

DATED

2020

THE CORNWALL COUNCIL

-AND-

PLYMOUTH CITY BUS LIMITED

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AGREEMENT IN RELATION TO THE PROVISION OF INTEGRATED LOCAL AND  
SCHOOL BUS SERVICES ACROSS CORNWALL

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Prepared by



(Commercial Contracts and Projects)

Cornwall Legal Services

AO/054962

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THIS AGREEMENT is made on                      day of                      2020

**BETWEEN:**

1. **THE CORNWALL COUNCIL** of New County Hall, Treyew Road, Truro, Cornwall, TR1 3AY (**'the Council'**); and
2. **PLYMOUTH CITY BUS LIMITED** a company incorporated in England and Wales with company registration number 2004966 and whose registered office is situated at 3<sup>RD</sup> Floor 41-51 Grey Street, Newcastle Upon Tyne and Wear, NE1 6EE (**'the Operator'**)

Each a 'Party' and together the 'Parties'

**BACKGROUND**

- (A) The Council is a best value authority and has a duty under section 3(1) of the LGA 1999 to make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness.
- (B) The Council placed a contract notice 2019/S 146-359715 on 31<sup>st</sup> July 2019 in the Official Journal of the European Union seeking expressions of interest from potential providers for the provision of Local and School Bus Services.
- (C) The Council has, through a competitive process, selected the Operator to provide these services and the Operator is willing and able to provide the services in accordance with the terms and conditions of this agreement.
- (D) The Council has powers under Transport Act 1985, Local Government Act 1972, Education Act 1996 and Localism Act 2011 to enter into this Agreement.

## PART 1 PRELIMINARY

### Agreed Terms

#### 1. Definitions and Interpretations

1.1 In this Agreement, unless the context otherwise requires, the following expressions have the following meanings:

**Actual Income** monies payable to the Council by the Operator from sale of tickets from any Minimum Cost Contract where this is stated in the Specification,;

**Affected Party** means a Party that is prevented, hindered or delayed in or from performing any of its obligations under this Agreement by a Force Majeure Event;

**Agreement** means this Agreement;

**Authorised Officer** means an officer authorised by the Council to act on behalf of the Council on matters arising out of this Agreement;

**Applicable Laws** means (for so long as and to the extent that they apply to the Operator) the law of the European Union, the law of any member state of the European Union and/or Domestic UK law;

**Catastrophic Failure** means a complete failure on the part of the Operator to meet a substantial part of its obligations and performance indicators;

**CCTV** means closed circuit television

**Change Control Note** the written record of a change agreed or to be agreed by the parties pursuant to the Change Control Procedure.

**Change Control**

|   |  |
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| <b>Procedure</b>                              | the procedure for changing this agreement, as set out in Schedule 7;   |
| <b>Council's Minimum Standards of Service</b> | has the meaning given in the Specification;  |
| <b>Council's Monitoring Officer</b>           | has the meaning given in the Council's Constitution;   |
| <b>Council's Constitution</b>                 | means the constitution of the Council, a copy of which is available on the Council's website;  |
| <b>Council's Internal Auditor</b>             | has the meaning given in the Council's Constitution;   |
| <b>Council Vehicles</b>                       | vehicle supplied by the Council to the Operator for the sole purpose of provision of the Services and detailed in Schedule 10;   |
| <b>Commencement Date</b>                      | means the date of this Agreement;  |
| <b>Commercially Sensitive Information:</b>    | has the meaning given in Schedule 13;  |
| <b>Community Bus Service</b>                  | means provision of a local bus service in accordance with the conditions of permit issued pursuant to section 22 of Transport Act 1985;  |
| <b>Confidential Information</b>               | shall include, but not necessarily be limited to, all information which is not publicly known including the personal details of any Council employee and any information related to the personnel management function of the Council;  |
| <b>Consumer Price Index:</b>                  | the index published by the Office for National Statistics or failing such publication or in the event of a fundamental change to the index, such other index as the Parties may agree, or such other adjustments to the index as the Parties may agree (in each case with the intention of putting the Parties in no better nor worse position than they would have been in had the index not ceased to be |

published or the relevant fundamental change had not been made) or, in the event that no such agreement is reached, as may be determined in accordance with clause 57 (Dispute Resolution);

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| <b>Consistent failure</b>                                       | means a failure by the Operator to comply with its obligations repeatedly;   |
| <b>Contract Documents</b>                                       | means the documents comprising this Agreement, and supporting the Schedules;   |
| <b>Contracts Finder</b>   | has the meaning given in Public Contracts Regulations 2015;  |
| <b>Contract Period</b>  | means the period ascertained in accordance with Clause 2;  |
| <b>Contract Price</b>   | means the price payable to the Operator by the Council under this Agreement as set out in the Pricing Document appended as Schedule 2;   |
| <b>Council's Representative</b>                                 | means the person(s) nominated by the Council as set out in Schedule 3;   |
| <b>Cornwall &amp; Isles of Scilly Safeguarding Adults Board</b> | means the Safeguarding Board of Cornwall and Isles of Scilly;  |
| <b>Data Protection Legislation</b>                              | the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications) |
| <b>Data Subject</b>   | as defined in the Data Protection Legislation;   |
| <b>Disposal</b>   | means disposal of buses acquired by the Council for use by the Operator for Truro Park and Ride Services;  |



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| <b>District Auditor</b>                     | a person whose job is to check the financial records of a local government organisation, to make certain that its accounts are being managed correctly;  |
| <b>Disclosure and Barring Service</b>       | the organisation established in 2012 for the purposes of carrying out the functions previously undertaken by the Criminal Records Bureau (CRB) and the Independent Safeguarding Authority (ISA); |
| <b>Driver Licence</b>                       | a licence issued by a relevant authority in accordance with the Law for the purposes of driving a motor vehicle on public road;  |
| <b>Domestic UK Law</b>                      | means the Law;   |
| <b>Driver Qualification Card</b>            | means the Driver Certificate of Professional Competence (CPC) issued by Driver and Vehicle Standards Agency (DVSA);  |
| <b>DVSA</b>                                 | Driver & Vehicle Standards Agency;   |
| <b>Electronic Bus Service Registration</b>  | a system for registering bus service electronically;   |
| <b>Employee</b>                             | means the Operator's personnel used in the provision of the service.   |
| <b>Equality and Human Rights Commission</b> | a statutory non-departmental public body established by the Equality Act 2006  |
| <b>Exit Management Plan</b>                 | a plan to be agreed between the Parties at least six (6) months before the expiry of the Term forming part of Schedule 12.   |
| <b>EIR</b>                                  | Environmental Information Regulations;   |
| <b>Force Majeure Event</b>                  | means any circumstance not within a party's reasonable control including, without limitation:<br><br>(a) acts of God, flood, drought, earthquake or other natural disaster;                      |

- (b) epidemic or pandemic;
- (b) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
- (c) nuclear, chemical or biological contamination or sonic boom;
- (d) any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;
- (e) collapse of buildings, fire, explosion or accident; and
- (f) any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the party seeking to rely on this clause, or companies in the same group as that party);
- (g) interruption or failure of utility service.

**FOIA** the Freedom of Information Act 2000 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

**Handover Protocol** has the meaning given in Schedule 11;

**Hazard Warning Lights** each of a pair of yellow flashing indicator lights on a vehicle, switched on simultaneously as a warning that the vehicle is stationary or unexpectedly slowing down or reversing;

**Health and Safety Policy** means a policy of the Operator;

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| <b>HMRC Revenue and Custom</b> | Her Majesty Government Department responsible for collection of tax;  |
| <b>Financial Reports</b>       | a report providing financial statistics relative to the Services provided by the Operator;  |
| <b>Hiring In</b>               | is a temporary action by the Operator involving the hiring of a vehicle from a third party, which is then used by the Operator to provide the Services under the auspices of the Operator's operating licence.  |
| <b>Insolvency Event:</b>       | where: <ul style="list-style-type: none"> <li>a) the Operator suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;</li> <li>b) the Operator commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;</li> <li>c) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Operator (being a company);</li> <li>d) an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Operator (being a company);</li> <li>e) the holder of a qualifying floating charge over the assets of the Operator (being a company) has become entitled to appoint or has appointed an administrative receiver;</li> <li>f) a person becomes entitled to appoint a receiver over the assets of the Operator or a receiver is appointed over the assets of the Operator;</li> <li>g) a creditor or encumbrancer of the Operator attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;</li> <li>h) any event occurs, or proceeding is taken, with respect to the Operator in any jurisdiction to which it is subject that has</li> </ul> |

an effect equivalent or similar to any of the events mentioned in (a) to (h) (inclusive); or

the Operator suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;

## **Intellectual Property**

### **Rights**

means patents, utility models, rights to inventions, copyright and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

### **KPI**

means the performance indicators set out in Part 2 of Schedule 1;

### **Law**

means any legal provision the Operator must comply with including any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body, whether in the UK or elsewhere;

### **Licence**

shall mean the Operator Licence or Drivers Licence;

### **Living Wage Foundation**

a campaigning organisation in the United Kingdom established in 2011 which aims to persuade employers to pay a Living Wage, an independently-

calculated recommended minimum wage to cover workers' basic needs.

**Local Authority** has the meaning given in Local Government Act 1972;

**Local Bus Services** means the provision of a Local Bus Service as defined in Section 2 of the Transport Act 1985 provided by the Operator as set out in the Specification;

**Local Government Ombudsman** an independent body responsible for investigating complaints against Councils details of which can be found at [www.gov.uk](http://www.gov.uk);

**Lost Mileage** means non operation of any or all part of contracted scheduled bus journeys;

**Management Reports** the reports to be prepared and presented by the Operator in accordance with clause 24 and Schedule 3,

**Minimum Cost Contract** is a Service on which all the revenue accrued during the operation of the service is due to the Council. If the transport provisions falls within this definition shall be stated in the Specification;

**Minimum Standards of Operation** has the meaning given in the Specification;

**Minimum Subsidy Contract** means a Service on which all the revenue accrued during the operation of the service is retained by the Operator. If the transport provision falls within this definition shall be stated;

**Motor Vehicle Insurance Policy** an insurance policy required to be procured for use of the bus for the purposes of provision of Services that satisfies the requirement of the Law;

**Multi-Agency**

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| <b>Safeguarding Adults Policy</b>   | means a policy of the Council;  |
| <b>Necessary Consents</b>           | all approvals, certificates, authorisations, permissions, licences, permits, regulations and consents necessary from time to time for the performance of the Services;  |
| <b>Operator’s Personnel</b>         | means those individuals employed by the Operator;   |
| <b>Operator’s Representative</b>    | means the person(s) who is/are nominated to represent the Operator as set out in Schedule 3;  |
| <b>Operator Tender Submission:</b>  | has the meaning given in Schedule 17;   |
| <b>Operator’s Licence</b>           | means either a Public Service Vehicle (PSV) Operator’s Licence of the relevant classification as required by Section 12 of the Public Passenger Vehicles Act 1981, or a Community Bus Permit issued under Section 22 of the Transport Act 1985; |
| <b>Operator Vehicle</b>             | vehicle supplied by the Operator for the purpose of provision of Service;   |
| <b>Payment Period</b>               | is the set frequency of payments across the life of the Agreement. Unless otherwise specified, payment will be paid on a monthly basis;   |
| <b>Performance Damages</b>          | means the costs that the Council may charge in accordance with Part 2 of Schedule 1;  |
| <b>Public Service Vehicle (PSV)</b> | has the meaning given in Public Passenger Vehicle Act 1981 and the Law generally;   |
| <b>Premises</b>                     | a building, together with its land and outbuildings, occupied or used by the Operator for the purposes of provision of Services;  |
| <b>Processor</b>                    | as defined in the Data Protection Legislation;  |

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| <b>Prohibited Act</b>                      | <p>the following constitute Prohibited Acts:</p> <ul style="list-style-type: none"> <li>a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage as an inducement or reward for any improper performance of a relevant function of activity in relation to obtaining this agreement or any other Agreement with the Supplier;</li> <li>b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this agreement;</li> <li>c) committing any offence: (i) under the Bribery Act; (ii) under legislation or common law concerning fraudulent acts; or (iii) of defrauding, attempting to defraud or conspiring to defraud the Authority;</li> <li>d) any activity, practice or conduct which would constitute one of the offences listed under (c) above, if such activity, practice or conduct had been carried out in the UK.</li> </ul> |
| <b>Prohibition Notice</b>                  | a notice issued by a responsible body imposing a ban on use of the vehicle on public road;  |
| <b>Personal Data</b>                       | has the meaning given in the Data Protection Legislation;   |
| <b>Personal Protective Equipment (PPE)</b> | clothing, helmets, goggles, or other garments or equipment designed to protect the wearer's body from injury or infection;  |
| <b>Real Time Information</b>               |   |

|                                   |   |
|-----------------------------------|---|
| <b>System (RTPI)</b>              | Delivery of information to the public of expected departure times of vehicles to the public via a range of channels.  |
| <b>Regulated Activity</b>         | in relation to children shall have the same meaning as set out in Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 and in relation to vulnerable adults shall have the same meaning as set out in Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006; |
| <b>Relevant Requirement</b>       | all applicable law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010;   |
| <b>Replacement</b>                | means replacement of Council Vehicles by the Council for use by the Operator;   |
| <b>Request for Information</b>    | has the meaning given in the Freedom of Information Act 2000 or EIA Regulations;  |
| <b>Risk Period</b>                | Commencement Date to expiry of Term;  |
| <b>Route Specification</b>        | means the specification setting out route requirements as more detailed in Part 1 of Schedule 1;  |
| <b>Services</b>                   | means the services to be performed by the Operator under this Agreement and shall include integrated Local and School Bus Services as set out in the Specification;   |
| <b>Services Commencement Date</b> | 29 <sup>th</sup> March 2020;  |
| <b>Service Specification</b>      | has the meaning given in Schedule 1;  |
| <b>Service Users</b>              | those using the Service namely, school children, students or passengers;  |
| <b>Schedule</b>                   | means any of the schedules attached hereto;   |
| <b>School</b>                     | has the meaning given in the Education Act 1996;  |



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| <b>School Bus</b>                                   | means a Bus used for the purposes of transporting students or children to and from school or school-related activities;  |
| <b>School Bus Service</b>                           | means the provision of a Bus Service as defined in Section 2 of the Transport Act 1985 which is intended primarily for use by School children or students;   |
| <b>School Transport Contract (Closed Contracts)</b> | means the provision of transport under the Education Act 2006 as set out in the Specification. School Transport should not be registered as a Local Bus Service unless so required by the Council;     |
| <b>Term</b>   | a period 8 years from Services Commencement Date;  |
| <b>Termination Date</b>                             | the date when the Agreement is terminated either as a consequence of effluxion of time or in accordance with the provisions of clause 33;  |
| <b>Termination Payment Default</b>                  | means an event where at any time undisputed amount have been overdue for payment for a period of 60 days or more, the Council will have committed a Termination Payment Default;                       |
| <b>Traffic Commissioner</b>                         | the person(s) responsible for the licensing and regulation of those who operate heavy goods vehicles, buses and coaches, and the registration of local bus services;                                   |
| <b>Traveline Information Ltd</b>                    | a company incorporated in England and Wales, with company number 03826797 and whose registered office is at Chancery House 5th Floor (South) Chancery House, Chancery Lane, London, England, WC2A 1QS; |
| <b>National Passenger</b>                           |  |

**Transport Information  
(NPTI)**

means travel information delivered by National Passenger Transport Information Limited (NPTI), a partnership of transport operators and local authorities formed to provide impartial and comprehensive information about public transport;

**TUPE**

means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended);

**UK Data Protection  
Legislation**

all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679), the Data Protection Act 2018, the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended;

**Vehicle**

means the Council's Vehicle and or Operator's Vehicle;

**Value Added Tax (VAT)**

has the meaning given in Value Added Tax Act 1994;

**Warning**

means a warning issued by the Council to the Operator in accordance with the provisions of Part 2 of Schedule 1 (Specification);

**Interpretations**

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement.
- 1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 The schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement and any reference to this agreement includes the schedules.

- 1.5 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.7 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.8 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and includes any subordinate legislation for the time being in force made under it.
- 1.9 A reference to writing or written includes fax and e-mail.
- 1.10 Any obligation in this agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.11 A reference in this Agreement to any other agreement or a document is a reference to such other agreement or document as varied or novated (in each case, other than in breach of the provisions of this agreement) from time to time.
- 1.12 References to clauses and schedules are to the clauses and schedules of this Agreement and references to paragraphs are to paragraphs of the relevant schedule.
- 1.13 Any words following the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

## **2. Contract Period**

- 2.1. This Agreement shall take effect on the Commencement Date and shall continue for the Term unless it is terminated earlier in accordance with the provisions of this Agreement.
- 2.2. The Agreement shall expire on expiry of the Term.
- 2.3. The Services shall commence on the Service Commencement Date and continue for the Term.

### **3. Due Diligence and Operator Warranty**

#### **3.1. The Operator acknowledges and confirms that:**

- (a) the Council has delivered or made available to the Operator all of the information and documents that the Operator considers necessary or relevant for the performance of its obligations under this Agreement;
- (b) it has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied or made available to it by or on behalf of the Council pursuant to clause 3.1(a);
- (c) it has satisfied itself (whether by inspection or having raised all relevant due diligence questions with the Council before the Commencement Date) of all relevant details relating to the performance of its obligations under this Agreement (including without limitation the suitability of Council Premises); and
- (d) it has entered into this Agreement in reliance on its own due diligence.

#### **3.2. Save as provided in this Agreement, no representations, warranties or conditions are given or assumed by the Council in respect of any information which is provided to the Operator by the Council and any such representations, warranties or conditions are excluded, save to the extent that such exclusion is prohibited by law.**

#### **3.3. The Operator:**

- (a) warrants and represents that all information and statements made by the Operator as a part of the negotiation, including without limitation the Operator's match funding proposals, remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Council prior to execution of the agreement; and
- (b) shall promptly notify the Council in writing if it becomes aware during the performance of this Agreement of any inaccuracies in any information provided to it by the Council during such due

diligence which materially and adversely affects its ability to perform the Services.

- 3.4. The Operator shall not be entitled to recover any additional costs from the Council which arise from, or be relieved from any of its obligations as a result of, any matters or inaccuracies notified to the Council by the Operator in accordance with clause 3.3(b), save where such additional costs or adverse effect on performance have been caused by the Operator having been provided with fundamentally misleading information by or on behalf of the Council and the Operator could not reasonably have known that the information was incorrect or misleading at the time such information was provided. If this exception applies, the Operator shall be entitled to recover such reasonable additional costs from the Council or shall be relieved from performance of certain obligations as shall be determined by the Change Control Procedure.
- 3.5. Nothing in this clause 3 shall limit or exclude the liability of the Council for fraud or fraudulent misrepresentation.

## PART 2 SERVICES

### 4. Operator's Obligations

#### 4.1 The Operator undertakes to the Council that:

- 4.1.1 it shall provide the Services to the Council for the duration of this Agreement and in accordance with the provisions of this Agreement, the Service Specification (Minimum Standards of Operation), the Route Specification, and the Operator Tender Submissions;
- 4.1.2 it shall provide all other services reasonably required by the Council which are reasonably incidental to the Services in accordance with the terms of this Agreement;
- 4.1.3 it shall make no change to the Service without the prior written agreement of the Council except in an emergency or other safety critical event;
- 4.1.4 it shall comply with all reasonable instructions given by the Council in relation to the Services;
- 4.1.5 it shall keep the Council fully informed and provide it with regular reports on all matters of interest to a prudent client, together with such information as the Council may reasonably require from time to time;
- 4.1.6 it will be responsible for all costs, fees, expenses and charges incurred in the provision of the Service.

#### 4.2 The Operator shall maintain current and accurate records of all work undertaken in the provision of the Services.

#### 4.3 The Operator shall inform the Council's Representative promptly and confirm in writing if the Operator is unable to or fails to provide any part of the Service in accordance with this Agreement. The provision of information under this Clause 4.3 shall not in any way release or excuse the Operator from any of its obligations under this Agreement.

- 4.4 The Operator shall as may be necessary or appropriate co-operate, liaise with, and co-ordinate its activities with those of any other operator or sub-contractor employed directly or indirectly by the Council and shall provide the Services in harmony with and at no detriment to any other Services provided by or on behalf of or to the Council.
- 4.5 Failure by the Operator to comply with the obligations under the Agreement may result in the Council invoking the Performance Damages Procedure, which may at the Council's discretion lead to termination of the Agreement or any part thereof or the imposition of Performance Damages in accordance with Part 2 of Schedule 1.
- 4.6 If the Operator fails to provide the Service, the Council may, at its discretion and in addition to the other conditions of this Agreement, make any arrangements it sees fit to secure the operation of the whole or any part of the Service, until the Operator fully complies with the Specification.
- 4.7 In the event that the Operator does not comply with the provisions of this clause 4 in any way, the Council may serve the Operator with a notice in writing setting out the details of the Operator's default (**a Default Notice**).

## 5. Key Performance Indicator (KPI)

- 5.1 Where any Service is stated in the Specification to be subject to a specific KPI, the Operator shall provide that Service in such a manner as will ensure compliance with the stated KPI in respect of that Service.
- 5.2 If the existing Services are varied or new Services are added, target KPIs for the same will be determined and included within the Specification.
- 5.3 The Operator shall provide records of and Management Reports summarising the achieved KPIs as provided for in clause 24.

## 6. Supply and Use of Vehicles

### 6.1 Local Bus Services and School Bus Services

- 6.1.1 The Operator shall at its own costs, provide or procure all Operator's Vehicles required for use for the purposes of provision of Services outlined in Part 1 and 2 of the Specification.
- 6.1.2 All Vehicles used in the provision of the Service(s) shall be maintained in a fit and roadworthy condition, comply with all relevant legislative requirements, and meet the requirements set out in the Service Specification (Minimum Standards of Operation) and Route Specification.
- 6.1.3 The Operator shall:
- (a) Ensure that any premises used for the purpose of maintaining Vehicles, whether owned, Hired In, Sub-contracted or otherwise, are suitable for the purpose, compliant with relevant Local Authority permissions and off the public highway.
  - (b) Permit the Council to inspect such premises and Vehicle maintenance records at any reasonable time.
  - (c) Ensure that any maintenance contract with a third party provides that the Council may inspect the premises used in accordance with this clause 6.
- 6.1.4 If a Vehicle has a defect which could affect the safety of passengers or other road users, the Operator must cease to use that Vehicle immediately and until the defect has been rectified, at the Operator's expense, provide a suitable replacement. The Council may at its discretion notify the authority licensing the Vehicle and/or the Department for Transport Driver & Vehicle Standards Agency (DVSA) of any defects found.
- 6.1.5 In respect of School Transport Contracts, Vehicles must display "School Bus" signs as prescribed by the Road Vehicles Lighting (Amendment) Regulations 1994. The Operator must supply and fit the signs, and arrange that they are displayed only when the Vehicles are engaged in carrying schoolchildren. Vehicles operating these Services may also display Hazard Warning Lights when stationary to allow schoolchildren to board or alight.



- 6.1.6 The Operator must co-operate with any initiative instigated by the Council regarding the installation, operation and monitoring of CCTV systems. Where the Operator is required to have CCTV installed on one or more Vehicles, a formal agreement must be signed.
- 6.1.7 No Vehicles are permitted to be refuelled during scheduled journeys.
- 6.1.8 Vehicles shall not be left unattended with engines running and/or with passengers on board.
- 6.1.9 The Operator will ensure that all Vehicles in operation display the route number and/or destination as agreed by the Council. When not in use the Vehicles shall display the text "Sorry Not In Service".

## **7. Fares, Tickets and Passes**

- 7.1 The Operator shall not refuse travel to children aged under 16 and/or vulnerable adults who are unable to produce a valid pass or ticket, or to pay the appropriate fare. The Operator shall record the name, address and/or school/centre of the passenger and send a report, including the journey details, to the Council within seven days.
- 7.2 A Vehicle being utilised on a School Transport Contract shall not carry or pick-up, whether for hire or reward or not, any person other than those carried therein in fulfilment of the Service, unless otherwise agreed in writing by the Council.
- 7.3 The Operator may be required to collect separate fares from the passengers. In this case, the Operator must make arrangements acceptable to the Council to ensure that all fares collected are properly accounted for, and in the case of Minimum Cost Contracts credited to the Council. A clearly legible permit to travel must be issued to every passenger who pays a fare on the vehicle or prepaid before boarding, which accurately records the date and place of issue and the fare paid. The Operator must ensure that every passenger boarding a vehicle that does not hold a valid pre-paid ticket, pass or other authority to travel is charged the appropriate fare.
- 7.4 On Minimum Subsidy Contracts, the Operator will propose on the tender submission the fares to be charged for specimen journeys which will be taken into account by the Council when considering the tender response. The Council has offered a suggested fare scale in the Service Specification (Minimum Standards of Operation). The Council may

determine through the Specification that certain tickets, or categories of passenger, shall be accepted for travel on the Service at reduced fares or without charge. The Operator must confirm to the Council all the fares to be charged, and conditions, as part of the original Tender Submission and confirmed not less than 14 days before the commencement of the Service.

- 7.5 In respect of Local Bus Service, fares may be increased no more frequently than annually, and only with the prior agreement of the Council. The percentage increase may not exceed the Consumer Price Index plus 1% within any twelve month period. Operators must give the Council 14 days notice of any changes to fares to be charged and conditions thereof.
- 7.6 On Minimum Cost Contracts, the Operator must charge the fares and comply with the Conditions as set out in the Service Specification and related Route Specification, or as otherwise instructed from time to time by the Council.
- 7.7 The Council will not be responsible for any financial or other loss sustained by the Operator arising from any estimates made by any party of existing or potential passengers, or any inaccuracies in data supplied in good faith for the guidance of tenderers.
- 7.8 If at any time a ticket discrepancy or other irregularity is discovered, whether by the Council Representative or otherwise, a report will be submitted to the Operator, who must provide an explanation of the irregularity and any action that has been taken (or is proposed) to prevent its recurrence. If in the view of the Council the explanation or action is unsatisfactory, the Council may issue a warning in accordance with Part 2 of Schedule 1.
- 8.0 Safeguarding**
- 8.1 The Operator shall put or have in place a safeguarding policy which reflects and complements the relevant statutory provisions relating to safeguarding children and/or vulnerable adults and;
- 8.1.1 the Council's safeguarding policies and procedures; and
- 8.1.2 the Cornwall and Isles of Scilly Safeguarding Adults Board policies and procedures including but not limited to Multi-Agency Safeguarding Adults Policy; and

- 8.1.3 the Cornwall and Isles of Scilly Local Safeguarding Children's Board's safeguarding policies and procedures including South West Safeguarding and Children Protection Procedures and the Local Safeguarding Children Board Guidelines for Providers;
- 8.1.4 As applicable and amended from time to time to ensure that all allegations, suspicions and incidents of abuse, harm or the risk of harm to children and/ or vulnerable adults or where there is concern about the behaviour of an individual are reported immediately to the Council's Representative and the Council's Directorate of Adult Care and Support (Single Point of Access) 03001234131 in respect of vulnerable adults or the Council's Directorate of Children Schools and Families (Single Referral Unit) 0300123116 in respect of a child. The Operators safeguarding policies and procedures should include active encouragement to staff in whistle blowing if aware of suspected abuse.
- 8.2 The Operator shall submit its safeguarding policy to the Council for approval. The Operator must incorporate any amendments to the policy which may be advised by the Council.
- 8.3 The Operator shall:
- 8.3.1 ensure that all individuals engaged in a Regulated Activity on behalf of the Operator are subject to a valid enhanced disclosure check undertaken through the Disclosure and Barring Service including a check against the adults barred list or the children's barred list as appropriate; this check must be undertaken through Cornwall Council's HR Safeguarding Team via the EBulk system,
- 8.3.2 monitor the level and validity of the checks under this clause 8.3 for each member of staff and
- 8.3.3 comply fully with the Council's process for handling 'positive' DBS. Operators must agree to abide by any decision of the Council in regards to the suitability of the individual to work on transport services with the Council.
- 8.4 The Operator warrants that at all times, for the purposes of this Agreement, it has no reason to believe that any person who is or will be employed or engaged by the Operator in the provision of the

Services is barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time.

- 8.5 The Operator shall immediately notify the Council of any information that it reasonably requests to enable it to be satisfied that the obligations of this Clause 8 have been met.
- 8.6 The Operator shall make a referral to the Disclosure and Barring Service when it has dismissed or removed a person from working with children or vulnerable adults (or would or may have if the person had not left or resigned) because the person has been cautioned or convicted for a relevant offence; or engaged in relevant conduct in relation to children and/or vulnerable adults; or satisfied the Harm Test in relation to children and/or vulnerable adults.
- 8.7 The Operator shall advise the Council of any referrals made pursuant to Clause 8.6 as soon as possible and in any event within 5 Working Days. The Operator shall ensure that the Agreements of employment of its staff provide for relevant staff consent for the sharing of the information/data required under this Clause 8.7.
- 8.8 The Operator shall not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that he or she would not be suitable to carry out Regulated Activity or who may otherwise present a risk to Service Users.
- 8.9 The Operator shall comply with all statutory obligations in respect of Safeguarding and shall act in accordance with the guidance issued by the Disclosure and Barring Service as amended from time to time.

- 8.10 The Operator shall ensure that the organisation operates a recruitment and selection procedure which aligns with the Council's safer recruitment and disciplinary standards and which meets the requirements of legislation, equal opportunities and anti-discriminatory practice and ensures the protection of children and/or vulnerable adults. The selection of all Operator personnel and volunteers should be fair, safe and effective and the Operator will be expected to comply with all national requirements for registered providers and shall ensure that all relevant safeguarding, recruitment and barring checks have been undertaken for all employees engaged in the provision of Services. These checks shall include:
- 8.10.1 recruitment through an appropriate application form
  - 8.10.2 face to face interviews
  - 8.10.3 checking self declaration forms for relevance to the role
  - 8.10.4 checking reference before confirming appointment
  - 8.10.5 a probationary and supervision period for new staff
  - 8.10.6 conducting personal development reviews
  - 8.10.7 monitoring conduct in the role
  - 8.10.8 conducting in role risk assessments
- 8.11 The Operator shall ensure that children and/or vulnerable adults are safeguarded from any form of abuse or exploitation including physical, financial, psychological and sexual abuse, neglect, discriminatory abuse or self-harm or inhuman or degrading treatment through deliberate intent, negligent acts or omissions.
- 8.12 The Operator shall ensure that all personnel engaged in the delivery of the Services regularly receive appropriate Safeguarding training in relation to children and/or vulnerable adults according to their job role as detailed within the Specification or discussed and agreed at subsequent contract review meetings.
- 8.13 The Operator shall appoint an individual of sufficient seniority for the safeguarding of children and/or vulnerable adults. This individual shall be responsible for the implementation and monitoring of the Operator's safeguarding policies and procedures in accordance with the terms of this Agreement.

8.14 The Operator shall:

8.14.1 have in place a process whereby its employees may report in confidence any alleged malpractice on the part of the Operator as regards any part of the provision of the Services;

8.14.2 not take any action against any employee pursuant to its contractual rights in respect of that employee where such employee has in accordance with the process provided pursuant to Clause 8.14.1 and in good faith reported alleged malpractice on the part of the Operator.

**9 Council's Vehicles**

9.1 The Council agrees, subject to the provisions of this clause 9, to provide the Council's Vehicles to the Operator for the sole purpose of provision of Services.

9.2 The Council shall be responsible for the process of Acquisition, Disposal or Replacement of the Council's Vehicles.

9.3 Council Vehicles shall be retained and used by the Operator for the sole purposes of provision of Services outlined in Schedule 1 under this Agreement.

9.4 The condition of the Council's Vehicles shall be maintained by the Operator to the standard specified in the Service Specification. An inventory of the Council's Vehicle is set out in Schedule 10.

9.5 The Council shall prior to the date of this Agreement provide the Operator with full and complete list of the Council's Vehicles, specifications, log book and maintenance plan.

9.6 Council's Vehicles deployed in the provision of Services outlined in Schedule 1, shall be maintained in a fit and roadworthy condition, in order to comply with all relevant legislative requirements, and meet the requirements set out in Schedule 1

9.7 The Operator shall:

(a) Ensure that any premises used for the purpose of maintaining Council's Vehicles, are suitable for the purpose, compliant with relevant Local Authority permissions and off the public highway.

- (b) Permit the Council to inspect such premises and Council's Vehicle maintenance records at any reasonable time.
- (c) Ensure that any maintenance contract with a third party provides that the Council may inspect the premises used in accordance with this clause 9.
- (d) Keep and maintain the Council's Vehicle(s) in good and substantial repair in order to keep it in as good an operating condition as it was on the Commencement Date including replacement of worn, damaged or lost parts and shall make good any damage to the Council's Vehicle(s);
- (e) Make no alterations to the Council's Vehicle(s) and shall not remove any existing component(s) from the Council's Vehicle(s) without prior written consent of the Council unless carried out to comply with any mandatory modifications required by Law or unless the component(s) are replaced immediately (or if removed in the ordinary course of repair and maintenance as soon as practicable) by the same component or by one of similar make or model or an improved version of it. Title and property in all substitutions, replacements shall vest in the Council immediately upon installation;
- (f) Keep the Council fully informed of all material matters relating to the Council's Vehicle(s);
- (g) Keep the Council's Vehicle(s) at all times at the Premises and shall not attempt to move any part of the Council's Vehicle(s) to any other location without the Council's written consent;
- (h) Permit the Council or its duly authorised representative to inspect the Council Vehicle(s) at all reasonable times and for such purpose to enter upon the Premises or any premises at which the Council's Vehicle(s) may be located, and shall grant reasonable access and facilities for such inspection;
- (i) Maintain operating and maintenance records of the Council's Vehicle(s) and make copies of such records readily available to the Council, together with such additional information as the Council may reasonably require;
- (j) Not without the prior written consent of the Council, part with

control, sell or offer for sale, underlet or lend the Council Vehicle(s) or allow the creation of any charge, mortgage, lien or other security interest in respect of the Council's Vehicle(s);

- (k) Not without the prior written consent of the Council, attach the Council's Vehicle(s) to any land or building so as to cause the Vehicle(s) to become permanent or immovable fixture on such land or building. If the Council's Vehicle(s) does become affixed to any land or building then the Vehicle(s) must be capable of being removed without material damage to such land or building and the Operator shall repair and make good any damage caused by the affixation or removal of the Vehicle(s) from any land or building and indemnify the Council against all losses, costs or expenses incurred as a result of such affixation or removal;
- (l) Not do or permit to be done any act or thing which will or may jeopardise the right, title and interest of the Council in the Council's Vehicle(s) and where the Council's Vehicle(s) has become affixed to any land or building, the Operator must take all necessary steps to ensure that the Council may enter such land or building and recover the Council's Vehicle(s) both during the Term of this Agreement and for a reasonable period thereafter, including by procuring from any person having an interest in such land or building, a waiver in writing and in favour of the Council of any rights such person may have or acquire in the Council's Vehicle(s) and a right for the Council to enter onto such land or building to remove the Council's Vehicle(s);
- (m) Not suffer or permit the Council's Vehicle(s) to be confiscated, seized or taken out of its possession or control under any distress, execution, or other legal process, but if the Council's Vehicle(s) is so confiscated, seized or taken, the Operator shall notify the Council and the Operator shall at its sole expense use its best endeavours to procure an immediate release of the Council's Vehicle(s) and shall indemnify the Council on demand against all losses, costs, charges, damages and expenses incurred as a result of such confiscation;
- (n) Not use the Council's Vehicle(s) for any unlawful purpose;
- (o) Ensure that at all times the Council's Vehicle(s) remains identifiable as being the Council's property and whenever possible shall ensure that a visible sign to that effect is attached to the Council's



Vehicle(s);

(p) Not do or permit to be done anything which could invalidate the insurances referred to in clause 9.9;

9.8 The Operator acknowledges that the Council shall not be responsible for any loss or damage to the Council's Vehicle(s) arising out of or in connection with any negligence, misuse, mishandling of the Council's Vehicle(s) or otherwise caused by the Operator or its officers, employees, agents or contractors, and the Operator undertakes to indemnify the Council on demand against the same and against all losses, liabilities, claims, damages, costs or expenses of whatever nature otherwise arising out of or in connection with any failure by the Operator to comply with the terms of this Agreement.

#### **9.9 Title, Risk and Insurance**

9.9.1 Council's Vehicles provided to the Operator pursuant to this clause 9 shall at all times remain the property of the Council and the Operator shall have no right, title or interest in or to the Council's Vehicle(s) save for the right to possession and use of the Council's Vehicles subject to the terms and conditions of this Agreement.

9.9.2 The Council's Vehicles provided to the Operator pursuant to clause 9 shall be defined and identified by reference to Schedule 10.

9.9.3 The Operator shall ensure that the Council's title is clearly shown on the V5 document (log book).

9.9.4 The risk of loss, theft or damage to the Council's Vehicle(s) shall remain with the Operator for the Term of this Agreement until such time that the Council's Vehicle(s) are either handed back to the Council or Replacement Operator.

9.9.5 During the Term and the Risk Period, the Operator shall at its own expense, obtain and maintain the following required insurances:

- (a) Motor Vehicle Insurance Policy;
- (b) The insurance required to be effected pursuant to Clause 9.9.5 (a) shall be to a value not less than its full replacement value comprehensively against all usual risks of loss, damage or

destruction by fire, theft or accident, and such other risks at the Council may from time to time nominate;

- (c) Insurance for such amounts as a prudent owner or operator of the vehicle(s) would insure for and shall in no circumstance, be less than £10m for the entire fleet of the Council's Vehicles, to cover any third party or public liability risks of whatever nature and howsoever arising.

9.9.6 The Operator shall give immediate written notice to the Council in the event of any loss, accident, damage to the Council's Vehicles arising out of or in connection with the Operator's possession and use of the Council's Vehicles.

9.9.7 All insurance policies procured by the Operator shall be endorsed to provide the Council with at least twenty (20) Business Days prior written notice of cancellation or material change (including any reduction in coverage or policy amount) and shall upon the Council's request, name the Council on the policies as a loss payee in relation to the Council's Vehicle(s). The Operator shall be responsible for paying any deductibles due on any claims under such insurance policies.

9.9.8 If the Operator fails to effect or maintain any of the insurances required under this clause 9.9, the Council may at its discretion, be entitled to effect and maintain the same, pay such premiums as may be necessary for that purpose and recover the same from the Operator as a debt.

9.9.9 The Operator shall on demand supply copies of the relevant insurance policies or other insurance confirmation acceptable to the Council and proof of premium payments.

## **10 Health and Safety**

10.1 The Operator shall comply with all and any duties and obligations arising under all health and safety including, but not limited to the Health and Safety at Work Act 1974, the Management of Health and Safety at Work Regulations 1992 and all other statutory and regulatory requirements and the Council's policies and procedures relating to health and safety copies of which are available on request.

10.2 During the mobilisation of the service, the Operator shall supply a copy of its Health and Safety Policy to the Council, and discuss any particular hazards with the Council's Authorised Representative. The

policy must include best practice provisions such as fire wardens, fire drills and first aiders as detailed in the Service Specification.

- 10.3 High visibility jackets should not be worn when driving but should be available if staff needs to alight in traffic.
- 10.4 The Operator shall carry out and maintain an up-to-date risk assessment of the route and any variations to route. The Operator shall report any concerns to the Council within one week of the Services Commencement Date not later than one week following any route variation or any manoeuvre as required to ensure the safe operation of the Service. The Operator shall ensure that its employees are made aware of all hazards identified by any risk assessment and receive sufficient information and training to mitigate the associated risk.
- 10.5 The Operator shall keep records of route risk assessments and shall make those records available for inspection by the Council when requested.
- 10.6 Should any factor arise following the commencement of the Services that the Operator considers may affect the safe provision of the Services, the Operator shall bring this to the immediate attention of the Council followed by a written report detailing the circumstances. The Council will consider this information and the Operator shall not compromise the health and safety of its passengers or employees.
- 11 **NOT USED**
- 12 **NOT USED**
- 13 **Equipment and Materials**
  - 13.1 Save for the Council Vehicles the Operator shall provide at its own costs, all materials and plant as necessary for the provision of Services.

## **PART 3 PAYMENTS**

### **14 Payments to the Operator**

- 14.1 Provided the Operator has complied fully with its obligations under this Agreement, the Council shall, in consideration of the provision of the Services, pay the Contract Price to the Operator in accordance with Schedule 2.
- 14.2 The Contract Price shall unless agreed in writing between the Parties be exclusive of Value Added Tax.
- 14.3 The Contract Price shall be inclusive of all expenses and disbursements.
- 14.4 Provided that the Operator shall have complied with its obligations under the Agreement and where there is no dispute, payment of the Contract Price within 30 days of receipt of a valid invoice. Such invoice shall contain appropriate reference and detailed breakdown of the Services provided.
- 14.5 Where the Operator enters into a sub-contact with an Operator for the purpose of performing its obligations under the Agreement, it shall ensure that a provision is included in that subcontract which requires payments to be made of all sums due by the Operator to the subcontractor within a specified period not exceeding 30 days from receipt of a valid invoice.
- 14.6 Where a modification is issued pursuant to Clause 36 the Council's Representative shall calculate the amount due to the Operator on a fair and reasonable basis.
- 14.7 No variation to the Contract Price or any extra charges shall be accepted by the Council unless agreed in writing by the Parties.

### **15 Payment to the Council**

- 15.1 Where the Actual Income is due to the Council from the sale of tickets, the Operator shall make those payments to the Council in accordance with the provisions of Part 2 Schedule 2.

## 16 Interest

16.1 Each Party shall pay interest on any sum due under this Agreement, calculated as follows:

(a) **Period:** from when the overdue sum became due, until it is paid.

(b) **Rate:** 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when the base rate is below zero percent.

## 17 Deductions

17.1 Where the Operator fails to meet the Service Standards as detailed in the Contract Documents, then the deductions procedure set out in Part 2 of Schedule 1 shall apply.

## 18 Set Off

18.1. Whenever under the Agreement any sum of money shall become recoverable from or payable by the Operator, including but not limited to, payments to the Council under clause 15, the same may be deducted from any sum then due or which at any time thereafter may become due to the Operator under this Agreement.

## PART 4 GENERAL

### 19 Vehicle

19.1 Where a Vehicle used by the Operator for the purposes of provision of Services has a defect which could affect the safety of passengers or other road users, the Operator must cease to use that Vehicle immediately and until the defect has been rectified, at the Operator's expense, provide a suitable replacement. The Council may at its discretion notify the authority licensing the Vehicle and/or the Department for Transport Driver & Vehicle Standards Agency (DVSA) of any defects found.

19.2 The Operator shall co-operate with any initiative instigated by the Council regarding the installation, operation and monitoring of CCTV systems. Where the Operator is required to have CCTV installed on one

or more Vehicles, a formal agreement must be signed.

- 19.3 Vehicles shall not be left unattended with engines running and/or with passengers on board.
- 19.4 The Operator will ensure that all Vehicles in operation display the route number and/or destination as agreed by the Council. When not in use the Vehicles shall display the text “Sorry Not In Service”.
- 19.5 The Operator shall during the Term:
- (a) Ensure that the Vehicle(s) is/are kept and operated in a suitable environment, used only for the purposes for which it is designed, and operated in a proper manner by trained competent staff in accordance with any operating instructions;
  - (b) Take such steps (including compliance with all safety and usage instructions provided by the manufacturers to ensure, that the Vehicle(s) is at all times safe and without risk to health when it is being set, used, cleaned or maintained by a person at work;

## **20 Supply of Information**

### **20.1 Local Bus Services**

- 20.1.1 A report detailing any instances of Lost Mileage must be sent to the Council using the appropriate form provided, on a weekly basis, to arrive no later than 1700 on the following Tuesday. Emailed reports will be acceptable, and can be submitted by individual depot supervisors if this is most convenient. The report should detail for each journey the following information:
- (a) Service number;
  - (b) Date;
  - (c) Scheduled departure point and time;
  - (d) Reason for non-operation classified into: staff shortage; vehicle shortage; breakdown; traffic delays; other cause (to be specified by Operator); and
  - (e) Section of route and number of miles not operated.
- 20.1.2 For each instance of Lost Mileage (deemed to be within the Operator’s control), the Council will, at its discretion, impose Performance Damages in accordance with Part 2 of Schedule 1.

- 20.1.3 The Operator must, on demand by the Council, make available at any reasonable time all records for the audit of any revenue collected on behalf of the Council, and lost mileage, passenger, revenue or other information supplied to the Council in connection with the Agreement. All such records must be retained for at least one year.
- 20.1.4 A report on any deficiencies discovered by an audit carried out under clause 41 will be sent to the Operator, who is required to respond within 10 working days with any comment he may have on the report. The response should detail any action the Operator has taken or proposes to take to rectify any deficiencies. If no response is received within this period the Operator will be deemed to accept the report as a true statement. The Council will consider what action to take in respect of any deficiencies identified in the audit report, having regard to the response from the Operator. Failure to keep satisfactory records may result in warnings being issued.
- 20.1.5 The Operator must record for each journey made in the operation of the Service the passengers carried and revenue collected. At the end of each payment period, revenue and passenger data for all passengers should be submitted within 14 days or by any other method agreed with the Council.
- 20.1.6 Where the Operator has been awarded a contract for a number of individual Services on the basis of a Packaged Bid, the information required must be supplied in a form which separately identifies each of the individual Services for which tenders were invited.
- 20.1.7 Operators of Local Bus Services must comply with the Cornwall Real Time Passenger Information (RTPI) System Procedure details of which are to be found in Schedule 15 to this Agreement.
- 20.1.8 The RTPI Procedure shall be reviewed on an annual basis by the Council.
- 20.1.9 The Operator must record all information regarding the Actual Income which shall include, but not limited to, details of each journey made in the operation the Service, the number of passengers and revenue collected through the sale of tickets/passes.

20.1.10 Within 7 days of the expiry of each and any payment period, the aforementioned data shall be supplied to the Council in an approved format as set out in Schedule 16 to this Agreement. Where necessary, a separate record must be made of any prepaid travel revenue, and a summary of this information for each period be supplied in approved format, along with electronic data.]

## **21 Service Publicity - Local Bus Services**

- 21.1 The Operator is obliged to comply with the terms and obligations as set out in the Council's Service Specification (Minimum Standards of Service) and Route Specification.
- 21.2 The Operator is legally bound to make available on all vehicles a current copy of the timetable and the fare table. Personnel operating the Service must be able to provide full details of the whole of the bus service to passengers requiring information. This means that where the Operator provides the service for only part of the day or week, drivers and other staff must possess, and give on request, information on the parts of the service provided by another operator.
- 21.3 The Council may require the Operator to display inside Vehicles a maximum of two relevant notices provided by the Council.
- 21.4 The Operator shall supply appropriate timetable and fares information for the countywide Real Time Information System and National Passenger Transport Information (NPTI) on request. This is notwithstanding the Bus Open Data Statutory requirements on Operators to supply the data to the Bus Open Data Digital Service (BODDS).
- 21.5 Operators are required to give the Council access to the ETM back-office systems to enable monitoring of patronage, ticket sales and any other data relevant to the Service.
- 21.6 The Operator shall pay for the costs of all telephone enquiries made to Traveline Information Ltd (TIL Ltd) relating to all Local Bus Services registered by the Operator within the geographic boundary of the County of Cornwall and to or from the County of Cornwall in accordance with the method reasonably determined by Traveline Information Ltd.



21.7 The Operator shall maintain its own telephone enquiry service for matters such as timetables, fares, lost property and complaints. As a minimum this should be available during the operating hours of the Service.

21.8 The Operator will comply with the Council regarding the provision of publicity and/or promotional material inside Vehicles, and will co-operate with the Council over the display and monitoring of such information.

## **22 NOT USED**

## **23 School Contract Services**

23.1 The Service will operate on all days when the establishments which it serves are open, unless otherwise stated or advised. The Council shall endeavour to give not less than one month's notice to the Operator of all main and mid-term school/college/centre holidays, occasional holidays, teacher training days, or closures and the Operator shall not be entitled to any payment in respect of such periods.

23.2 The Operator shall ensure that its personnel record matters of concern and report any incidents of bad behaviour by school children to their line manager who in turn should forward these to the school and the Council. The Council will carry out necessary investigations with the School and report back accordingly. This formal procedure should not in any way detract from the essential verbal communication that takes place between Operators and schools.

## **24 Reporting and Meetings**

24.1 The Operator shall provide the Management Reports in the form and at the intervals set out in Schedule 3.

24.2 The Authorised Representatives shall meet in accordance with the details set out in Schedule 3 and the Operator shall, at each meeting, present its previously circulated Management Reports and Financial Report in the format set out in that Schedule 3.

## **25 Monitoring**

- 25.1 The Council will monitor the performance of the Services by the Operator.
- 25.2 The Operator shall co-operate, and shall procure that its Sub-operator co-operate, with the Council in carrying out the monitoring referred to in clause 25.1 at no additional charge to the Council.

## **26 Service standards**

- 26.1 Without prejudice to clause 5, the Operator shall provide the Services, or procure that they are provided:
- (a) with reasonable skill and care and in accordance with the requirements of the Service Specification (Minimum Standards of Operation and Route Specification);
  - (b) in all respects in accordance with the Council's policies ;
  - (c) in accordance with Schedule 1; and
  - (d) in accordance with all Applicable Law.

## **27 Compliance**

- 27.1 The Operator shall ensure that all Necessary Consents and/or Licences are in place to provide the Services and the Council shall not (unless otherwise agreed in writing) incur any additional costs associated with obtaining, maintaining or complying with the same.
- 27.2 Where there is any conflict or inconsistency between the provisions of this agreement and the requirements of a Necessary Consent and/or Licence, then the latter shall prevail, provided that the Operator has made all reasonable attempts to obtain a Necessary Consent and/or Licence in line with the requirements of the Services and the Operator has notified the Council in writing.
- 27.3 The Operator shall (and shall procure that the Operator's Personnel shall) perform its obligations under this agreement (including those in relation to the Services) in accordance with:
- (a) all Applicable Law regarding health and safety; and
  - (b) the Health and Safety Policy whilst at the Council's Premises.

- 27.4 Each Party shall notify the other as soon as practicable of any health and safety incidents or material health and safety hazards at the Council's Premises of which it becomes aware and which relate to or arise in connection with the performance of this agreement. The Operator shall instruct its personnel to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.
- 27.5 Without limiting the general obligation set out in this clause 27, the Operator shall (and shall procure that the Operator Personnel shall):
- (a) perform its obligations under this agreement (including those in relation to the Services) in accordance with:
    - (i) all applicable equality law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);
    - (iii) any other requirements and instructions which the Council reasonably imposes in connection with any equality obligations imposed on the Council at any time under applicable equality law;
  - (b) take all necessary steps, and inform the Authority of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation); and
  - (c) at all times comply with the provisions of the Human Rights Act 1998 in the performance of this agreement. The Operator shall also undertake, or refrain from undertaking, such acts as the Council requests so as to enable the Authority to comply with its obligations under the Human Rights Act 1998.

## **28 Operator's Licences**

### **28.1 Contracts requiring PSV vehicles that carry 9 or more Passengers**

- 28.1.1 The Operator shall at its own cost have and keep in force a Public Service Vehicle (PSV) Operator's Licence of the relevant classification. The Operator shall produce the licence or permit

for inspection when required to do so by the Council.

28.1.2 The Agreement shall be invalid and of no force or effect during any period that the Operator does not have a PSV Operator's Licence or Community Bus Permit, or if any such licence or permit previously granted has been revoked or suspended for any reason, or has had conditions attached to it which prohibit or limit the operation of any Service.

28.1.3 The Operator must notify the Council forthwith of any change or disciplinary action to its PSV Operator's Licence or Community Bus Permit imposed by the Traffic Commissioner or any substantial change to such licence or permit sought by the Operator and approved by the Traffic Commissioner.

28.1.4 The Operator must notify the Council within seven days of any public inquiry proceedings and consequent alteration, suspension or revocation of a Licence made by the authority issuing the Licence, whether for maintenance or other reasons.

28.1.5 If the Operator fails to comply with the provisions of this Clause 28, then such an event shall constitute a breach of this Agreement which entitles the Council to exercise its rights pursuant to Clause 24, 43 and Part 2 of Schedule 1.

## **29 Registration of Bus Services**

29.1 The Operator must, at its own expense, register the Service appropriately in accordance with the Transport Act 1985, and shall supply a copy to the Council, together with all working timetables in a format that is acceptable to the Council.

29.2 The Council prefers electronic registrations prepared to the standard DVSA Electronic Bus Service Registration format.

## **30 Accidents and Breakdowns**

30.1 Any accident or incident involving Vehicle(s) on Service(s) must be reported by telephone to the Transport Co-ordination Service of the Council at the first opportunity. The Operator must as soon as is practicable, and in any case within three days, send to the Council a

written report of any personal injury or accident involving a Vehicle(s) on Service(s), or a passenger travelling in or boarding or alighting from a Vehicle, together with a report of any action the Operator has taken or proposes to take to prevent its recurrence.

- 30.2 In the event of an accident or breakdown causing delay to a Vehicle, the Operator must take all reasonable measures (at his own expense) both to minimise the delay to passengers on board the Vehicle concerned, and to operate the remainder of the bus service, adhering as closely as possible to the timetable. In any event, any delay to a passenger due to these incidents should not exceed 30 minutes. Furthermore, any delay in either restoring or resuming the journey will be treated as a breach of contract, and may lead to action in accordance with Part 2 of Schedule 1.
- 30.3 All Vehicles must carry a means of communication in order that the driver can readily call for assistance. Such facilities are to be used in the event of accident, breakdown or delays over 15 minutes and in the case of School Services, to notify the relevant establishment of the circumstances.
- 30.4 The Operator must supply the Council with the telephone number and name of the person to be contacted in an emergency outside office hours.
- 30.5 The Operator must notify the Council, no later than 1000 the next working day, of all Immediate Prohibition Notices (PG9) issued to the Operator by DVSA in respect of any Vehicle used to operate the Service, whilst engaged in performing the Service or whilst based at any depot maintained or used by the Operator.

### **31 Severe Weather Procedures**

- 31.1 The Operator shall share their email address(es) to ensure that they are on the Council's circulation list for daily notification of proposed treatments on the county road network and weather forecast.
- 31.2 It is for an Operator to decide whether to operate on a day when road conditions are considered hazardous. If a School is open and an Operator decides not to run or modify its various services; the Operator should inform the School and then the Council.

- 31.3 In the unlikely event of a vehicle being stranded in especially adverse conditions, the Operator shall notify the Council as soon as possible. The passengers must be encouraged to stay with the vehicle where their safety can be assured and their whereabouts known.

## 32 Operator's Personnel

- 32.1 The Operator shall employ sufficient, qualified and competent persons to ensure that the Services are provided at all times and in all respects in accordance with this Agreement.
- 32.2 The Operator shall ensure that such persons are instructed and supervised with regard to the provision of the Services and in particular:
- 32.2.2 the task or tasks such person has to perform,
  - 32.2.3 all relevant provisions hereof,
  - 32.2.4 all relevant policies, rules, procedures and standards of the Council, and
  - 32.2.5 all relevant rules, procedures and statutory requirements concerning health and safety, including the Council's health and safety policy which shall be provided to the Operator and if not so provided shall be requested by it.
- 32.3 The Operator must ensure that all drivers possess the correct and current Driving Licence and, where required by legislation a valid Driver Qualification Card and that these are carried by the driver.
- 32.4 The driver must produce their current licence for inspection by any Authorised Officer of the Council on demand. If the licence cannot be produced on demand, the Operator must submit written evidence that the driver holds the appropriate licence. The driver is required to give his name, address and other proof of identity sufficient to establish his or her identity, to any Authorised Officer of the Council on request.
- 32.5 The Operator must take all reasonable steps to ensure that employees are medically fit to carry out the duties of their role.

- 32.6 Drivers must neither smoke, vape nor be under the influence of drugs or alcohol at any-time during the operation of the Service.
- 32.7 The Council shall, upon giving notice in writing, have the power to require the Operator to remove from the provision of the Services any personnel of the Operator specified in such notice including the Operator's Representative. The Operator shall forthwith remove such personnel from the provision of any Services under this Agreement and shall, unless the Council determines otherwise, immediately provide a replacement that shall be satisfactory to the Council.
- 32.8 The Council shall in no circumstances be liable either to the Operator or to such personnel in respect of any cost, expense, liability, loss, or damage occasioned by such removal and the Operator shall fully indemnify the Council in respect of any claim made by such personnel.
- 32.9 The Operator shall ensure that its personnel engaged in the provision of the Services carry photographic identification. When requested to do so, any personnel of the Operator shall disclose his identity and status as and shall not attempt to avoid doing so. For Schools Transport Services, personnel will be issued with a Council ID badge, which must be worn during the Service provision.
- 32.10 The Operator will comply with all legislation governing Health and Safety including the provision of Personal Protective Equipment (PPE) as required.
- 32.11 The Operator shall notify the Council's Representative immediately upon becoming aware of any possible conflict of interest which may arise between the interests of the Council and any other client of the Operator. The Operator shall take all reasonable steps to remove or avoid the cause of any such conflict of interest to the satisfaction of the Council.
- 32.12 When any employee is involved in carrying out the Service, the Operator shall ensure that he obeys all reasonable instructions given to him by the Council or its employees in any matter in which the immediate safety or wellbeing of any members of the public, employees of the Council, or of its contractors or agents shall be involved.
- 32.13 The Operator shall assume full responsibility for the acts and omissions of any their employees, agents, sub-contractors and its and their

visitors in performance of the Services, and shall be solely responsible for their supervision, daily direction and control.

- 32.14 The Operator undertakes to the Council to discharge all the obligations on the part of the employer in respect of the contracts of employment of the employees of the Operator for all periods up to, including and following the expiry of this Agreement. For the avoidance of doubt this shall include without limitation all salaries and wages, bonuses and other emoluments (including holiday pay), pay as you earn tax deductions and national insurance contributions and pension or retirement scheme contributions for the period up to and including the expiry of the Agreement and the Operator shall indemnify the Council against, and hold it harmless from, all actions, proceedings, costs, claims and demands made by any or all of the employees of the Operator or HMRC Revenue & Customs in respect of them.

### **33 Operator's Representative**

- 33.1 The Operator shall appoint a suitably qualified and experienced Operator Representative as named in Schedule 1 who shall be empowered to act on behalf of the Operator for all purposes connected with this Agreement. Such appointment or any further appointment shall be subject to the approval of the Council. The Operator's Representative shall not be replaced without notification to the Council. Any notice, information, instruction or other communication given to the Operator's Representative or his duly appointed deputy shall be deemed to have been given to the Operator.
- 33.2 The Operator shall forthwith give notice in writing to the Council's Representative of the identity, address, email address and telephone numbers of any person appointed as the Operator's Representative and of any subsequent appointment.
- 33.3 The Operator shall forthwith give notice in writing to the Council's Representative of the identity, address, email address and telephone numbers of any person authorised to act for any short temporary period as deputy for the Operator's Representative and when such deputy ceases to be so authorised.
- 33.4 The Operator shall ensure that the Operator's Representative is available to meet the Council's Representative at all reasonable times.



### **34 Council's Representative**

- 34.1 The Council's Representative shall be the person named in the Schedule 1 or such other person nominated in writing, including by electronic means, by the Council from time to time to act in the name of the Council for the purposes of this Agreement.
- 34.2 The Council's Representative shall have power to issue instructions to the Operator on any matter relating to the provision of the Services and the Operator shall comply therewith.
- 34.3 From time to time the Council's Representative may appoint one or more persons to act as the Council's Representative generally or for specified purposes or periods. Any act or instruction of any such representative shall be treated as an act of the Council's Representative.

### **35 Use of Council's Premises**

- 35.1 The Operator shall ensure that neither it nor its employees or agents shall do any act or thing at any of the premises owned or occupied or controlled by the Council that is not solely for the benefit of the Council and done in the course of the proper performance of the Services and as may be permitted by this Agreement.

### **36 Modification to the Services**

- 36.1 Any part of the Specification may be altered at any time by written agreement between both Parties.
- 36.2 If the Council's requirements for the Service provided under the Agreement change during its currency, the Council may request the Operator to vary the Specification accordingly.
- 36.3 Where such variation contemplated in Clause 36.2 does not:

- (a) involve a change to the specification of, or an increase in the number or capacity of, the vehicles used to carry out the Service;
- (b) involve a change to the days of the week or periods of the year (e.g. school terms) of operation;
- (c) fundamentally alter the nature of the Agreement,

the Operator will be required to implement the requested alteration.

36.4 If the variation contemplated in Clause 36.2 does involve changes, then the Council will seek to agree implementation of the requested alteration with the Operator, and negotiate a revised Contract Price. In any case where agreement cannot be reached between the two parties, then the Agreement or any part of the Service provided thereunder may be terminated under the Terms of this Agreement.

36.5 Where the modification involves an omission, reduction or postponement, the valuation shall not include, and the Council shall not be liable to the Operator in respect of, any loss or reduced contribution to overheads or profit whether in respect of this Agreement or any lost opportunity to earn overhead contribution or profit elsewhere.

## **37 Variation**

37.1 Any variation to this Agreement including for clarification or modification in accordance with Clause 36 shall be effected by an agreement in writing signed by a duly authorised officer or representative of each of the Parties hereto.

## **38 Freedom of Information**

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

- (a) Provide all necessary assistance and cooperation as reasonably requested by the Council to enable the Council to comply with its obligations under the FOIA and EIRs;

- (b) Transfer to the Council all Requests for Information relating to this agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;
- (c) provide the Council with a copy of all Information belonging to the Council requested in the Request For Information which is in its possession or control in the form that the Council requires within 5 Working Days (or such other period as the Council may reasonably specify) of the Council's request for such Information; and
- (d) not respond directly to a Request For Information unless authorised in writing to do so by the Council.

- 38.2 The Operator acknowledges that the Council may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Operator. The Council shall take reasonable steps to notify the Operator of a Request For Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this agreement) the Council shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs.
- 38.3 Notwithstanding any other term of this agreement, the Operator consents to the publication of this Agreement in its entirety (including variations), subject only to the redaction of information that is exempt from disclosure in accordance with the provisions of the FOIA and EIRs.
- 38.4 The Council shall, prior to publication, consult with the Operator on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decisions in its absolute discretion. The Operator shall assist and co-operate with the Council to enable the Council to publish this agreement.

## 39 Data Processing

- 39.1 Both Parties will comply with all applicable requirements of the Data Protection Legislation. This clause 39 is in addition to, and does not relieve, remove or replace, a Party's obligations or rights under the Data Protection Legislation. In this clause 39, Applicable Laws means (for so long as and to the extent that they apply to the Operator) the law of the European Union, the law of any member state of the European Union and/or Domestic UK law; and Domestic UK Law means the UK Data Protection Legislation and any other law that applies in the UK.
- 39.2 The Parties acknowledge that there may be occasions when the Operator is the Controller and these situations are set out in Schedule 5. Where the Operator is the Controller, the Operator shall ensure compliance with the relevant obligations placed on it as Controller of the data under the UK Data Protection Legislation
- 39.3 The Parties acknowledge that for the purposes of the UK Data Protection Legislation, the Council is the Controller and the Operator is the Processor in relation to data resulting directly from the Operators obligations under this Agreement as indicated in Schedule 5.
- 39.4 Without prejudice to the generality of clause 39.1, the Council will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Operator for the duration and purposes of this Agreement .
- 39.5 Without prejudice to the generality of clause 39.1, the Operator shall, in relation to any Personal Data processed in connection with the performance by the Operator of its obligations under this Agreement:
- (a) process that Personal Data only on the documented written instructions of the Council which are set out in Schedule 6, unless the Operator is required by Applicable Laws to otherwise process that Personal Data. Where the Operator is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, the Operator shall promptly notify the Council of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Operator from so notifying the Council;

- (b) ensure that it has in place appropriate technical and organisational measures (as defined in the Data Protection Legislation), reviewed and approved by the Council, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
- (c) not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Council has been obtained and the following conditions are fulfilled:
  - (i) the Council or the Operator has provided appropriate safeguards in relation to the transfer;
  - (ii) the Data Subject has enforceable rights and effective remedies;
  - (iii) the Operator complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
  - (iv) the Operator complies with the reasonable instructions notified to it in advance by the Council with respect to the processing of the Personal Data;
- (d) notify the Council immediately if it receives:
  - (i) a request from a Data Subject to have access to that person's Personal Data;
  - (ii) a request to rectify, block or erase any Personal Data;
  - (iii) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation (including any communication from the Information Commissioner);

- (e) assist the Council in responding to any request from a Data Subject and in ensuring compliance with the Council's obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (f) notify the Council without undue delay on becoming aware of a Personal Data breach including without limitation any event that results, or may result, in unauthorised access, loss, destruction, or alteration of Personal Data in breach of this agreement;
- (g) at the written direction of the Council, delete or return Personal Data and copies thereof to the Customer on termination or expiry of the agreement unless required by the Applicable Laws to store the Personal Data;
- (f) maintain complete and accurate records and information to demonstrate its compliance with this clause 29 and allow for audits by the Council or the Council's designated auditor pursuant to clause 41 and immediately inform the Customer if, in the opinion of the Operator, an instruction infringes the Data Protection Legislation.

- 39.6 The Operator shall indemnify the Council against any losses, damages, cost or expenses incurred by the Council arising from, or in connection with, any breach of the Operator's obligations under this clause 39.
- 39.7 Where the Operator engage a Sub-contractor pursuant to clause 58 and intends for that Sub-contractor to process any Personal Data relating to this agreement, it shall:
- (a) notify the Council in writing of the intended processing by the Sub-contractor;
  - (b) obtain prior written consent from the Council to the processing;
  - (c) enter into a written agreement incorporating terms which are substantially similar to those set out in this clause 39.
- 39.8 Either Party may, at any time on not less than 30 Working Days' written notice to the other party, revise this clause 39 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this Agreement).

39.9 The provisions of this clause shall apply during the continuance of the Agreement and indefinitely after its expiry or termination.

#### **40 Confidentiality**

40.1 Subject to clause 40.2, each Party shall keep the other Party's Confidential Information confidential and shall not:

- (a) use such Confidential Information except for the purpose of performing its rights and obligations under or in connection with this agreement; or
- (b) disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this clause 30.

40.2 The obligation to maintain confidentiality of Confidential Information does not apply to any Confidential information:

- (a) which the other party confirms in writing is not required to be treated as Confidential Information;
- (b) which is obtained from a third party who is lawfully authorised to disclose such information without any obligation of confidentiality;
- (c) which a party is required to disclose by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by Applicable Law, including the FOIA or the EIRs;
- (d) which is in or enters the public domain other than through any disclosure prohibited by this agreement;
- (e) which a party can demonstrate was lawfully in its possession prior to receipt from the other party; or
- (f) which is disclosed by the Council on a confidential basis to any central government or regulatory body.

40.3 A Party may disclose the other Party's Confidential information to those of its Representatives who need to know such Confidential Information for the purposes of performing or advising on the party's obligations under this agreement, provided that:

- (a) it informs such Representatives of the confidential nature of the Confidential Information before disclosure; and

- (b) it procures that its Representatives shall, in relation to any Confidential Information disclosed to them, comply with the obligations set out in this clause as if they were a party to this agreement,
- (c) and at all times, it is liable for the failure of any Representatives to comply with the obligations set out in this clause 40.3.

40.4 The provisions of this clause 40 shall survive for a period of six (6) years from the Termination Date.



## 41 Audit and Inspection

- 41.1 During the Term and for a period of six (6) years after the Termination Date, the Council (acting by itself or through its Representatives) may conduct an audit of the Operator, including for the following purposes:
- (a) to verify the accuracy of charges (and proposed or actual variations to them in accordance with this agreement) and/or the costs of all Operators (including Sub-contractors) of the Services at the level of detail agreed in Schedule 2 (Payment);
  - (b) to review the integrity, confidentiality and security of any data relating to the Council or any service users;
  - (c) to review the Operator's compliance with the Data Protection Legislation, the FOIA, in accordance with clause 39 (Data Protection) and clause 38 (Freedom of Information) and any other legislation applicable to the Services;
  - (d) to review any records created during the provision of the Services;
  - (e) to review any books of account kept by the Operator in connection with the provision of the Services;
  - (f) to carry out the audit and certification of the Council's accounts;
  - (g) to carry out an examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Council has used its resources;
  - (h) to verify the accuracy and completeness of the Management Reports delivered or required by this Agreement.
- 41.2 Except where an audit is imposed on the Council by a regulatory body or where the Council has reasonable grounds for believing that the Operator has not complied with its obligations under this Agreement, the Council may not conduct an audit under this clause 41 more than twice in any calendar year.
- 41.3 The Council shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Operator or delay the provision of the Services.
- 41.4 Subject to the Council's obligations of confidentiality, the Operator shall on demand provide the Council and any relevant regulatory body (and/or their agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including:

- (a) all information requested by the above persons within the permitted scope of the audit;
  - (b) reasonable access to any sites and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services; and
  - (c) access to the Operator Personnel.
- 41.5 The Council shall endeavour to (but is not obliged to) provide at least 14 Working Days' notice of its intention or, where possible, a regulatory body's intention, to conduct an audit.
- 41.6 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause, unless the audit identifies a material failure to perform its obligations under this Agreement in any material manner by the Operator in which case the Operator shall reimburse the Council for all the Council's reasonable costs incurred in the course of the audit.
- 41.7 If an audit identifies that:
- (a) the Operator has failed to perform its obligations under this Agreement in any material manner, the parties shall agree and implement a remedial plan. If the Operator's failure relates to a failure to provide any information to the Council about the charges, proposed charges or the Operator's costs, then the remedial plan shall include a requirement for the provision of all such information;
  - (b) the Council has overpaid any charges, the Operator shall pay to the Council the amount overpaid within 30 days. The Council may deduct the relevant amount from the charges if the Operator fails to make this payment; and
  - (c) the Council has underpaid any charges, the Council shall pay to the Operator the amount of the under-payment less the cost of audit incurred by the Council if this was due to a default by the Operator in relation to invoicing within 30 days.

## 42 Intellectual Property

- 42.1 In the absence of prior written agreement by the Council to the contrary, all Intellectual Property Rights created by the Operator or Operator Personnel:
- (a) in the course of performing the Services; or

- (b) exclusively for the purpose of performing the Services,  
shall vest in the Council on creation.

42.2 The Operator shall indemnify the Council against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right by the availability of the Services, except to the extent that they have been caused by or contributed to by the Council's acts or omissions.

## 43 Termination

### 43.1 Termination for breach

43.1.1 The Council may terminate this agreement in whole or part with immediate effect by the service of written notice on the Operator in the following circumstances:

- (a) if the Operator is in breach of any material obligation under this Agreement provided that if the breach is capable of remedy, the Council may only terminate this Agreement under this clause 43.1 if the Operator has failed to remedy such breach within 28 days of receipt of notice from the Council (a Remediation Notice) to do so;
- (b) if a Consistent Failure has occurred;
- (c) if a Catastrophic Failure has occurred;
- (d) if there is an Insolvency Event.
- (e) if there is a change of control of the Operator within the meaning of section 1124 of the Corporation Tax Act 2010.
- (f) the Council reasonably believes that the circumstances set out in regulation 73(1) of the Public Contracts Regulations 2015 apply.
- (g) Any issues relating to, and including, the loss of PSV Operators Licence.

43.1.2 The Council may also terminate this Agreement in accordance with the provisions of clause 44 and clause 45.

43.1.3 If this Agreement is terminated by the Council pursuant to this clause 43, such termination shall be at no loss or cost to the Council and the Operator hereby indemnifies the Council against any such losses or costs which the Council may suffer as a result of any such termination.

43.1.4 The Operator may terminate this Agreement in the event that the Council commits a Termination Payment Default by giving 30 days' written notice to the Council. In the event that the Council remedies the Termination Payment Default in the 30 day notice period, the Operator's notice to terminate this Agreement shall be deemed to have been withdrawn.

## **43.2 Termination on Notice**

43.2.1 Without affecting any other right or remedy available to it, either party may terminate this agreement at any time by giving six (6) months written notice.

43.2.2 For the avoidance of doubt, notices under this section cannot be issued by way of an email or fax.

## **44 Force Majeure**

44.1 Provided it has complied with the remaining provisions of this Clause 44, if a party is prevented, hindered or delayed in or from performing any of its obligations under this agreement by a Force Majeure Event (Affected Party), the Affected Party shall not be in breach of this agreement or otherwise liable for any such failure or delay in the performance of such obligations.

44.2 The corresponding obligations of the other party will be suspended to the same extent as those of the Affected Party.

44.3 The Affected Party shall:

- (a) as soon as reasonably practicable after the start of the Force Majeure Event but not later than 14 days from its start, notify the other party in writing of the Force Majeure Event, the date on which it started, its likely potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the agreement; and
- (b) use all reasonable endeavours to mitigate the effect of the Force Majeure Event.

44.4 An Affected Party cannot claim relief if the Force Majeure Event is attributable to the Affected Party's wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event. The Operator cannot claim relief if the Force Majeure Event is one which, in accordance with Best Industry Practice, the Operator should have foreseen and provided for the cause in question.

44.5 The Affected Party shall notify the other party in writing as soon as practicable after the Force Majeure Event ceases or no longer causes the affected party to be unable to comply with its obligations under this agreement. Following such notification, this agreement shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the Parties.

44.6 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than three weeks, the party not affected by the Force Majeure Event may terminate this agreement by giving one (1) weeks' notice to the Affected Party.

## 45 Prevention of Bribery

45.1 The Operator represents and warrants that neither it, nor any Operator Personnel:

- (a) has committed a Prohibited Act;
- (b) to the best of its knowledge has been or is subject to an investigation, inquiry or enforcement proceedings by a governmental, administrative or regulatory body regarding any Prohibited Act or alleged Prohibited Act; or

- (c) has been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or Agreements on the grounds of a Prohibited Act.
- 45.2 The Operator shall promptly notify the Council if, at any time during the Term, its circumstances, knowledge or awareness changes such that it would not be able to repeat the warranties set out in clause 45.1 at the relevant time.
- 45.3 The Supplier shall (and shall procure that its Operator Personnel shall):
  - (a) not commit a Prohibited Act; and/or
  - (b) not do or omit to do anything that would cause the Council or any of the Council's employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.
  - (c) have and maintain in place its own policies and procedures to ensure compliance with the Relevant Requirements and prevent occurrence of a Prohibited Act;
  - (d) promptly report to the Council any request or demand for any undue financial or other advantage of any kind received by the Operator in connection with performance of this agreement.
- 45.4 The Operator shall maintain appropriate and up to date records showing all payments made by the Operator in connection with this Agreement and the steps taken to comply with its obligations under clause 45.3.
- 45.5 The Operator shall allow the Council and its third party representatives to audit any of the Operator's records and any other relevant documentation in accordance with clause 41.
- 45.6 Any notice served by the Council under clause 45 shall specify the nature of the Prohibited Act, the identity of the Party who the Council believes has committed the Prohibited Act and the action that the Council has elected to take (including, where relevant, the date on which this Agreement shall terminate).

## **46 Consequences of Termination or Expiry**

- 46.1 On the expiry of the Term or if this Agreement is terminated in whole or in part for any reason, the provisions of the Exit Management Plan shall come into effect and the Operator shall co-operate fully with the Council to ensure an orderly migration of the Services to the Council or, at the Council's request, a Replacement Operator.
- 46.2 On termination or expiry of this agreement and on satisfactory completion of the Exit Management Plan (or where reasonably so required by the Council before such completion) the Operator shall procure that all data and other material belonging to the Council (and all media of any nature containing information and data belonging to the Council or relating to the Services), shall be delivered to the Council forthwith and the Operator Authorised Representative or Chief Executive Officer shall certify full compliance with this clause.
- 46.3 Any provision of this Agreement that expressly or by implication is intended to come into or continue force on or after termination or expiry, including clause 38 (Freedom of Information), clause 39 (Data Protection), clause 40 (Confidentiality), clause 41 (Audit), clause 43 (Termination), clause 46 (Consequences of termination), clause 59 (Indemnities), clause 60 (Limitation of Liability) and clause 61 (Insurance), shall remain in full force and effect.
- 46.4 Termination or expiry of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the Termination Date.
- 46.5 The Operator shall hand over the Council's Vehicles to the Council in accordance with the Handover Protocol.

## **47 Non-solicitation**

- 47.1 In order to protect each other's legitimate business interest, neither Party shall (except with the prior written consent of the other) during the term of this Agreement, and for a period of one year thereafter, solicit or attempt to solicit or entice away any senior staff of the other party who have been engaged or employed in the provision of the Services or any significant part thereof either as principal, agent,

employee, independent contractor or in any other form of employment or engagement other than by means of an open national advertising campaign and not specifically targeted at such staff of the other Party.

#### **48 Waiver**

- 48.1 No failure or delay by a Party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

#### **49 Rights and Remedies**

- 49.1 Except as expressly provided in this Agreement, the rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

#### **50 Severability**

- 50.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement.
- 50.2 If any provision or part-provision of this Agreement is deemed deleted under clause 50.1, the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

#### **51 Partnership or Agency**

- 51.1 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the Parties, constitute any Party the agent of another Party, or authorise any Party to make or enter into any commitments for or on behalf of any other Party.



51.2 Each Party confirms it is acting on its own behalf and not for the benefit of any other person.

## **52 Third Party Rights**

52.1 Unless it expressly states otherwise, this Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

52.2 The rights of the Parties to terminate, rescind or agree any variation, waiver or settlement under this Agreement are not subject to the consent of any other person.

## **53 Publicity**

53.1 The Operator shall not make any press announcements or publicise this agreement or its contents in any way; or use the Council's name or logo in any promotion or marketing or announcement of orders, except as required by Law, any government or regulatory Council, any court or other Council of competent jurisdiction, without the prior written consent of the Council, which shall not be unreasonably withheld or delayed.

## **54 Notices**

54.1 Any notice given to a Party under or in connection with this Agreement shall be in writing marked for the attention of the Party's Authorised Representative and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case);

54.2 Any notice shall be deemed to have been received:

- (a) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
- (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Working Day after posting or at the time recorded by the delivery service.

- (c) if sent by email, at the time of transmission, or if this time falls outside working hours in the place of receipt, when working hours resume. In this clause 54.2(c), working hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

54.3 This clause 54 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

54.4 A notice given under this Agreement is not valid if sent by email.

54.5 For the purposes of this clause 54, the address of each Party shall be:

(a) For the Council:

Head of Integrated Public Transport, Parking & Technology

Address: Economic Growth and Development Directorate - Transport and Infrastructure, Cornwall Council, New County Hall, Treyew Road, Truro, Cornwall, TR1 3AY

For the attention of: [REDACTED]

Tel: [REDACTED]

(b) For the Operator:

[REDACTED]

The Go-Ahead Group PLC,  
Group Legal Department

Address: 4, Matthew Parker Street, Westminster, London, SW1H 9NP.

For the attention of:

email: [REDACTED]

54.6 Either Party may change its address for service by serving a notice in accordance with this clause.

## 55. Statutory Obligations

55.1 The Operator shall at all times comply with the requirements of:

- (i) all relevant Transport Legislation governing the operation of this Agreement.
- (ii) the Health and Safety at Work Act 1974, the Management of Health and Safety at Work Regulations 1992 and all other

statutory and regulatory requirements and the Council's policies and procedures relating to health and safety copies of which are available on request.

- (iii) the Equality Act 2010 and all other relevant related statutory and regulatory requirements and the Council's policies and procedures, copies of which are available on request, relating to equal opportunities and shall not treat any person or group of people less favourably than another on the grounds of race, colour, religion, belief, ethnicity, gender, age, disability, nationality, marital status or sexual orientation; and
- (iv) all statutory and European and domestic statutory and regulatory requirements where relevant to the provision by the Operator of the Services and to be observed and performed in connection with this Agreement including any obligations binding upon the Council and shall indemnify the Council against all actions, claims, demands, proceedings, damages, costs, charges and expenses whatsoever and howsoever arising in respect of any breach by the Operator of this clause 55.

55.2 The Operator shall take all reasonable steps to prevent fraud by employees and the Operator (including its shareholders, members, directors) in connection with the receipt of monies from the Council. The Operator shall notify the Council immediately if it has reason to suspect that any fraud has occurred or is likely to occur.

## **56 Gratuities**

56.1 The Operator shall not, whether itself, or by any person employed by it to provide the Services, solicit or accept any gratuity or any other reward, tip or any other form of money taking, collection or charge for any part of the Services other than charges properly approved by the Council in accordance with the provisions of this Agreement.

## **57 Dispute Resolution**

57.1 If a dispute arises out of or in connection with this Agreement or the performance, validity or enforceability of it (Dispute) then the Parties shall follow the procedure set out in this clause:

- (a) either Party shall give to the other written notice of the Dispute, setting out its nature and full particulars (Dispute Notice), together with relevant supporting documents. On service of the Dispute Notice, the Authorised Representatives shall attempt in good faith to resolve the Dispute;
- (b) if the Authorised Representatives are for any reason unable to resolve the Dispute within 30 days of service of the Dispute Notice, the Dispute shall be referred to the Council's Service Director for Transport and Infrastructure and the Operator's Managing Director who shall attempt in good faith to resolve it; and
- (c) if the Council's Service Director for Transport and Infrastructure and the Operator's Managing Director are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the Parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the Parties, the mediator shall be nominated by CEDR. To initiate the mediation, a Party must serve notice in writing (ADR notice) to the other Party to the Dispute, requesting mediation. The mediation will start not later than 14 days after the date of the ADR notice.

57.2 The commencement of mediation shall not prevent the Parties commencing or continuing court proceedings in relation to the dispute under clause 65 which clause shall apply at all times.

## **58 Sub-contracting and Assignment**

58.1 Subject to clause 57.3, neither Party shall assign, novate, subcontract or otherwise dispose of any or all of its rights and obligations under this Agreement without the prior written consent of the other party, neither may the Operator sub-contract the whole or any part of its obligations under this agreement except with the express prior written consent of the Council, such consent not to be unreasonably withheld.

58.2 In the event that the Operator enters into any Sub-contract in connection with this Agreement it shall:

- (a) remain responsible to the Council for the performance of its

obligations under the Agreement notwithstanding the appointment of any Sub-contractor and be responsible for the acts omissions and neglects of its Sub-contractors;

- (b) impose obligations on its Sub-contractors in the same terms as those imposed on it pursuant to this agreement and shall procure that the Sub-contractors complies with such terms; and
  - (c) provide a copy, at no charge to the Council, of any such Sub-contractor on receipt of a request for such by the Council's Authorised Representative.
- 58.3 The Council shall be entitled to novate (and the Operator shall be deemed to consent to any such novation) the Agreement to any other body which substantially performs any of the functions that previously had been performed by the Council.
- 58.4 Provided that the Council has given prior written consent, the Operator shall be entitled to novate the agreement where:
- (a) the specific change in Operator was provided for in the procurement process for the award of this contract;
  - (b) there has been a universal or partial succession into the position of the Operator, following a corporate restructuring, including takeover, merger, acquisition or insolvency, by another economic operator that meets the criteria for qualitative selection applied in the procurement process for the award of this contract.
- 58.5 Without prejudice to the generality of this clause 58, the Operator shall:
- (a) subject to clause 58.7, advertise on Contracts Finder all subcontract opportunities arising from or in connection with the provision of the Services above a minimum threshold of £25,000 that arise during the Term;
  - (b) within 90 days of awarding a Subcontract, update the notice on Contracts Finder with details of the Subcontractor;
  - (c) monitor the number, type and value of the subcontractor opportunities placed on Contracts Finder advertised and awarded during the Term;
  - (d) provide reports, in a format and at a frequency reasonably specified by the Council, containing the information referred to in clause 58.5(c) to the Council;
  - (e) promote Contracts Finder to its Operators and encourage those organisations to register on Contract Finder.

- 58.6 Each advert referred to at clause 58.5(a) shall provide a full and detailed description of the subcontract opportunity with each of the mandatory fields being completed on Contracts Finder by the Operator.
- 58.7 The obligation at clause 58.5 shall only apply in respect of subcontract opportunities arising after the Commencement Date.
- 58.8 Notwithstanding clause 58.5, the Council may by giving its prior written approval agree that a subcontract opportunity is not required to be advertised on Contracts Finder.

## **59 Indemnities**

- 59.1 Subject to clause 59.2, the Operator shall indemnify and keep indemnified the Council against all liabilities, costs, expenses, damages and losses incurred by the Council arising out of or in connection with:
- (a) the Operator's breach or negligent performance or non-performance of this Agreement;
  - (b) any claim made against the Council arising out of or in connection with the provision of the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of this agreement by the Operator or Operator Personnel;
  - (c) the enforcement of this Agreement.
- 59.2 The indemnity under clause 59.1 shall apply except insofar as the liabilities, costs, expenses, damages and losses incurred by the Council are directly caused (or directly arise) from the negligence or breach of this Agreement by the Council or its Representatives.

## **60 Limitation of Liability**

- 60.1 Subject to clause 60.2, neither Party shall be liable to the other Party, whether in Agreement, tort (including negligence), breach of statutory duty, or otherwise, for any indirect or consequential loss arising under or in connection with this Agreement.
- 60.2 Notwithstanding the provisions of clause 60.1, but subject to clause 50.4, the Operator assumes responsibility for and acknowledges that the Council may, amongst other things, recover:

- (a) sums paid by the Council to the Operator pursuant to this agreement, in respect of any services not provided in accordance with the Agreement;
  - (b) wasted expenditure;
  - (c) additional costs of procuring and implementing replacements for, or alternatives to, the Services, including consultancy costs, additional costs of management time and other personnel costs and costs of equipment and materials;
  - (d) losses incurred by the Council arising out of or in connection with any claim, demand, fine, penalty, action, investigation or proceeding by any third party (including any Subcontract, Operator Personnel, regulator or customer of the Council) against the Council caused by the act or omission of the Operator;
  - (e) any anticipated savings
- 60.3 Each Party shall at all times take all reasonable steps to minimise and mitigate any loss or damage arising out of or in connection with this Agreement, including any losses for which the relevant party is entitled to bring a claim against the other Party pursuant to the indemnities in this Agreement.
- 60.4 Subject to clause 60.1 and clause 60.6, the Operator's aggregate liability is unlimited in respect of:
- (a) the indemnities in clause 59,
  - (b) the Operator's wilful default and,
  - (c) all other claims, losses or damages, whether arising from tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with this Agreement.
- 60.5 Subject to clause 60.1 and clause 60.6, the Council's aggregate liability to the Operator for all claims, losses or damages, whether arising from tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with this agreement (other than a failure to pay any of the Contract Price that are properly due and payable and for which the Council shall remain fully liable), shall be limited to Contract Price.
- 60.6 Notwithstanding any other provision of this agreement neither party limits or excludes its liability for:
- (a) fraud or fraudulent misrepresentation;
  - (b) death or personal injury caused by its negligence (or the

- negligence of its personnel, agents or subcontractors);
- (c) breach of any obligation as to title implied by statute; or
- (d) any other liability for which may not be limited under any Applicable Law.

## 61 Insurance

61.1 The Operator shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance providing as a minimum the following levels of cover:

- (a) public liability insurance with a limit of indemnity of not less than £10m in relation to any one claim or series of claims;
- (b) employer's liability insurance with a limit of indemnity of not less than £10m OR in accordance with any legal requirement for the time being in force in relation to any one claim or series of claims;
- (c) any and all Motor Insurances required on the Vehicles used on the Service

(the Required Insurances). The cover shall be in respect of all risks which may be incurred by the Operator, arising out of the Operator's performance of the Agreement, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Operator.

61.2 The Operator shall give the Council, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the Required Insurances are in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

61.3 If, for whatever reason, the Operator fails to give effect to and maintain the Required Insurances, the Council may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Operator.

61.4 The terms of any insurance or the amount of cover shall not relieve the Operator of any liabilities under the Agreement.

## 62. Complaints



- 62.1.1 The Operator shall provide the Council with all written comments, suggestions or complaints received about or in connection with the Service or its performance, together with any reply given within 3 working days.
- 62.1.2 Any complaints that the Council receives will be passed to the Operator for comments before any action is considered under Clause 62. The Operator must respond to such complaint within 3 working days, or such other period as may be agreed by the Council, failing which action may be taken by the Council on the face value of the complaint. Failure to respond to complaints will be treated as a breach of contract.
- 62.1.3 The Operator is required to give all reasonable assistance to the Council in the investigation of any complaint, and to comply with any direction given by the Council to ensure compliance with the terms of this Agreement.

### **63 Recovery of sums due to the Council**

- 63.1 Whenever under this Agreement any sum of money shall be recoverable from or payable by the Operator to the Council, the same may be deducted from any sum then due or which at any time thereafter may become due, to the Operator under this Agreement or any other agreement held by the Operator.

### **64 TUPE**

The Parties agree that the provisions of Schedule 6 shall apply to any Relevant Transfer of staff under this Agreement.

### **65 Legal Proceedings**

- 65.1 The Operator shall notify the Council's Representative immediately upon becoming aware of any accident, damage, or breach of any statutory provision relating in any way to the provision of or connected with the Services.
- 65.2 If requested to do so by the Council's Representative and at its own expense, the Operator shall provide the Council's Representative with any relevant information in connection with any litigation, arbitration

or other dispute in which the Council may become involved or any relevant disciplinary hearing internal to the Council and shall give evidence in such inquiries or proceedings or hearings, arising out of the provision of the Services.

- 65.3 The Operator shall at its own expense fully assist the Local Government Ombudsman, the Audit Commission, the District Auditor, the Council's Internal Auditor, the Council's Monitoring Officer and any other body or person as may be specified by the Council's Representative with any investigations, enquiries or complaints relating to allegations of maladministration or other irregularities or improprieties in connection either directly or indirectly with the Agreement such assistance to include the prompt disclosure to such body or person as aforesaid of all relevant information and documentation.
- 65.4 Should any part of the Services involve the Operator in performing duties or exercising powers under some other agreement it shall upon becoming aware of anything which is likely to give rise to arbitration or litigation under that other agreement forthwith notify the Council's Representative of any such matter together with such particulars as are available.

## **66 Parent Company Guarantee and Performance Bond**

- 66.1 If the Operator is a subsidiary company within the meaning of Section 1159 of the Companies Act 2006, it shall, if requested, provide a guarantee in the form set out in Schedule 14 by its holding company or companies (as defined by the said Section 1159) to secure the due performance by the Operator of its obligations under this Agreement.
- 66.2 If required to do so, the Operator shall procure a performance at a value to be determined by the Council.

## **67 Compliance with Anti-Slavery and Human Trafficking Laws**

- 67.1 In performing its obligations under the agreement, the Operator shall:
- (a) comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015; and

- (b) have and maintain throughout the term of this Agreement its own policies and procedures to ensure its compliance; and
- (c) not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK; and
- (d) include in its agreements with its subcontractors and Operators anti-slavery and human trafficking provisions that are at least as onerous as those set out in this clause 67 that each of its subcontractors and Operators shall comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015.

67.2 The Operator represents and warrants that at the date of this Agreement:

- (a) its responses to the Council's slavery and human trafficking due diligence questionnaire are complete and accurate; and
- (b) neither the Operator nor any of its officers, employees or other persons associated with it:
  - (i) has been convicted of any offence involving slavery and human trafficking; and
  - (ii) having made reasonable enquiries, so far as it is aware has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking.

67.3 The Operator shall implement due diligence procedures for its subcontractors, and other participants in its supply chains, to ensure that there is no slavery or human trafficking in its supply chains.

67.4 The Operator shall notify the Council as soon as it becomes aware of any actual or suspected slavery or human trafficking in a supply chain which has a connection with this Agreement.

67.5 The Operator shall prepare and deliver to the Council, within 28 days of the Services Commencement Date and thereafter, on the 1<sup>st</sup> April each year, an annual slavery and human trafficking report setting out the steps it has taken to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its

business.

67.6 The Operator shall:

- (a) maintain a complete set of records to trace the supply chain of all Services provided to the Council in connection with this Agreement; and
- (b) permit the Council and its third party representatives, on reasonable notice during normal business hours, but without notice in case of any reasonably suspected breach of this clause 67.6(b), to have access to and take copies of the Operator's records and any other information and to meet with the Operator's personnel to audit the Operator's compliance with its obligations this clause; and
- (c) implement annual audits of its compliance and its subcontractors' and Operators' compliance with this clause 67.

67.7 The Operator shall indemnify the Council against any losses, liabilities, damages, costs (including but not limited to legal fees) and expenses incurred by, or awarded against, the Council as a result of any breach of this clause 67.

67.8 The Operator represents warrants and undertakes that it conducts its business in a manner that is consistent with the Applicable Laws.

## **68 Living Wage**

68.1 It is a condition of this Agreement that, for the duration of this Agreement:

- (a) the Operator shall pay all employees who are employed by the Operator to perform the Services pursuant to this Agreement not less than the Living Wage, as set annually by the Living Wage Foundation; and
- (b) notwithstanding 68.1 (a), the Operator shall have up to 12 months from the date on which any increase in Living Wage is adjusted by Living Wage Foundation, to increase any or all wages such that the contracted employees continue to be paid not less than the Living Wage as set by the Living Wage Foundation.

68.2 If the Operator sub-contracts all or part of the provision of the Services

to a sub-contractor, the Operator shall ensure that any subcontractor adheres to clause 68.1 as though it were the Operator.

- 68.3 A breach by the Operator of its obligations pursuant to clauses 68.1 and 68.2 shall constitute a material breach by the Operator of this Agreement which shall entitle the Council to terminate this Agreement.

## **69 Preventing Extremism/Terrorism**

- 69.1 The Council as a specified authority under Schedule 6 of the Counter Terrorism & Security Act 2015 (the Act) has certain duties imposed on it by the Act. In particular, section 26 the Act places a duty on the Council, in the exercise of its functions, to have due regard to the need to prevent people from being drawn into terrorism.

- 69.2 In performance of its obligations under this Agreement, the Operator shall have regard to the need to prevent people from being drawn into terrorism.

- 69.3 In order to comply with its obligations under clause 69.1 and 69.2, the Operator shall put in place a policy that sets out measures for preventing people from becoming drawn into terrorism and how to challenge the extremist ideology that can be associated with it. The policy shall amongst other things, articulate how to spot the signs, referral pathways and how to obtain support for people who may be being exploited by radicalising influences.

## **70 Entire Agreement**

- 70.1 This Agreement contains the whole Agreement between the Parties and supersedes all prior agreements, arrangements and undertakings between the Parties and constitutes the entire Agreement between the Parties. The Parties confirm that they have not entered into this Agreement on the basis of any representation that is not expressly incorporated into this Agreement.

## **71 Governing Law and Jurisdiction**

- 71.1 This Agreement shall in all respects be construed and interpreted in accordance with the laws of England and Wales and the English courts

shall have exclusive jurisdiction to settle any disputes which may arise between the Parties out of or in connection with this Agreement.

**IN WITNESS** whereof this Agreement has been executed as deed by the Parties hereto and is intended to be and is hereby delivered on the day and year first above written.

**THE COMMON SEAL OF  
CORNWALL COUNCIL**

Was affixed hereunto in the presence of

|                    |                  |
|--------------------|------------------|
| Authorised Officer | NAMES IN CAPITAL |
|                    | SIGNATURE        |

**EXECUTED AS A DEED BY  
PLYMOUTH CITY BUS LIMITED**  
Acting by

|          |                  |
|----------|------------------|
| Director | NAMES IN CAPITAL |
|          | SIGNATURE        |

Witnessed by

|                     |                  |
|---------------------|------------------|
| Director/Secretary* | NAMES IN CAPITAL |
|                     | SIGNATURE        |

\*delete as appropriate

## **SCHEDULES**

### **SCHEDULE 1 - SERVICE SPECIFICATION AND PERFORMANCE INDICATORS**

#### **Part 1**

#### **Service Specification (Local Bus and School Bus Services)**

##### **1.1 Minimum Standards of Operation**

##### **1.2 Route Specification**

## Part 2

### Key Performance Indicators

#### 1. General

- 1.1 The Council may issue a formal Warning or claim performance credits if the Operator fails to comply with the provisions of this Agreement.
- 1.1 The Council regards the quality of service as very important, and the Operator must take all reasonable steps to ensure that, as well as operating all the specified journeys, the service is provided to the required quality. From time to time the Council will without notice, monitor the service, and will also investigate complaints received from passengers.
- 1.2 Failures to comply with these Conditions and/or meet the Specification and in the opinion of the Council could reasonably be avoided, action may be taken as described below.

#### 2. Warnings

- 2.1 If the Council is satisfied that the Operator has failed to meet the required standards set out in the KPI's or breached a condition of this Agreement, it may issue a formal Warning.
- 2.2 A performance credit points system is operated which will trigger the issue of a formal Warning:-
- (a) if a total of 100 points is accrued by the Operator in any period of two months, or
  - (b) a total of 200 points is accrued in any period of six months.
  - (c) Points will not be counted towards more than one Warning.
- 2.3 If a total of three formal Warning letters within a 12 month period or four warnings during any 24 months rolling period of the Agreement are served upon the Operator, the Council may terminate the Agreement immediately and the provisions of Clause 36 (consequences of termination) shall apply.
- 2.4 Where the Operator holds more than one Lot that accrues points meeting or exceeding an average of 50 points per Lot across a period of 2 months OR 100 points per Lot across a period of 6 months, he will be subject to the same actions as per a separate Lot. For example if an



Operator holds 50 Lots, the trigger points would be 2,500 (2 months) or 5,000 points (6 months).

- 2.5 If the Operator wishes to appeal against the issue of a formal Warning, he must do so in writing to the Council within 14 days of receipt of the Warning. Such appeals should detail the reasons for the appeal, and will be considered by the Council, taking into account all relevant circumstances. The final decision of such an appeal shall be at the absolute discretion of the Council.

### 3. Key Performance Indicators and Performance Damages

- 32.1 Performance Damages may be payable, where the Operator fails to meet the required standard of operation. These will be deducted from the next payment on the affected contract unless otherwise agreed between the Operator and Council.

- 32.2 If the Operator wishes to appeal against a demand for Performance Damages in accordance with paragraph 32.1 above, he must do so in writing to the Council within 14 days of receipt of notification. Such appeals should detail the reasons for the appeal, and will be considered by the Council, taking into account all relevant circumstances. The final decision of such an appeal shall be at the absolute discretion of the Council.

- 32.3 The scale of Key Performance Indicators and Performance Damages are shown in the following tables.

#### SCALE OF PERFORMANCE DAMAGES

| Nature of Failure                                   | Points | Notes                         | Fine for failure to meet the Standard |
|---|--------|-------------------------------|---------------------------------------|
| Failure to operate journey or no replacement within | 50     | Per scheduled journey not per | £100                                  |

|   |      |  |      |
|---|------|--|------|
| 30 minutes.   |      | day  |      |
| Failure to operate both School Journeys   | 150  | This means AM and PM on the same operating day                         | £300 |
| Failure to display current and correct Operators Licence  | 100  | Referral to DVSA as this indicates a failure of daily checks           | £200 |
| Failure to meet the required vehicle specification  | 25   | This applies per journey and includes capacity and vehicle dimensions. | £50  |
| Use of unauthorised Driver  | ---- | Agreement Termination  |      |
| Staff smoking or vaping in or around the vehicle during operation   | 25   | This will trigger per instance   | £50  |
| Failure to observe the specified Route and/or stopping points   | 25   | This will apply per journey  | £50  |
| Failure to display relevant signage and notices including School Bus Signs and Destination Displays (list not exhaustive) | 25   | This will trigger per operating day                                    | £50  |
| Failure to supply any data as required by this Agreement within timescales and/or format specified.                       | 50   | This will trigger per data request per period.                         | £100 |
| Failure to respond to complaint or correspondence within 5 working days.  | 25   | This will trigger per instance.  | £50  |
| Closed School Contract - Adult passenger travelling without authorisation.  | 100  | This will apply per instance.  | £200 |

|  |     |   |      |
|--|-----|---|------|
| Failure to meet requirements for BODDS or Real Time Passenger Information provision. | 50  | This includes Fares Data, Routes, Timetables as stipulated by forthcoming BODDS (Open Data) regulations (list not exhaustive). This applies per data request. | £100 |
| Failure to meet any requirement in the Service Specification                         | 25  | This will trigger per instance or per issue.  | £50  |
| Staff under the influence of drugs or alcohol whilst carrying out the service.       | --- | Agreement Termination   |      |

**KEY PERFORMANCE INDICATORS FOR LOCAL BUS SERVICES** Operators should note that the required standard for these is at least Green. Any KPIs measured in Blue will be recorded as Excellent, and those in Red will require review. These are specifically stated for the purpose of Local Bus Services.

| Ref  | KPI   | Measured             | Result  |
|------|---|----------------------|---|
| TCS1 | % of Journeys on Time at First Stop (Using Office for the Traffic Commissioner Tolerances)          | 6 monthly            | Less than 90% - Red - Requires review as part of Agreement Management Meetings<br><br>Between 90% - 95% - Green<br><br>Exceeds 95% - Blue |
| TCS2 | % of Journeys on Time across the whole route (Using Office for the Traffic Commissioner Tolerances) | 6 monthly            | Less than 85% - Red - Requires review as part of Agreement Management Meetings<br><br>Between 85% - 95% - Green<br><br>Exceeds 95% - Blue |
| TCS3 | % of Journeys Matching on the Real Time Information System.   | 6 monthly            | Less than 90% - Red - Requires review as part of Agreement Management Meetings<br><br>Between 90% - 95% - Green<br><br>Exceeds 95% - Blue |
| TCS4 | Number of Total Passengers on Service   | Rolling Annual Count | Less than 5% Growth<br>Requires review as part of Agreement Management Meetings<br>Red<br>5% - 10% Growth<br>Green<br><br>Over 10% Growth |

|      |  |                      |   |
|------|--|----------------------|---|
|      |  |                      | Blue  |
| TCS5 | <ul style="list-style-type: none"> <li>Proportion of Journeys by Smart/Cashless transaction</li> </ul> | Rolling Annual Count | <p>Less than 80%<br/>Requires review as part of Agreement Management Meetings<br/>Red</p> <p>80% - 90%<br/>Green</p> <p>90%+<br/>Blue</p> |

#### Data Requirements

For TSC01 - TSC03 the data will be collated by the Council via its RTPi system.

For TCS04 and TCS05 the Operator is required to send in a monthly (Calendar month) report (per Tendered route) detailing:

- Route Number
- Total Passenger Journeys for the Month split by:
  - Total Number of Smartcard and e-Ticket Journeys
  - Total Number of Contactless EMV Journeys
  - Total Number of Cash Journeys

This information must be sent to the Council no later than 14 days after the end of the calendar month recorded.

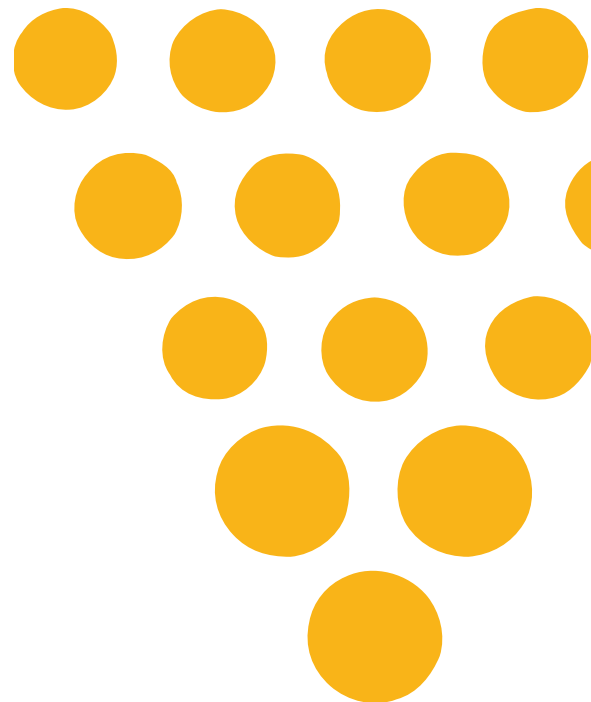


# Service Specification (Minimum Standards of Operation)

For Local Bus and School Bus Services

Version 1.5 FINAL

Transport Co-ordination Service



## Document

|  |            |                                      |            |
|--|------------|--------------------------------------|------------|
| Directorate :<br>Economic Growth & Development |            | Service : Transport & Infrastructure |            |
| Project : Bus Services                         |            |                                      |            |
| Sponsoring Corporate Director                  | ██████████ | Senior Responsible Owner             | ██████████ |
| Business Lead                                  | ██████████ | Date Updated                         | 05/07/2019 |
| Programme / Project Manager                    | ██████████ |                                      |            |

| Document History |      |        |        |        |
|------------------|------|--------|--------|--------|
| Version          | Date | Author | Change | Signed |
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# 1. Introduction

This document must be read in conjunction with the Council's Conditions of Contract for the operation of Local Bus and School Bus Services.

These are to be viewed as the **minimum** level of service provision required and innovations, actions and offerings above these are encouraged.

# 2. Definitions

The following terms are used throughout the document.

| Terminology                         |   |
|-------------------------------------|---|
| Term                                | Definition  |
| Air Quality Management Areas (AQMA) | zones or regions that require particular monitoring of Air Quality. For the purposes of this document, these are those that exist within Cornwall;  |
| Bank Holiday                        | means any day defined as such by Schedule 1 of the Banking and Financial Dealings Act 1971 <sup>1</sup> ;   |
| Boxing Day                          | means 26 <sup>th</sup> December of any year;  |
| Christmas Day                       | means 25 <sup>th</sup> December of any year;  |
| School Bus Service                  | provision of transport under the Education Act 2006. These may not be open to the general public. School Transport should not be registered as a Local Bus Service unless so required by the Council; |
| ETM                                 | Electronic Ticket Machine;  |
| Euro XX                             | Euro Emissions Standards at a specified rating defined by the number;   |
| ITSO                                | Interoperable Ticketing Standards Organisation;   |
| Local Bus Service                   | means the provision of a Local Bus Service as defined in Section 2 of the Transport Act 1985 provided by the Operator as set out in the Specification;  |
| New Year                            | means 1 <sup>st</sup> January of any year;  |

<sup>1</sup> <https://www.legislation.gov.uk/ukpga/1971/80/contents>

|  |  |
|--|--|
| Non-School Day                         | means any other weekday not falling within the definition of a School Day;   |
| Operating Day                          | means a day on which passenger services are required to be operated to comply with the service level specification;  |
| Principal Further Education Providers  | Truro and Penwith College, Callywith College and Cornwall College Group;   |
| Real Time Passenger Information (RTPI) | provision of information to passengers of transport services (e.g. local bus services) to indicate the current positions of vehicles and predicted time of arrival;                              |
| School Day                             | means any of the 195 school days defined by the school term calendar published by Cornwall Council annually;   |
| Vehicle                                | means the vehicle or vehicles used by the Operator to deliver the services;  |
| SIRI                                   | Service Interface for Real Time Information  |
| Current Summer Period                  | period from the 2 <sup>nd</sup> Bank Holiday (Sunday) in May to the 3 <sup>rd</sup> Sunday in September.   |
| Planned Summer period                  | period from the Sunday before the Easter weekend until the Sunday of the first weekend of the October Half Term as defined by the schools terms calendar published by Cornwall Council annually; |
| Planned High Summer                    | months of July and August outside the term dates of the principal Further Education providers in Cornwall;   |
| Winter                                 | means any time of the year not falling within the definition of Summer;  |

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For Local Bus Services and Closed School Contracts

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## 3. Interpretations

For the purposes of this document:

- 3.1. The headings in the document are inserted for convenience only and shall not affect its interpretation.
- 3.2. Where appropriate words denoting the singular only, shall include the plural and vice versa.
- 3.3. The masculine shall include the feminine and vice versa.
- 3.4. A reference to a person shall include a reference to any individual, Council or legal entity.
- 3.5. Any reference to any Act of Parliament, or any Order, Regulation, Statutory Instrument, Directive or the like, shall be deemed to include a reference to any amendment or re-enactment thereof.

## 4. Periods of Operation

### 4.1. Specimen Timetables

The Specimen Timetables set out in the Route Specifications set out the operating days and periods of time, the number of journeys required, the routing and any variants thereof – all of which are required when submitting a compliant bid. Timings are indicative and may be varied to accommodate connectional opportunities with other bus and rail services.

Certain journeys are specified serving educational establishments and/or to connect with existing commercial service provisions. Therefore, scope to amend timings of these particular journeys is limited.

### 4.2. Days and Times of Day

4.1.1. Except where otherwise specified, references to a day (including an Operating Day) means the period commencing at 0400 on one day and ending at 0359 on the following day. References to particular days of the week should be interpreted accordingly.

4.1.2. All references to times are to the twenty-four hour clock.

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## 4.2. Bank Holidays

- 4.2.1. In the event of a Bank Holiday, and on the weekdays between Christmas and New Year, the service must operate unless otherwise specified in the Service Specification.
- 4.2.2. There is no requirement to provide any service on Christmas Day, Boxing Day or New Year's Day.

## 4.3. Christmas Eve and New Year's Eve

- 4.3.1. Bus service frequency is reduced after 2000 on these days.

# 5. Service Connections

- 5.1. Where a Service is specified to connect with another bus service, such may be provided by through-operation without a change of vehicle being required.
- 5.2. Where a Service is specified to connect with rail, ferry or air service, the timetable should provide sufficient opportunity for passengers to make a stress free transition between modes, giving due regard for access to platforms at individual stations served.

# 6. Vehicles

## 6.1. Vehicle Specification

- 6.1.1. Operators must satisfy themselves that vehicles proposed for operation are suitable for the route and take into account road parameters. Cornwall Council will accept no liability for any subsequent costs incurred by Operators failing to make necessary observations and preparations.
- 6.1.2. Sufficient capacity must always be provided to meet passenger demand; this will predominantly be seated capacity. For School

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related journeys this must always be seated capacity.

- 6.1.3. Vehicles should be cleaned internally and externally at the commencement of every day's operation of the Service, and as far as practicable kept in this clean condition at all times.
- 6.1.4. For the comfort of both drivers and passengers, vehicles must have adequate heating and ventilation appropriate to the climatic conditions.
- 6.1.5. Vehicles used on Local Bus Services must be wheelchair accessible under the Public Service Vehicle Accessibility Regulations 2000.
- 6.1.6. Local Bus Service vehicles must be fitted with digital destination displays capable of showing:
  - Route Number
  - Final Destination
  - Via Points

Operators must work with the Council to ensure consistency between Destination Displays and Real Time Information.

- 6.1.7. Operators should comply with the forthcoming legislation regarding Audio and Visual Passenger Information Systems and any other future developments specified in legislation across the life of the 8 year contract.
- 6.1.8. Operators must ensure the vehicles on the service comply with the Construction and Use Regulations currently in force.
- 6.1.9. Where the Vehicle has a capacity of 16 or fewer, passengers must not be carried in sideways facing seats.
- 6.1.10. Smoking and vaping is prohibited throughout and in the vicinity of all vehicles. Appropriate notices must display to this effect.
- 6.1.11. Reversing cameras must be fitted to all Vehicles at the Operator's expense, where the Specification states that such is required.
- 6.1.12. All vehicles should fully comply with the requirements of the Public Service Vehicle Accessibility Regulations and the previous DPTAC regulations. However, for Local Bus Services, smaller

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vehicles must offer full level access and suitable space for the conveyance of a wheelchair.

### 6.3. Vehicle Emissions

- 6.3.1. The Vehicles operating on the services must meet the Euro Emissions Standards specified.
- 6.3.2. Vehicles can either be compliant at first build or by certified retro fitment.

| Minimum Euro Rating of Vehicles                 |                        |                               |
|---|------------------------|-------------------------------|
| Service Type                                    | Start of the Contract  | At End of Year 4              |
| Local Bus Services<br>Under 5,000 km per week   | Euro IV (4)            | Euro VI (6)                   |
| Local Bus Services<br>5,000 km or over per week | Euro V (5)             | Highest Available Euro Rating |
| School Bus Services                             | Euro III (3)           | Euro V (5)                    |
|   | No Older Than 25 Years | No Older Than 10 Years        |

- 6.3.3. Cornwall has a number of towns categorised as Air Quality Management Areas.
- 6.3.4. The current Air Quality Management Areas are: Camborne, Pool and Redruth, Bodmin, Tideford, Gunnislake, St Austell, Truro, Camelford, Grampound and Launceston.  
(<https://www.cornwall.gov.uk/environment-and-planning/environmental-protection/environmental-protection-air-quality/air-quality-management-areas/>)
- 6.3.5. Vehicles operating in Air Quality Management Areas will be required to meet at least the following for all contracts from the start date of the contract:
- a. Local Bus Service at least Euro V (5)

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b. School Bus Service at least Euro IV (4).

6.3.6. Further Air Quality Management Areas may be declared during the life of the service. Operators will be expected to work with the Council's Air Quality Management Plan over the deployment of appropriate vehicles.

## 7. Ticketing (Local Bus Service Only)

### 7.1. Ticketing Technology Requirements

- 7.1.1. The Operator will be required to have in place at the commencement of the contract an ETM system fully compliant with the ITS0 2.1.4 specification, and all subsequent updates, capable of accepting ITS0 SmartCards, ITS0 on Mobile, Host Card Emulation Solutions, QR Codes and Contactless EMV transactions.
- 7.1.2. Operators are expected to maintain appropriate back-office systems to manage the ETM system and provide any data to the Council as required by the Contract.
- 7.1.3. Operators are required to give Cornwall Council access to these back office systems to enable monitoring of patronage, ticket sales and any other data relevant to the Service.
- 7.1.4. The Ticketer ETM system is widely used throughout Cornwall and has proven compatibility with existing systems.
- 7.1.5. Should an Operator wish to utilise an alternative system, they will be responsible for all integration costs that may be incurred including ensuring compatibility and data compliance.
- 7.1.6. Drivers should be fully trained on how to operate the ETM.

## 8. Fares and Tickets

### 8.1. Tickets and Transactions

- 8.1.1. Drivers must ensure that each passenger has validated travel as appropriate, which may include electronic, plastic or paper forms. This may include, where appropriate, a list provided by the Council.

- 8.1.2. Operators of any tendered service must accept any Cornwall Council issued season ticket without further charge.
- 8.1.3. Operators must co-operate with the Council to introduce smartcard ticketing for all scholars. For the avoidance of doubt, this includes School Bus services, including Closed Contracts.
- 8.1.4. The Local Bus Operator shall participate in the Cornwall Countywide Concessionary Travel Scheme published annually by the Council under its duty as the Travel Concession Authority for Cornwall, exercising the English National Concessionary Travel Scheme.
- 8.1.5. Local Bus Service Operators must participate in any Multi-Operator or Multi-Modal ticketing schemes in operation during the life of the Contract as applicable to the area in which the service operates.
  - 8.1.5.1. Operators should be able to accept, sell and record such multi-ticket products. The cost of any alterations to ETMs and/or back office management systems to do so, must be borne by the Operator.
  - 8.1.5.2. Examples of these tickets include (but are not limited to) Ride Cornwall, PlusBus, Town Zone or Corridor Tickets.
- 8.1.6. Local Bus Service Operators must accept any and all valid tickets on their service that relates to another part of the same service as defined in the Service Specification. For example if two operators run the Service A (One during Off-Peak and one during Peak times), a return journey bought from one operator for Service A should be valid on the Service A when operated by the other.
  - 8.1.6.1. Where tendered journeys cover part of a commercial service, the Operator of the tendered journeys must accept all day returns and/or period passes issued by the commercial operator where journeys and services share the same corridor. Furthermore, Operators must enable accurate validation and recording of such transactions on the bus ETM system by exchange of necessary and relevant information.



## 8.2. Local Bus Service Fares

8.2.1. Fares levels and complexity of products are a key concerns of current and potential passengers and are a barrier for people using the service.

8.2.2. The following fare rules will apply to these services.

8.2.2.1. Return fares will be calculated at 1.5 times the adult single fare for any given journey.

8.2.2.2. Passengers aged 5-19 inclusive are to be charged at half the equivalent adult fare.

8.2.2.3. Passengers aged under 5 travel free of charge and only when accompanied by an adult.

8.2.3. The following is a suggestion of a fare scale for the routes operated under contract. Fares should only increase annually after the first year of the contract [i.e. from 1<sup>st</sup> April 2021] based on the CPI% (using the CPI Index from the previous September and reported in the October) and in any event should not undercut any equivalent Commercial fare on the same stretch of route:

| <b>Suggested Fare Table (Journey Length)</b> |                          |
|--|--------------------------|
| <b>Journey Length</b>                        | <b>Adult Single Fare</b> |
| First 3 Miles                                | £2.00                    |
| For each additional mile up to 5 Miles       | £0.50/mile               |
| For each additional mile thereafter          | £0.30/mile               |

| <b>Suggested Fare Table (Period Passes)</b> |                   |
|---|-------------------|
| <b>Ticket type</b>                          | <b>Adult Fare</b> |
| Daily                                       | £9.00             |
| Weekly                                      | £27.00            |
| Monthly                                     | £100.00           |

8.2.4. Where two points are served by differing routes the fare between those two points shall be consistent.

## 9. Staff

### 9.1. Driver Uniform

9.1.1. Drivers must be of smart appearance and dress and wear a uniform at all times when carrying out the service. This must identify them as working for a specific Operator.

### 9.2. Staff Training

9.2.1. All Staff should hold the appropriate licences and qualifications to carry out their duties and be able to work in the UK.

9.2.2. All Staff should be recruited using a Safer Recruitment Process.

9.2.2.1. Disclosure and Barring Service (DBS) checks are a requirement for all School Bus Services.

9.2.3. All Front-line Staff should receive regular training in Safeguarding and Contract Compliance.

9.2.4. All School Bus Service Staff must receive a copy of the Cornwall Council Codes of Conduct for their role(s) on induction. Up-to-date copies are available from the Transport Co-ordination Service on request.

- 9.2.5. The Operator must provide a copy of the Company's Safeguarding Policy on an annual basis together with a named Designated Protection Officer (DPO) who will be responsible for all Safeguarding matters for the Company. Each DPO must have completed the appropriate training available from Cornwall Council.

## 10. Customer Service

### 10.1. Customer Charter

- 10.1.1. All Local Bus Operators must work with Cornwall Council to devise an agreed Customer Charter.

### 10.2. Complaint Procedures

- 10.2.1. Operators should respond to Cornwall Council within 5 working days of receiving notification of a concern or complaint.

### 10.3. Disruption Communication

- 10.3.1. For Local Bus Services, operators must communicate their disruptions, including service cancellations through the RTPI system in accordance with forthcoming legislation. Further information can be found in the RTPI Operation Procedure in the Terms and Conditions, Schedule 15.

### 10.4. Real Time Passenger Information

- 10.4.1. From the commencement of the contract, Local Bus Operators will be required to be able to provide SIRI VM data to the Council's RTPI system.
- 10.4.2. Cornwall Council will provide all Local Bus Operators with access to the RPTI back office system.
- 10.4.3. The Ticketer ETM system is widely used throughout Cornwall and has proven compatibility with existing systems.
- 10.4.4. If a Local Bus Operator chooses to utilise an alternative method to deliver SIRI VM data they will be responsible for any and all

configuration costs that may arise to integrate feeds into the existing system.

- 10.4.5. The operating procedure for the RTPI system is detailed in the Schedules within the Contract Terms and Conditions.

## 11. Infrastructure

### 11.1. Bus Stops and Shelters

- 11.1.1. Roadside infrastructure such as Stops, Shelters and flags are primarily the responsibility of the Council. However some sites are owned by the local Town or Parish Council or a third party company. Operators are encouraged to report concerns or comments either from their own staff or passengers regarding facilities to the Council.
- 11.1.2. Cornwall Council has a statutory responsibility to maintain bus stop data for the national data sets (NaPTAN). Bus Stop names and geo-locations need to match across all data sets managed by both by the Council and the Operators. Local Bus Operators must notify the Council of any required variations in a timely manner for consideration and potential action.
- 11.1.3. Local Bus Operators can only utilise stops to display public timetables and limited advertising within the timetable case e.g. fares, map etc. No posters or decals will be allowed on bus shelters or other furniture without prior written agreement with Cornwall Council, unless the sign is a temporary fixture in relation to diversion information e.g. Christmas changes.

### 11.2. Bus Stations

- 11.2.1. Local Bus Operators are expected to operate to/via/from designated Bus Stations/Terminus in main towns, except where expressly indicated. This is to ensure maximum benefit for passengers undertaking multi-modal or multi-operator journeys.

- 11.2.2. Use of the facilities at the stations may be subject to departure charges set by Facility Operator. Bus operators are therefore required to confirm in advance with the relevant Facility Operator the access and charges (if applicable) arrangements. For those facilities which are owned and leased by Cornwall Council, it is the Council's view that departure charges are to be implemented, following lease/rent reviews.

| <b>Bus Station/Terminus Facilities</b>   |                                     |                               |
|--|-------------------------------------|-------------------------------|
| <b>Location</b>                          | <b>Ownership</b>                    | <b>Operation</b>              |
| St Just Bus Terminus                     | Cornwall Council                    | Cornwall Council              |
| Penzance Bus and Rail Interchange        | Cornwall Council                    | First South West Ltd          |
| St Ives, The Malakoff                    | Private Ownership                   | First South West Ltd          |
| St Erth Multi Modal Hub (Bus facilities) | Cornwall Council                    | Cornwall Council              |
| Camborne Bus Station                     | First South West Ltd                | First South West Ltd          |
| The Moor, Falmouth                       | Cornwall Council                    | Cornwall Council              |
| Tremough Campus                          | Falmouth University                 | Falmouth University           |
| Truro Bus Station                        | Cornwall Council                    | First South West Ltd          |
| St Austell Bus and Rail Interchange      | First Greater Western Ltd (t/a GWR) | First South West Ltd          |
| Newquay Bus Station                      | Cornwall Council                    | First South West Ltd          |
| Wadebridge Bus Station                   | Cornwall Council                    | Cornwall Council              |
| Padstow Bus Terminus                     | Padstow Harbour Commissioners       | Padstow Harbour Commissioners |

### Minimum Standards of Operation

Prepared by:

Transport Co-ordination Service  
26 July 2019

If you would like this information  
in another format please contact:

**Cornwall Council, County Hall  
Treyew Road, Truro TR1 3AY**

Email: [comments@cornwall.gov.uk](mailto:comments@cornwall.gov.uk)

Telephone: **0300 1234 100**

**[www.cornwall.gov.uk](http://www.cornwall.gov.uk)**

**Minimum Standards of Operation**

For Local Bus Services and Closed School Contracts  
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## **SCHEDULE 2 - CHARGES AND PAYMENTS**

### **Part 1**

#### **Payments to the Operator**

Unless otherwise specified the Operator will be paid the Contract Price, in accordance with the provisions of clause 14 of this Agreement. Payments shall be monthly in arrears.

#### **Price Review**

The Council will review the Contract Price after the first twelve months' operation of the Contract, and thereafter not more frequently than annually. Variation to the Contract Price will be solely at the rate of the Consumer Price Index (CPI) as measured in the previous September (and published in the October following ). The variation will be applied on the anniversary of the Contract Commencement Date.

### **Part 2**

#### **Payments to the Council**

Where the Service is a Minimum Cost Contract, the Operator shall pay all Actual Income due to the Council.

All Actual Income is the property of the Council. The Operator shall pay all Actual Income to the Council and the arrangements for the transfer of such monies will be agreed by the Council and the Operator prior to Contract Service commencement.

In addition to Actual Income, the Operator shall send the account of the same to the Council.

The format will be agreed with the Operator prior to Service Commencement based on the frequency of the Service to be provided as per the provisions of clause 20.1.

Required Data and Income must be supplied within 14 days of each payment period.

The Operator shall pay any deficit between the monies transferred to the Council and the Actual Income as may be ascertained from any information supplied, within 14 days of a request by the Council to pay such amounts.

The Contractor shall be responsible for ensuring that the Actual income is fully insured at all times up until the safe deposit of the monies into the Council's designated bank account and shall fully indemnify the Council for any deficit in the Actual Income.



In this Schedule, the following words have the following meaning:

- **Required Data** means the data to provided by the Operator in accordance with Schedule 16 and
- **Income** mean Actual Income.

## SCHEDULE 3 - CONTRACT MANAGEMENT

1. Authorised representatives
  - 1.1 The Authority's initial Authorised Representative: Glyn Williams
  - 1.2 The Operator's initial Authorised Representative: Darren Hewlett
2. Key personnel
  - Mark Horide

### **Contract & Operator Relationship Management**

Contract Management activities will be arranged in accordance with the Council's Contract Management Operating Model and Contract Management Toolkit guidelines. The Toolkit and Operating Model will be made available to Operators at the Service Commencement.

The Contract Management meetings are designed to support continuous service improvement, improving the relationship between the Council and the Operator, and the sharing of good practice. The nature and frequency of these meetings will be determined by the S.C.O.T. Contract Management Segmentation - an indicative guide is provided below.

### **S.C.O.T. (Strategic, Critical, Operational, Transactional)**

This is the framework that Cornwall Council uses to segment the contracts it holds and will drive the framework for contract management activities. For this Service, Operational and Transactional operators are likely to be those with low value and/or a low number of contracts, whereas Strategic and Critical operators are likely to be those with high value and/or a high number of contracts, where any failure will have significant impact on a large number of the residents of Cornwall.

### **Operational Meetings**

These will be held at least annually for Operational or Transactional level contracts, and at least quarterly for Strategic or Critical contracts.

### **Strategic Review Meetings**

This will be held at least quarterly for Strategic contracts and will deal with issues escalated from the Operational Meetings.

### **Annual Review Meetings**

These will be held annually for Strategic Contracts and will provide opportunities to review the previous year's performance, consider the Strategic Risks, and look forward to the next year.

These meetings should not detract from any correspondence, or continuous improvement opportunities that occur outside of these fixed times.

**SCHEDULE 4 - NOT USED**



## SCHEDULE 5 - DATA PROCESSING

|  | <b>Customer Services</b>  | <b>CCTV</b>   | <b>Wifi</b>  | <b>Websites</b>  | <b>Surveys and attendance at stakeholder meetings, such as passenger panels and accessibility forums and public relations</b> | <b>Incidents and accidents<br/>Incidents - Insurance ( and personal injury claims) damage claims antisocial behaviour and revenue enforcement</b>   | <b>Operator Employee Data</b>  |
|--|---|---|--|--|---|---|--|
| <b>The subject matter and duration of the Processing</b> | Providing customer services as described in this Agreement and for the duration of the Agreement.   | As described in the Agreement, disclosure of images requested and/or required for incidents (and required to be disclosed to Police for crimes and accidents)   | Provision of wifi services on busses as described in the Agreement and including a log in/landing page and customer service. | Provision of websites as described in the Agreement.   | As described in the Agreement   | As described in the Agreement   | Employee data for all Operator staff                                   |
| <b>The nature and purpose of the Processing</b>          | Performance of the Services pursuant to this Agreement, and includes the following data and processing activities: <ul style="list-style-type: none"> <li>• audio files (phone calls to or from designated customer contact numbers only);</li> <li>• text files (all comments, complaints and responses</li> </ul> | Transfer of data from CCTV camera equipment from the Network Buses for the following purposes: <ul style="list-style-type: none"> <li>• To discourage delinquent and anti-social behaviour;</li> <li>• To deter and detect crime, including theft and criminal damage;</li> <li>• To maintain the safety and security of all</li> </ul> | As described in the Agreement i.e. to provide and monitor provision of wifi service.   | Personal data is processed via websites as follows: <ul style="list-style-type: none"> <li>• Online contact forms;</li> <li>• Online recruitment forms;</li> <li>• Standard fare payment system and penalty payment system which includes receipt of credit card details;</li> </ul> | Public relations purposes including accessibility panels and reporting for service provision.                                 | As described in the Agreement and includes the following processing activities: <ul style="list-style-type: none"> <li>• recording incidents;</li> <li>• producing evidence of incidents;</li> <li>• maintaining a data base;</li> <li>• dealing with incidents;</li> <li>• Liaising with individuals involved in incidents, their</li> </ul> | In the ordinary course of Operator acting as employer of all employees |

|  | <b>Customer Services</b>   | <b>CCTV</b>  | <b>Wifi</b> | <b>Websites</b>  | <b>Surveys and attendance at stakeholder meetings, such as passenger panels and accessibility forums and public relations</b> | <b>Incidents and accidents<br/>Incidents - Insurance ( and personal injury claims) damage claims antisocial behaviour and revenue enforcement</b>                      | <b>Operator Employee Data</b> |
|--|--|--|-------------|--|---|--|-------------------------------|
|  | <p>made via website, emails, tweets, Facebook comments, direct messages etc.);</p> <ul style="list-style-type: none"> <li>documents (all comments, complaints and responses by letter);</li> <li>forms (all comments and complaints made via contact report);</li> <li>Producing reports (lost property - identify and contact owner);</li> <li>Collecting, hosting, storage, access, using, reporting and backup of personal data;</li> </ul> | <p>employees, customers, members of the public, buses, premises and property;</p> <ul style="list-style-type: none"> <li>To lawfully monitor staff carrying out work duties;</li> <li>To assist in the recollection of, investigation of or evidence of events leading up to an incident or accident;</li> </ul> |             | <ul style="list-style-type: none"> <li>Maintain record of payments;</li> <li>Monitor usage through cookies, IP addresses and Google Analytics</li> </ul> |   | <p>representatives and the relevant Authorities;</p> <ul style="list-style-type: none"> <li>To gather evidence and pursue revenue enforcement requirements.</li> </ul> |                               |

|  | <b>Customer Services</b>  | <b>CCTV</b>  | <b>Wifi</b>  | <b>Websites</b>   | <b>Surveys and attendance at stakeholder meetings, such as passenger panels and accessibility forums and public relations</b> | <b>Incidents and accidents<br/>Incidents - Insurance ( and personal injury claims) damage claims antisocial behaviour and revenue enforcement</b> | <b>Operator Employee Data</b>  |
|--|---|--|--|---|---|---|--|
|  | <p>including in a database;</p> <ul style="list-style-type: none"> <li>• Making refunds and contacting individuals in respect of lost property;</li> <li>• Analysis, monitoring and reporting in relation to the Services.</li> </ul> |  |  |   |   |   |  |
| <b>The type of Personal Data being Processed</b> | <p>Current, former and prospective passengers and personnel.</p> <p>Other data subjects of the personal data processed in connection with the provision of the Services.</p>  | <p>The monitoring, recording, holding and processing of images of distinguishable individuals; being passengers and public near bus, and staff</p> | <p>Passenger mobile phone data for e.g. IMEI number and location data which may be recorded when accessing the on-board public wifi network.</p> | <p>cookies and IP addresses and integration with customer database for customer services, all personal data from online forms, online Standard Fare payments to include credit card details</p> | <p>Name, contact details, nature and details of contact , reporting and analysis</p>  | <p>Contact details, events, evidence, injuries , legal proceedings, compensation , representatives</p>  | <p>Staff records (age /payment data) and employment and health histories.</p>                                  |
| <b>Legal basis of Processing</b>                 | <ul style="list-style-type: none"> <li>• Performance of contract</li> <li>• Legitimate interests of</li> </ul>  | <ul style="list-style-type: none"> <li>• Legitimate interests of controller</li> <li>• Legal obligation</li> </ul>                                 | <ul style="list-style-type: none"> <li>• Performance of contract</li> <li>• Legitimate interest of</li> </ul>                                    | <p>Legitimate interests of controller</p>   | <p>Legitimate Interests of Controller</p>   | <ul style="list-style-type: none"> <li>• Legitimate interests of controller</li> <li>• Legal obligation</li> </ul>                                | <ul style="list-style-type: none"> <li>• Performance of contract</li> <li>• Legitimate interests of</li> </ul> |



|   | <b>Customer Services</b>  | <b>CCTV</b>   | <b>Wifi</b>   | <b>Websites</b>   | <b>Surveys and attendance at stakeholder meetings, such as passenger panels and accessibility forums and public relations</b>  | <b>Incidents and accidents<br/>Incidents - Insurance ( and personal injury claims) damage claims antisocial behaviour and revenue enforcement</b>  | <b>Operator Employee Data</b>   |
|---|---|---|---|---|--|--|---|
|   | controller <ul style="list-style-type: none"> <li>Legal obligation</li> </ul> |   | controller  |   |  |  | controller <ul style="list-style-type: none"> <li>Legal obligation</li> </ul>   |
| Third Parties who may process data  | Other regulatory bodies who would deal with complaints                        | Police, insurers, Fire Brigade  | Wifi hardware suppliers   | Website suppliers and hosting companies   |  | Police, the Fire Brigades where necessary, Courts.   |   |
| Nature of relationship:- Data Processor(s) or Data Controller(s) or Joint Controllers or Separate Controller(s) | Operator and the Council are each Independent Data Controllers.               | Operator are the sole Controller of all CCTV related Personal Data. In the event any CCTV Personal Data is supplied to the Council, both parties will each be an Independent Controller of that CCTV Personal Data. | Operator are the sole Controller of all Wifi related Personal Data. | Operator are the Controller for all Personal Data gathered through their website, except in the case of: <ul style="list-style-type: none"> <li>Customer Service Personal Data (refer to Customer Service section)</li> <li>Standard Fares Personal Data (refer to Standard Fares section)</li> </ul> | Operator are the sole Controller for any Personal Data gathered pursuant to partaking in surveys and attendance at stakeholder meetings.<br><br>In the event Operator conduct surveys on the Council's behalf, the Council is the Controller and Operator are the Processor. | Operator are the sole Controller of all Personal Data gathered in these circumstances. In the event any related Personal Data is supplied to the Council, both parties will each be an independent Controller of that Personal Data. | Operator are the sole Controller of all their employee related Personal Data. In the event any employee Personal Data is supplied to the Council (e.g for TUPE purposes), each Party will be an Independent Controller of that Personal Data. |



## SCHEDULE 6 - TUPE

### 1. INTERPRETATION

The definitions and rules of interpretation in this paragraph apply in this Agreement:

**Admission Agreement:** the agreement to be entered into in accordance with regulation 3 of the Local Government Pension Scheme Regulations 2013, as amended, by the administering Authority,] the Council and the Operator or Sub-contractor, as appropriate .

**Appropriate Pension Provision:** in respect of Eligible Employees, either:

- (a) membership, continued membership or continued eligibility for membership of their Legacy Scheme; or
- (b) membership or eligibility for membership of a pension scheme, which is certified by the Government Actuary's Department (GAD) as being broadly comparable to the terms of their Legacy Scheme.

**Data Protection Legislation:** the Data Protection Act 1998, the Data Protection Directive (95/46/EC), the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive (2002/58/EC), the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2426/2003) and all applicable laws and regulations relating to the processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner.

**Effective Date:** the date(s) on which the Services (or any part of the Services), transfer from the Council [or any Third Party Employer] to the Operator or Sub-contractor, and a reference to the Effective Date shall be deemed to be the date on which the employees in question transferred or will transfer to the Operator or Sub-contractor.

### Eligible Employees

- (a) the Transferring Employees who are active members of (or are eligible to join) the LGPS on the date of a Relevant Transfer including the Effective Date; and/or
- (b) the Third Party Employees who are former employees of the Council and who were active members of (or who were eligible to join) the LGPS on the date of a previous Relevant Transfer of the Services.

**Employee Liability Information:** the information that a transferor is obliged to notify to a transferee under regulation 11(2) of TUPE:

- (a) the identity and age of the employee;
- (b) the employee's written statement of employment particulars (as required under section 1 of the Employment Rights Act 1996);
- (c) information about any disciplinary action taken against the employee and any grievances raised by the employee, where a Code of Practice issued under Part IV of the Trade Union and Labour Relations (Consolidation) Act 1992 relating exclusively or primarily to the resolution of disputes applied, within the previous two years;
- (d) information about any court or tribunal case, claim or action either brought by the employee against the transferor within the previous two years or where the transferor has reasonable grounds to believe that such action may be brought against the Operator arising out of the employee's employment with the transferor;
- (e) information about any collective agreement that will have effect after the Effective Date or the Service Transfer Date, as the case may be, in relation to the employee under regulation 5(a) of TUPE.

**Employment Liabilities:** All claims, including claims without limitation for redundancy payments, unlawful deduction of wages, unfair, wrongful or constructive dismissal compensation, compensation for sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy or maternity, or sexual orientation discrimination, claims for equal pay, compensation for less favourable treatment of part-time workers, and any claims (whether in tort, Agreement, statute or otherwise), demands, actions, proceedings and

any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs and expenses reasonably incurred in connection with a claim or investigation (including any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body), and of implementing any requirements which may arise from such investigation, and any legal costs and expenses.

**Legacy Scheme:** the pension scheme of which the Eligible Employees are members, or are eligible for membership of, or are in a waiting period to become a member of, prior to the Relevant Transfer.

**LGPS:** Local Government Pension Scheme.

**LGPS Regulations:** the Local Government Pension Scheme Regulations 2013 (SI 2013/2356).

**Relevant Employees:** those employees whose Agreements of employment transfer with effect from the Service Transfer Date to the Council or a Replacement Operator by virtue of the application of TUPE.

**Relevant Transfer:** a relevant transfer of the Services for the purposes of TUPE.

**Replacement Services:** any services that are fundamentally the same as any of the Services and which the Council receives in substitution for any of the Services following the termination or expiry of this agreement, whether those services are provided by the Council internally or by any Replacement Operator.

**Replacement Operator:** any third party operator of Replacement Services appointed by the Council from time to time.

**Service Transfer Date:** the date on which the Services (or any part of the Services), transfer from the Operator or Sub-contractor to the Council or any Replacement Operator.

**Staffing Information:** in relation to all persons detailed on the Operator's Provisional Staff List, in an anonymised format, such information as the Council may reasonably request including the Employee Liability Information and details of whether the personnel are employees, workers, self-employed, contractors or consultants, agency workers or otherwise, and the amount of time spent on the provision of the Services.

**Sub-contractor:** the contractors or operators engaged by the Operator to provide goods, services or works to, for or on behalf of the Operator for the purposes of providing the Services to the Council.

**Operator's Final Staff List:** the list of all the Operator's and Sub-contractor's personnel engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the Service Transfer Date.

**Operator's Provisional Staff List:** the list prepared and updated by the Operator of all the Operator's and Sub-contractor's personnel engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the date of the preparation of the list.

**Third Party Employees:** employees of Third Party Employers whose Agreements of employment transfer with effect from the Effective Date to the Operator or Sub-contractor by virtue of the application of TUPE.

**Third Party Employer:** an operator engaged by the Council to provide [some of the] Services to the Council before the Effective Date and whose employees will transfer to the Operator on the Effective Date.

**Transferring Employees:** employees of the Council whose Agreements of employment transfer with effect from the Effective Date to the Operator by virtue of the application of TUPE

**TUPE:** the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246), as amended.

## 2. TRANSFER OF EMPLOYEES TO THE OPERATOR ON THE EFFECTIVE DATE

- 2.1 The Council and the Operator agree that where the identity of the provider of any of the Services changes, this shall constitute a Relevant Transfer and the contracts of employment of any Transferring Employees [and Third Party Employees] shall transfer to the Operator or Sub-contractor. The Operator shall comply and shall procure that each Sub-contractor shall comply with their obligations under TUPE. The first Relevant Transfer shall occur on the Effective Date
- 2.2 The Council shall be responsible for all remuneration, benefits, entitlements and outgoings in respect of the Transferring Employees, including without limitation, all wages, holiday pay, bonuses,

commissions, payments of PAYE, National Insurance contributions, pension contributions and otherwise, up to the Effective Date. The Council shall provide and, where necessary, update the Employee Liability Information for the Transferring Employees to the Operator, as required by TUPE. The Council shall warrant that such information is complete and accurate as it is aware or should reasonably be aware as at the date it is disclosed.

- 2.3 Subject to paragraph 2.4, the Council shall indemnify and keep indemnified the Operator against any losses, except indirect losses, incurred by the Operator or any relevant Sub-contractor in connection with any claim or demand by any Transferring Employee arising out of the employment of any Transferring Employee. This indemnity shall apply provided that it arises from any act, fault or omission of the Council in relation to any Transferring Employee prior to the Effective Date (except where such act, fault or omission arises as a result of the Operator or any relevant Sub-contractor's failure to comply with regulation 13 of TUPE) and any such claim is not in connection with the transfer of the Services by virtue of TUPE on the Effective Date.
- 2.4 The Operator shall be liable for and indemnify and keep indemnified the Council [and any Third Party Employer] against any Employment Liabilities arising from or as a consequence of:
- (a) any proposed changes to terms and conditions of employment the Operator or Sub-contractor may consider making on or after the Effective Date;
  - (b) any of the employees informing the Council [and any Third Party Employer] they object to being employed by the Operator or Sub-contractor; and
  - (c) any change in identity of the Transferring Employees' [and Third Party Employees'] employer as a result of the operation of TUPE or as a result of any proposed measures the Operator or Sub-contractor may consider taking on or after the Effective Date.
- 2.5 The Operator shall be liable for and indemnify and keep indemnified the Council [and any Third Party Employer] against any failure to meet all remuneration, benefits, entitlements and outgoings for the Transferring Employees, [the Third Party Employees,] and any other person who is or will be employed or engaged by the Operator or any Sub-contractor in connection with the provision of the Services, including without

limitation, all wages, holiday pay, bonuses, commissions, payments of PAYE, National Insurance contributions, pension contributions, termination costs and otherwise from and including the Effective Date.

- 2.6 The Operator shall immediately on request by the Council [and/or the Third Party Employer] provide details of any measures that the Operator or any Sub-contractor envisages it will take in relation to any Transferring Employees [and any Third Party Employees], including any proposed changes to terms and conditions of employment. If there are no measures, the Operator will give confirmation of that fact, and shall indemnify the Council [and any Third Party Employer] against all Employment Liabilities resulting from any failure by it to comply with this obligation.

### **3. EMPLOYMENT EXIT PROVISIONS**

- 3.1 This Agreement envisages that subsequent to its commencement, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination of this Agreement, or part or otherwise) resulting in a transfer of the Services in whole or in part (Subsequent Transfer). If a Subsequent Transfer is a Relevant Transfer then the Council or Replacement Operator will inherit liabilities in respect of the Relevant Employees with effect from the relevant Service Transfer Date.
- 3.2 The Operator shall and shall procure that any Sub-contractor shall on receiving notice of termination of this Agreement or otherwise, on request from the Council and at such times as required by TUPE, provide in respect of any person engaged or employed by the Operator or any Sub-contractor in the provision of the Services, the Operator's Provisional Staff List and the Staffing Information together with any additional information required by the Council, including information as to the application of TUPE to the employees. The Operator shall notify the Council of any material changes to this information as and when they occur.
- 3.3 At least 28 days prior to the Service Transfer Date, the Operator shall and shall procure that any Sub-contractor shall prepare and provide to the Council and/or, at the direction of the Council, to the Replacement Operator, the Operator's Final Staff List, which shall be complete and accurate in all material respects. The Operator's Final Staff List shall identify which of the Operator's and Sub-contractor's personnel named are Relevant Employees.



- 3.4 The Council shall be permitted to use and disclose the Operator's Provisional Staff List, the Operator's Final Staff List and the Staffing Information for informing any tenderer or other prospective Replacement Operator for any services that are substantially the same type of services as the Services (or any part of the Services).
- 3.5 The Operator warrants to the Council and the Replacement Operator that the Operator's Provisional Staff List, the Operator's Final Staff List and the Staffing Information (TUPE Information) will be true and accurate in all material respects and that no persons are employed or engaged in the provision of the Services other than those included on the Operator's Final Staff List.
- 3.6 The Operator shall and shall procure that any Sub-contractor shall ensure at all times that it has the right to provide the TUPE Information under Data Protection Legislation.
- 3.7 The Council regards compliance with this paragraph 3 as fundamental to the Agreement. In particular, failure to comply with paragraph 3.2 and paragraph 3.3 in respect of the provision of accurate information about the Relevant Employees shall entitle the Council to suspend payment of the Charges until such information is provided, or indefinitely. The maximum sum that may be retained under this paragraph 3.7 shall not exceed an amount equivalent to the Charges that would be payable in the [three] month period following the Operator's failure to comply with paragraph 3.2 or paragraph 3.3, as the case may be.
- 3.8 Any change to the TUPE Information which would increase the total employment costs of the staff in the [six] months prior to termination of this Agreement shall not (so far as reasonably practicable) take place without the Council's prior written consent, unless such changes are required by law. The Operator shall and shall procure that any Sub-contractor shall supply to the Council full particulars of such proposed changes and the Council shall be afforded reasonable time to consider them.
- 3.9 In the [six] months prior to termination of this Agreement, the Operator shall not and shall procure that any Sub-contractor shall not materially increase or decrease the total number of staff listed on the Operator's Provisional Staff List, their remuneration, or make any other change in the terms and conditions of those employees without the Council's prior written consent.

- 3.10 The Operator shall indemnify and keep indemnified in full the Council and each and every Replacement Operator against all Employment Liabilities relating to:
- (a) any person who is or has been employed or engaged by the Operator or any Sub-contractor in connection with the provision of any of the Services; or
  - (b) any trade union or staff association or employee representative, arising from or connected with any failure by the Operator and/or any Sub-contractor to comply with any legal obligation, whether under regulation 13 or 14 of TUPE or any award of compensation under regulation 15 of TUPE, under the Acquired Rights Directive or otherwise and, whether any such claim arises or has its origin before or after the Service Transfer Date.
- 3.11 The parties shall co-operate to ensure that any requirement to inform and consult with the employees and or employee representatives in relation to any Relevant Transfer as a consequence of a Subsequent Transfer will be fulfilled.
- 3.12 The parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply from paragraph 3.2 to paragraph 3.11, to the extent necessary to ensure that any Replacement Operator shall have the right to enforce the obligations owed to, and indemnities given to, the Replacement Operator by the Operator or the Council in its own right under section 1(1) of the Contracts (Rights of Third Parties) Act 1999.
- 3.13 Despite paragraph 3.12, it is expressly agreed that the parties may by agreement rescind or vary any terms of this Agreement without the consent of any other person who has the right to enforce its terms or the term in question despite that such rescission or variation may extinguish or alter that person's entitlement under that right.

#### **4. PENSIONS**

- 4.1 The Operator shall or shall procure that any relevant Sub-contractor shall ensure that all Eligible Employees are offered Appropriate Pension Provision with effect from the Effective Date.
- 4.2 The provisions of paragraph 4, paragraph 5 and paragraph 6 shall be directly enforceable by an affected employee against the Operator or

any relevant Sub-contractor and the parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply to the extent necessary to ensure that any affected employee shall have the right to enforce any obligation owed to such employee by the Operator or Sub-contractor under those paragraphs in his own right under section 1(1) of the Agreements Rights of Third Parties Act 1999.

## **5. ADMITTED BODY STATUS TO THE LOCAL GOVERNMENT PENSION SCHEME**

- 5.1 Where the Operator or Sub-contractor wishes to offer the Eligible Employees membership of the LGPS, the Operator shall or shall procure that it and/or each relevant Sub-contractor shall enter into an Admission Agreement to have effect from and including the Effective Date or, if the Relevant Transfer occurs after the Effective Date, from and including the date of that Relevant Transfer. [The Operator or Sub-contractor will bear the cost of any actuarial assessment required in order to assess the employer's contribution rate [and Bond value] in respect of any Eligible Employee who elects to join the LGPS [on or after] the Effective Date.]
- 5.2 [For the purposes of calculating the employer's contribution rate, any termination payment, and any other sums due to the administering Council under the Admission Agreement, the Council shall ensure that the Eligible Employees' past service benefits accrued prior to the Effective Date are fully funded as at the Effective Date, as determined by the Fund's actuary.]
- 5.3 The Operator shall indemnify and keep indemnified the Council and/or any Replacement Operator and, in each case, their sub-contractors, from and against all direct losses suffered or incurred by it or them, which arise from any breach by the Operator or Sub-contractor of the terms of the Admission Agreement, to the extent that such liability arises before or as a result of the termination or expiry of this Agreement.
- 5.4 The Operator shall and shall procure that it and any Sub-contractor shall prior to the Effective Date or, if the Relevant Transfer occurs after the Effective Date, from and including the date of that Relevant Transfer, obtain any indemnity or Bond required in accordance with the Admission Agreement. [The Operator or Sub-contractor will bear the cost of any actuarial assessment required in order to assess the value of the Bond or guarantee.]

5.5 The Operator shall and shall procure that any relevant Sub-contractor shall award benefits (where permitted) to the Eligible Employees under the LGPS Regulations in circumstances where the Eligible Employees would have received such benefits had they still been employed by the Council. The Operator shall be responsible for meeting all costs associated with the award of such benefits.

## 6. OPERATOR PENSION SCHEME

6.1 Where the Operator or Sub-contractor does not wish to or is otherwise prevented from offering [all or some of] the Eligible Employees membership or continued membership of the LGPS, the Operator shall or shall procure that any relevant Sub-contractor shall offer the Eligible Employees membership of an occupational pension scheme with effect from the Effective Date or, if the Relevant Transfer occurs after the Effective Date, from and including the date of that Relevant Transfer. Such an occupational pension scheme must be:

- (a) established no later than [three months] prior to the date of the Relevant Transfer; and
- (b) certified by the GAD as providing benefits that are broadly comparable to those provided by the Legacy Scheme, and the Operator shall produce evidence of compliance with this paragraph 6 to the Council prior to the date of the Relevant Transfer.

6.2 The Council's actuary shall determine the terms for bulk transfers from the LGPS to the Operator's scheme following the Effective Date and any subsequent bulk transfers on termination or expiry of this Agreement.

6.3 The Operator shall and shall procure that each relevant Sub-contractor shall:

- (a) maintain such documents and information as will be reasonably required to manage the pension rights of and aspects of any onward transfer of any person engaged or employed by the Operator or any Sub-contractor in the provision of the Services on the expiry or termination of this Agreement (including without limitation identification of the Eligible Employees);

- (b) promptly provide to the Council such documents and information mentioned in paragraph 6.3(a) which the Council may reasonably request in advance of the expiry or termination of this Agreement; and
- (c) fully cooperate (and procure that the trustees of the Operator's scheme shall fully cooperate) with the reasonable requests of the Council relating to any administrative tasks necessary to deal with the pension rights of and aspects of any onward transfer of any person engaged or employed by the Operator or any Sub-contractor in the provision of the Services on expiry or termination of the Agreement.

## SCHEDULE 7 - CHANGE CONTROL PROCEDURE

### 1. General principles

- 1.1 Where the Council or the Operator sees a need to change this Agreement, the Council may at any time request, and the Operator may at any time recommend, such change only in accordance with the Change Control Procedure set out in paragraph 2 of this Schedule 7.
- 1.2 Until such time as a Change is made in accordance with the Change Control Procedure, the Council and the Operator shall, unless otherwise agreed in writing, continue to perform this agreement in compliance with its terms before such change.
- 1.3 Any discussions which may take place between the Council and the Operator in connection with a request or recommendation before the authorisation of a resultant change shall be without prejudice to the rights of either Party.
- 1.4 Any services provided by the Operator and the Operator Personnel which has not been authorised in advance by a change, and which has not been otherwise agreed in accordance with the provisions of this Schedule 7, shall be undertaken entirely at the expense and liability of the Operator.

### 2. Procedure

- 2.1 Discussion between the Council and the Operator concerning a change shall result in any one of the following:
  - (a) no further action being taken; or
  - (b) a request to change this agreement by the Council; or
  - (c) a recommendation to change this agreement by the Operator.
- 2.2 Where a written request for a change is received from the Council, the Operator shall, unless otherwise agreed, submit two copies of a change Control Note signed by the Operator to the Council within three weeks of the date of the request.
- 2.3 A recommendation to amend this agreement by the Operator shall be submitted directly to the Council in the form of two copies of a Change Control Note signed by the Operator at the time of such

recommendation. The Council shall give its response to the Change Control Note within three weeks.

2.4 Each Change Control Note shall contain:

- (a) the title of the change;
- (b) the originator and date of the request or recommendation for the change;
- (c) the reason for the change;
- (d) full details of the change, including any specifications;
- (e) the price, if any, of the change;
- (f) a timetable for implementation, together with any proposals for acceptance of the change;
- (g) a schedule of payments if appropriate;
- (h) details of the likely impact, if any, of the change on other aspects of this agreement including:
  - (i) the timetable for the provision of the change;
  - (ii) the personnel to be provided;
  - (iii) the Contract Price;
  - (iv) the documentation to be provided;
  - (v) the training to be provided;
  - (vi) working arrangements;
  - (vii) other contractual issues;
- (i) the date of expiry of validity of the Change Control Note;
- (j) provision for signature by the Council and the Operator; and

- (k) if applicable, details of how costs incurred by the Parties if the change subsequently results in the termination of this Agreement will be apportioned.

2.5 For each Change Control Note submitted by the Operator the Council shall, within the period of the validity of the Change Control Note:

- (a) allocate a sequential number to the Change Control Note; and
- (b) evaluate the Change Control Note and, as appropriate:
  - (i) request further information;
  - (ii) accept the Change Control Note by arranging for two copies of the Change Control Note to be signed by or on behalf of the Council and return one of the copies to the Operator; or
  - (iii) notify the Operator of the rejection of the Change Control Note.

2.6 A Change Control Note signed by the Council and by the Operator shall constitute an amendment to this Agreement.



**SCHEDULE 8  
NOT USED**

**SCHEDULE 9 -  
NOT USED**

## SCHEDULE 10 COUNCIL'S VEHICLES

### Inventory of Buses

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| No | Registration | Model             | Make                | Colour            | Chassis Number    | Fuel Type |
|----|--------------|-------------------|---------------------|-------------------|-------------------|-----------|
| 1  | WK18BVF      | Enviro<br>200 MMC | Alexander<br>Dennis | Green<br>Two Tone | SFD9LAER9JGYA6700 | Diesel    |
| 2  | WK18BVG      | Enviro<br>200 MMC | Alexander<br>Dennis | Green<br>Two Tone | SFD9LAER9JGYA6701 | Diesel    |
| 3  | WK18BVH      | Enviro<br>200 MMC | Alexander<br>Dennis | Green<br>Two Tone | SFD9LAER9JGYA6702 | Diesel    |
| 4  | WK18BVJ      | Enviro<br>200 MMC | Alexander<br>Dennis | Green<br>Two Tone | SFD9LAER9JGYA6703 | Diesel    |
| 5  | WK18BVL      | Enviro<br>200 MMC | Alexander<br>Dennis | Green<br>Two Tone | SFD9LAER9JGYA6704 | Diesel    |
| 6  | WK18BVM      | Enviro<br>200 MMC | Alexander<br>Dennis | Green<br>Two Tone | SFD9LAER9JGYA6717 | Diesel    |
| 7  | WK18BUE      | Enviro<br>200 MMC | Alexander<br>Dennis | Green<br>Two Tone | SFD9LAER9JGYA6718 | Diesel    |
| 8  | WK18BUF      | Enviro<br>200 MMC | Alexander<br>Dennis | Green<br>Two Tone | SFD9LAER9JGYA6719 | Diesel    |
| 9  | WK18BUH      | Enviro<br>200 MMC | Alexander<br>Dennis | Green<br>Two Tone | SFD9LAER9JGYA6720 | Diesel    |
| 10 | WK18BUJ      | Enviro<br>200 MMC | Alexander<br>Dennis | Green<br>Two Tone | SFD9LAER9JGYA6721 | Diesel    |
| 11 | WK18BUO      | Enviro<br>200 MMC | Alexander<br>Dennis | Green<br>Two Tone | SFD9LAER9JGYA6736 | Diesel    |
| 12 | WK18BUP      | Enviro<br>200 MMC | Alexander<br>Dennis | Green<br>Two Tone | SFD9LAER9JGYA6737 | Diesel    |
| 13 | WK18BUU      | Enviro<br>200 MMC | Alexander<br>Dennis | Green<br>Two Tone | SFD9LAER9JGYA6738 | Diesel    |
| 14 | WK18BUV      | Enviro<br>200 MMC | Alexander<br>Dennis | Green<br>Two Tone | SFD9LAER9JGYA6739 | Diesel    |
| 15 | WK18BUW      | Enviro<br>200 MMC | Alexander<br>Dennis | Green<br>Two Tone | SFD9LAER9JGYA6741 | Diesel    |

|    |         |                   |                     |                   |                   |        |
|----|---------|-------------------|---------------------|-------------------|-------------------|--------|
| 16 | WK18BVA | Enviro<br>200 MMC | Alexander<br>Dennis | Green<br>Two Tone | SFD9LAER9JGYA6740 | Diesel |
|----|---------|-------------------|---------------------|-------------------|-------------------|--------|

## **SCHEDULE 11 HANDOVER PROTOCOL**

The Operator shall comply with all conditions within this Agreement, including those within this Schedule in order to facilitate a smooth transition of Service to another Operator via the Council.

The Operator shall not impede the successful continuation or termination of the Service.

### **A. General Procedure**

1. On termination or expiry of the Agreement howsoever arising the Operator shall:

1.1 transfer, deliver, and/or assign (as applicable) the following free from all liens charges and encumbrance:

- All and any Intellectual Property Rights of the Council which may have come into the possession of the Operator or which the Operator may have acquired directly or indirectly during the course of providing the Services under this Agreement;
- Such Plant and Equipment leased from the Council as the Council may notify the Operator that it requires in writing;
- The ticket/smart card data used in connection with the Service;
- All other assets used exclusively in the Service and not specified in this section and requested by the Council in writing other than the Alternative Vehicles and any agreement with any bank in respect of finance or otherwise.
- TUPE data for transferring Supplier's personnel.
- All other records relating to the delivery of the contracted provision for the 6 months preceding Expiry or Termination Date including:

- Maintenance, statutory checks, records and certificates for the year preceding Expiry or Termination Date, including any Inspection and Maintenance Certificates.
- Training Records for Supplier Staff, for the duration of the Contract, including the names of participants.
- Details of all Sub-contractors which were employed by the Supplier for the provision of the Service including the Name of Sub-contractor, contact details, types of services and duration of the sub contract.

- 1.2 deliver to the Council details of all current jobs outstanding, copies of other papers and materials which relate to the Service and are so held by or on behalf of the Operator and all information reasonably necessary to enable the Council to carry on the Service in succession to the Operator;
- 1.3 deliver to the Council the accounting records, and all other documents papers and records of the Operator (including for the avoidance of doubt and without limitation the originals of any contracts or arrangements reduced in writing) appertaining exclusively to the Services held by or on behalf of the Operator and copies of relevant extracts of such other documents papers and records which relate partly to the Service;
- 1.4 provide an up to date financial model showing full reconciliation of payments and deductions to date, as well as any outstanding payments and invoices due up to the end of the contract.
- 1.5 transfer to the Council (or its nominee) any confidential information used in connection with the Service;
- 1.6 provide all reasonable assistance to the Council to effect a smooth transfer of the Service to the Council or any other third party nominated by the Council;
2. If the Council elects to terminate this Contract pursuant to the clauses in this Agreement the Council shall:
- 2.1 cease to be under any obligation to make further payment;
- 2.2 be entitled to require the Operator forthwith to return files, documents or the equipment or items belonging to the Council and

any other resources licensed, loaned, or hired, to the Operator and should the Operator fail to return these, to enter onto any site of the Operator and repossess all such files, documents, equipment or other items. The Council shall have full and unfettered licence over all drawings, details, descriptive schedules and other documents for use in connection with the provision of the Services.

- 2.3 be entitled to deduct from any sum or sums which would but for the conditions in this Agreement have been due from the Council to the Operator under this Contract or any other Contract or be entitled to recover the same from the Operator as a debt, any loss or damage to the Council resulting from or arising out of the termination of this Contract. Such loss or damage shall include the reasonable cost to the Council of the time spent by its Officers in terminating this Contract and in making alternative arrangements for the provision of the Services or any part thereof;
  - 2.4 be entitled to employ and pay other persons to provide and complete the provision of the Services or part thereof and to use the Operator's files, documents, materials, equipment, vehicles or other goods for the purposes thereof;
  - 2.5 when the total costs, loss and/or damage suffered by the Council resulting from or arising out of the termination of this Contract have been calculated and after taking into account any deduction made or to be made by the Council from any sum or sums which would have been due to the Operator, be entitled to any balance shown as due to the Council which shall be recoverable as a debt.
3. The rights of the Council under this Schedule and Agreement are in addition to and without prejudice to any other rights the Council may have whether against the Operator directly or pursuant to any guarantee or bond.

#### **B. Council Vehicles**

1. On termination of this Agreement for any reason, the Operator shall:

1.1 immediately cease using the Council's Vehicles for any purpose;

1.2 notify the Co

1.3 Council of any repairs required and, if requested to do so by the Council, at the Operator's cost, carry-out any such repairs;

1.4 at its cost carry out all cleaning required so that the Council's Vehicles are clean internally and externally; and

1.5 leave the Council's Vehicles at the Property or return the Council's Vehicles to such address as the Council shall notify the Operator in writing, promptly and in a good state of repair together with all vehicle documents and maintenance and repair records.. For the avoidance of doubt, the Operator agrees at the its cost to make good any damage to the Council's Vehicles before returning them to the Council.

1.6 In this Schedule, the following words have the following meaning:

**Ticket Machine:** means the ticket machines attached to the Vehicle and used by the Operator for the purposes of provision of Services.

## SCHEDULE 12 - EXIT MANAGEMENT PLAN

The Exit Management Plan follows the Cornwall Council Template. This will be reviewed annually between the Council and the Operator.

The Operator shall provide the name and contact details of the Supplier's Exit Manager. Any updates, revisions or amendments will be agreed to ensure a smooth and prompt separation and migration of the Service and their day-to-day delivery to the Council or Replacement Operator during the Term.

At the first Contract Management meeting this Schedule will be superseded by the first agreed plan between the Council and the Operator.

If this Exit Management Plan is employed, the Operator must refer to the Handover Protocol.

Contract Name:.....

Contract Ref. No.....

|    | Activity  | Timescales from Exit Plan Start Date for completion of planned activity | (Council in these columns refers to both the Council and the Council Replacement Service Provider) |  |  |
|----|---|---|--|--|--|
|    |   |   | Voluntary Termination by the Council or Termination for Council Default                            | Termination for Operator Default, Persistent Breach by Operator and for Corrupt Gifts and Fraud by Operator and as per all other Termination Conditions in the Agreement | Expiry and Termination for Force Majeure and Insolvency - Bankruptcy |
| 1. | The Council shall appoint a manager responsible for liaising with the Operator's exit manager (referred to below). Such Council exit manager shall be appropriately skilled and have the requisite authority to manage the Council's responsibilities in relation to the exit plan. | 1 day   | Council  | Council  | Council  |



|    | Activity  | Timescales from Exit Plan Start Date for completion of planned activity | (Council in these columns refers to both the Council and the Council Replacement Service Provider) |  |  |
|----|---|---|--|--|--|
|    |   |   | Voluntary Termination by the Council or Termination for Council Default                            | Termination for Operator Default, Persistent Breach by Operator and for Corrupt Gifts and Fraud by Operator and as per all other Termination Conditions in the Agreement | Expiry and Termination for Force Majeure and Insolvency - Bankruptcy |
| 2. | <p>The Operator shall appoint a manager who should be responsible for managing and co-ordinating implementation of the exit plan by the Operator. The Operator exit manager shall be appropriately skilled and have the requisite authority to manage the Operator's responsibilities in relation to the exit plan. The responsibilities of the Operator's exit manager shall include but not be limited to:</p> <ul style="list-style-type: none"> <li>• participating in the planning and resourcing of exit plan for transferring responsibility for the provision of the contracted provision to the Council or the Replacement Operator;</li> <li>• managing the Operator's involvement in the implementation of the Exit Plan, including managing the Operator's Resources allocated for its implementation and the timescales as contained wherein.</li> </ul> | 1 day   | Council  | Operator   | Operator   |
| 3. | The Council shall advise the Operator whether the Council intends to migrate the contracted provision to a replacement Operator or to the Council.  | 1 day   | Council  | Council  | Council  |

|    | Activity   | Timescales from Exit Plan Start Date for completion of planned activity  | (Council in these columns refers to both the Council and the Council Replacement Service Provider) |  |  |
|----|--|--|--|--|--|
|    |  |  | Voluntary Termination by the Council or Termination for Council Default                            | Termination for Operator Default, Persistent Breach by Operator and for Corrupt Gifts and Fraud by Operator and as per all other Termination Conditions in the Agreement | Expiry and Termination for Force Majeure and Insolvency - Bankruptcy |
| 4. | <p>Both the Operator and the Council shall meet and agree in good faith working diligently together a detailed exit plan in respect of the performance of all of their obligations set out in this Activity Matrix, such agreement not to be unreasonably withheld or delayed. The exit plan should contain as a minimum:</p> <p>Detailed exit Programme with timescales, to include but not be limited to:</p> <ul style="list-style-type: none"> <li>✓ Timescales for provision of all the Records</li> <li>✓ Timescales for completion of all the tasks detailed in the Activity Matrix</li> <li>✓ Resource allocation for each specified task</li> </ul> | 20 days from notification of whether contracted provision are to be migrated to Replacement Operator or the Council          | Council  | Operator   | Each party shall bear its own costs                                  |
| 5. | <p>Provide the Council or the Replacement Operator sufficient skills transfer in so far as such relates to the [contracted provision]</p> <p>The Council shall use reasonable endeavours to ensure that personnel of the Council and Replacement Operator who attend such workshops have sufficient training and experience to benefit from the provision of the workshops.</p>  | As defined in Exit Plan, and in any case no earlier than 2 months and no later than 1 month prior to Expiry Termination Date | Council  | Operator   | Council  |

|     | Activity   | Timescales from Exit Plan Start Date for completion of planned activity | (Council in these columns refers to both the Council and the Council Replacement Service Provider) |  |  |
|-----|--|---|--|--|--|
|     |  |   | Voluntary Termination by the Council or Termination for Council Default                            | Termination for Operator Default, Persistent Breach by Operator and for Corrupt Gifts and Fraud by Operator and as per all other Termination Conditions in the Agreement | Expiry and Termination for Force Majeure and Insolvency - Bankruptcy |
| 6.  | The Operator shall transfer copies of the Records in an agreed electronic format (where possible) or such other available format to the Council and make the same available at the Authority's request to the Replacement Operator.  | As defined in Exit Plan for each individual Record                      | Council  | Operator   | Operator   |
| 7.  | On completion of the migration of the contracted provision to the Council or Replacement Operator, the Operator shall cease to use all Council Data and, at the direction of the Council, destroy all copies of the Council Data within the timescale agreed with the Authority at that time and shall certify to the Council that it has complied with this obligation. | As defined in Exit Plan   | Council  | Operator   | Operator   |
| 8.  | The Council shall return all items exclusively belonging to the Operator and which the Council is not entitled to retain under the terms of the contract.  | As defined in the Exit Plan   | Council  | Council  | Council  |
| 9.  | The Operator shall return all items exclusively belonging or transferred to the Council under the agreements made as part of the Exit Plan, and which the Operator is not entitled to retain under the terms of the contract, including all relevant certificates, warranties, licenses and leases.  | As defined in the Exit Plan   | Operator   | Operator   | Operator   |
| 10. | The Operator will participate in all relevant consultation and negotiation meetings relating to TUPE of relevant Operator's Staff to the Council or the Replacement Operator   | As defined in the Exit Plan   | Council  | Operator   | Council  |

**SCHEDULE 13**  
**COMMERCIALY SENSITIVE INFORMATION**

**SCHEDULE 14**  
**PARENT COMPANY GUARANTEE**

## SCHEDULE 15

### CORNWALL REAL TIME PASSENGER INFORMATION SYSTEM (RTPI)

#### Background

Cornwall Council maintains a network of approximately 250 displays across the county providing up to the minute schedule information to bus passengers. The system also provides real time information for all stops in the county for third party journey planner and app providers.

Success of the system is dependent upon the co-operation of bus operators, in particular around commitment to timely provision of Transxchange (TxC) schedule files and ensuring a continuous industry standard data feed is made available.

In line with the expected provisions of the Bus Open Data legislation due to come into force in January 2020, Operators may wish to appoint a third party to prepare and supply the required data.

#### Operating Procedure

##### (a) TxC Management

Transxchange files should be supplied no later than 10 working days before the commencement date of the associated services. The requirements for data in the file are:

- (i) Each service should be contained in a separate TxC file, a number of individual service files may however be supplied in a single ZIP file.
- (ii) For each journey contained in a service file, the following values must be set:
  - Full journey schedule with all stopping points included and Principal Timing Points correctly annotated. Each stopping point to have correct stop action value assigned.
  - Electronic Ticket Machines (ETM) journey number
  - Running Board
  - Duty Board
  - Public Service Code
  - Depot Code
  - Operating Start Date
  - Operating End Date
  - Serviced Organisations
  - Dynamic Destination values set for all stops in accordance with values set and issued by Cornwall Council

- (ii) Each file must contain the full Serviced Organisation calendar for the period in which the timetable is in force and dates set out in the following format as defined in the proposed revisions to the Transxchange profile.
- (iii) Days of Operation for Serviced Organisation are 'Working Days'
- (v) Days of Non Operation for Serviced Organisation are 'Holidays'
- (vi) Where there are journey variations necessitated by the Service having most typically school and non-school day variations these should be included in a single file.
- (vii) Operators should endeavour to capture all variants that may occur in a timetable operating period into a single file upload. Cornwall Council will undertake a maximum of 6 uploads per year per operator.
- (viii) Additional uploads will be charged at £100 per required upload unless otherwise required in response to a significant change to Service caused by unforeseen circumstances.
- (ix) Cornwall Council will also reserve the right to charge £100 per instance where errors are found on file upload that necessitate revisions being required to TXC files. It is important that operators give the preparation of data the correct level of resource to achieve 'Right First Time' outcomes.

**(b) Disruptions**

- (i) Each Operator will be provided with access to the back-office system to enable them to view service data in real time and manage information proactively to ensure accurate information provision to customers.
- (ii) Cornwall Council follows Paragraph 3 of the RTIG guidance 'Managing RTPI systems during disruptions'. In summary
- (iii) Planned events - Operators should provide revised TXC files to Cornwall Council where services are to be varied on a pre-planned basis at least 5 working days before the event commences.
- (iv) Unplanned events - In the event of major disruption RTPI displays on affected routes should be changed to display an appropriate message, templates for which will be provided separately.
- (v) Journey amendments or cancellations - Operators must make use of the system to amend or cancel journeys or part thereof that is affected by immediate unforeseen circumstances.
- (vi) The ability also exists to display messages in addition to schedule data, separate protocol will be issued for same.

(vii) Cornwall Council will manage sign messages in response to pre-planned Road Closures and Diversions to ensure consistency of messaging.

(viii) This document will be updated following publication of further Statutory Instruments regarding Bus Open Data.



