasonable to those audits and inspections; and
 - c) inform the Council if, in its opinion, an instruction from the Council infringes any obligation under the Data Protection Laws.

- 47.12. The Operator must maintain written records including in electronic form, of all Processing activities carried out in performance of the Contract or otherwise on behalf of the Council containing the information set out in Article 30(2) of the GDPR.
- 47.13. If requested, the Operator must make such records referred to clause 46.12 available to the Supervisory Authority on request and co-operate with the Supervisory Authority in the performance of its tasks.
- 47.14. The Parties acknowledge that the inspecting party will use reasonable endeavours to carry out any audit or inspection under clause 46.13 with minimum disruption to the Operator’s Day to day business.

Schedule - DATA PROTECTION	
	Data Processing provision as required by Article 28(3) GDPR. This Schedule includes certain details of the Processing of Personal Data in connection with the purchase of Services under this Contract:
<i>The subject matter and duration of the Processing of Personal Data are:</i>	Transportation requirements covering Short Notice, Education, Health, Blood, Medical Record & Local Bus Services for the duration of the Contract. The period of processing of personal data will be detailed in any contact awards.
<i>The nature and purpose of the Processing of Personal Data:</i>	Recording and storage of any personal data or special category personal data as set out in the contract to enable provision of the transportation services. At the expiry or termination of the Contract the Supplier must, on written instruction of the Purchaser, delete or return to the Purchaser all Personal Data and delete any existing copies.
<i>The type of Personal Data to be Processed:</i>	Information to enable the delivery of any service e.g. names, addresses, email, telephone numbers.
<i>The categories of Data Subject to whom Personal Data relates:</i>	Patients, pupils, family members, escorts, members of the public and will on occasions include special category personal data e.g. medical records.
<i>The obligations and rights of the Purchaser:</i>	The obligations and rights of the Purchaser as the Data Controller are set out in Condition 46 of the Contract.

This is the Schedule referred to in the foregoing Conditions of Contract.

SCHEDULE A: CONDITIONS SPECIFIC TO THE PROVISION OF SHORT NOTICE AND URGENT TRANSPORT

1. It is anticipated that some Services required will be ad hoc, unplanned journeys required at short notice and possibly urgently. Some access to the Services will be required 24/7. Journeys may also be one-offs or short-term regular journeys.
2. The Short Notice and Urgent Transport requirement may be 24 hours per day, 7 days per week, and 365 days per year.

TERMINATION BY THE COUNCIL

The Council may terminate any contract with a minimum of two (2) Working Days' notice if there are any material changes which impact on service delivery e.g. if there are no longer any Passengers required to be carried on such contract, a change to the number of passengers which may also impact on the vehicle size required or changes to the Contracted route. This is not an exhaustive list, but for indicative purposes only.

In the event that less than two (2) Working Days' notice is given, the Council shall pay the Operator the equivalent Contract rate for two (2) days operation.

TERMINATION BY THE OPERATOR

The Operator is required to give the Council a minimum of 28 days' notice of their intention to terminate any contract awarded.

SCHEDULE B: CONDITIONS SPECIFIC TO THE PROVISION OF A MAINSTREAM EDUCATION CONTRACT (School and College Campuses)

1. The Operator shall provide sufficient seats to carry the number of authorised Passengers as will be detailed in the Specification.
2. The Operator shall not convey any Passengers not authorised by the Council.
3. The Operator shall carry the Passengers to and from the Establishment(s) as detailed in within the Specification.
4. Passengers shall be picked up and set down at the points described and at the designated times as referred to in the Specification or as amended by the agreement of both Parties. The Operator shall undertake a risk assessment of the route, stopping places, suitability of the Vehicle for its route and purpose prior to the commencement of any Contract and subsequently in the event of any changes. All such information will be made available to the Council, upon request.
5. The Operator shall not take instructions from any child or from any Passenger other than an authorised representative of the Council.
6. The Operator shall not drop off any Passenger in any location other than the authorised drop - off point unless the Council specifically authorises an alternative location.
7. Drivers and passenger assistants shall not exchange personal information (such as telephone numbers, social media details or addresses) with pupils or students.
8. Drivers and Passenger Assistances should carry out the Service in a friendly manner but should not:
 - engage Passengers in any conversation of a personal, suggestive or intimate nature;
 - touch, hold or make any physical contact with any Passenger.
9. Any information obtained about any Passenger should be treated in the strictest confidence and in accordance with data protection principles.
10. If any allegation of impropriety is made against any Driver or Passenger Assistance the Council shall require the Operator to remove that person from the performance of the Service immediately to ensure that a thorough and fair investigation can take place.
11. The Council may require the Operator to modify the timetable detailed in the original Specification. If as a result of modification to the route and/or pick up and set down point(s) the daily operational mileage increases or decreases by 5% or less, no adjustment will be made to the contract price. To ensure clarity in all such evaluations the Operator will advise the Council of the change to operational mileage arising on each occasion and the Council shall satisfy itself that the reported operational mileage is correct. Where mileage changes are beyond the 5% threshold the Council will refer to the Operators rate submitted at tender and decide whether to revise the contract rate accordingly or retender the Contract.
12. Beyond considerations of route and mileage variations as agreed with the Operator in condition 5 above, the Council will review any contract price where added operational time arises due to changed Passenger needs, including but not limited to, the provision and use of special equipment, and care/supervision requirements. Similarly, the Council will consider amendment to any contract price to reflect added operational time arising from, but not limited to, changed road traffic conditions and/or Vehicular access.
13. Passengers shall arrive at the Establishment at the time of arrival as detailed in the Specification provided. If for any reason the actual arrival time is earlier than that specified, the Driver and any Passenger Assistant will retain responsibility for

- the Passengers until the specified arrival time or until a representative of the school/college accepts responsibility if sooner. In such an event the Driver or Passenger Assistant must be satisfied as to the identity of the representative.
14. Any feeder arrangements will be in accordance with the Specification to meet the needs of the Passenger(s). Where feeder arrangements are specified, the Operator shall maintain appropriate communication with the Operator of any feeder service(s) ensuring the safe and coordinated transfer of Passengers between Vehicles. In the event that feeder arrangements fail the Operator will retain Passengers in his care and communicate the circumstances to the Council.
 15. Non-emergency variations may be made to the Contract route, pick-up and set down arrangements, frequency, timings and vehicle specified only with the prior agreement of the Council. Any variation to the Contract route, pick-up and set down arrangements, timings or capacity of the vehicle must be agreed with the Council in writing prior to implementation.
 16. Operators are responsible for taking reasonable care of Passengers temporarily in their charge. In case of breakdown and other emergency and for dealing with misbehaviour by Passengers the Driver may be the only person in a position to decide the appropriate action to take. Operators must ensure that Drivers are suitably briefed to cope with these possibilities and that Council officers are kept informed of any significant incidents.
 17. The Operator shall not register any part of the Contract as a local bus service or merge or amend any route without the prior written approval of the Council.
 18. A Passenger Carrying Vehicle must display School Bus Signs in accordance with the Road Vehicles Lighting (Amendment) Regulations 1994 and use hazard warning lights when it is stationary and when Passengers are being picked up or dropped off.
 19. The Passenger Carrying Vehicle shall display a sign adequate to inform pupils and/or students of the Vehicle's route number.
 20. In the event of a Vehicle breakdown, Passengers should not be allowed to leave the Vehicle except in the case of an emergency or risk of fire whereupon the Driver and/or Passenger Assistant should ensure Passengers are directed to a safe waiting place away from the Vehicle until another Vehicle arrives. Passengers must not be placed at risk by being left unattended or walking unsupervised except at their normal alighting point. The Driver must take steps to communicate immediately with the Operator, by use of a mobile telephone or radio facilities, to arrange for a replacement Vehicle to fulfil the Contract. Under no circumstances must Passengers be placed at risk by being allowed or asked to push a Vehicle or be sent to find assistance. The Operator shall notify the Council of the incident in writing as soon as practicable using the Incident Report Form.
 21. Any Vehicle breakdown, accident, difficulties caused by severe weather conditions or other exceptional circumstances, which results in a delay in the excess of fifteen (15) minutes must be reported immediately to the Council's Duty Authorised Officer. The Operator shall notify the Council of the incident in writing as soon as practicable using the Incident Report Form.
 22. The Operator shall report immediately to the Head teacher or Principal, or duly authorised person of any Establishment involved any incident of disorderly or unruly conduct. Except at the request of the Head teacher, Principal or duly authorised person in no other circumstances must a Passenger be asked to leave the Vehicle because of unruly behaviour. In extreme circumstances the Driver may drive direct to a Police Station or dial 999. The Operator shall notify the Council of the incident in writing as soon as practicable using the Incident Report Form.

23. The Council shall issue school travel passes of a standard design to entitled pupils and/or students. The Operator shall honour any such pass issued by the Council.
24. Only persons authorised by the Council shall be carried on the contract Vehicle unless the Service has been registered as a local bus service with the Traffic Commissioner.
25. All authorised Passengers shall be issued with a pass to travel prior to meeting the Vehicle. This pass shall display the name of the traveller, contract number and destination (points of travel). Where Passengers have been issued with pass, a Passenger claiming to be travelling to or from school shall not be refused travel where they are unable to produce their pass.
26. The Operator shall at its cost and expense ensure that the Driver or Passenger Assistant (where employed by the contractor) has been issued with a mobile telephone enabling contact with the Operator, Establishment, Council or Emergency Services should an emergency arise whilst discharging the Service. Except in the case of an emergency, the Driver's mobile telephone must be switched off irrespective of whether the telephone is fitted as 'hands free' and only used by the Driver when the Vehicle is stationary, and the engine switched off.
27. The Operator must ensure that Passenger airbags are turned off where a child is travelling in a child car seat or with aid of a booster cushion, and where the use of airbags is not recommended by either the manufacturer of the child restraint, or by the Vehicle manufacturer.
28. The Standard Operating Hours for the Mainstream Education Transport is 0600 – 1800 hours.

TERMINATION BY THE COUNCIL

The Council may terminate any contract with a minimum of two (2) Working Days' notice if there are any material changes which impact on service delivery e.g. if there are no longer any Passengers required to be carried on such contract, a change to the number of passengers which may also impact on the vehicle size required or changes to the Contracted route. This is not an exhaustive list, but for indicative purposes only.

In the event that less than two (2) Working Days' notice is given, the Council shall pay the Operator the equivalent Contract rate for two (2) days operation.

TERMINATION BY THE OPERATOR

The Operator is required to give the Council a minimum of 28 days' notice of their intention to terminate any contract awarded.

SCHEDULE C: CONDITIONS SPECIFIC TO THE PROVISION OF ADDITIONAL NEEDS, SOCIAL CARE, HEALTHCARE AND OTHER TRANSPORT

1. In Schedule C the term Social Care shall mean a person in one of the following customer groups:
 - Older people (who may be physically or mentally frail).
 - People with learning disabilities.
 - People with physical disabilities.
 - People with emotional difficulties or problems.
 - People with sensory impairment.
 - Children accessing social care provision.
 - Any other person who is authorised by the Duly Authorised Officer to travel under this Contract.

The term Additional Needs shall mean a person who could have any of the following conditions:

- Moderate or severe learning difficulties.
 - Physical disabilities.
 - Emotional and behavioural difficulties.
 - Sensory impairment.
 - Medical needs.
 - Any additional person who is authorised by the Duly Authorised Officer to travel under this Contract.
2. The Operator shall provide all Drivers and Passenger Assistants with a Support/Action Plan where applicable and will expect that all Drivers and Passenger Assistants comply with this guidance at all times.
 3. The Driver and Passenger Assistant will maintain a positive atmosphere on the Vehicle maintaining a calm, caring, and sensitive environment respecting the dignity of people at all times. Should Passengers become agitated the Driver and Passenger Assistant must remain calm and seek to defuse any such situation by using non-confrontational techniques. Physical restraint will only be used as a last resort to prevent Passengers injuring themselves or another person. Any incidents or difficulties involving Passengers must be reported immediately to the appropriate Establishment Manager, and the Council informed via the Incident Report Form.
 4. The Operator shall provide a Vehicle(s) with sufficient seats to carry the number of authorised Passengers and of a type as stipulated in the Specification. Passengers shall be picked up and set down at the points described and at the designated times as referred to in the Specification or as amended by the agreement of both Parties.
 5. The Operator shall at its cost and expense ensure that the Driver or Passenger Assistant has been issued with a mobile telephone enabling contact with the Operator, Establishment, Council or Emergency Services should an emergency arise whilst discharging the service. Except in the case of an emergency, the Driver's mobile telephone must be switched off irrespective of whether the telephone is fitted as 'hands free' and only used by the Driver when the Vehicle is stationary, and the engine switched off.
 6. The Council will notify the Operator of any specific instructions for the Driver or Passenger Assistant concerning the needs of any Passenger.
 7. The Operator shall not convey any Passenger not authorised by the Council.

8. Any communication regarding the operation of the Contract should not be accepted from Passengers without verification from parent/carer, Establishment or Council. Any request for a change to frequency of travel, boarding and alighting point and operational times can only be approved by the Council.
9. Passengers shall arrive at the Establishment at the time of arrival detailed in the Specification. If for any reason the actual arrival time is earlier than that specified, the Driver and any Passenger Assistant will retain responsibility for the Passengers until the specified arrival time or until a representative of the Establishment accepts responsibility if sooner. In such an event the Driver or Passenger Assistant must be satisfied as to the identity of the representative.
10. If the Passenger's parent or carer is not present to receive the person, the Driver should continue the route and return the Passenger at the completion of the journey. If at the end of the journey there is no-one to receive the Passenger, the Operator should follow the guidance contained in the Support/Action plan if applicable. The operator shall notify the Council of the incident in writing as soon as practicable using the Incident Report Form.
11. The Vehicle shall be at the Establishment at the close of the session and return the Passengers to the points of origin unless otherwise stated in the Specification. The Vehicle should park as close as possible to the Passenger's boarding and alighting point. The Operator will be responsible for ensuring Passengers are safe when boarding and alighting the Vehicle and crossing the public highway, and that where specified are handed to the supervision of a parent/carer. Passengers must not be allowed to alight into the highway.
12. Passengers in wheelchairs, as detailed in the Specification, must be conveyed in accordance with the Department of Transport 'Code of Practice' VSE 87/1.
13. In the event of a Vehicle breakdown, Passengers should not be allowed to leave the Vehicle except in the case of an emergency or risk of fire whereupon the Driver and/or Passenger Assistant should ensure Passengers are directed to a safe waiting place away from the Vehicle until another Vehicle arrives. Passengers must not be placed at risk by being left unattended or walking unsupervised except at their normal alighting point. The Driver or Passenger Assistant must take steps to communicate immediately with the Operator, by use of a mobile telephone or radio facilities, to arrange for a replacement Vehicle to fulfil the Contract. Under no circumstances must Passengers be placed at risk by being permitted to push a vehicle or be sent to find assistance.
14. In the event of a Vehicle breakdown, Passengers should not be allowed to leave the Vehicle except in the case of an emergency or risk of fire whereupon the Driver and/or Passenger Assistant should ensure Passengers are directed to a safe waiting place away from the Vehicle until another Vehicle arrives. Passengers must not be placed at risk by being left unattended or walking unsupervised except at their normal alighting point. The Driver or Passenger Assistant must take steps to communicate immediately with the Operator, by use of a mobile telephone or radio facilities, to arrange for a replacement Vehicle to fulfil the Contract. Under no circumstances must Passengers be placed at risk by being permitted to push a vehicle or be sent to find assistance.
15. Any Vehicle breakdown, accident, difficulties caused by severe weather conditions or other exceptional circumstance, which results in a delay in the excess of twenty (20) minutes must be reported immediately to the Council's Duly Authorised Officer. The operator shall notify the Council of the incident in writing as soon as practicable using the Incident Report Form.
16. The Operator shall report as soon as practicable to the Council's Duly Authorised Officer and the manager of any Establishment or their designated representative

- any incident of unusual or unacceptable behaviour, messages or information from carers, or concerns about the wellbeing of Passengers.
17. When a passenger exhibits challenging behaviour, advice should be sought from the Establishment, or parent/carer where possible to establish an appropriate course of action. Only at the explicit request of Passenger Transport but in extreme circumstances the Driver may drive direct to a Police Station or summon police support via use of a mobile telephone or radio facilities. The Operator shall notify the Council of the incident in writing as soon as practicable using the Incident Report Form.
 18. The Driver/Passenger Assistant will maintain a Passenger register on a daily basis. The Driver/Passenger Assistant must report any absenteeism and reasons for the absence, if known to the Establishment manager or their designated representative on arrival or before departure.
 19. When required to do so in the Specification, the Operator shall provide a suitable and competent person authorised by the Council (per clause 4 of the Conditions of Contract) to act as a Passenger Assistant. The Passenger Assistant must travel in the rear of the Vehicle where Passengers can be properly supervised, unless detailed in the Specification.
 20. The Driver and Passenger Assistant shall assist Passengers boarding and alighting the Vehicle and whilst being carried on it. If detailed in the Specification assistance shall be provided to Passengers from and to their own accommodation and into and out of the Establishment including assistance with a Passenger's personal belongings and/or equipment.
 21. Where Passengers are left on the Vehicle unsupervised in order for the Passenger Assistant to assist other Passengers a Risk Assessment must be completed by the Operator and supplied to the Council within 48 Hours two (2) workdays of the commencement of travel.
 22. Operators shall accept responsibility for any medication which needs to be transported between home and the Establishment. A Driver or Passenger Assistant should hand any medication directly to an authorised representative of the Establishment or to the Passenger's parent or carer with, if applicable, any additional written instructions from parents, carers or representatives. Drivers and Passenger Assistants shall not administer medication unless this is specified in the Contract and the proper training has been undertaken. In the event that any medication is administered during the operation of the Contract, the person who has administered the medication must report the action taken to the person receiving the Passenger at the end of the journey. The Operator shall notify the Council of the incident in writing as soon as practicable using the Incident Report Form.
 23. If required by the Council as detailed in the Specification, the Operator shall ensure that each Driver and Passenger Assistant has received training in First Aid (which is the equivalent to the Red Cross or St John's Ambulance standard). In the event of a medical emergency arising on the Vehicle, the Operator should call the emergency services on 999 and notify the Council in writing as soon as practicable using the Incident Report Form.
 24. Each Passenger must have a seat which is fitted with a three (3) point inertia reel seat belt or other seat belt/safety restraint specified by the Council. All Passengers will be required to wear their seat belt/safety restraint during their journey and the Driver or Passenger Assistant will provide assistance to Passengers to ensure that they are correctly used. The Driver or Passenger Assistant must advise the Establishment manager, parent or carer and the

- Council, should a Passenger(s) refuse to wear the seat belt/safety restraint provided for their use.
25. If stipulated by the Council, either in the Specification or at any subsequent time prior to commencement of the Contract, the Operator shall at his own expense arrange for the Driver and Passenger Assistant to undertake a pre-Contract visit to the home(s) of the Passenger(s) for the purpose of introduction and familiarisation engaging with the Passenger, parent(s)/carer(s), Council representatives and others as may be necessary. The Operator shall make the Vehicle and any associated equipment available at this time. Thereafter, the Operator shall provide the same Driver and Passenger Assistant on the Vehicle for the purpose of continuity, except in the event of sickness or holidays when, so far as is reasonably practicable, prior notification will be given to the Council.
 26. The Operator must inform the Council in writing within 48 hours, two (2) Working Days, using the Incident Report Form, where any Passenger ceases to travel.
 27. The Operator shall advise the Council as soon as practicable if it becomes aware that Passengers allocated to the Contract are no longer travelling, or if Passenger numbers have generally diminished from the number allocated to the Contract.
 28. The Council may require the Operator to modify the timetable detailed in the original Specification. If as a result of modification to the route and/or pick up and set down point(s) the daily operational mileage increases or decreases by 5% or less, no adjustment will be made to the contract price. To ensure clarity in all such evaluations the Operator will advise the Council of the change to operational mileage arising on each occasion and the Council shall satisfy itself that the reported operational mileage is correct. Where mileage changes are beyond the 5% threshold the Council will refer to the Operators rate submitted at tender and decide whether to revise the contract rate accordingly or retender the Contract.
 29. The Council will review the contract price where added operational time arises due to changed passenger needs, including but not limited to, the provision and use of special equipment, and care/supervision requirements. Similarly, the Council will consider amendment to the contract price to reflect added operational time arising from, but not limited to, changed road traffic conditions and/or vehicular access.
 30. Feeder arrangements will be in accordance with the Specification to meet the needs of the Passenger. Where feeder arrangements are specified, the Operator shall maintain appropriate communication with the Operator of the feeder Service(s) ensuring the safe and coordinated transfer of Passengers between Vehicles. In the event that feeder arrangements fail the Operator will retain Passengers in his care and communicate circumstances to the Council.
 31. The Council will consider reimbursing the Operator's reasonable costs for the cleaning/valeting of a Vehicle in the event that a Passenger(s) soil it during operation of the Contract. The Council relies upon the Operators earliest advice to the Council, carers and Establishment representatives of any such incident and in all cases a sensitive, considerate and discrete approach toward Passengers and their representatives.
 32. The Standard operating hours for this service is 0630 – 2330.

TERMINATION BY THE COUNCIL

The Council may terminate any contract with a minimum of two (2) Working Days' notice if there are any material changes which impact on service delivery e.g. if there are no longer any Passengers required to be carried on such contract, a change to the

number of passengers which may also impact on the vehicle size required or changes to the Contracted route. This is not an exhaustive list, but for indicative purposes only.

In the event that less than two (2) Working Days' notice is given, the Council shall pay the Operator the equivalent Contract rate for two (2) days operation.

TERMINATION BY THE OPERATOR

The Operator is required to give the Council a minimum of 28 days' notice of their intention to terminate any contract awarded.

SCHEDULE D: CONDITIONS SPECIFIC TO THE PROVISION OF A SUPPORTED LOCAL BUS CONTRACT

VEHICLES

1. Operators shall provide a Vehicle(s) in accordance with the relevant Schedule as stipulated in the Specification.
2. A sign shall be displayed on the window and adjacent to two (2) nominated seats in the most practical position advising they are for priority use by Passengers who are elderly or disabled.
3. A correct and legible destination sign to inform intending Passengers of the Vehicle's route number and destination shall be displayed prominently on the front of the Vehicle. The sign shall use contrasting colours (e.g. white or yellow on black; black on white or yellow). The route number characters shall be at least two hundred (200) millimetres high, and the destination characters shall be in upper- or lower-case characters at least one hundred and twenty-five (125) millimetres high. The display must be clearly illuminated during the hours of darkness.
4. The Operator shall comply with any regulations made under the Public Service Vehicles Accessibility Regulations 2000.
5. The Vehicle shall be fitted with an ITSO compliant electronic ticket machine which is compatible with requirements laid down by Transport Scotland. The costs of supplying, fitting and maintaining all ticketing equipment will be met by the Operator.
6. The Council reserves the right to require CCTV equipment to be installed and operated on Vehicles of any capacity.
7. The Council may require other equipment to be fitted on the Vehicle, such as cabling, electronic communications and data transfer devices as stipulated in the Specification. The cost of supplying and fitting such equipment will be met by the Council but any maintenance and running costs will be met by the Operator. Details of these costs should not be unreasonably withheld or delayed prior to tender submission.

SERVICE REGISTRATION

8. The Contract is conditional upon valid registration with the Traffic Commissioners in respect of the Contract. Registration of the Contract is the responsibility of the Operator and must accord with the Specification. If the registration is at any time cancelled, the Contract shall terminate at the same time as the cancellation takes effect. All costs incurred by the Operator in connection with any such registration with the Traffic Commissioner shall be borne by the Operator.
9. Except in case of emergency, the registered timetable may only be varied, with the prior approval of the Council in writing. The Operator is responsible for notifying the Traffic Commissioner of such variation to the registered timetable and in such manner as may be prescribed by law. In the event of the Council requesting a variation then the Council will pay the appropriate fee to the Traffic Commissioner.

SERVICE OPERATION

10. The Contract is to observe all bus stops along the line of the route and operate on a hail and ride basis out-with built up areas.
11. Where connections between routes are specified Drivers must wait up to 10 minutes later than the scheduled departure time for late running connections.

Conditions of Contract for Passenger Transport

12. In case of breakdown or accident the driver shall instruct the Passengers to stay in the Vehicle whilst assistance is summoned.
13. In periods of adverse weather drivers must use discretion to decide whether a road is passable or not. Drivers should endeavour to choose a route which gives the greatest number of Passengers a reasonable chance of getting to their destination in safety.
14. The Operator must make available to the general public, a telephone number and email address that they may contact for queries other than timetable information, for example to make complaints and for lost property.
15. Where specified in the timetable schedule, the Operator shall enter into an agreement and be responsible for all charges incurred to use Edinburgh Bus Station and Galashiels Transport Interchange.
16. Any Vehicle breakdown, accident, difficulties caused by severe weather conditions or other exceptional circumstances, which results in a delay in the excess of thirty (30) minutes must be reported immediately to the Council's Duly Authorised Officer. The operator shall notify the Council of the incident in writing as soon as practicable using the Incident Report Form.
17. Ensure the punctuality of the bus is within one minute before, and five minutes after, at the timing points shown in the timetable provided.

TICKETS AND FARES

18. Operator(s) who win Minimum Cost contract(s) must ensure that all revenue from the sale of tickets, passes, re-imburement for participation in concessionary travel schemes and multi-operator schemes (such as One-Ticket) are passed onto the Council. The Council will set the fare and pass rates to be used. These changes will be communicated to the Operator no less than one (1) month before they come into effect to allow re-programming of ticket machines and some administration time.
19. Operators who win Minimum Subsidy contract(s) shall retain all revenue from ticket and pass sales together with re-imburement due for participation in concessionary travel schemes and multi-operator schemes (such as One-Ticket).
20. All fare paying Passengers shall be issued with a correct ticket and issued with change as required.
21. Where required, the Council will supply school travel passes of a standard design for pupils entitled to free travel under Council policy. The Operator shall honour all valid passes issued by the Council.
22. Non fare paying Passengers or concessionary travel card holders must show a valid travel pass and this should be recorded on the ticket machine. Concessionary travel card holders must be issued with a ticket.
23. The Operator must participate in the "ONE TICKET" travel ticket scheme.
24. Operators(s) of the Council local public bus service Contracts are required to become member(s) of the Traveline bus information network.
25. The Operator will be required to provide stage by stage and ticket type analyses of Passenger and revenue returns by individual journey on a monthly basis, which should include revenue and boarding data. Any additional request for such data will be supplied free of charge.

PAYMENT

26. On Minimum Subsidy Contracts (with all on-bus revenue and revenue received in respect of concessionary fares and multi-operator ticket re-imburement retained by the Operator) the Council will pay the Contract Price.

Conditions of Contract for Passenger Transport

27. On Minimum Cost Contracts the Council will pay the Contract Price less all on-bus revenue and revenue received by the Operator in respect of concessionary payments and multi-operator ticket re-imbusement.
28. On Shared Risk Contracts the Council will pay the Contract Price less the agreed share of fare box revenue and revenue grants in accordance with the formula detailed in the Specification.

REVENUE AND PASSENGER DATA

29. The Operator shall supply to the Council the following information in a manner approved by the Council:
30. a list of any journeys which operated only partly or did not operate at all or differed from the route and stops shown in the Specification and the mileage lost as a consequence of failing to perform the Service as required;
31. a monthly return of electronic Passenger data on the number and type of tickets issued on each journey of the Service in a manner approved by the Council;
32. a monthly return on bus fares revenue, concessionary travel and multi-operator ticket re-imbusement received in respect of any contracted Service.
33. all ticket sales relating to Council contracts in RAW format on the 1st of April and 1st of September of each year.
34. The information required in clause 6.1 must accompany the invoice submitted by the Operator for performing the Service. Failure to supply any of this information may lead to the Council withholding payment for the service concerned.
35. In each instance of lost mileage as defined in clause 6.1.1 being incurred, the Operator may provide mitigating reasons for such lost mileage in writing.
36. A full business case must be submitted to Council officers before the introduction of any special ticket deals outlining the full details of the deal and any revenue risk implications.

AVAILABILITY OF INFORMATION

37. The Operator must carry on the Vehicle a copy of the current timetable and fare table relating to the Contract and this information shall be made available for inspection on request.
38. The Operator shall comply with the latest version of the Council's published Bus Information Strategy. If information is not provided satisfactorily as required under that Strategy, the Council may use its powers under the Transport (Scotland) Act 2001 to recover the costs from the Operator.

TERMINATION BY THE COUNCIL

The Council may terminate any Contract with a minimum of Ninety (90) days' notice, this may be reduced with mutual agreement from both parties.

TERMINATION BY OPERATOR

The Operator is required to give the Council a minimum of Ninety (90) days' notice of their intention to terminate any Contract, this may be reduced with mutual agreement from both parties.

SCHEDULE E: SUMMARY OF BREACHES AND CONSEQUENCES

MATERIAL BREACH OF CONTRACT		MAXIMUM CONSEQUENCE	ADMINISTRATIVE COST
1	Use of vehicle which is not correctly licensed or insured	Immediate termination	Per 22.1 of these conditions.
2	Use of Driver without the appropriate driving license for the vehicle being used.	Immediate termination	Per 22.1 of these conditions.
3	Use of Driver or Passenger Assistant who has not passed the Disclosure clearance procedure agreed by the Council.	Immediate termination	Per 22.1 of these conditions.
4	Use of Driver or Passenger Assistant unfit consequent to use of alcohol, medications or other substances.	Immediate termination	Per 22.1 of these conditions.
5	Driver/Passenger Assistant smoking in vehicle or on a School/Establishments premises	Immediate termination	Per 22.1 of these conditions.
6	Driver using mobile telephone (including hands free kit) whilst driving.	Immediate termination	Per 22.1 of these conditions.
7	Any action which is judged by the Council to place passengers in unacceptable danger.	Immediate termination	Per 22.1 of these conditions.
8	Failure to provide Passenger Assistant where specified.	Immediate termination	Per 22.1 of these conditions.
9	Sub-contracting to an Operator that is not an Approved Operator	Immediate termination	Per 22.1 of these conditions.
10	Failure to comply with feeder transport transfer arrangements.	Immediate termination	Per 22.1 of these conditions.
11	Combining of Contracts without the Council's prior written approval.	Immediate termination	Per 22.1 of these conditions.