



**CONDITIONS OF CONTRACT FOR VOCATIONAL TRANSPORT CONTRACTS**

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## STRATHCLYDE PARTNERSHIP for TRANSPORT

### CONDITIONS OF CONTRACT FOR VOCATIONAL TRANSPORT CONTRACTS

#### PART ONE

#### INTRODUCTION

SPT acts as an Agent for a number of councils for the purpose of arranging Vocational transport contracts (“the Contracts”) on their behalf. The parties to any contract shall be the relevant council and the transport operator (“the Operator”). Reference in these Conditions of Contract to the powers, discretion or rights of SPT shall be regarded as the powers, discretion or rights of the appropriate Council. The Contract Specification and Letter of Award of Contract will identify the parties to the Contract.

The Operator must bring these Conditions of Contract to the attention of all relevant employees, ensure that they are aware of all of their obligations and, for the avoidance of doubt, will be responsible for all of the actions and omissions of such employees.

#### **(1) CONTRACT SPECIFICATION**

The Operator shall perform the Contract:

- (i) In accordance with the specification as agreed with the Operator and defined when the Contract is awarded.

and/or

- (ii) In accordance with the worksheet or passenger schedule which will be transmitted to the Operator by email or by other appropriate means of communication and updated as required.

The Operator shall not make any change of any kind to the Contract without obtaining the prior approval of SPT.

For Services undertaken in whole or in part in accordance with a worksheet or passenger schedule, the Operator shall:

- (a)** Provide and maintain a secure email address for the purpose of communicating with SPT and specifically for the receipt of worksheets and passenger schedules and updates thereto. The Operator shall provide SPT’s Bus Contracts Section with no less than forty-eight hours notice of any change to the email address. The Operator shall ensure compliance with the terms of the Data Protection Act 1998 and shall allow SPT or its representatives to audit its compliance with this requirement upon forty-eight hours’ notice having being given.
- (b)** Inform SPT’s Bus Contracts Section by email at [Schoolcontracts@spt.co.uk](mailto:Schoolcontracts@spt.co.uk) immediately of any late running or breakdown of any Service. In the event of this occurring when the SPT’s offices are closed, the Operator must advise SPT’s Bus Contracts Section by no later than 9am on its next working day.
- (c)** Each vehicle used in the provision of the Services will be equipped with a hands free mobile telephone which can be used by the driver in compliance

with all relevant legislation and regulations. SPT shall be advised of the mobile telephone numbers applicable for all vehicles prior to the commencement of the Services. The Operator must provide SPT's Bus Contracts Section with a minimum of twenty-four hours prior notice of the change to any such mobile telephone numbers.

- (d) All worksheets or passenger schedules will be destroyed by the Operator within 7 days of receipt to ensure passenger confidentiality. Operators are reminded that the information contained in the vehicle worksheet or passenger schedule is covered by the terms of the Data Protection Act 1998.
- (e) At any time during the period of the Contract, SPT reserves the right to modify any aspect of the Contract. SPT further reserves the right to modify the Contract price in a manner consistent with any modification to the Contract. The Operator shall comply with any modification specified by SPT within such time-scale as is required by SPT. Such modifications could include the termination of the Contract, without liability to SPT, if it is judged in the opinion of SPT that the service provided under the Contract no longer appropriately meets or will no longer appropriately meet the needs of SPT or its client. In such circumstances, SPT may terminate the Contract by giving such written notice to the Operator as may be reasonably practicable in the circumstances. SPT may also suspend the operation of a Contract if the lack of justification for the Contract is believed to be for a temporary period.

## **(2) STATUTORY REQUIREMENTS**

- (a) The Operator, and all vehicles and drivers used in the performance of this Contract, shall conform fully with all appropriate statutory and regulatory requirements and particularly those of the Road Traffic and Transport Acts. In this respect the Operator will be held to have satisfied himself/herself in respect of what documentation by way of certificates, licences and records of inspection and maintenance will be required in relation to the carrying out of the Contract and must display these to SPT as and when required. The Operator shall disclose such information and documentation relating to legislative compliance as is required by SPT to it upon request.
- (b) Unless otherwise determined by SPT, this and any other Contract which the Operator has with SPT and/or any third party on whose behalf SPT acts as agent shall be terminated and of no force and effect from the commencement of any period that:
  - (i) the Operator does not have a relevant Operator's licence or if any licence previously granted has been suspended for any reason;
  - (ii) the Operator does not have valid and satisfactory insurance to cover the operation of the Contract;
  - (iii) the Operator does not have a valid Test Certificate appropriate for the class of vehicle, issued by the Department for Transport for every vehicle used on the Contract;
  - (iv) any driver does not have a valid driving licence appropriate for the class of vehicle used on the Contract;
  - (v) the Operator does not have valid Vehicle Excise Duty for every vehicle used on the Contract;

- (vi) if SPT reasonably considers the Operator may have otherwise acted in an illegal manner.
- (c) Where it is the opinion of SPT that an Operator has breached the terms of this Clause 2, SPT may, at its discretion, suspend any or all Contracts to allow further investigation or may terminate the Contract or Contracts.
- (d) Where a Contract or Contracts have been suspended or any Contract or Contracts have been terminated as a result of action taken under sub-clause 2(c), SPT may arrange for another Operator to fulfil the Contract or Contracts and any and all increased and additional costs incurred or to be incurred by SPT shall be charged to the defaulting Operator and recovered either by deduction from any payments due to be made to the Operator by SPT in terms of this or any other contract or such other appropriate means as may be necessary.

### (3) VEHICLES AND DRIVERS

- (a) The vehicles used on Contracts must comply with the terms of the Contract Specification and these Conditions of Contract. The Operator will not operate a Contract with any non-compliant vehicle.

Should a compliant vehicle not be available through unforeseeable circumstances, the Contract may be operated by another vehicle of the same taxation class from the Operator's fleet. The Operator shall ensure that any replacement vehicle complies to the greatest extent possible with the Contract Specification. Should such an event occur the Operator must immediately advise SPT's Bus Contracts Section at [Schoolcontracts@spt.co.uk](mailto:Schoolcontracts@spt.co.uk). Should SPT's offices be closed, the Operator must advise SPT's Bus Contracts Section by no later than 9am on its next working day. For the avoidance of doubt, a replacement vehicle that is not fully compliant **MUST NOT** be used to allow for any scheduled test, maintenance or repair of the compliant vehicle.

- (b) All vehicles used in the performance of this and any other Contract will be licensed, equipped, insured and maintained as required by statute and inspected in compliance with the terms of any undertaking given to the Commissioner for the Scottish Traffic Area (the Commissioner), other licensing authority or SPT, details of which will be made available to SPT upon request. Notwithstanding the foregoing, inspection and maintenance records for all vehicles shall be completed and maintained in such a manner as may be prescribed by SPT and provided to SPT on demand.
- (c) The Operator shall ensure that all vehicles are the subject of a daily "pre-service inspection" and that a written or otherwise appropriately recorded "nil defect" reporting system is adhered to. Any failure to strictly adhere to this requirement may result in the suspension or termination of this and any other Contract.
- (d) All vehicles will be driven by a competent driver who will also be licensed, insured and who possesses all necessary certification as required by statute or otherwise, who will ensure the full safety of passengers, pedestrians and other road users and who will also have been confirmed in writing by SPT as being "suitable" following appropriate checks having been carried out via Disclosure Scotland.

- (e)** The Operator shall ensure that no driver, attendant or other employee carries out any duties relating to this or any other Contract while under the influence of alcohol or drugs or having consumed alcohol or drugs. Drivers and attendants must also inform the Operator of all prescribed and “over-the-counter” medication taken or any health condition which may affect their ability to work safely.  
The Operator shall have appropriate policies and procedures in place which all personnel must adhere to in this regard and shall ensure that all personnel used on this and any other Contract are medically fit and capable in all respects for the role and their eyesight meets all required standards.
- (f)** The Operator shall, without prior notification, allow SPT’s duly authorised representatives to enter and inspect the Operator’s vehicles used or to be used to operate the Contract. Such inspections may take place at an appropriate roadside location or at the Operator’s premises. SPT may also inspect the Operator’s maintenance facilities or arrangements and have access to the inspection and maintenance records kept for the said vehicles. For the avoidance of doubt, SPT reserves the right to suspend or terminate this or any other Contract should any such inspection result in a finding of material failings in respect of those vehicles, facilities or records or if access to the vehicles, facilities or arrangements and/or records is refused.
- (g)** If it is necessary to involve a third party to ensure that SPT’s representatives can carry out a satisfactory inspection of the Operator’s vehicles, maintenance facilities or arrangements or any aspect of the Contract, this will be arranged by the Operator to meet SPT’s requirements at no additional cost to SPT. Alternatively, appropriate arrangements may be made directly by SPT with all associated costs being for the account of the Operator. To allow examination of the underside of vehicles, a pit, vehicle hoist or ramp will be necessary. For the avoidance of doubt, portable drive-on ramps will not be acceptable.
- (h)** All vehicles must comply with any weight, height, width, length and seated passenger capacity restrictions applicable to the contracted Service.
- (i)** The name of the Operator must be clearly displayed on all vehicles operating on the Contract.
- (j)** The Operator must ensure that all vehicles are clean and damage free inside and out. The Operator must sweep vehicles daily and wash them regularly. The Operator will provide details of its cleaning and washing procedures to SPT on request and shall comply with directions given in order to improve the standard of same.
- (k)** All vehicles must be properly heated and ventilated at all times.
- (l)** All vehicle logos and notices supplied by SPT are to be clearly displayed in the appropriate manner, maintained in good condition and returned to SPT on request.
- (m)** The destination and/or service number (where such has been allocated by SPT) must be clearly displayed on the front of each vehicle in such a way as to be clearly visible from at least fifty yards under all but the most severe weather conditions. If enhanced facilities such as electronic destination equipment, signage illumination, or side and rear displays are available on the vehicle, these must be maintained in working order and in use at all times.

- (n) All vehicles with 18 passenger seats or more must be fitted with power operated doors controlled by the driver from his cab.
- (o) All vehicles with 9 passenger seats or more must be fitted with a 'door open warning device' maintained in a fully operational condition for each and every entrance/exit door (including emergency exit doors) situated rearward of the driver's seat. This warning device must alert the driver to a door being opened and shall not deactivate until such time as the exit has been closed. The device must give the driver a visual and/or audible warning. A device that relies solely upon activating the standard interior light to the vehicle will not be satisfactory to SPT. The driver of the vehicle must be familiar with and be able to demonstrate the operation of the warning device.

Vehicles found with warning devices not fitted or inoperative, will be subject to immediate prohibition from use on all Contracts and this may result in the termination of the Contract or Contracts.

- (p) Subject to meeting the above requirements, Operators may choose their own vehicles for the Contract, provided that they conform to the detailed requirements specified. Any vehicle which does not so comply must not be used.

#### **(4) CONTRACT PAYMENT**

- (a) On or about the last day of each month, SPT shall, subject to the terms of these conditions of Contract pay the Operator a sum equivalent to one twelfth of the relevant annual Contract price. Payment shall be made via BACS.
- (b) SPT shall not be responsible for any inaccuracies in costs or income estimates associated with the Contract price.
- (c) After the end of each month, the performance of the Operator shall be assessed in relation to the service specified in the Contract and the provisions of these Conditions of Contract and any balance payable to or receivable from the Operator shall be calculated and paid or deducted in the subsequent month.
- (d) SPT must receive, by no later than the dates stipulated, a fully and accurately completed Traffic Return for the relevant period for each Contract held.
- (e) Contracts awarded for periods of twelve months or less will be on a fixed price basis.

For Contracts awarded for periods in excess of twelve months, the total cost indicated in the tender completed and submitted by the Operator shall be adjusted each ensuing year by the percentage variation in the Consumer Price Index (CPI) in the year to the preceding April subject to a maximum increase of no more than 3% and a decrease of no more than 1%

All adjustments which will be applied with effect from the payment made each August. The first adjustment will be made with effect from the August following the first anniversary of the commencement of the Contract.

**Note:** The Consumer Price Index is produced monthly in the National Statistics Office Monthly Digest of Statistics. It will be necessary for SPT to

estimate index factors at the commencement of each period prior to publication of indices. Retrospective adjustments will only be made when there is a significant difference between the estimated and published index.

- (f) SPT reserves the right to be provided with a breakdown of the Contract price detailing all costs relating to labour, fuel, materials and all other operating costs and overheads.

**(5) PUBLICITY**

- (a) SPT may advertise the Contract and provide passenger information in such manner as it may decide. Any Operator's advertising of the Contract must be with the prior approval of SPT and such publicity must state that the Contract is operated on behalf of SPT.
- (b) The Operator shall display in a manner prescribed by SPT on each vehicle used on the Contract, service numbers together with logos stating that the Contract is being operated on behalf of SPT and a client of SPT.

**(6) CARRIAGE OF SCHOOL PUPILS**

- (a) **The roles of driver and attendant on dedicated school transport are deemed "Regulated Work" and no driver or attendant may be deployed on a contract involving the carriage of school pupils until such time as membership of the "Protection of Vulnerable Groups" scheme has been obtained and formal notification of the suitability of the individual(s) concerned has been received by the Operator from SPT.** Any decision that an individual is suitable shall remain valid only until the date intimated in the formal notification. A further check via Disclosure Scotland and decision on suitability will be necessary to allow the deployment of any driver or attendant beyond that date. SPT also reserves the right should it have reasonable cause to do so, to suspend or withdraw clearance for any driver or attendant at any time. Written notice of such a decision shall be given both to the individual(s) concerned and the Operator. In such circumstances, the individual(s) concerned may not be deployed on any contract involving the carriage of school pupils until clearance is re-instated or new clearance obtained. The Operator must advise SPT in writing of any changes to the details of drivers and attendants on school transport contracts and written notice must also be given within 28 days of any such individual leaving the employment of the Operator for any reason. These provisions will be strictly adhered to.

The Operator's attention is specifically drawn to the detailed guidance issued by SPT on this matter. For the avoidance of doubt, all costs associated with this process shall be for the account of the Operator.

For the avoidance of doubt, any breach of this clause 6(a) may result in the suspension and/or termination of this and any other Contract that the Operator has with SPT or any client of SPT.

- (b) The passengers must depart from school and return thereto within the acceptable time limits specified in the Contract or as subsequently agreed by SPT. Boarding and alighting times at other locations must also be within acceptable limits specified in the Contract.

- (c) The Operator shall, **without exception**, provide transport for all pupils notified to it by SPT. The Operator shall **under no circumstances**, refuse to provide transport to any designated pupil or pupils in the absence of the express prior written permission of SPT or the relevant council. The Operator shall convey such different and/or revised numbers of passengers as may be required by SPT at any time during the period of the Contract at no financial detriment to the Operator, subject to sub-clause 6(d) below. Irrespective of whether an additional vehicle is provided to fulfil the terms of the Contract, the Contract price shall only be increased if the Operator can demonstrate that such changes have led to an increase in the cost of operating the Services.
- (d) SPT reserves the right to modify the Contract price in a manner consistent with any modification in the Contract Specification arising from sub-clause (c) above.
- (e) The Operator shall complete such returns and supply such information as may be required by SPT on matters relative to the conveyance of passengers in terms of the Contract.
- (f) If a vehicle used in this Contract requires to turn around, the turn round shall be completed before the passengers are set down. Operators must take all precautions to ensure the full safety of passengers, pedestrians and other road users.
- (g) On Contracts operated by taxis or cars, Operators must ensure the availability of a seat belt for each pupil carried and must ensure that it is securely fastened prior to moving off and that it remains fastened throughout the journey. Operators must also provide seating that is appropriate for the age, weight and height of all pupils carried. Operators of any Contracts involving water-borne transport must ensure the availability of a suitable life jacket for each passenger included in the Contract.
- (h) Operators must report all concerns or complaints about pupil misbehaviour. Complaints concerning pupil misbehaviour must be reported in the first instance to the head teacher of the school concerned and confirmed in writing on request. If it is considered that the safety of pupils, employees of the Operator or members of the public is being put at risk, the matter must immediately be brought to the attention of the Bus Contracts Section of SPT by email to [schoolcontracts@spt.co.uk](mailto:schoolcontracts@spt.co.uk) and in any event, by no later than 9am on the next working day after the date of the incident.
- (i) If a vehicle with 16 seats or less is used to carry out any Contract, any side facing seats must not be used and must not be counted as part of the seating capacity provided.
- (j) If a vehicle with 16 passenger seats or less is used for any Contract then fully functional lap and diagonal seat belts fitted to the standard acceptable to the Department of Transport shall be provided for each child being transported under the terms of the Contract. If the Contract requires that any vehicle used is fitted with seatbelts, evidence of a seatbelt installation check carried out by the Department for Transport shall be provided. Where seatbelts have been "retro-fitted" to a vehicle, a copy of the appropriate notification to the Department for Transport shall be provided to SPT on request together with a copy of the MOT certificate detailing that the seatbelt installation check has been carried out.

- (k)** An Operator must not transfer pupils from one vehicle to another without authorisation from SPT except in an emergency.
- (l)** Vehicles using terminal or turning areas adjacent to or within school grounds will require to be stationary prior to the school finishing time as detailed in the Contract specification.
- (m)** Operators must ensure that all drivers and attendants comply at all times with the relevant Code of Conduct forming the schedule to these conditions of contract.
- (n)** All vehicles will, in addition to any sign required by law in respect of the carriage of school children, display at the front of the vehicle, a sign supplied by SPT. Signs will be displayed in such a way as not to impinge on the swept area of the windscreen. Signs must only be displayed when the vehicle is being used to on the Contract.
- (o)** The Operator shall comply with instructions from SPT with regard to places where passengers shall join and leave the conveyance and shall further comply with any instructions which may be issued by SPT as to the hours of arrival and departure to and from school and as to holidays, in-service days etc..
- (p)** Only persons authorised by SPT or its client shall be entitled to board or travel by the conveyance while it is engaged on the Contract.
- (q)** Where childproof locks are fitted to any non public service vehicles, such locks must be in operation, set to the “child safe” mode at all times.
- (r)** The Operator is prohibited from registering any part of the Contracted Service as a ‘Local Service’.
- (s)** On all Contracts, drivers and attendants are required to carry and display, when required, photographic identification. Where the identification is of a type provided by the Operator, the Operator must be identified together with the signature of the person responsible for issuing the card, which must be a type approved by SPT. A passport or photographic driving licence is satisfactory. SPT reserves the right to require all drivers and attendants to display only identification provided by SPT.
- (t)** One seat per pupil shall be provided on all vehicles and pupils shall not be permitted to stand.
- (u)** On vehicles with 16 passenger seats or more the destination of the vehicle must be clearly displayed on the destination screen or at the door of the vehicle. Any sign displayed must not be on the “swept area” of the windscreen.
- (v)** All vehicles must be equipped with a means e.g. 2-way radio or mobile telephone, by which the driver is able to communicate directly with their base or the school(s) served by the Contract. Communication equipment must only be used in compliance with all legislative and regulatory requirements.
- (w)** On vehicles with 16 passenger seats or less the driver shall be responsible for opening and closing doors and supervising the setting down and picking up of passengers.

- (x) Drivers must not move the vehicle until they have ensured that all passengers are seated.
- (y) For Contracts involving water borne transport, the vessel must be in position at the boarding point by no later than the earliest specified acceptable time.

The conditions shall apply to all journeys transporting pupils specified by SPT whenever the journey operates.

- (z) Operators must, unless instructed otherwise, destroy all information relating to school pupils by no later than 7 days following the last day of the school term in June of each year and by no later than 7 days following the termination of this Contract for any reason.

## **(7) OPERATORS' LIABILITY AND INSURANCE**

- (a) The Operator shall be responsible for and shall indemnify, save and hold harmless SPT, its servants, agents and principals from and against all liability for personal injury (whether fatal or otherwise), loss of or damage to property and any other loss, damage, costs and expenses which may arise out of, or in consequence of, the performance of this Contract by the Operator, its servants or agents or the presence on SPT's property or the property of a principal of SPT of the Operator, its servants or agents whether such injury, loss, damage, cost or expenses be caused by negligence or otherwise. Provided always that the Operator shall not be responsible to indemnify SPT for any injury, loss or damage caused solely by the negligence of SPT, its servants or agents and the Operator's liability to indemnify SPT as aforesaid shall be reduced proportionately to the extent that the act or negligence of SPT, its servants or agents may have contributed to the said injury, loss or damage.
- (b) The Operator shall inform SPT of all accidents or other incidents involving vehicles, or which occur within vehicles being used during the operation of the Contract which result in damage to a vehicle or other property (including theft) or injury to or assault on any person. The Operator shall inform SPT immediately by email to [Schoolcontracts@spt.co.uk](mailto:Schoolcontracts@spt.co.uk) in any case of personal injury or assault or other incident attended to by the police or other relevant authority and within twenty four hours of the accident or incident in other cases. Within forty eight hours of the accident or incident, the Operator shall provide a written report to SPT. The written report will contain confirmation that the incident in question has been brought to the attention of the Operator's insurers when it is necessary to do so. When required to do so, any necessary report shall be made to the police and confirmation will be provided to SPT that this has been done.
- (c) It will be the responsibility of the Operator to produce on demand for inspection by SPT the certificate(s) of insurance and the receipt or receipts for payment of the current premiums or alternatively, evidence of the provision of appropriate security as required by statute in respect of all vehicles used on the Contract.
- (d) The Operator of any water-borne transport used on a Contract will require to produce for examination by SPT the marine inspection report obtained for the purposes of insurance, before the Contract takes effect.

**(8) SUB-CONTRACTING**

- (a)** In situations of an emergency nature **only**, the Operator is permitted to sub-contract the operation of the Contract to ensure that it is carried out. In such circumstances, the Operator is required to advise the Bus Contracts Section of SPT by email to [Schoolcontracts@spt.co.uk](mailto:Schoolcontracts@spt.co.uk) in advance if at all possible and in all circumstances, by no later than 9am on its next working day. In doing so, the Operator must ensure that all Conditions of Contract are met and shall remain liable to SPT for all actions and omissions of any sub-contractor.
- (b)** Other than in situations of an emergency nature, the Operator is not permitted to sub-contract the Contract or any part thereof without the prior written consent of SPT. SPT reserves the right to suspend or terminate any Contract should unauthorised sub-contracting occur.
- (c)** Any sub-contractor must be satisfactory to SPT. Should SPT, at its discretion not consider any proposed sub-contractor to be satisfactory, SPT reserves the right to arrange for an alternative operator to carry out the Contract for the duration of the period during which the Operator is unable to do so. Any costs incurred by SPT in so doing shall be for the account of the Operator and shall be recovered by withholding payments otherwise due or by such other means as may be necessary.

**(9) ASSIGNATION**

The Operator **must not** assign the Contract or any part thereof without the prior written consent of SPT. Should the Operator wish to sell any part of its business which includes the operation of this or any other Contract or change status from e.g. a sole trader to a limited company then, before doing so, the Operator must obtain the consent of SPT which shall not be unreasonably withheld.

**(10) CONFIDENTIALITY**

The Operator shall keep confidential and not to disclose without SPT's prior written consent any information supplied by SPT to the Operator save where ordered to do so by a Court or Tribunal of competent jurisdiction.

**(11) NOTICES**

- (a)** Any notice which is required to be given to SPT shall be properly given if it is addressed to SPT's Senior Legal Advisor, 131 Saint Vincent Street, Glasgow G2 5JF or such other person or address as SPT may from time to time specify.
- (b)** Any notice which is required to be given to the Operator shall be properly given if sent to the address set out in the letter of award or such other person or address as the Operator may from time to time specify.
- (c)** Any notice required to be given hereunder shall in the absence of any provision to the contrary be sufficiently given if forwarded by first class mail, signed for mail or given by hand in writing to SPT or the Operator by the other. Every notice shall be deemed to have been received and given at the

time when in the ordinary course of transmission it should have been delivered at the address to which it was sent.

## **(12) TERMINATION AND SUSPENSION**

SPT shall, in the circumstances detailed at (a)-(e) below, be entitled to terminate or suspend this or any other Contract with the Operator forthwith and to recover from the Operator the amount of any and all costs and/or losses resulting from such termination or suspension. SPT may also arrange for another Operator to fulfil the Contract or Contracts and any and all increased costs incurred or to be incurred by SPT in so doing shall be for the account of the Operator and shall be retrieved either by deduction from payments otherwise due or such other appropriate methods as necessary. SPT reserves the right to apply interest to any monies due to it which are unpaid for any period in excess of 30 days from the date on which payment is required from the Operator. Interest will be applied at the rate of 2% above the then applicable base lending rate of the Bank of Scotland. The right of SPT to terminate or suspend a Contract or Contracts in the circumstances outlined below are in addition to any other right to suspend or terminate any Contract or Contracts as set out elsewhere in these Conditions of Contract. For the avoidance of doubt, no payment will be made to the Operator for any period during which the Contract is suspended.

- (a)** If the Operator or his representative (whether with or without the knowledge of the Operator) shall have practised collusion in tendering for the Contract or any other Contract with SPT or shall have employed any corrupt, fraudulent or other illegal practices either in obtaining or execution of the Contract, or any other Contract with SPT.
- (b)** If the Operator becomes bankrupt or insolvent, or has a receiving order made against him or her, or compounds with or assigns for the benefit of his or her creditors or, being a company, commences to be wound up (not being a members voluntary winding up for the purposes only of solvent reconstruction or amalgamation) or carries on his business under a receiver for the benefit of creditors or gives, offers or promises any loan, fee, reward or advantage of any kind to any employee or Member of SPT.
- (c)** If the Operator or any employee, agent or representative of the Operator fails in any material respect to observe the terms and conditions of this or any other Contract or fails to execute with due diligence and expedition anything necessary for the proper performance of a Contract or Contracts, or acts in any way to undermine the good repute of SPT or any principal on behalf of which, SPT acts as agent.
- (d)** If any of the circumstances detailed in Regulation 73 of the Public Contracts (Scotland) Regulations 2015 apply.
- (e)** If the Operator fails to provide SPT with satisfactory evidence of its compliance with any obligation regarding the recording, accounting or paying of Income Tax, Corporation Tax, Value Added Tax, National Insurance Contributions, Minimum Wage or any benefit to which any employee may be entitled.
- (f)** If this Contract is suspended or terminated in accordance with any provision of these Conditions of Contract, no tender submitted by the Operator will be considered for any contract that is required to replace the Contract that has

been suspended or terminated. SPT further reserves the right to exclude the Operator from tendering for other contracts. SPT will advise the Operator of the period during which such exclusion shall apply.

### **(13) FREEDOM OF INFORMATION**

- (g)** SPT and the councils on behalf of which SPT acts as agent are required to comply with the terms of the Freedom of Information (Scotland) Act 2002 (FOISA) and the Environmental Information (Scotland) Regulations 2004 (EISRs). The Operator shall assist and co-operate with the Council (at the Contractor's expense) to enable the Council to comply with these Information disclosure requirements.
- (h)** The Operator shall provide SPT with a copy of all Information in its possession in the form that SPT requires within such period as SPT may specify of SPT requesting that Information; and provide all necessary assistance as reasonably requested by SPT to enable it to respond to a request for information within the time for compliance.
- (i)** SPT reserves the right to disclose information held by it in response to a request, the decision of SPT in relation to the interpretation of FOISA and the EISRs shall be final and conclusive in any dispute, difference or question arising in respect of disclosure under its terms.
- (j)** The Operator acknowledges that SPT may disclose Information (a) without consulting with the Operator or (b) following consultation with the Operator and having taken its views into account.
- (k)** The Operator shall ensure that they retain all Information produced in the course of the contract or relating to the contract and shall permit SPT to inspect such records as requested from time to time.
- (l)** SPT may also communicate with The Commissioner, the Driver and Vehicle Services Agency, the Police, a licensing authority or any other appropriate public authority or agency on any matter concerning the performance of the Contract. SPT may also report all and any matters concerning the Contract to any principal on whose behalf SPT acts as agent.

### **(14) DATA PROTECTION**

- (a)** For the purposes of this clause (14), **Data Protection Legislation** means law relating to data protection, the processing of personal data and privacy from time to time, including: the Data Protection Act 1998; (with effect from 25 May 2018) the General Data Protection Regulation (EU) 2016/679 (**GDPR**); the Privacy and Electronic Communications (EC Directive) Regulations 2003 (as may be amended by the proposed Regulation on Privacy and Electronic Communications); and any legislation that, in respect of the United Kingdom, replaces, or enacts into United Kingdom domestic law, the GDPR, the proposed Regulation on privacy and Electronic Communications or any other law relating to data protection, the processing of personal data and privacy as a consequence of the United Kingdom leaving the European Union.
- (b)** SPT shall fully comply with both the terms and principles of the Data Protection Legislation and, where applicable, will process any personal data received from the Operator only as required for this Contract and for no other

purpose and shall return all such data to the Operator immediately on demand.

- (c) The Operator shall comply with both the terms and principles of the Data Protection Legislation and shall act at all times so as to enable SPT and any principal of SPT to so comply.
- (i) The Operator will process personal data received from SPT only as required for this Contract in accordance with Data Protection Legislation and for no other purpose and shall return all such data to SPT immediately on demand.
  - (ii) The Operator shall maintain in place appropriate technical and organisational measures to ensure against unauthorised or unlawful access to, processing, loss, damage to or accidental loss or destruction of personal data.
  - (iii) SPT reserves the right to audit the Operator's compliance with the terms and principles of the Data Protection Legislation and the Operator shall provide such information and/or access to its premises and documentation as SPT may require.
  - (iv) The Operator shall immediately advise SPT upon becoming aware of any breach or potential breach of the Data Protection Legislation or its obligations hereunder and shall fully comply with all instructions given by SPT in this regard.
- (d) Where SPT receives any subject access requests relating to personal data in the possession of the Operator, the Operator shall
- (i) fully co-operate with SPT in complying with SPT's obligations under the Data Protection Legislation in relation to that personal data;
  - (ii) only make disclosure of the personal data or do anything else required by the Data Protection Legislation with SPT's express written consent;
  - (iii) respond promptly (and in any event within two working days) to any request from SPT for details of personal data in the possession of the Operator; and
  - (iv) ensure that it processes any subject access requests in such a manner that SPT can access that personal data and respond to the request within the period set down by the Data Protection Legislation.
- (e) Notwithstanding the above, any computer used to store or process information in relation to this Contract shall be password protected and used solely by the Operator. All personal data (having the meaning ascribed to it in the Data Protection Legislation) contained in communications between the Operator and SPT shall be sent as an email attachment and encrypted to AES 256-bit standard. In relation to school transport only, the Operator and SPT shall ensure that all communication between them containing personal data shall be shared and secured via the existing legacy system (PTIS) until SPT's in-house online platform currently under development (Axiom) is operational but where personal data is communicated between the parties via email such personal data shall be sent as an email attachment and encrypted to AES 256-bit standard.
- (f) Any breach by the Operator of the provisions either of this clause or of the Data Protection Legislation in relation to the processing of personal data or any other obligations on the Operator under the Data Protection Legislation shall amount to a breach of this Contract entitling SPT to terminate this Contract and any other contract with the Operator.

- (g) The Operator shall indemnify SPT against all liabilities, damages, costs, losses, claims, awards of compensation, any monetary penalty notices or administrative fines imposed for breach of Data Protection Legislation and/or expenses (including legal fees and expenses) suffered, incurred by SPT, or awarded, levied or imposed against SPT, as a result of any breach by the Operator of its obligations under these Conditions of Contract or any breach by SPT of the Data Protection Legislation, which is caused as a result of the Operator's unauthorised and/or unlawful processing or destruction and/or damage to any personal data held or processed or due to be processed by the Operator, its employees or agents.
- (h) The Operator agrees that it shall not transfer any personal data outside the United Kingdom except to the extent agreed in writing by SPT.
- (i) The Operator agrees to notify SPT as soon as is practicable if an error is discovered in any personal data which has been provided to the Operator by SPT, to ensure that SPT is able to correct its records.
- (j) The Operator shall promptly (and, in any event, no later than 12 hours after becoming aware of the breach or suspected breach), inform SPT by email to [reporting@spt.co.uk](mailto:reporting@spt.co.uk) of any breach or suspected breach of any of the Operator's obligations in terms of the Data Protection Legislation, this clause (14) and/or of any other unauthorised or unlawful processing of any personal data and any other loss or destruction of or damage to any personal data provided under this Contract.

Such notification shall specify (at a minimum):

- (i) The nature of the personal data breach or suspected breach;
- (ii) The date and time of occurrence;
- (iii) The extent of the personal data and the individuals to whom the personal data relates affected or potentially affected, the likely consequences of any breach (in the case of a suspected breach, should it have occurred) for individuals affected by it and any measures taken or proposed to be taken; and
- (iv) Any other information that SPT shall require in order to discharge its responsibilities under the Data Protection Legislation.

In addition, the Operator shall promptly, at its own expense:

- (i) Provide SPT with all such information as SPT requests in connection with such breach or suspected breach;
  - (ii) Take such steps as SPT requires it to take to mitigate the detrimental effects of any such breach or suspected breach on any individual to whom the personal data relates and/or SPT; and
  - (iii) Otherwise cooperate with SPT in investigating and dealing with such breach or suspected breach and its consequences.
- (k) The Operator agrees that the rights conferred under this clause (14) are without prejudice to any other rights and remedies available to SPT for the Operator's breach of these Conditions of Contract whether in contract or otherwise in law.
  - (l) The Operator warrants that any personal data no longer required by the Operator for the purposes of this Contract will be securely removed from its systems and any printed copies securely destroyed.

- (m) SPT and the Operator shall review these Conditions of Contract and the operational arrangements which give effect to them, if any of the following events takes place:
- (i) These Conditions of Contract have been breached in any material aspect, including any security breach or loss in respect of personal data which is subject to these Conditions of Contract;
  - (ii) The Information Commissioner or any of his or her authorised staff recommends that these Conditions of Contract be reviewed.
- (n) In the event that SPT has any reason to believe that the Operator is in breach of any of its obligations under this clause (14), SPT may, at its sole discretion:
- (i) Suspend the sharing of personal data until such time as SPT is reasonably satisfied that the breach will not re-occur; and/or
  - (ii) Terminate the Contract immediately by written notice to the Operator if the Operator commits a material breach of these Conditions of Contract which (in the case of a breach capable of a remedy) it does not remedy within 5 business days of receiving written notice of the breach.

Where SPT exercises its rights under this clause (14)(n), it may request the return of the personal data (in which case the Operator shall, no later than 7 days after receipt of such a written request from SPT, at SPT's option, return or permanently erase/destroy all materials held by or under the control of the Operator which contain or reflect the personal data and shall not return any copies, extracts or other reproductions of the personal data either in whole or in part), save that the Operator will be permitted to retain 1 copy for the purpose of complying with, and for so long as required by, any law or judicial or administrative process or for its legitimate internal compliance and/or record keeping requirements.

## **(15) CYBER-SECURITY**

- (a) For the purposes of this clause (15), **SPT Data** means all information and materials of SPT which the Operator has custody or control of and/or which are accessed, transmitted or stored using or on the Operator's IT systems or equipment in the performance of this Contract.
- (b) The Operator shall use all reasonable endeavours including (but not limited to):
- (i) Using passwords to protect SPT Data;
  - (ii) Preventing malicious software damage by installing and turning on anti-virus software;
  - (iii) Keeping all IT equipment and up to date and portable and fixed devices safe;
  - (iv) Avoiding phishing attacks;
  - (v) Backing up SPT Data; and
  - (vi) Ensuring that all relevant staff are trained as appropriate in Cyber Security,

to ensure that SPT Data is protected at all times, in accordance with SPT's written instructions and guidance available by the National Cyber Security Centre, from:

- (1) Unauthorised access or use by a third party; and
- (2) Misuse, damage or destruction by any person.

(c) If the Operator becomes aware of any actual or suspected action taken through the use of computer networks that result in an actual or potentially adverse effect on SPT's IT system and/or SPT Data residing on that system or any other unauthorised access or use by a third party or misuse, damage or destruction by any person (**Cyber Incident**), the Operator shall promptly (and, in any event, no later than 12 hours after becoming aware of the Cyber Incident or suspected Cyber Incident), inform SPT by email to [reporting@spt.co.uk](mailto:reporting@spt.co.uk) where such notification shall specify (at a minimum):

- (1) The nature of the Cyber Incident or suspected Cyber Incident;
- (2) The date and time of occurrence;
- (3) The extent of the SPT Data affected and any measures taken or proposed to be taken; and
- (4) Any other information that SPT reasonably requires.

In addition, the Operator shall promptly, at its own expense:

- (1) Provide SPT with all such information as SPT requests in connection with such Cyber Incident or suspected Cyber Incident;
- (2) Take such steps as SPT requires it to take to mitigate the detrimental effects of any such Cyber Incident or suspected Cyber Incident on SPT; and
- (3) Otherwise cooperate with SPT in investigating and dealing with such Cyber Incident or suspected Cyber Incident and its consequences.

(d) The Operator shall, if requested by SPT, take out and maintain insurance to protect against the risks of a Cyber Incident, and comply with the provisions of clause (7) in respect of such insurance.

(e) The Operator shall ensure that:

- (i) All sub-contracts which may allow or cause access to SPT Data, contain no provisions that are inconsistent with this clauses; and
- (ii) All Operator personnel and any sub-contractors who have access to SPT Data comply with this clause (15).

(f) In the event that SPT has any reason to believe that the Operator is in breach of any of its obligations under this clause (15), SPT may, at its sole discretion:

- (i) Suspend the sharing of SPT Data until such time as SPT is reasonably satisfied that the breach will not re-occur; and/or
- (ii) Terminate the Contract immediately by written notice to the Operator if the Operator commits a material breach of these Conditions of Contract which (in the case of a breach capable of a remedy) it does not remedy within 5 business days of receiving written notice of the breach.

Where SPT exercises its rights under this clause (15), it may request the return of SPT Data (in which case the Operator shall, no later than 7 days after receipt of such a written request from SPT, at SPT's option, return or

permanently erase/destroy all materials held by or under the control of the Operator which contain or reflect SPT Data and shall not return any copies, extracts or other reproductions of SPT Data either in whole or in part), save that the Operator will be permitted to retain 1 copy for the purpose of complying with, and for so long as required by, any law or judicial or administrative process or for its legitimate internal compliance and/or record keeping requirements.

**(16) VARIATION**

SPT reserves the right to vary these Conditions of Contract or any document forming the Contract by giving the Operator prior notice in writing of the variations.

**(17) LAW OF SCOTLAND**

This Contract is subject to the Law of Scotland.

**(18) GENERAL AND MISCELLANEOUS**

- (a)** No smoking or use of electronic or vapour cigarettes is permitted by any driver, attendant or other employee or passenger on or at the entrance to any vehicle at any time when that vehicle is being used in the performance of the Contract. The Operator must ensure that the terms of the Smoking, Health & Social Care (Scotland) Act 2005 are adhered to at all times.
- (b)** The Operator shall maintain sufficient records of vehicles, maintenance and personnel to satisfy SPT that all aspects of the Contract have been complied with at all times.
- (c)** The Operator shall provide to SPT or its representatives such financial, or other information or supporting documents with regard to the Contract as SPT may require, and shall permit access to the Operator's premises and vehicles at all times to permit inspection of such documentation. For the avoidance of doubt, such inspections may include the copying and/or removal of documentation.
- (d)** The Operator together with all employees, agents and sub-contractors shall comply with all instructions from SPT's representatives. This requirement does not obviate the Operator's responsibilities, and those of its staff, regarding safety and legislative requirements.
- (e)** No delay, neglect or forbearance on the part of SPT in enforcing any right available to it, arising from these Conditions of Contract shall be or deemed to be a waiver of or in any way prejudice any right.
- (f)** The Operator is responsible for the safe carriage of all passengers and specifically, must ensure that if any passenger who travels in a wheelchair requests assistance with boarding, such assistance will be provided and the wheelchair passenger will then be appropriately positioned in the space provided for that purpose or, securely restrained by approved wheelchair safety restraints (where permitted in terms of the Contract) prior to the vehicle moving. Assistance will also be provided on request to enable the passenger to alight from the vehicle.

- (g)** The Operator shall, within forty-eight hours of receipt of any oral or written complaint in respect of any aspect of the Contract, forward a copy of such complaint to SPT by email to [Schoolcontracts@SPT.co.uk](mailto:Schoolcontracts@SPT.co.uk) together with any reply from the Operator to the complainant. The Operator will respond to any enquiry from SPT in respect of any complaint orally within twenty-four hours and in writing within forty-eight hours.
- (h)** Notwithstanding the terms of any other provision contained within these Conditions of Contract SPT may, acting reasonably, require the Operator to remove, temporarily or permanently any driver, attendant or other employee from the operation of any or all Contracts which the Operator may have with SPT or any client of SPT.
- (i)** Should any Contract require the Operator to access any bus station owned or managed by SPT then, the Operator shall, prior to commencement of the Contracted Service enter into any necessary Bus Station Licence Agreement and undertake to comply with the terms of the Bus Station Rules as may be amended from time to time.
- (j)** If the Operator uses a vehicle owned by another operator to carry out the Contract, that vehicle will prominently have on display a sign stating that the vehicle is “on hire” to the Operator.
- (k)** All drivers and attendants shall at all times be smartly attired.
- (l)** All signs supplied by SPT or its client to the Operator shall be returned to SPT on conclusion of the Contract or as otherwise required. The cost of any signs not returned shall be recovered from any payments due to be made to the Operator or by other appropriate means.
- (m)** Other than responding to complaints as detailed in sub-clause 16(g) above, the Operator shall not, orally, in writing or by any other means including email and social media, communicate with passengers, prospective passengers or parents of school pupils on any matter concerning this or any previous or prospective Contract unless the proposed communication has been approved by SPT.
- (n)** Operators shall if so required by SPT, operate all services subject to Conditions of Carriage approved by SPT and which will be available to all passengers.
- (o)** Operators shall maintain all necessary equipment and materials and have in place procedures at their premises to ensure that vehicles can safely move within and leave from those premises and access the nearest adopted road in all situations of snow, ice or other inclement weather.
- (p)** Should SPT provide an Operator with greater than seven days’ notice that operation of the Contract shall not be required on a day or days, the Operator shall not receive payment for any day or days on which the Contract is not operated. Should SPT provide an Operator with less than seven days’ notice but more than twelve hours notice that operation of the Contract shall not be required on a day or days, payment will be made at 50% of the normal daily rate of payment for the day or days on which the Contract is not operated.
- (q)** The Operator shall comply at all times with all statutory and regulatory obligations regarding payment of wages together with the recording and

payment of Income Tax, National Insurance Contributions and Value added Tax and shall ensure that all personnel are engaged subject to appropriate checks on their employment history and their entitlement to work in the United Kingdom.

- (r)** The Operator shall if so required by SPT nominate at least one individual with whom SPT may communicate on all aspects of the Contract including giving and receiving instructions on all operational, performance and financial matters arising.
- (s)** The Operator shall inform SPT immediately upon it becoming aware of it being called to a Public Inquiry by the Commissioner; of any prosecution or legislative or regulatory action being raised against it or any office holder or of any such prosecution, legislative or regulatory action being taken or potentially taken against it, any office holder, transport manager, driver or attendant. The Operator shall provide such information as SPT may require.
- (t)** If applicable to this Contract the Operator shall:

  - (i) When required to do so by SPT, make a statement to SPT or to any prospective tenderer(s) for a contract for the work being carried out by the Operator as to whether TUPE is deemed to apply to any of the Operator's employees;
  - (ii) [Should the Operator deem that TUPE applies], be bound to advise SPT, or any prospective tenderers as aforesaid or anyone advised to the contractor by SPT of all necessary details of employees, benefits, wage rates etc, to which TUPE applies; and
  - (iii) Indemnify SPT for any claims for loss or damage arising from claims from employees that a breach of the TUPE regulations occurred.
- (u)** During the term of this Contract, SPT reserves the right to require that all communications between it and the Operator shall be conducted by email, including encrypted email. This may include all communications relating to the award of contracts, variations, warnings, traffic returns and passenger information. The Operator shall ensure that they have appropriate private computing equipment and software, access to which will be restricted and password protected to allow for communication in this way.
- (v)** This Contract does not create any rights in favour of third parties under the Contracts (Third Party Rights) (Scotland) Act 2017 to enforce or otherwise invoke any provision of this Contract.

## **PART TWO**

### **SERVICE PERFORMANCE AND MONITORING**

#### **1. INTRODUCTION**

The Operator's performance of the Contract will be monitored in relation to service quality and quantity.

#### **2 ADDITIONAL INFORMATION**

- (a)** Subject to any agreement between the Operator and SPT stipulating the operation of vehicles fitted with tachographs, the Operator will be responsible for retaining the tachograph records for the duration of the term of the Contract and making them available for inspection by SPT's staff or representatives. Records shall be identified by vehicle, service, duty number and date.
- (b)** The driver will carry details showing the vehicle trip number relative to the timetable which will be made available to SPT's representatives on request.
- (c)** The Operator shall keep updated a list of drivers' names, together with their PCV and Driving Licence numbers and expiry dates.
- (d)** The Operator shall keep updated a list of registration and fleet numbers for those vehicles used in the operation of the Contracted Service(s).
- (e)** In addition the Operator will supply such other information as SPT may from time to time reasonably require.
- (f)** All drivers must be able to identify the Contract which they have or are about to carry out. They must also be able to state which of those Contracts are covered in full or part by the vehicle. All drivers must have available for inspection a document stating the Contracts covered in full or in part.

#### **3. ACCESS TO PREMISES, VEHICLES AND INFORMATION**

- (a)** SPT retains the right to conduct roadside compliance checks on all vehicles. Such checks may be undertaken whilst the vehicle is en-route to commence operation of the Contract, during operation of the Contract or on completion of a journey or journeys. The Operator shall fully cooperate and shall ensure that all drivers fully cooperate with SPT for the purposes of such checks and shall comply with all instructions given by SPT
- (b)** SPT retains the right to audit the information supplied or obtained or required to be maintained by the Operator and the Operator will provide access as required to premises and vehicles to examine any aspect of the operation and finances of the Contract.
- (c)** The Operator shall permit access to premises and vehicles to any of SPT's authorised representatives for the purpose of ingathering such information as SPT may reasonably determine. Such information ingathered shall be the property of SPT.
- (d)** The Operator must provide, when requested, details of the working hours of all drivers who carry out duties on Contracts. The records must include details

of all working known, if the driver is full or part-time, temporary or permanent, if other employers provide employment. The records must be held for a period of at least 6 months after the end date of the Contract.

- (e) The Operator shall carry out regular checks on the licences of their drivers or the drivers sub-contracted to drive their vehicles. The record of such checks would preferably be a photocopy of the licence and such checks shall be carried out no less frequently than every six months. The Operator shall oblige all drivers and attendants to immediately advise them of any occurrence of whatever nature which affects or may affect their entitlement to drive or impact on their ability to carry out their duties and shall be fully responsible for the deployment of all drivers and attendants.

#### **4. TRAFFIC RETURNS**

- (a) Traffic Return documents will be provided by SPT which will be fully and accurately completed by the Operator and returned electronically or as otherwise instructed to SPT by the dates specified. The Operator will certify that all information regarding passengers carried, receipts, and mileage that is operated, lost or deemed to be lost is complete and accurate.
- (b) A financial deduction will be applied in every case when either SPT does not receive a Traffic Return by the date specified in respect of each Contract or if any Traffic Return received is inaccurately completed. Deductions will be applied on the basis that 5% of the normal current monthly Contract payment will be deducted on the first occasion an inaccurate Traffic Return is submitted or when no Traffic Return is received on time. On the second occasion an inaccurate Traffic Return is submitted or where no Traffic Return is received on time, the Operator will be required to attend a Service Review meeting as detailed in Clause 9 below. Contract payments will be suspended pending a satisfactory outcome of the Service Review Meeting.
- (c) The Operator shall maintain and keep for a period of at least 6 months after the end date of the Contract, records of information in order to permit SPT staff to investigate the validity of claims in respect of operation of the Contract.

#### **5. MONITORING**

- (a) SPT may carry out comprehensive monitoring of all aspects of the operation and performance of the Contract. For the avoidance of doubt, such monitoring may include the use of still or video photography. Operators must permit SPT's representatives to be carried free of charge on vehicles or vessels as and when required to allow monitoring duties to be carried out.
- (b) Any breach of Contract will be brought to the attention of the Operator using the formal warning letter procedure or by such other means as may be appropriate in the circumstances. Operators will have the right of appeal against any warning.
- (c) Any warning for which no appeal is submitted or where any appeal has not resulted in the warning being rescinded will result in a formal recording of that warning and/or the appropriate financial deduction being made.

- (d) For the avoidance of doubt, should SPT be of the opinion that any aspect of the Contract is not being complied with, it may carry out repeat monitoring of a Contract or an Operator and issue formal warnings or take such other or further appropriate action as provided for herein.

## **6. WARNINGS**

### **(a) Formal Warnings**

SPT may issue a formal warning to the Operator in respect of any breach of Contract. Warnings are primarily issued to draw the Operator's attention to a breach or breaches of Contract to allow for remedial action to be taken in order to improve performance. A warning or warnings issued for a breach or breaches of Contract may however result in the termination of this or other contracts with SPT as set out in clause 7 below and elsewhere in these Conditions of Contract. Each formal warning will be "weighted" reflecting the seriousness of the breach of Contract and will, subject to the outcome of any Appeal, result:

- (i) in the recording of the appropriate number of points against the particular Contract(s) to which the warning relates; and
- (ii) in a corresponding financial deduction being applied to the payment made to the Operator in terms of Clause 4 of Part One of these Conditions of Contract.

Warnings will be "weighted" as noted below:

- (1) Any breach of Contract regarding the Operator's vehicles, premises, maintenance facilities, inspection, maintenance or relevant record keeping. 5 points (major adverse impact)
- (2) Any breach of Contract which has not resulted in the suspension or termination of this or any other Contract regarding a failure to adhere to all of the requirements to have relevant drivers and attendants confirmed by SPT as being suitable following checks carried out via Disclosure Scotland. For the avoidance of doubt, such warnings will be applied against all Contracts held by the Operator to which these requirements apply: 1 point (limited adverse impact) to 5 points (major adverse impact)
- (3) Any breach of Contract which results in a limited adverse impact to SPT, any contracting principal or service user: 1 point (limited adverse impact)
- (4) Any breach of Contract which results in a significant adverse impact to SPT, any contracting principal or service user: 3 points (significant adverse impact)
- (5) Any breach of Contract which results in a major adverse impact to SPT, any contracting principal or service user: 5 points (major adverse impact)

All warning points will remain in force for a period of 1 year from the date those points were originally allocated.

For the avoidance of doubt, this and any other Contract may be suspended or terminated prior or subsequent to a formal warning being issued.

**(b) Appeals**

Any appeal must be submitted within 14 days of receipt by the Operator of a formal warning or notification by SPT to impose a financial deduction. Any such appeal must fully detail, with supporting evidence, reasons why, in the opinion of the Operator, no formal warning or financial deduction should apply. Such submissions will be considered by SPT. Any warning in respect of which no appeal is submitted or where an appeal does not result in the warning being rescinded will result in a formal recording of that warning and the appropriate financial deduction being made.

**(c) Deductions**

If the Contract is not complied with, there will be a deduction from the normal current monthly payment equivalent to the subsidy for the whole journey concerned.

**(d) Extenuating Circumstances**

At the discretion of SPT, deductions may not be made in respect of operating out-with the Contract Specification, or non-operation, or failure to comply with any aspect of the Contract if it is found that such failure is due to extenuating circumstances beyond the control of the Operator and acceptable to SPT.

**7. TERMINATION**

In addition to any other right available to suspend or terminate any Contract SPT reserves the right to terminate the Contract and recover from the Operator any and all costs and/or losses:

When a Contract has, within any period of 12 weeks received a total of 20 or more points or 6 or more warnings and within any period of 12 months received a total of 30 or more points or 10 or more warnings.

In the event of termination of a Contract or Contracts, SPT may also arrange for another operator to fulfil the Contract or Contracts and any and all increased costs incurred or to be incurred shall be for the account of the Operator and shall be retrieved either by deduction from payments otherwise due or such other appropriate methods as necessary. SPT reserves the right to apply interest to any monies due which are unpaid for any period in excess of 30 days from the date on which payment is required from the Operator. Interest will be applied at the rate of 2% above the then applicable base lending rate of the Bank of Scotland.

**8. SERVICE REVIEW MEETINGS**

The Operator shall meet SPT or its representatives, as and when required to do so to discuss the performance of the Contract. Service Review Meetings shall be minuted by SPT and a copy of the Minute will be made available to the Operator. SPT may require the Operator to provide written undertakings as to improvements in the operation of the Contract. Any failure to adhere to the terms of such undertakings will be regarded by SPT as a breach of the

Conditions of Contract. Such meetings will be held at SPT's premises or such other venue as SPT may determine.

## **9. DISPUTE RESOLUTION**

If at any time any question of dispute or difference whatsoever arises between the parties in relation to this Contract that cannot be resolved satisfactorily by the parties authorised representatives, the issue in dispute shall be discussed at directorate or equivalent level between the parties in an attempt to resolve the matter. In the event that the matter remains unresolved after a period of no less than 14 days, the matter shall be referred for Alternative Dispute Resolution with a mediator being appointed by the President of the Freight Transport Association. SPT and the Operator shall each bear their own costs arising from such mediation.

## **Schedule to the Conditions of Contract for Vocational Transport Contracts**

### **Code of Conduct for Drivers and Attendants of school transport vehicles**

This code of conduct is issued on behalf of councils on behalf of which SPT acts as agent for the purpose of managing school transport contracts.

Operators are responsible for taking all reasonable care of pupils temporarily in their charge. These guidelines concern the safety of passengers in normal operation, in the case of breakdown and other emergency, and for dealing with misbehaviour of pupils. In such circumstances the driver, assisted by the attendant will be the only person(s) in a position to decide the appropriate action to take.

**Operators must ensure that drivers and attendants are suitably briefed on the action to take in the circumstances set out below.**

#### **1. Safety during normal operation.**

##### **Drivers MUST:**

- 1.1 Carry out a pre-service inspection of their vehicle and record same before the vehicle is used to fulfil a contract
- 1.2 Comply with the Highway Code, drive in a courteous manner and adhere to speed limits.
- 1.3 Approach each pick-up and drop-off point slowly and with care keeping the doors closed until the vehicle has come to a complete standstill.
- 1.4 Ensure that doors are properly closed, and that no coats, bags, etc. are caught in the mechanism of the door from inside or outside and that all pupils are seated before moving off. Check the nearside mirror every time before moving.
- 1.5 Pay particular attention to nearside mirrors in case latecomers attempt to board.
- 1.6 Discourage pupils from crossing in front of the vehicle.
- 1.7 Ensure that all pupils are picked up and set down at a suitable and safe place, paying special attention to any hazards, traffic or obstructions.
- 1.8 Ensure that the number of passengers does not exceed the permitted seating capacity of the vehicle.
- 1.9 Ensure that all doors and emergency exits are fully operational and remain free of any obstruction, giving a clear exit in case of emergency.
- 1.10 Endeavour to ensure that pupils remain seated with seatbelts fastened whilst travelling. If pupils do not wear seatbelts, this must be brought to the attention of the head teacher as a matter of urgency.
- 1.11 Ensure that where child proof locks are fitted to a vehicle that the locks are in the "child safe" position throughout the journey.

- 1.12 Immediately advise their supervisor of any difficulties on the route regarding road-works, parking or traffic volumes etc which would cause difficulty in maintaining the timetable.
- 1.13 Fully co-operate at all times with all representatives of SPT, councils, DVSA and the police.
- 1.14 Avoid physical contact with pupils. Maintain a courteous and professional relationship with pupils avoiding inappropriate language and topics of conversation at all times and never engage in personal telephone, text, email or social media contact with pupils.

**Attendants MUST:**

- 1.1 Ensure pupil safety when boarding or alighting and be at or near the entrance/exit at these times.
- 1.2 Assist the driver in ensuring that before moving off, all doors are properly closed and no coats, bags, etc. are caught in the mechanism of the door from inside or outside.
- 1.3 Discourage children from crossing in front of the vehicle.
- 1.4 Assist the driver in ensuring that the number of passengers does not exceed the permitted number.
- 1.5 Ensure that all doors and emergency exits remain free of any obstruction, giving a clear exit in the case of emergency.
- 1.6 Ensure that pupils remain seated with seatbelts fastened whilst travelling.
- 1.7 Monitor both the upper and lower decks throughout the journey.
- 1.8 Not stand beside the driver whilst the vehicle is in motion or obstruct his view through the windscreen.
- 1.9 Not converse with the driver except when it is necessary for the safety of the pupils.
- 1.10 Be aware of the legal responsibilities for the wearing of seatbelts on school transport vehicles which vary depending on the type of vehicle and the age of the pupils. If difficulties are experienced in gaining co-operation from pupils in the wearing of seatbelts then the problem must be reported to the child's head teacher in writing through the management of the company.
- 1.11 Fully co-operate at all times with all representatives of SPT, councils, DVSA and the police.
- 1.12 Avoid physical contact with pupils. Maintain a courteous and professional relationship with pupils avoiding inappropriate language and topics of conversation at all times and never engage in personal telephone, text, email or social media contact with pupils.

**2. Seating arrangements and wearing of seat belts in motor cars**

- 2.1 Drivers must be aware of the legal and contractual responsibilities for the wearing of seatbelts on school transport vehicles. These responsibilities vary depending on the type of vehicle and the age and height of the pupils. If

difficulties are experienced in gaining co-operation from pupils in the wearing of seatbelts then the problem should be reported to the child's head teacher in writing through the management of the company.

- 2.2 In all cases seatbelts appropriate to the child's size must be used including, if necessary, booster cushions.
- 2.3 On primary school contracts children should not occupy the front seat of the vehicle unless the rear seats are occupied. The eldest child should sit in the front seat wherever practicable.

### **3. Safety in case of breakdown or accident**

- 3.1 In case of breakdown or accident resulting in the vehicle being unable to be moved, the driver will normally instruct the pupils on the vehicle to stay on the vehicle. The driver may only leave the vehicle to summon assistance and then, only in the event of the failure of the mobile phone or radio on the vehicle.
- 3.2 Where contracts use motorways, specific instructions may be issued by SPT which **MUST** be followed.

### **4. Adverse weather and other conditions jeopardising a journey**

- 4.1 In such conditions, drivers **MUST** liaise with Head Teachers to ensure the children are safe.
- 4.2 In periods of snow, ice, flooding or other adverse weather, the driver must use discretion to decide whether a road is passable or not. The driver should endeavour to choose a route which gives the greatest number of children a reasonable opportunity of getting to school in safety.
- 4.3 At their discretion drivers may abandon a morning journey. In such an event, the driver will contact the Head Teacher for further instructions and inform SPT.
- 4.4 On homeward journeys pupils shall only be set down at their normal vehicle set down point. If it is likely that the vehicle will be unable to take the pupils to that point, contingency plans must be made with the Head Teacher.
- 4.5 In the event that transport becomes stuck because of blocked roads, children shall be instructed to stay on the vehicle until alternative arrangements can be made.

### **5. Misbehaviour by pupils on transport**

- 5.1 The driver or attendant should warn the pupil about their behaviour and ask them to stop. It may be that this will be sufficient action.
- 5.2 In the case of more serious misbehaviour or repeated misbehaviour, drivers should take all reasonable steps to identify the pupil concerned. The driver may request the assistance of senior pupils on the bus to identify the pupil responsible for the misbehaviour and may ask for and retain the pupil's season ticket or pass as proof of identity. Having identified the pupil, the driver should report the incident to the Head Teacher and to their supervisor.
- 5.3 A supervisor receiving a report of misbehaviour must send the details directly to the Head Teacher concerned, together with any ticket or pass taken from the pupil. SPT must also be advised if it is considered that the misbehaviour causes a risk to the safety of passengers.

- 5.4 A driver or attendant shall not remove a pupil from a vehicle for misbehaviour. In a severe case of misbehaviour which affects the safety of other passengers on the vehicle or the vehicle itself, the driver should seek assistance from other bus company staff, school staff or the police by any reasonable means.
- 5.5 As well as behaviour which is disruptive to other passengers, drivers are asked so far as is possible to note any incidents of bullying amongst pupils and to report problems of this kind to the Head Teacher at the earliest opportunity.
- 5.6 Should a pupil or pupils leave the vehicle in the course of a journey prior to arrival at school or designated destination, the driver must report this to the Head Teacher immediately upon arriving at the school.

## **6. Refusal of Transport**

**Under no circumstances will pupils be refused transport without the express prior permission of the relevant council or SPT.**

## **7. Tickets or Passes**

- 7.1 Where pupils have been issued with a ticket or pass to show their entitlement to travel on the Contract, a pupil claiming to be travelling to or from school shall not be refused travel where they are unable to produce their pass.
- 7.2 Where a pupil who has been issued with a pass regularly refuses to display a pass on boarding this must be reported to the Head Teacher.

## **8. Carriage of unauthorised persons**

For the avoidance of doubt, the only persons who may board the vehicle are those pupils entitled to travel on the Contract. No unauthorised person, including parents of pupils may board the vehicle whilst it is on contract to the council.

## **9. Smoking**

As required by legislation, smoking is not permitted on vehicles at any time including by drivers or attendants. Drivers and attendants must ensure that this is enforced. For the avoidance of doubt, the use of electronic or vapour cigarettes is similarly prohibited.