



**CONDITIONS OF CONTRACT FOR SUBSIDISED  
LOCAL SERVICES, SCHOOL TRANSPORT CONTRACTS  
AND DEMAND RESPONSIVE TRANSPORT SERVICES**

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# INDEX

## PART ONE: - TERMS AND CONDITIONS

	Page
INTRODUCTION	
1. CONTRACT SPECIFICATION	1
2. STATUTORY REQUIREMENT	2
3. VEHICLES AND DRIVERS	3
4. FARES AND INCOME	5
5. CONTRACT PAYMENT	8
6. PUBLICITY	10
7. CARRIAGE OF SCHOOL PUPILS	10
8. CONTRACTS SOLELY FOR SCHOOL TRANSPORT	12
9. CONTRACTS FOR DEMAND RESPONSIVE TRANSPORT	14
10. OPERATORS' LIABILITY AND INSURANCE	15
11. SUB-CONTRACTING	16
12. ASSIGNATION	16
13. CONFIDENTIALITY	17
14. COMMUNICATION	17
15. TERMINATION AND SUSPENSION	17
16. VARIATION	18
17. LAW OF SCOTLAND	18
18. GENERAL AND MISCELLANEOUS	18

## PART TWO: SERVICE PERFORMANCE AND MONITORING

	Page
1. INTRODUCTION	22
2. ADDITIONAL INFORMATION	22
3. ACCESS TO PREMISES, VEHICLES AND INFORMATION	22
4. MONITORING	23
5. EXTENUATING CIRCUMSTANCES	24
6. TRAFFIC RETURNS	24
7. FINANCIAL PENALTIES	25
8. WARNINGS	25
9. TERMINATION	26
10. SERVICE REVIEW MEETINGS	27

## STRATHCLYDE PARTNERSHIP for TRANSPORT

### CONDITIONS OF CONTRACT FOR SUBSIDISED LOCAL SERVICES, SCHOOL TRANSPORT CONTRACTS AND DEMAND RESPONSIVE TRANSPORT SERVICES (the Services)

#### PART ONE

#### INTRODUCTION

In terms of the Transport (Scotland) Act 2005, Strathclyde Partnership for Transport of Consort House, 12 West George Street, Glasgow G2 1HN (hereinafter called "SPT") has the power to enter into agreements with any competent person for the provision of public passenger transport services. In such circumstances, the parties to any contract shall be SPT and the relevant transport operator ("the Operator"). SPT also acts as an agent for a number of both public and private sector clients for the purpose of arranging transport services on their behalf. In these circumstances, the parties to any contract shall be the relevant council or other client of SPT and the transport operator. For such contracts, 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 council or other client of SPT. The Contract Specification and Letter of Award of Contract will identify the parties to the Contract. Unless otherwise specified, these Conditions of Contract shall apply to all contracts for subsidised local services, school transport services and demand responsive transport services.

The Operator must bring these Conditions of Contract to the attention of all relevant employees and will be responsible for all of the actions and omissions of such employees.

#### **1. CONTRACT SPECIFICATION**

**(a)** The Operator shall provide the Services:

(i) In accordance with the timetable, the stopping places and route details as agreed with the Operator.

and/or

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

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

**(b)** Where, due to unforeseen circumstances (e.g. emergency road-works) it is impossible to give prior notice of change, the Operator shall follow the Contract Specification as closely as is practicable and immediately advise SPT's Bus Operations Department in such reasonable detail as SPT may require. The Operator shall then comply with any instructions given by SPT.

- (c) 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 meets or will no longer meet the needs of the area or the needs of SPT or its client. In such circumstances, SPT may terminate the Contract by giving such written notice as may be reasonably practicable in the circumstances, to the Operator. 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 the appropriate statutory 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) when required, the Operator does not have the relevant Local Service registration as required in terms of the Transport Act 1985 or any Regulation made in terms thereof;
  - (iii) the Operator does not have a valid certificate of insurance to cover the Services provided;
  - (iv) 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;
  - (v) any person employed by the Operator as a driver does not have a valid PCV or driving licence as required for the nature of the Contract; or
  - (vi) 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 the Operator from any or all Contracts to allow further investigation or may terminate the Contract or Contracts.
- (d) Where an Operator has been suspended from a Contract or Contracts or any Contract or Contracts have been terminated as a result of action taken under sub-clause 2(c), SPT shall arrange for another Operator to fulfil the Contract or Contracts and any and all increased or additional costs 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 or such other appropriate means as may be necessary.

### 3. VEHICLES AND DRIVERS

- (a) The vehicles used to operate the Services must comply with the terms of the Contract Specification and these Conditions of Contract. The Operator will not, other than as detailed below, provide a Service with any non-compliant vehicles. Should a compliant vehicle not be available to operate the Services through unforeseeable circumstances e.g. theft, the Services may be operated by another vehicle from the Operator's fleet. The Operator shall endeavour to 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. Should SPT's offices be closed, the Operator must advise SPT's Bus Contracts Section within 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 contractually agreed 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 Traffic Commissioner, 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. It is the Operator's responsibility to ensure that all vehicles are the subject of a daily "pre-service inspection" by the driver and that a written "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. All vehicles will be in the charge of a competent driver who will also be licensed and insured as required by statute and who will also, when the Contract so requires, have been confirmed in writing by SPT as being "suitable" following appropriate checks having been carried out via Disclosure Scotland.
- (c) The Operator shall, without prior notification, allow SPT's duly authorised representatives to enter and inspect the Operator's vehicles used for the purposes of the Contract, the Operator's maintenance facilities or arrangements and have access to the 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.

- (d)** 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, premises or any aspect of the contracted Service, 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.
- (e)** SPT may, by issuing a "Prohibition Order", instruct the Operator not to use any vehicle which is found to be defective and which could affect the safety of passengers. In such circumstances the Operator will be required to provide at his own expense an alternative compliant vehicle for the performance of the Contract. SPT will, notwithstanding clause 13, notify the Traffic Commissioner and/or any other appropriate body of any such prohibition order.
- (f)** Prohibited vehicles will, unless otherwise instructed by SPT at the time of issuing the Prohibition Order, be eligible for use on Contracts 24 hours after notice, in the specified format is received by SPT's Engineering Section from the Operator confirming that all defects have been rectified.
- (g)** All vehicles must comply with any weight, height, width, length and seated passenger capacity restrictions applicable to the contracted Service.
- (h)** The overall livery and standard of presentation of vehicles operating on the Services shall be of a design and standard acceptable to SPT. All vehicles operating on a particular Service must, within reason, be in the same livery. SPT reserves the right to require the Operator to remove any advertising or publicity material that SPT in its sole discretion deems to be unsuitable.
- (i)** The "legal lettering" identifying the name and address of the vehicle operator must be clearly displayed on all PSVs.
- (j)** The Operator must ensure that the vehicles used in the performance of any Contract are clean and damage free inside and out. The Operator must sweep his/her 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 service number (allocated by SPT) must be clearly displayed on the front of each vehicle when used in the performance of the Contract 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) For all registered local services, the Operator shall have available for inspection the agreed service timetable and fare-table in all vehicles for the route or routes on which they operate. Any timetable modifications must be agreed in writing by SPT and all details must be published at least twenty one days prior to implementation.
- (o) Subject to meeting the above requirements, Operators may choose their own vehicles for the Contract, provided that they conform to any detailed requirements specified.
- (p) All vehicles with 17 passenger seats or more must be fitted with power operated doors controlled by the driver from his cab. On all demand responsive transport contracts, all vehicles must be fitted with power operated doors controlled by the driver from his cab, regardless of the number of passenger seats.
- (q) 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 may 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 Contracts with SPT or any client of SPT and may result in the termination of the Contract or Contracts.

- (r) Operators of registered local services and demand responsive transport services shall prominently display on all vehicles used in the performance of the contracted Services, a notice supplied by SPT indicating where passengers may make comments or suggestions about any aspect of the contracted Service.

#### **4. FARES AND INCOME**

The following sub-clauses shall apply to **MINIMUM SUBSIDY CONTRACTS ONLY:**

- (a) The Operator shall charge passenger fares at or below the rate detailed in the then applicable Fare-scale for Subsidised Local Services.
- (b) SPT shall notify the Operator of any change to the maximum permitted fare-scale at least one month before it takes affect. On such Contracts, the Operator may make adjustments to the fares charged (except the maximum fare) by prior arrangement with SPT's Bus Services Manager and provided at least 28 days notice is given before any such agreed adjustment to the fares take place. Details of any alterations to fares must be notified to passengers by on-bus notices at least 21 days prior to implementation.

The following sub-clauses shall apply to **GROSS COST CONTRACTS ONLY:**

- (c) SPT will specify the fares to be charged and shall notify the Operator of any change at least one month before it takes effect. The Operator may not make adjustments to the fares charged. Details of any alteration to fares authorised by SPT must be notified to passengers by on-bus notices at least 21 days prior to implementation.
- (d) Approval to participate in any other fare scheme or promotion not promoted by SPT will only be given subject to the Operator undertaking to reimburse SPT to the extent of 75% of the equivalent standard fare for each journey made under such arrangements. On all such Contracts a record must be kept by the Operator of all journeys undertaken through the use of pre-paid tickets not promoted by SPT, indicating the stage of boarding and alighting.
- (e) Gross Cost Contracts must be operated separately from any other subsidised or unsubsidised service. Through fare arrangements will not be permitted with any other bus service in the absence of prior written approval of SPT.

The following sub-clauses shall apply to **ALL CONTRACTS:**

- (f) The Operator shall ensure that the relevant fare table is submitted to SPT no later than 21 days prior to commencement of the Contract and no later than 21 days prior to any changes to the fare table, and is available for inspection on request in all vehicles for the route or routes on which they operate.
- (g) The Operator shall, if instructed to do so by SPT, participate in the Strathclyde Concessionary Travel Scheme administered by SPT in terms of the Transport Act 1985 and shall not, without the prior consent of SPT cease to participate in this scheme or, when applicable, shall not apply to the Secretary of State under Section 98 of the Transport Act 1985 for the cancellation or variation of any participation notice served on the Operator by SPT in terms of Section 97 of the Transport Act 1985. The Operator shall allow SPT's duly authorised representatives to board the Operator's vehicles whenever such vehicles are being operated under the Contract, for the purposes of gathering passenger information in connection with the said travel concession scheme. Any change in the terms of the scheme which results in a change in the Operator's costs or income will be reflected in a change of Contract payments to avoid any consequential financial gain or detriment to the Operator. All eligible passengers possessing travel passes issued in terms of the Scheme shall either travel free of charge or pay the appropriate fare as set out in the service specification for concessionary and non-concessionary passengers.
- (h) Contracted Services shall be included in any pass or special ticket scheme including any "multi-modal" ticket scheme as directed by SPT and shall not participate in any other fare scheme or promotion without the prior written approval of SPT. When submitting tenders, Operator's assumptions on income must take account of such schemes in operation or about which notification has been given.
- (i) All vehicles shall carry ticket machines capable of issuing single and return or such other range of tickets indicating fare paid, journey number, class of

passenger/ticket, and boarding point (by stage). Ticket machines must also record the number of tickets of each type sold and their total value on each trip. SPT may also require such alterations to the ticketing equipment as may be required in order to allow for the inclusion of new facilities and technology. All ticket machines will require to be "smart enabled". The Operator shall also ensure that emergency procedures, to the satisfaction of SPT, are available for use in the event of ticket machine failure. The ticket machine must also be capable of interrogation by appropriate ticketing analysis software and it shall be a requirement that the Operator allows installation of this software by, or on behalf of SPT to enable SPT to have access to relevant information in connection with subsidised services operated on its behalf. Other than this software, the fitting and maintenance of all ticket machine equipment shall be the responsibility of the Operator and be undertaken at the Operator's expense. The Operator may not alter the ticket machine equipment or emergency procedures in the absence of the prior written consent of SPT. Operators must ensure that at all times, drivers are fully trained regarding the use of the ticketing equipment and that full and accurate details including journey numbers are entered for all passengers carried on all journeys. Operators will also be responsible for ensuring the accuracy of the timing module on all ticketing machines.

- (j)** Fares must be collected from passengers or, passes or other pre-paid tickets inspected as they board. Tickets must be issued to the exact value of all fares paid. Tickets must also indicate the information detailed at sub-clause 5(i) above. All passes and tickets in lieu of cash payment or to allow travel at a reduced rate must be checked for validity. All fares collected from passengers will be at the Operator's risk.
- (k)** The Operator shall permit SPT's representatives to act as inspectors on any vehicle used by the Operator for the purpose of the Contract. The said representatives shall be permitted to travel on vehicles operating on the Contract at no charge for the purpose of inspecting ticket fare receipts or other records or equipment kept by the Operator's drivers or other staff and to ensure compliance with the Contract. SPT's representatives will take appropriate action in the event that any passenger does not have the correct ticket or pass for the journey being undertaken.
- (l)** The Operator shall, in a manner approved by SPT, keep records of total daily passenger receipts for each Contract operated. Full and accurate details shall be supplied to SPT as required and in accordance with traffic returns supplied by SPT at the commencement of the Contract.
- (m)** The Operator will display on the vehicles, in a position to be agreed, notices provided by SPT indicating that passengers may take advantage of any special ticket schemes promoted by SPT and applicable to the service on which the vehicle is being used.

## 5. CONTRACT PAYMENT

The following clauses shall apply to **MINIMUM SUBSIDY CONTRACTS ONLY**:

- (a) On or about the last day of each month, SPT shall pay the Operator a sum equivalent to one twelfth of the relevant annual Contract price. Payment shall be made via BACS.
- (b) Any change in the passenger income element of the Contract price as indicated in columns B and/or C of Section 1 of the standard Tender Document shall not exceed that produced by applying a factor in accordance with changes in the relevant part of the maximum fare scale specified by SPT.

**Notes:** The passenger income element of the Contract price will normally only be changed when there is a change in the maximum permitted fare-scale. The change would be the average overall amendment to the fare scale derived as a weighted average for all subsidised local services provided by all Operators and expressed as a percentage reduced by an allowance for elasticity of  $\pm 0.3$ . Where the provision and use of subsidised local services provided by an Operator did not reflect the full extent of that part of the maximum permitted fare scale subject to change, consideration will be given to a different percentage impact on passenger income element. It is important to note that the change relates to the passenger income element when the tender or quotation was submitted and to the maximum permitted fare scale and **NOT** to actual income or actual fares charged where these are different.

The following provisions shall apply to **GROSS COST CONTRACTS ONLY**:

On or about the last day of each month, SPT shall, subject to the terms of sub-clause (d) below, pay the Operator a sum equivalent to one twelfth of the relevant annual Contract price. Payment shall be made via BACS.

- (c) The income shown on traffic returns will be deducted from the appropriate monthly payments, together with 75% of the equivalent standard fare for each journey made under pre-payment arrangements not promoted by SPT. These payments will only be made if traffic returns are accompanied by all supporting documentation. No deduction will be made from the first payment regarding income, but the last Contract payment will be subject to deduction of income for two payment periods.
- (d) For each gross cost Contract, a certificate of completeness and accuracy, issued by a person who is a member of one of the following bodies:
  - I. Institute of Chartered Accountants in Scotland;
  - II. Institute of Chartered Accountants in England and Wales;
  - III. Chartered Association of Certified Accountants;
  - IV. Chartered Institute of Public Finance and Accountants;
  - V. Chartered Institute of Management Accountants.

Stating they are satisfied that revenue collected on behalf of SPT and the associated patronage have been accounted for on the relevant traffic returns and other documentation (copies of which must be provided by the Operator for the auditors' use in certification), shall be forwarded at the Operator's expense to SPT within two months from the end of every twelve months of operation of the Contract and, within two

months from the end of the operation of the Contract when the last period of operation is less than twelve months. For Contracts of less than twelve months duration, a certificate will be issued within two months of the end of the Contract period. Failure to timeously submit such a certificate will result in the suspension of all payments otherwise due to the Operator in terms of this Clause 5.

The following provisions apply to **ALL CONTRACTS**:

- (f)** SPT shall make payment to the Operator subject to the provisions of this Clause 5 and Clauses 2 above, 15 below and Part Two of these Conditions. SPT shall not be responsible for any inaccuracies in costs or income estimates associated with the Contract price.
- (g)** 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 Part Two hereof and any balance payable to or receivable from the Operator shall be calculated in accordance with the terms of Part Two and paid or deducted in the subsequent month.
- (h)** SPT must receive, by no later than the dates stipulated, a fully and accurately completed Traffic Return for each Contract held.
- (i)** 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 tender price shall be reviewed on the last day of each July unless otherwise specified. Thereafter, 85% of the total cost indicated in Column A of section one of the Tender Document, (which should be net of any grants), will be adjusted each ensuing year by applying to the cost for the previous period, that index which is the percentage variation in the Consumer Price Index (CPI) between the midpoints of the Contract Periods. In addition, 15% of the total cost indicated in Column A of the Tender Document will be adjusted each ensuing year by applying to the cost for the previous period that index which is the percentage variation in the year to the preceding April of the price of Ultra Low Sulphur Diesel, net of all taxes, as published in "Transport Statistics Great Britain" (Currently table 3.3).

**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.
- (j)** In negotiations for tender price adjustment for any reason, 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. This is intended to provide a basis from which any claims for adjustment of the Contract price, to reflect the effect of inflation (or deflation), or changes in operational requirements can be measured.
- (k)** SPT shall, during the period of the Contract have the right to negotiate reductions in the amount paid to the Operator in order to take account of reductions in operating costs which may arise for any reason out-with the control of the Operator.

## **6. PUBLICITY**

- (a)** SPT may advertise the Service and provide passenger information e.g. public timetables and changes to the Service in such manner as it may decide. Any Operator's advertising of the Service must be with the prior approval of SPT and such publicity must state that the Service is operated on behalf of SPT.
- (b)** The Operator shall display in a manner prescribed by SPT on each vehicle used in providing the Services, service numbers and, where applicable, e.g. Dial-a-Bus logos, together with logos stating that the Service is being operated on behalf of SPT and where applicable a client or clients of SPT.
- (c)** Where an Operator provides both subsidised and unsubsidised journeys on the same service, and the subsidised journeys constitute less than half the total number of journeys, the Operator will show all journeys on his timetables. Information regarding the subsidised journeys will be incorporated into the Operator's timetables at the next reprint or, within six months, whichever is the sooner, prior to which, SPT will make temporary arrangements to ensure availability of information about subsidised journeys.

## **7. CARRIAGE OF SCHOOL PUPILS**

The following are additional conditions that apply when the Contract specifies the carriage of school pupils on behalf of an Education Authority on behalf of which SPT acts as Agent.

- (a)** The passengers must arrive at school and return there from within the acceptable time limits specified in the Contract Specification or as subsequently agreed by SPT. Boarding and alighting times at other locations must also be within acceptable limits specified in the Contract Specification.
- (b)** 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 permission of the relevant Education Authority. 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 7(c) 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.
- (c)** SPT reserves the right to modify the Contract price in a manner consistent with any modification in the Contract Specification arising from sub-clause 7(b) above.
- (d)** 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.

- (e)** 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.
- (f)** Taxis or Private Hire cars shall be considered only in cases of exclusive school Contracts. Operators will not be permitted to register such Contracts as local Services.
- (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)** Travel passes may be issued to pupils on any Contract if the Operator wishes to do so at no additional cost to SPT. The Operator may be required to issue passes at no additional cost to SPT, for any Contract, if SPT considers that there is a need for passes on that Contract. Passes must be issued at no additional cost, to all specified pupils if the Services will be delivered using vehicles with more than 16 passenger seats. SPT reserves the right to specify that any such passes to be issued will be "smart" enabled.
- (i)** Any passes issued should only be valid until the end of the school year following the date of issue, and should be designed to a satisfactory minimum standard in order to last for the period of validity.
- (j)** In the event of travel passes having to be replaced, the Operator will be required to cooperate with SPT and Education Authority Officials to expedite such replacement. The charge of such replacement must not exceed £3 per pass. Any charge will be payable by the pupil or their parent/guardian/carer.
- (k)** 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 and in any event, by no later than the next working day after the date of the incident.
- (l)** 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.
- (m)** In assessing vehicle capacity to meet minimum seating requirements for local service vehicles on which school pupils are transported under contract, one seat per pupil shall be provided at all times.
- (n)** 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 for Transport shall be provided for each child being transported

under the terms of the Contract. If the Contract requires that any vehicle(s) 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.

- (o) An Operator must not transfer pupils from one vehicle to another without authorisation from SPT or unless instructed to do so, e.g. a link contract, except in an emergency.
- (p) With the exception of conditions relating to punctuality, the conditions shall apply to all journeys transporting pupils specified by SPT whenever the journey operates.
- (q) Operators must ensure that all drivers and attendants comply at all times with the relevant Code of Conduct as issued by SPT from time to time.

## **8. CONTRACTS SOLELY FOR SCHOOL TRANSPORT**

The following are further conditions that apply in addition to Section 7 above where the Contract is solely for the carriage of school pupils.

- (a) Other than parents, guardians or carers transporting only their own children or those children for whom they are legally responsible, the suitability of all drivers and attendants employed on Contracts will require to be checked via Disclosure Scotland. 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. SPT also reserves the right 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 8(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 Contract is for one journey, morning and afternoon each school day during the period of the Contract, unless otherwise detailed in the Contract Specification.

- (c)** The Operator shall comply with instructions from SPT or its nominee 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..
- (d)** Only persons authorised by SPT or its client shall be entitled to board or travel on any vehicle while it is engaged on the Contract.
- (e)** Attendants must be on duty at all times on all Contracts on which double deck buses are used. This includes vehicles commonly referred to as 'twin deck' buses,
- (f)** Vehicles with open platforms or open top decks must not be used on contracts solely for school transport.
- (g)** Where childproof locks are fitted to any non PCV vehicle(s), such locks must be in operation, set to the "child safe" mode at all times.
- (h)** The Operator shall register any part of the Contract as a 'Local Service' only with the prior written agreement of SPT. In such cases sub-clause 8(d) will not apply and the conveyance may stop at locations additional to those specified by SPT under sub-clause 8(c).
- (i)** 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.
- (j)** One seat per pupil shall be provided on all vehicles and pupils shall not be permitted to stand.
- (k)** 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.
- (l)** 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.
- (m)** 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.
- (n)** Drivers must not move the vehicle until they have ensured that all passengers are seated.

- (o) In the absence of prior permission to the contrary having being granted at the discretion of the relevant Education Authority, all drivers and attendants shall be at least eighteen years of age prior to the first working day on any Contract and no driver or attendant will be employed by the Operator on any Contract beyond their seventieth birthday.
- (p) Vehicles using terminal or turning areas adjacent to or within school grounds must be stationary prior to the school finishing time as detailed in the Contract Specification.
- (q) 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.
- (r) Other than on Contracts on which pupils are carried on registered local services which operate irrespective of school transport requirements, all vehicles will display a sign at the front of the vehicle as prescribed by SPT in addition to any sign required by law in respect of the carriage of school children and, where an exemption to the display of any sign required by law applies then, for the purposes of these Conditions of Contract, the Operator shall act as if there was no such exemption and apply the terms of the regulations. Such signs will be supplied by SPT and, they will be displayed in such a way as not to impinge on the swept area of the windscreen.

## **9. CONTRACTS FOR DEMAND RESPONSIVE TRANSPORT SERVICES**

- (a) The Operator shall provide the Services in accordance with the daily worksheet or passenger schedule which, will be communicated to the Operator by email or other appropriate means of communication. The Operator shall comply with the specified pick up and drop-off points, times and route details and shall not make any change of any kind to these without obtaining the prior approval of SPT. The worksheet and/or passenger schedule may be updated by SPT by means of direct communication to the mobile data terminal situated in each vehicle. The Operator shall ensure that all drivers adhere to such updates.
- (b) The Operator shall provide and maintain a secure email address for the purpose of communicating with SPT and specifically for the receipt of daily worksheets and passenger schedules and updates thereto. The Operator shall provide SPT's DRT Unit with no less than forty-eight hours notice of any change to the email address.
- (c) The Operator shall also provide and maintain a facsimile machine at its premises for the purpose of communicating with SPT and specifically for the receipt of daily worksheets and passenger schedules and updates thereto in the event that communication by email is not possible. The Operator shall provide SPT with no less than forty-eight hours notice of any change to the facsimile number.
- (d) The Operator will inform SPT's DRT Unit immediately of any late running or breakdown of any vehicle. In the event of this occurring when the SPT's offices are closed, the Operator must advise SPT's DRT Unit within its next working day.
- (e) All drivers who the Operator intends to deploy on DRT Services must attend and satisfactorily complete training provided by or on behalf of SPT on relevant

aspects of customer care, disability awareness and the operation of DRT services on behalf of SPT. The Operator will ensure that all drivers attend such training when they are required to do so.

- (f) All drivers must 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 of a type approved by SPT. A passport or photographic driving licence is satisfactory.
- (g) 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 contracted services. The Operator must provide SPT's DRT Unit with a minimum of twenty-four hours prior notice of the change to any such mobile telephone numbers.
- (h) All worksheets or passenger schedules must be destroyed by the Operator within one week 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.
- (i) Drivers must not move the vehicle until they have ensured that all passengers are seated.

## **10. OPERATORS' LIABILITY AND INSURANCE**

- (a) The Operator shall be responsible for and shall indemnify, save and hold harmless SPT, its servants, agents or 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 provided further that 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 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(s) 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 produce for examination by SPT the marine inspection report obtained for the purposes of insurance, before the Contract takes effect.

## 11. 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 in advance if at all possible and in all circumstances, by no later than within 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 benefit of 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.

## 12. 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 seek the consent of the Bus Contracts Section of SPT.

## 13. CONFIDENTIALITY

- (a) The Operator undertakes to keep confidential and not to disclose without SPT's prior written consent any trade or business secrets or similar confidential information supplied by SPT to the Operator save where ordered to do so by a Court or Tribunal of competent jurisdiction.
- (b) SPT is required to comply with the terms of the Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004. SPT may also communicate with the Traffic Commissioner, the Vehicle

and Operator 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.

- (c) The Operator shall comply with both the terms and principles of the Data Protection Act 1998. The Operator shall be registered as a Data Controller with the Office of the Information Commissioner should such registration be necessary to comply with the Data Protection Act. SPT reserves the right to audit the Operator's compliance with the terms and principles of the Data Protection Act and the Operator shall provide such information and/or access to its premises and documentation as SPT may require.

#### **14. COMMUNICATION**

- (a) Any notice or other communication which is required to be given to SPT shall be deemed to be properly given if it is addressed to the Senior Legal Advisor, Strathclyde Partnership for Transport, Consort House, 12 West George Street, Glasgow G2 1HN or such other person or address as SPT may from time to time specify.
- (b) Any notice or other communication which is required to be given to the Operator shall be deemed to be properly given if sent to the address set out in the Contract, 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, recorded delivery or fax 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.

#### **15. TERMINATION AND SUSPENSION**

SPT shall, in the circumstances detailed at (a)-(c) 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 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 Terms and Conditions of Contract.

- (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 or illegal practices either in obtaining or the 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.

## **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 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 together with details of all income received in relation to the Contract, 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 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 his 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)** Where an Operator intends to carry out the delivery of parcels and newspapers etc. in a vehicle operating a Contract and such goods are to be carried and occupy seating capacity, the seats must not then be considered as part of the seating capacity provided. Goods carried must be secured in place either within the luggage compartment or, via the use of cargo nets or similar. Tools, components, spare seats, towropes etc. must not be carried loose in the passenger saloon.
- (g)** 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 Specification prior to the vehicle moving. Assistance will also be provided on request to enable the passenger to alight from the vehicle.
- (h)** The Operator shall, within forty-eight hours of receipt of any oral or written complaint in respect of any aspect of the service provided, forward a copy of such complaint to SPT 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.
- (i)** Notwithstanding the terms of any other provision contained within these Conditions of Contract SPT may 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.
- (j)** 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 Contract, 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.
- (k)** 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.
- (l)** SPT reserves the right to have installed at its cost, a Mobile Data Terminal and associated software, on any vehicle used by the Operator in the performance of any Contract. In such circumstances, a vehicle that is not equipped with a Mobile Data Terminal must not be used to operate a Contract to which this condition applies. The Operator shall be responsible for the safety and security of any Mobile Data Terminal and software whilst in the possession of the Operator and shall reimburse SPT all costs associated with the loss of or damage to any terminal or software whilst in the possession of the Operator.

- (m)** All drivers and attendants shall at all times be smartly attired.
- (n)** All Operators of registered local services must be members of Traveline Scotland and remain as members for the duration of the Contract
- (o)** With the exception of those Operators contracting solely for school transport services, all Operators must be eligible to participate in the National Concessionary Travel Scheme. SPT reserves the right to terminate all contracts with any Operator whose membership of the said scheme ceases for any reason. In the event of such termination, any and all additional and increased costs incurred by SPT shall be for the account of the Operator and shall be recovered either by deduction from payments otherwise due or such other appropriate methods as necessary.
- (p)** SPT reserves the right to supply and have fitted to all vehicles used in carrying out Contracted Services, an Automated Vehicle Location System "AVL" which shall be operational and carried on all vehicles when used in the performance of the Contract.
- (q)** 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.
- (r)** Other than responding to complaints as detailed in sub-clause 18(h) above, the Operator shall not, either orally or in writing, communicate to passengers, prospective passengers or parents of school pupils on any matter concerning the Contract unless the proposed communication has been approved by SPT.
- (s)** Operators of registered local services shall, if so required by SPT, submit all registration documentation electronically in a manner stipulated by SPT.
- (t)** All Contracts shall, unless otherwise excluded, participate in any Statutory Quality Partnership for the area within which the Contract operates.
- (u)** 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.
- (v)** 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.
- (w)** 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.
- (x)** 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.

## **PART TWO**

### **Conditions of Contract**

#### **SERVICE PERFORMANCE AND MONITORING**

##### **1. INTRODUCTION**

The Operator's performance of the Contract will be monitored in relation to service quality and quantity together with the collection of all income due.

##### **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 Contract.
- (e)** In addition the Operator will supply such other information as SPT may from time to time reasonably require.
- (f)** Other than on Contracts on which pupils are carried on registered local services which operate irrespective of school transport requirements, all drivers of vehicles must be able to identify the Contract(s) which they have or are about to carry out. They must also be able to state which of those Contract(s) are covered in full or part by the vehicle. All drivers must have available for inspection documentation detailing the Contract(s) covered in full or in part.

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

- (a)** SPT will retain the right to audit the information supplied and the Operator will provide access as required to premises and vehicles to examine any aspect of the operation and finances of the Contract.
- (b)** The Operator shall permit access to premises and vehicles to any of SPT's authorised representatives for the purpose of surveys of income, tickets, passengers and such other information as SPT may reasonably determine. Such information ingathered shall be the property of SPT.

- (c) 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.
- (d) 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.

#### **4. MONITORING**

- (a) SPT's representatives will 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.

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.

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 penalty and/or the appropriate financial deduction being made.

- (b) **In respect of subsidised local service journeys**

If at any point on any specified journey, a vehicle operates out-with the route specified in the Contract Specification or does not operate in compliance with the registered timetable without there being extenuating circumstances acceptable to SPT or, if a specified journey/journeys does not take place, or if the Contract is otherwise not adhered to, there will be a deduction from the normal current monthly payment equivalent to the subsidy cost of the whole journey or journeys.

- (c) **In respect of school journeys**

If at any point on any specified journey a vehicle operates out-with the permitted times for boarding and/or alighting, and/or the route as specified in the Contract Specification, or if a specified journey/journeys does not take place or if the Contract is otherwise not adhered to, there will be a deduction from the normal current monthly payment equivalent to the subsidy for the whole journey concerned.

**(d) In respect of demand responsive transport journeys**

- (i) If a passenger journey scheduled on the worksheet or passenger schedule is not provided or, if a passenger is collected from a pick up point or arrives at a destination more than five minutes early or more than ten minutes late, such incidents will be deemed as a failure to provide a journey or journeys scheduled on the worksheet or passenger schedule. In such circumstances, there will be a financial deduction from the normal current monthly payment equivalent to a percentage of the passenger journeys not carried by the vehicle as a proportion to the Contract operating cost per vehicle per day.
- (ii) In respect of any failure to: equip vehicles with a mobile telephone in working order; and/or failure to advise SPT of any change to mobile telephone numbers; or failure to provide an operational facsimile machine or email address at the Operator's premises; and/or failure to advise SPT of any change to a facsimile number or email address; or failure to use a Mobile Data Terminal; and/or failure to operate a Mobile Data Terminal in accordance with agreed procedures, a fifty pounds deduction per failure per day shall be applied in addition to a formal warning highlighting a major adverse impact.

**5. EXTENUATING CIRCUMSTANCES**

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

**6. TRAFFIC RETURNS**

- (a) Traffic Returns will be provided by SPT which will be fully and accurately completed by the Operator and returned 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 penalty 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. Penalties will be applied on the basis that 5% of the normal current monthly Contract payment will be deducted on the first occasion during the period of the Contract to which the traffic return applies, for an inaccurately submitted Traffic Return or when no Traffic Return is received on time. On the second occasion an inaccurately completed 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 10 below. Contract payments will be suspended pending a satisfactory outcome of the Service Review Meeting.
- (c) All Operators 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.

## **7. FINANCIAL PENALTIES (GROSS COST CONTRACTS)**

For Gross Cost Contracts SPT shall have the right:

- (i) Where mileage has not been operated without good reason, to deduct from the payments otherwise due to the Operator an amount equal to the average cost per mile operated for each mile not operated for the appropriate day of the week, plus a deduction equal to the average income normally received. The average cost per mile operated shall be calculated by dividing the monthly cost by the monthly Contract mileage.
- (ii) Subject to a representative one per cent or more of all vehicle mileage being checked, SPT shall have the right to make deductions from the payments due to the Operator in respect of any fare payment irregularities which could reasonably have been avoided by the Operator's employees.

The percentage of vehicle mileage checked will be used to estimate as 100 times the total number of miles checked by SPT's representatives on their duty statements during the specified 4 week period, divided by the total scheduled mileage during the same period.

The deduction made by SPT will be calculated 100 times the total amount by which all the passengers checked in the period have not paid or underpaid, divided by the percentage of vehicle mileage checked, as estimated in (ii) above. Where a fare payment irregularity is found, the amount underpaid will be defined as the value of the fare that should have been paid less the value of (if any) that had actually been paid.

SPT shall notify the Operator in writing of the deduction it decides appropriate and the reasons therefore, and within 14 days of such notification, the Operator's representatives regarding the deduction will be considered by SPT which may, if it is thought fit as a result of such representatives, increase or decrease the amount of the deduction. SPT's decision, whether altered or not, will be final.

## **8. WARNINGS**

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

SPT may issue a formal warning to the Operator in respect of any breach 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:

- (a) in the recording of the appropriate number of points against the particular Contract(s) to which the warning relates; and
- (b) in a corresponding financial deduction being applied to the payment made to the Operator in terms of Clause 6 of Part One of these Conditions of Contract.

Warnings will be "weighted" as noted below:

- (1) Any breach of Contract which has not resulted in the suspension or termination of this or any other Contract, regarding the Operator's premises, vehicles, inspection, maintenance or relevant record keeping. For the avoidance of doubt, such warnings will be applied against all Contracts held by the Operator: 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 relating to the requirements to have drivers and attendants confirmed 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: 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)

Should more than 3 warnings of an analogous nature be issued, warnings 4 to 6 will then be allocated the next level of points i.e. significant or major as appropriate, as the breach will be regarded as having greater adverse effect on users of the Contract. All subsequent warnings will be allocated 5 points.

**(b) Appeals**

Any appeal must be submitted within 14 days after 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 be made. Such submissions will be fully considered by SPT. Any warning in respect of which no appeal is submitted or where any appeal does not result in the warning being rescinded will result in a formal recording of that warning and the appropriate financial penalty and/or the appropriate financial deduction being made.

**9. TERMINATION**

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

When an Operator has, within any period of 12 weeks received a total of 20 points and within any period of 12 months received a total of 30 points.

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 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.

#### **10. 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 the Contract. Such meetings will be held at SPT's premises at Consort House, 12 West George Street, Glasgow or such other venue as may be appropriate in the circumstances.