

CONWY COUNTY BOROUGH COUNCIL
PASSENGER TRANSPORT SERVICES (PSV)
GENERAL CONDITIONS OF CONTRACT
September 2019

1.00 Definitions and Interpretations

1.01 In the Contract (as defined below) the following words and expressions will have the following meanings:

- (a) "Chief Officer" means the Head of Environment, Roads & Facilities for the time being of the Council and his authorised representative or such other person as the Council may identify in writing to the Contractor.
- (b) "Contractor" means the person or persons whether incorporated or not whose tender or offer has been accepted by the Council and includes the Contractor's permitted assignee, employees, Sub-Contractors and authorised representative.
- (c) "Contract" means the agreement entered into between the Contractor and the Council and includes these General Conditions, Schedules 1 to 10 inclusive, any Special Terms and Conditions, and the Contractor's Tender, Form of Tender, Anti-collusion Certificate, Canvassing and Whistle blowing Certificate and Financial Standing Orders of the Council or other offer and the Council's acceptance thereof.
- (d) "Contract Vehicle" means any vehicle employed by the Contractor in the execution of the Contract.
- (e) "Council" means the Conwy County Borough Council, Bodlondeb, Conwy, LL32 8DU.
- (f) "Driver" means the Contractor, his employees or owner drivers.
- (g) "Passenger Assistant" means the person assigned to the Contract by the Chief Officer who shall be conveyed in the Contract Vehicle for the care of the needs of the Service Users.
- (h) "Passenger Supervisor" shall mean an employee of the Contractor who shall be conveyed in the Contract Vehicle at all times while Service Users are carried boarding or alighting to ensure the care performance and conduct of Service Users.
- (i) "Hackney Carriage" means a vehicle which is licensed under Section 37 of the Town Police Clauses Act 1847 (as amended).
- (j) "Harm" means ill-treatment (including sexual abuse and forms of ill-treatment that are not physical) impairment of or an avoidable deterioration in physical or mental health and/or impairment of physical, emotional social or behavioural development.
- (k) "Last Known Place of Business" means the Contractor's last known address as notified to the Chief Officer by the Contractor.

- (l) "Licensing Authority" means the Authority, body or organisation for the time being responsible for the grant of Hackney Carriage or Private Hire, Drivers, Vehicles or Operators licences.
- (m) "Local Service" shall have the same meaning as in section 2 of the Transport Act 1985.
- (n) "Multi Journey Tickets" means all prepaid tickets permitting a passenger to use commercial and contracted services and includes freedom, rover and season tickets.
- (o) "Normal Place of Business" means the address notified to the Chief Officer by the Contractor which may be an address other than the Contractor's main or registered office address.
- (p) "Service User" means any person conveyed in the Contract Vehicle the subject of this Contract whether fare paying or entitled to School Transport or eligible for funded Social Services Transport.
- (q) "PSV" (Public Service Vehicle) shall have the meaning imparted by section 1 of the Public Passenger Vehicle Act 1981.
- (r) "Registered Keeper" means the person shown on the vehicle registration document issued by the Driver and Vehicle Licensing Agency.
- (s) "Related Contract" means any other Contract which forms part of a combination of Contracts for which the Council pays a single price to the Contractor or as may otherwise be agreed by the Contractor and the Chief Officer in writing.
- (t) "Safety" shall include the prevention of Harm.
- (u) "School Transport" means any route, service or facility that is identified by the Council as being provided for the use of pupils or students entitled to free transport between their home and their place of education or by such other persons as are authorised by the Chief Officer.
- (v) "Social Services Transport" means any route, service or facility that is identified by the Council as being provided for the use by Service Users entitled to funded transport between their stated pickup address and their stated destination or by such other persons as are authorised by the Chief Officer.
- (w) "Service Specification" means the details of routes, timetables, fares and other operating details set out in all of the Schedules to this Contract and in particular Schedule 1 thereof and in the Council's Invitation to Tender and incorporated in this Contract.

1.02 Words importing the singular shall also include the plural and vice versa where the context so requires and words importing the masculine gender shall likewise include the feminine gender.

- 1.03 The marginal headings or notes in these General Conditions are for ease of reference only and shall not affect the construction of the Contract.
- 1.04 Reference to any Act of Parliament or to any Order, Regulation, Statutory Instrument or the like shall include a reference to any amendment or re-enactment of the same.

2.00 Form of Contract

- 2.01 The Contractor shall be deemed to have satisfied himself before submitting his tender as to the accuracy and sufficiency of the rates and prices stated by the Contractor in his tender which shall, except insofar as is otherwise provided in the Contract, cover all the Contractor's obligations under the Contract and the Contractor shall be deemed to have obtained for himself all necessary information as to risks, contingencies and any other circumstances which might reasonably influence or affect the Contractor's tender.
- 2.02 Documents Mutually Explanatory
- 2.02.1 Except as otherwise stated, all of the documents comprising the Contract are to be taken as mutually explanatory of one another. Any ambiguities or discrepancies shall be resolved by the Chief Officer who shall then issue to the Contractor appropriate instructions in writing. The Contractor shall carry out and be bound by such instructions.
- 2.02.2 If the Contractor finds any discrepancy, error or omission or mis-statement in the documents he shall immediately notify the same to the Chief Officer in writing.
- 2.02.3 Any such discrepancy, error, omission or mis-statement shall not vitiate the Contract nor shall the Contractor be released from the performance of the whole or any part of the Contract.
- 2.02.4 In the event of any inconsistency between these Conditions and any provision in any of the other documents comprising this Contract these Conditions shall prevail.
- 2.03 Following the written acceptance by the Council of the Contractor's tender a binding agreement shall be formed and no deletion from, addition to or variation of these Conditions shall be valid or have any effect unless agreed in writing and signed by both parties.
- 2.04 The Contract Period
- Unless sooner determined or suspended in accordance with these Conditions this Contract shall be for the period set out in Schedule 1 of the Service Specification.

3.00 Obligations of Contractor

- 3.01 In the performance of this contract the Contractor shall ensure that all

- (a) their staff are fully instructed on the Conditions of this Contract.
- (b) complaints about the provision of transport are dealt with by the Contractor in the first instance, unless there is good reason why this is not appropriate. The Contractor shall inform the Chief Officer of all complaints about the service that have arisen during the operation. The Contractor shall inform the service user that they are also able to make a complaint directly to the Chief Officer.

3.02 Duty to Convey Service Users

- 3.02.1 The Contractor shall convey Service Users and any associated equipment in accordance with the Service Specification and to the entire satisfaction of the Chief Officer.
- 3.02.2 Unless otherwise agreed by the Chief Officer when engaged upon a School Transport or Social Services route not being a registered local service the Contractor shall only convey as Service Users those named individuals who are identified to him as authorised by the Chief Officer to travel as Service Users and no other persons shall in any circumstances be conveyed as a Service User.
- 3.02.3 In conveying Service Users the Contractor shall take all reasonable steps to ensure the safety of those Service Users whilst they are on board the vehicle and when they are boarding or alighting from the vehicle. Under no circumstances shall Service Users be required to change vehicles at any point along the line or route without the prior written permission of the Chief Officer. The Contractor shall only use appropriate stands or departure points as specified in the Service Specification and shall be responsible for any necessary arrangements and the payment of any fees for their use of bus stations and terminals as required in the Service Specification.
- 3.02.4 Without prejudice to the Council's other rights and remedies under this Contract if the Contractor shall fail to convey any Service Users in accordance with this Contract or any amendment thereof the Chief Officer shall make a deduction calculated in accordance with the provisions of schedule 7 for the period of non performance and may, in his absolute discretion, arrange for the conveyance of the Service Users the subject of this Contract or any of them by any other person and the Contractor shall pay to the Council the full charges, costs and expenses thereby incurred

3.03 Assignment and Sub-Letting

- 3.03.1 Except as is expressly provided below the Contractor shall not assign, sub let or transfer either directly or indirectly this Contract or any part thereof to any person or persons.
- 3.03.2 In any case of unforeseeable contingency the Contractor may sub-let the Contract or any part thereof for a period of up to two consecutive days in any one calendar month unless agreed otherwise by the Chief Officer provided that the Contractor shall have observed all of the requirements

set out in 3.03.4 below and provided always that the Contractor shall not thereby be relieved of any of his obligations under this Contract.

3.03.3 Provided that the Contractor shall first obtain the written consent of the Chief Officer to any proposed sub-letting he may upon receipt of such written consent sub-let the Contract or any part thereof to such person as the Chief Officer may approve of and in respect of whom the Contractor has certified that all of the requirements of 3.03.4 below have been complied with.

3.03.4 Any proposed, or in the case of 3.03.2 actual sub-lessee, shall:-

- (a) be a named individual or individuals;
- (b) be a licensed operator of a PSV or private hire vehicle or a licensed proprietor of a Hackney Carriage who deploys a vehicle and driver duly licensed by the appropriate Licensing Authority to deliver the service and have the benefit of all appropriate vehicle, public liability and other statutory insurances required by this Contract;
- (c) be bound by all of these General Conditions of Contract and in particular Condition 3.05 of this Contract as an agent of the Contractor.

3.03.5 Notwithstanding any permitted sub-letting the Contractor shall not be relieved of any of his obligations under this Contract.

3.04 Fitness of Vehicles

3.04.1 In performing this Contract the Contractor shall only use such vehicles as:-

- (a) comply with all statutory requirements, regulations, bye-laws, conditions and Traffic Commissioners requirements for the time being in force in relation to vehicles of that class;
- (b) comply with all of the requirements of and are properly validly licensed by the appropriate Licensing Authority for vehicles of that class;
- (c) are fully maintained and kept in a safe, roadworthy, clean and internally dry condition with all fittings and equipment used thereon or in connection therewith in full working order maintained in a clean, safe and efficient condition;
- (d) comply in all respects with the vehicle specification (schedules 2, 5 & 8) and any requirements of the Service Specification with particular regard to the provision of facilities for elderly and disabled persons;
- (e) are suitable in all respects for the performance of the Contract in regard to size, carrying capacity or any other particular with special

regard to their suitability for operation upon the specified route or routes under this Contract taking into account any obstructions, such as low bridges, corners, road widths and restrictions, overhanging and overhead wires;

- (f) are fitted with an efficient fire extinguisher of adequate size readily visible to Service Users and available for immediate use in an emergency, and, where applicable a first aid kit suitable for use in a Passenger carrying vehicle containing appropriate first aid dressings and appliances and carried in a position readily visible to Service Users and available for immediate use in an emergency.
- (g) Comply with the requirements of the provision and use of work equipment regulations.

3.04.2 Unless expressly authorised in writing by the Chief Officer the Contractor shall not in the performance of this Contract use:-

- (a) any open top vehicle other than where indicated in the service specification;
- (b) any vehicle with more than one Passenger entry/exit (other than emergency exits) unless the second or subsequent entry/exit has been de-commissioned and re-certified by the relevant governmental department;
- (c) Any vehicle with a rear passenger door for the boarding and alighting of Service Users.

3.04.3 Under no circumstances whatsoever shall the Contractor exceed the permitted carrying capacity of the vehicle.

3.04.4 Unless indicated in the service specification that none are required, in the case of school transport services or local service contracts specifically operating on school days only seat belts or appropriate restraints shall be provided for all passenger seats on vehicles other than double decks.

3.04.5 For each vehicle where seat belts are fitted the Contractor shall comply with the Department for Transport's requirements for MOT testing standards of seat belts for the time being in force and that written confirmation to this effect is sent to the Council prior to the vehicle being used.

3.04.6 Where a low floor bus is specified as required to fulfil all or part of the trips in Schedule 1, the vehicle must comply fully with the Disability Discrimination Act 1995 and subsequent regulations.

3.04.7 The Chief Officer reserves the right to approve in advance all internal and external advertising on all vehicles serving schools and colleges.

3.05 Provision of Drivers Passenger Assistants and Passenger Supervisors

3.05.1 At all times in the performance of this Contract the Contractor shall only provide whether as employees or under the terms of Condition 3.03, such Drivers Passenger Assistants or Passenger Supervisors who are not directly employed by the Chief Officer as are:-

- (a) of good repute;
- (b) not known to have convictions or cautions for any offences that might endanger the Safety or moral well being of Service Users including vulnerable adults and undertaken a Disclosure and Barring Service (DBS) enhanced check as required as appropriate by the licensing Authority or Chief Officer at the Contractors sole expense.
- (c) for Drivers properly and duly licensed by the appropriate Licensing Authority to drive the Contract Vehicle;
- (d) for Drivers suitably and properly trained and skilled in the driving and operation of the vehicle so as to ensure Service User Safety
- (e) able to complete within six months of the commencement of the Contract at the Contractor's expense a formal course recognised or provided by the Council appropriate to the Contract being undertaken;
- (f) properly and suitably informed and instructed as to the route to be followed and all of the Conditions of this Contract.

3.05.2 Each driver shall at all times during the performance of the Contract have use of a mobile telephone or other means of communication. Such means of communications shall not be used while the vehicle is in motion (including hands free telephony).

3.05.3 The Contractor's Drivers Passenger Assistants and Passenger Supervisors shall at all times:-

- (a) for Drivers drive the vehicle in a safe and considerate manner;
- (b) take all reasonable steps to ensure the Safety of Service Users be courteous, polite be clean and respectable in dress and person wearing for local services a recognised uniform issued by the Contractor and behave in a civil and orderly manner;
- (c) Adopt a policy of customer care in the operation of the contract paying due regards to issues of equality.
- (d) in accordance with The Health Act 2006 not smoke nor permit other occupants of the Contract Vehicle to smoke at any time;
- (e) not drink or eat in the Contract Vehicle during the operation of the journeys the subject of the Contract;

- (f) not cause or permit the noise emitted by any radio or sound producing instrument or equipment in the Contract Vehicle which he is driving to be the source of nuisance or annoyance to any person whether inside or outside the Contract Vehicle.
- (g) produce all documentation when requested by the Chief Officer.
- (h) For the Driver have sufficient fuel to complete the journey.

3.05.4 Immediately after the conclusion of each duty or as soon as practicable thereafter each Driver shall carefully search the Contract Vehicle for any property which may have been accidentally left there and shall account for same either to the owner, if the owner is ascertainable, or to the Chief Officer.

3.06 Operation of Vehicles

3.06.1 The Contractor shall ensure that all statutory requirements, regulations, bye-laws, conditions and Traffic Commissioners' and any other Licensing Authorities' requirements for the time being in force relating to the licensing of the operator and the registration of Local Services involved in the execution of this Contract are observed at all times.

3.06.2 The Contractor shall pay all fees in connection with Local Service registrations, variations and cancellations unless otherwise expressly agreed by the Chief Officer in writing.

3.06.3 The Contractor shall ensure that no Public Service Vehicles used in the performance of this Contract are parked overnight on any public highway.

3.06.4 The Contractor shall not allow parcels and unauthorised animals to be carried on services which are the subject of this Contract unless the Chief Officer has given prior written consent to the provision of such a facility to the public. In the event that such consent is granted the carriage of parcels shall not interfere with the cleanliness and comfort of passenger.

3.07 Provision of Information

3.07.1 The contractor, its employees and agents at all times shall keep secure confidential and secret and not disclose to any person, all information and other matters acquired by the Contractor in connection with this and any subsequent contracts including confidential information in connection with service users, carers and Passenger Assistants without the prior written consent of both parties except to such persons and to such extent as may be necessary for the performance of the Contract or except where disclosure is otherwise expressly permitted by the provisions of any statute or regulation.

3.07.2 Data referred to in 3.07.01 shall be kept on the contractors premises securely in lockable, non-portable storage, with access strictly controlled and

limited to those who are entitled to see it. When such information is required by drivers away from the office, they shall at all times keep data in a locked compartment within the vehicle or if unavailable in a portable locked strong box that is kept out of sight and is not left unattended in the vehicle at any time. In transferring the information between driver and contractor the driver shall return data directly to the contractor for safe keeping. At the expiry of the contract and for all out-of-date data the contractor shall shred the data using a cross-cutting shredder. The contractor shall regularly review their manual and computer files and discard/dispose/delete any unnecessary or out-of-date records including electronic records. Storage of information on computers shall be kept secure by password protection at the document level and the contractor shall limit access to those who are entitled to see it. When computers are sold, replaced or become obsolete then all data shall be erased.

3.07.3 Without prejudice to any more particular requirement in the Contract the Contractor shall notify the Chief Officer:-

- (a) immediately of any road traffic or other accident involving a Contract Vehicle operating Services under the Contract or any Service User or Passenger Assistant travelling in or boarding or alighting from any such vehicle. The Contractor shall further send to the Chief Officer within 24 hours of the event a full written report of any such incident with details of any action he has taken or proposes to take to prevent its recurrence. The Contractor shall comply with Schedule 4
- (b) immediately of any material conviction imposed upon him (or if the Contractor is a company or partnership on any of the Directors or partners) or any Driver Passenger Assistant or Passenger Supervisor employed or likely to be employed by him on services the subject of this Contract during the period of the Contract or any current or impending prohibition, restriction, condition or proceedings by any Vehicle Operator or Driver Licensing Authority or agency in connection with any vehicle, operating base, facility, manager or Driver used or associated in operating services under the Contract or any impending revocation, suspension or restriction of any such licence or licences and the outcome of any related proceedings shall be notified in writing.

3.07.4 The Contractor shall forthwith on demand notify the Chief Officer in such manner as the Chief Officer may reasonably require including the provision of copy documentation at the Contractor's entire expense:-

- (a) evidence of such motor public and employer liability policies required by this Contract;
- (b) evidence of all relevant licences, certificates, permissions, approvals required or necessary for the proper operation of this Contract in accordance with all of the Contract Conditions;

- (c) Details of all vehicles Drivers Passenger Assistant and Passenger Supervisors likely to be used to perform the Contract;
- (d) In respect of local service contracts:
 - (i) a copy of his conditions of carriage for approval by the Chief Officer. The Contractor shall make and obtain all necessary consents for any alterations to these Conditions as may be reasonably required by the Chief Officer. Notwithstanding any such approval, with or without amendments, the Council does not accept thereby any liability for any costs, injury, damage or expense howsoever incurred
 - ii. Total 'on bus' revenue, total adult single journeys made, total adult single journey fares, total number of concessionary passes carried, total tickets sold, total passengers carried and the total revenue for the Services provided as per the Contract for each calendar month operated in arrears and any other data the Council may periodically require
 - iii. Any Services not operated and the reasons for failure
- (e) The Council reserves the right at any time to instruct a full audit on the Contractors methods of providing this data.
- (f) Without prejudice to any provision in the Contract requiring the keeping of records the supply of statistics or the provision of information the Contractor shall keep such other records and details of or concerning the Services or their performance as the Council may require and shall produce or provide copies of such accounts invoices orders contracts receipts statistics and other information or documents touching or concerning or arising from the Services their performance or the Contract as when and in such form as the Council may require.
- (g) At the request of the Chief Officer average daily live mileage applicable to each contract.

3.07.05 In relation to School and Social Services Transport services and any Local Service carrying learners entitled to free school or college transport between the ages of 3 and 19 and at the Council's discretion up to 21 under this Contract the Contractor shall:

- (a) give in relation to himself and shall obtain from any of his partners or employees including Passenger Assistants or Passenger Supervisors who have or may have unsupervised access to Service Users during the performance of the services under the Contract written clearance for the Chief Officer to initiate at the Contractor's expense checks at the enhanced level for any possible criminal record including any spent convictions within the term of the Rehabilitation of Offenders Act 1974;

- (b) ensure that only Drivers Passenger Assistants and Passenger Supervisors subject to the checks in 3.07.04 above are used in the performance of the services in this contract and that any identification issued by the Council in this respect is worn by the Driver Passenger Assistant and Passenger Supervisor at all times during the performance of the contract;
- (c) give in relation to himself and shall obtain from any of his partners employees or Drivers written clearance for the Chief Officer to initiate at the Contractor's expense any checks as the Chief Officer may deem necessary with the Driver and Vehicle Licensing Agency to determine the Driver's fitness to drive.

3.07.6 In determining whether a PSV Driver, Passenger Assistant or Passenger Supervisor may be considered a “fit and proper” person to undertake School and Social Services Transport contract work, the following shall apply:-

- (a) Disclosure and Barring Service (DBS) enhanced checks shall be undertaken on all PSV Drivers, Passenger Assistants and Passenger Supervisors who undertake/intend to undertake contract work. Checks to be undertaken every three years.
- (b) Upon receipt of the “check”, all convictions and cautions and other relevant information will be considered particularly those relating to sexual, violent and drug-related offences whether spent or not.
- (c) Section 4 of the Rehabilitation of Offenders Act provides that, as a general rule, “spent convictions” must not be mentioned as, for the purposes of the Act, the person is deemed to be rehabilitated and therefore to be treated as a person of previous good character.

The Council takes the view however that, as the Driver Passenger Assistant and Passenger Supervisor will be conveying pupils and/or vulnerable adults to and from home, often on a one to one basis at the commencement and end of a journey, it is reasonable and relevant for the reason stated, for all convictions to be considered.

- (d) The protection of Service Users is paramount and therefore Officers will consider all spent convictions.
- (e) Each Driver Passenger Assistant and Passenger Supervisor will therefore be considered on his merits.
- (f) The Driver Passenger Assistant and Passenger Supervisor may be asked to attend a formal interview.
- (g) In the event of a Driver, Passenger Assistant or Passenger Supervisor being barred, they may appeal to the Chief Officer. If it is the Chief Officer’s decision to uphold the refusal, there will be no further appeal.

- (h) The Chief Officer may issue a badge or other identification at the contractor's expense to such drivers who the Chief Officer deems as fit and proper. Such identification may include the driver's name and a photograph. Drivers will be expected to display this badge and present it when requested.

3.8 Other

The Contractor hereby declares that any confidentiality clauses relating to its staff shall not apply in relation to a formal reference by that member of staff to the Council's Whistle blowing procedure.

4.00 **Provision of Inspection Facilities**

4.00 The Contractor shall allow the Chief Officer at all reasonable times whether with or without prior notice forthwith upon production of any identification issued by the Council access to:-

- (a) such vehicles as are or may be used in the provision of the services the subject of this Contract for the purpose of inspection and confirmation that they comply in all respects with the Conditions of this Contract;
- (b) any and all accounts, records, and other documentation relating to the services performed under this Contract for the purpose of inspection and confirmation that the service is being operated in all respects in accordance with the Contract.

4.01 For the avoidance of any doubt the provision of such access and inspection as is referred to above shall be at the Contractor's entire expense and the Council shall not be liable for any loss, disruption or other damage occasioned thereby.

4.02 In the event that such access and inspection may give the Chief Officer reasonable cause to believe that the provisions of this Contract have not been or are not being complied with he may in his absolute discretion either:-

- (a) exercise any of the Council's rights under Condition 12,

OR

- (b) without prejudice to the Council's aforesaid rights allow the Contractor such period of time as shall appear to the Chief Officer to be reasonable to remedy any such breach or suspected breach as may be identified and demonstrate to the Chief Officer that the same has in fact been remedied.

5.00 **Liability of Contractor and Insurance**

5.01 The Contractor shall at all times keep fully indemnified the Council, its servants and agents and third parties and all other persons from and against all proceedings, losses, costs, charges, expenses, claims, demands and any liability arising out of or in connection with the carrying out of the Contract.

5.02 The Contractor shall be liable for any personal injury to or the death of any Service User the subject of this Contract arising from the Contractor's negligence

whilst they are on board the Contract Vehicle or when entering or leaving the vehicle.

5.03 The Contractor shall adequately insure against and maintain:-

- (a) A Policy of motor insurance which meets statutory requirements and which includes business use and use for hire and reward including where appropriate use for Local Services. A policy solely for the carriage of school children shall not be acceptable; and
- (b) A public liability policy cover for a minimum of £20,000,000 (twenty million pounds) in compliance with the provisions of Condition 5.02 above. This will be reviewed annually following advice from the Council's insurers; and
- (c) An employer liability cover for a minimum of £10,000,000 (ten million pounds).

6.00 Tickets and Conditions of Carriage

- 6.01 The Contractor shall issue a ticket from a ticket machine to each Passenger paying a fare on the vehicle. Tickets shall be serially numbered and shall record the date of issue, the amount and type of fare paid, the fare stage at which the Passenger boarded and identify the issuing machine and shall refer to the Contractor's Conditions of Carriage.
- 6.02 The Contractor shall provide facilities for the public to inspect his Conditions of Carriage.
- 6.03 All ticketing equipment used will be of a specification determined and agreed by the Chief Officer.
- 6.04 The Chief Officer shall have the right to inspect and check any ticketing arrangements including any equipment in relation to on-bus ticketing, off-bus ticketing and concessionary travel. Where required by the Chief Officer the Contractor shall transmit by electronic means data appertaining to concessionary travel and Contract services.

7.00 Variations

- 7.01 Without prejudice to the express powers set out below and elsewhere within this Contract to require variations or to review particular matters the parties hereto shall be free to agree such variations of the Contract terms or any of them as may from time to time appear desirable however no such variation shall be of any effect unless received in writing and signed by both parties. In the event of a failure to agree any proposed variation either party may terminate the Contract in accordance with Condition 12.01.
- 7.02 In the case of School and Social Services Transport routes the Council reserves the right to require additional stops or otherwise amend the required stops along the same route at no extra cost.

- 7.03 The Contractor may be required to vary his existing journey as and when requested by the Chief Officer upon the same terms and conditions as are expressed in this Contract. Where this is required the Contractor will be paid according to the provisions of Schedule 10 or such price as may be agreed at the discretion of the Chief Officer. In default of agreement the Chief Officer may terminate the Contract in accordance with these Conditions of Contract.
- 7.04 Except in an emergency or where roadworks dictate no change shall be made in the route, stopping places or time table without the prior written approval of the Chief Officer.
- 7.05 The Contractor shall provide services on public holidays other times and specified adjacent days in accordance with the requirements of the appropriate Schedule to this Contract.

8.00 Contract Price and Fare Scales

- 8.01 The Contract Price shall be calculated on the basis specified in the Service Specification which shall be either;
- (i) Net Subsidy, or
 - (ii) Gross Cost based.
- 8.02 Where the Service Specification requires a Contract Price calculated on a "net subsidy" basis, the Contract Price exclusive of any variations shall be the Contractor's estimate on an annual basis of the net deficit which will be incurred by him in providing the service. In calculating the net deficit the Contractor shall subtract from his estimate of cost all revenues he expects to receive from and in respect of Service Users carried including fares paid on-vehicle, fares from any off-vehicle ticket sales applicable to the Contract are relevant, and revenue from all other sources. Unless otherwise stated in Schedule 1, the Contractor shall accept all valid concessionary travel passes together with companions as appropriate free of charge and with reimbursement in accordance with the terms of the Council's concessionary travel scheme.
- 8.03 For "net subsidy" contracts the reimbursement formula will be calculated in accordance with the Welsh Government's 'A Common Approach for reimbursement Arrangements for Participating Operators' dated 1 April, 2013, or any guidance from Welsh Government which supersedes that document.
- 8.04 Where the Service Specification requires a "gross cost based" Contract Price the Contract Price exclusive of any variations shall be the Contractor's estimate on an annual basis of the cost which will be incurred by him in providing the service. In submitting periodic claims for payment in respect of the service provided under the Contract, the Contractor shall credit the Council with all revenues received or accruing to him from and in respect of Service Users carried including fares paid on-vehicle, fares from any off-vehicle ticket sales applicable to the Contract, reimbursement from concessionary fares schemes to which the services under the Contract are relevant, and all other sources. Unless otherwise stated in Schedule 1, the Contractor shall accept all valid concessionary travel passes together with companions as appropriate free of charge.

- 8.05 Where the Service Specification requires a Contract Price calculated on a "net subsidy" basis, the Contractor may establish his own scale of fares to be charged on the service provided that it does not exceed the maximum fares specified in the Council's standard fare scale or as otherwise required by the Chief Officer.
- 8.06 The Chief Officer shall in his absolute discretion reserve the right to impose a commercial fare rate on a Contractor where it is demonstrated that the fare charged by him at any given time is below that which would be charged by a commercial service operating over the same route.
- 8.07 Where the Service Specification requires a "gross cost based" Contract Price the Contractor shall charge fares in accordance with the Council's standard fare scale, or as otherwise required by the Chief Officer.
- 8.08 Service Users identified as qualifying for free school or college transport by the Council shall not be required to pay fares by the Contractor, nor will any additional payment be made to the Contractor by the Council in respect of such Service Users. The Service Specification identifies the estimated number of Service Users travelling at normal school or college times where this is appropriate and known.
- 8.09 The Contractor shall clearly set out, and be bound by, the Price in his Tender, in the manner required therein, which unless otherwise agreed between the parties in writing shall be the price for the purposes of Condition 9 below.
- 8.10 The Council does not bind itself to accept the lowest or any Tender, and reserves the right to accept any Tender in whole or in part as the Council deems appropriate.

9.00 Review of Prices and Fares

- 9.01 The prices quoted by the Contractor shall be fixed, except that in the circumstances mentioned in Condition 9.02 hereof the Council may review the prices once during each year of the Contract.
- 9.02 The Council may at its sole discretion vary the price set out in the Service Specification. The Contractor shall request an increase in writing no more than 21 days after the Contract's anniversary. Where the Council has agreed a variation of the contract price, the effective date for any such variation of price shall be from the anniversary of the Contract start date or such other date as shall be mutually agreed.
- 9.03 Where the Council decides to exercise its discretion to vary the price, the amount awarded under this Condition shall be based on either:
- (a) the change in a transport index of prices prepared by the Chief Officer for all items over an appropriate twelve month period specified by the Chief Officer; or
 - (b) the provision for changes in prices assumed by the Council in its annual budget.

or whichever is the lower.

- 9.04 If the Council withholds its approval in whole or in part in respect of any application for price review and agreement has not been reached between the Council and the Contractor by the anniversary of the year in question on the amount payable under the review, the Council reserves the right by notice in writing to terminate the Contract and, if the Council so declares it shall not be liable to or for any claim or damages from the Contractor in respect of work then already done at any price higher than that which currently obtains.
- 9.05 The Council may from time to time, review the level and/or structure of fares or standard fare scale to be charged on any Local Service which are the subject of this contract.

10.00 Payment

- 10.01 Except where otherwise agreed, a payment claim shall be submitted by the Contractor to the Chief Officer in respect of the contract and shall clearly quote the Contract number and where applicable route number(s) of the services included in the Contract.
- 10.02 In respect of Local Services the payment claim to be submitted each month shall be for one-twelfth of the annual price of the Contract, or such amount as has been previously agreed in writing by the Chief Officer. The payment claim shall contain the total number of tickets issued during the payment claim period the total revenue paid by Service Users the number of Service Users travelling free of charge under the Council's concessionary travel scheme the average adult single fare per contract and a statement of the amount of and reasons for any schedule mileage not operated or which has been operated more than 20 minutes late.
- 10.03 In respect of School Transport services the payment shall be either:-
- 10.03.1 the Council shall notify the Contractor in writing of the number of school days required in any one year and the annualised contract price shall be based on the daily price submitted by the Contractor. The payment claim to be submitted each month shall be for one eleventh of the annualised contract price paid monthly except in August, or such amount as has been previously agreed in writing by the Chief Officer,
- OR
- 10.03.2 the payment to be submitted each month shall be for the number of days operated multiplied by the daily price detailed as submitted under the tender or such amount as has been previously agreed in writing with the Chief Officer.
- 10.04 Where a local service contract finishes on a day other than the last day of the month, payment for the days operated shall be made at a rate per day calculated by dividing the number of days the contract is scheduled to operate in a calendar year by the annual price applicable at the date of cessation, or 1/12th of the annual price, whichever is the lower..

- 10.05 Claims shall be submitted to the Chief Officer by no sooner than 1st and no later than 7th day of the month following the month in which the amount refers on a form prescribed by or agreed with the Chief Officer.
- 10.06 In respect of Social Services Transport the payment shall be made on the basis of Condition 10.03.2 and shall be claimed separately.
- 10.07 Any claim submitted more than six months late shall only be honoured at the discretion of the Council upon payment of an appropriate administration fee by the contractor.

11.00 Recovery of Sums Due from the Contractor

- 11.01 Whenever under the Contract any sum of money shall be recoverable from or payable by the Contractor such sum may be deducted from any sum or sums then due or which at any time thereafter may become due to the Contractor under the Contract or any other Contract with the Council.

12.00 Rights of Termination and Suspension

- 12.01 Either the Council or the Contractor may terminate the whole or any part of the Contract at any time subject to the following periods of written notice:-
- (a) In the case of the provision of School Transport where the journeys concerned are not registered as Local Services
 - i. up to three years – 56 days
 - ii. more than three and up to five years – 98 days
 - iii. more than five years – 168 days
 - (b) In the case of journeys registered as Local Services – 28 days, in addition to the appropriate statutory period of notice for withdrawal of a Local Service.
- 12.02 The Council shall also have the right to terminate forthwith or, in its absolute discretion, suspend forthwith for a period of up to six months the operation of this Contract if and so often as the Chief Officer shall have reasonable cause to believe that without due regard to safety, legal or insurance requirements :-
- (a) Any service operated under this or any other Contract held by the Contractor is being or has been or is likely to be operated without due regard to safety, legal or insurance requirements.
 - (b) The Contractor has failed to provide documentary evidence of the existence of any document including policies of insurance required to be held by him under the Conditions of this Contract.
 - (c) The Contractor is in breach of any other obligation imposed by this Contract.
 - (d) Circumstances render the contract moribund or no longer required owing to changes in Service User needs.

- 12.03 In any case where a Contract is suspended under this Condition and shall not have been reinstated within six calendar months from the date of suspension the Contract shall be deemed to be terminated on such date as is six calendar months from the date of suspension.
- 12.04 The Chief Officer shall be entitled, but not unreasonably or vexatiously, to require the Contractor by notice in writing stating the reasons to remove from the performance of this Contract any employee of the Contractor specified in such notice including Drivers and the Contractor shall forthwith remove such employee from the performance of the Contract and immediately provide a suitable replacement if so required.
- 12.05 If the Contractor shall have offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or having done or having forewarned to do any act or action relating to the obtaining of the Contract or any other Contract with the Council or foreshowing or forbearing to show favour or disfavour to any person in relation to the Contract or any other Contract with the Council where if the like act shall have been done by any person employed by the Contractor or acting on the Contractor's behalf (whether with or without the knowledge of the Contractor), or if in relation to the Contract, or any other Contract with the Council, the Contractor or any person employed by the Contractor or acting on the Contractor's behalf shall have committed any offence under the Bribery Act 2010 as amended or shall have given any fee or reward to any Member or officer of the Council which shall have been exacted or accepted by such officer by virtue of office or employment and is otherwise than such officers proper remuneration or if the Contractor or any person employed by the Contractor or any Sub-Contractor shall have committed any prohibited act as defined in the Bribery Act 2010 the Council shall be entitled to terminate the Contractor's employment under the Contract and to recover from the Contractor the amount of any loss resulting from such termination.
- 12.06 If the Contractor:-
- 12.06.1 becomes bankrupt or makes a composition or arrangement with its Creditors, or has a proposal in respect of its Company for voluntary arrangement for a composition of debts, or scheme or arrangement approved in accordance with the Insolvency Act 1986;
 - 12.06.2 has an application made under the Insolvency Act, 1986 to the Court for the appointment of an administrative receiver;
 - 12.06.3 has a Winding Up Order made, or (except for the purposes of amalgamation or reconstruction) a resolution for voluntary winding up passed;
 - 12.06.4 has a provisional Liquidator, Receiver, Manager of its business or undertaking duly appointed;
 - 12.06.5 has an administrative receiver, as defined in the Insolvency Act, 1986 appointed;

12.06.6 has possession taken, by or on behalf of the holders of any debenture secured by a floating charge, of any property comprised in, or subject to, the floating charge;

12.06.7 is in circumstances which entitle the Court or a Creditor to appoint, or have appointed, a Receiver, a Manager, or Administrative Receiver, or which entitled the Court to make a Winding Up Order;

then in any such circumstances the Council may, without prejudice to any approved rights or remedies under the Contract, terminate the Contractor's employment under the Contract by notice in writing having immediate effect.

13.00 Notices

13.01 Any demand notice or other communication required to be given hereunder shall clearly and conspicuously state the Contract number or numbers to which it refers and shall be sufficiently served if served personally on the addressee or his authorised representative, or if sent by prepaid first class recorded delivery post, electronic mail or facsimile transmission to the registered office or Last Known Place of Business of the party to be served therewith and if so served shall, subject to proof to the contrary, be deemed to have been received by the addressee on the second business day after the date of posting or the date of successful transmission, as the case may be.

14.00 Waiver

14.01 Failure by the Council at any time to enforce the provisions of the Contract or to require performance by the Contractor of any of the provisions of the Contract shall not be construed as a waiver of any such provision and shall not affect the validity of the Contract or any part thereof or the right of the Council to enforce any provision in accordance with its terms.

15.00 Severance

15.01 Whenever and so far as any one or more Conditions of this Contract are held to be void and unenforceable then the remainder of these Conditions shall continue in force and govern the parties' relationship as if the void and unenforceable Condition(s) had not formed any part of this Contract.

16.00 Force Majeure

16.01 In the event of an act of God or force majeure (which shall include acts of government, fire, tempest, acts of war and related matters, which are beyond the control of the Contractor and are such that the Contractor with the application of all due diligence and foresight could not prevent) which causes the cessation of or substantial interference with the performance of the service the subject of this Contract the duty of the Contractor to perform the service shall be suspended until such circumstances have ceased. The Council shall not be liable to make any payment to the Contractor in respect of such suspension and any such sum already paid in respect of any part of the service not yet performed shall be held to the credit of the Council and returned to the Council.

- 16.02 For the avoidance of doubt, it is hereby expressly agreed that industrial relations difficulties and failure to provide adequate premises, equipment, materials, consumables and/or staff or similar matters, which a prudent and diligent Contractor could have avoided with the application of foresight, are not to be considered as events of force majeure or acts of god.
- 16.03 If the period of suspension under Condition 16.01 above lasts for longer than one month, either party may serve upon the other one month's written notice of termination of the Contract. Unless the service the subject of this Contract has been resumed before the expiration of such notice the Contract shall terminate in accordance with such notice.
- 16.04 Upon termination of the Contract it is hereby agreed that Condition 3, 12 and 22 of these General Conditions of Contract shall continue in full force and effect.

17.00 Welsh Language

- 17.01 The Contractor shall ensure compliance with the Welsh Language Policy of the Council

18.00 Equal Opportunities

- 18.01 The Contractor shall operate an equal opportunities policy and warrants that this policy complies with the statutory obligation set down in the relevant legislation including but not restricted to the Equality Act 2010. The Contractor warrants that it shall not treat one group of people less favourably than others in relation to decisions to recruit, train or promote staff on any of the following grounds - Gender; Marital status; Family or other close relationship; Colour; Race; Nationality; Ethnic or national origin; Age; Disability; Health; Sexual identity; Sexual orientation; Religion; Political belief; Trade Union membership/non-membership or activity; irrelevant unspent criminal convictions; employment status for social class.
- 18.02 The Contractor shall provide such information as the Council may reasonable require to enable it to assess the Contractor's compliance with equal opportunities.
- 18.03 In the event of a Court, Tribunal or Quasi Judicial Body making a finding of unlawful discrimination against the Contractor, then the Contractor shall take all necessary steps to prevent re-occurrence of such unlawful discrimination. The Council may require the Contractor to provide full details of the steps taken to prevent such re-occurrence.

19.00 Health And Safety

- 19.01 The Contractor shall at all times comply with the requirements of the Health and Safety at Work etc Act 1974 and of any other Acts, Regulations or Orders pertaining to the health and safety of employees.
- 19.02 The Contractor shall provide its general statement of safety policy, having regard to the Council's general Statement of Safety Policy, which shall be supplied to the Chief Officer within seven days of the commencement date. The Contractor

shall forthwith nominate a person to be responsible for health and safety matters. Whilst on premises owned or occupied by the Council, the Contractor shall ensure that its employees comply with the Council's General Statement of Safety Policy and with the lawful requirements of the Council's Safety Officer.

- 19.03 The Chief Officer shall be empowered to suspend the provision of the service or part thereof in the event of non-compliance by the Contractor with this Condition or with its legal duties in health and safety matters. The Contractor shall not resume provision of the service or such part until the Chief Officer is satisfied that the non-compliance has been rectified.

20.00 Parent Company Guarantee

- 20.01 If the Contractor is a subsidiary Company within the meaning of Section 736 of the Companies Act 1985 it shall provide a guarantee in the form specified by the Council by its holding Companies (as defined by the said Section 736) to secure the due performance by the Contractor of its obligations to the Council.

21.00 Assistance in Legal Proceedings

- 21.01 If requested to do so by the Chief Officer, the Contractor shall provide to the Council any relevant information (including, but not limited to, documentation and statements from staff) in connection with any legal inquiry, arbitration or court proceedings in which the Council may become involved, or any relevant disciplinary hearing internal to the Council, arising out of the provision of the Services or the Contractor's presence on Council premises, and the Contractor shall give evidence in such inquiries, arbitrations, proceedings or hearings.
- 21.02 Where the Contractor or any of its staff become aware of any incident, accident or other matter which may give rise to a claim or legal proceedings in respect of the provision or failure to provide the Services, it shall notify the Chief Officer immediately in writing. Such notification shall include all relevant information to enable the Chief Officer to investigate the matter fully.
- 21.03 Such information provided or assistance rendered pursuant to the obligation in Conditions 21.01 and 21.02 above, in whatever form, shall be at no cost to the Council.

22.00 Governing Law

- 22.01 These Conditions shall be construed in accordance with and governed by the laws of England and Wales and the parties hereto agree to submit to the exclusive jurisdiction of the Courts of England and Wales.

23.00 Freedom of Information

- 23.01 The Contractor acknowledges that the Council is or may be subject to the Freedom of Information Act 2000 (FOIA) and may be required to disclose information about the Contract to ensure the compliance of the Council with the FOIA. The Contractor notes and acknowledges the FOIA and both the respective Codes of Practice on the Discharge of Public Authorities Functions and on the Management of Records (which are issued under Sections 45 and 46 of the FOIA respectively) as may be amended, updated or replaced from time to

time. The Contractor will act in accordance with the FOIA and these Codes of Practice (and any other applicable codes of practice or guidance notified to the Contractor from time to time) to the extent that they apply to the Contractor's performance under the Contract.

- 23.02 The Contractor agrees that the decision on whether any exemption applies as to a request for disclosure of recorded information is a decision solely for the Council. Where the Council is managing a request as referred to in this Condition, the Contractor shall co-operate with the Council if it so requests and shall respond within five (5) working days of any request by it for assistance in determining how to respond to a request for disclosure.

24.00 Disputes

- 24.01 Any dispute arising between the Council and the Contractor as to the construction of the Contract or as to the rights, duties or liability of the Contractor or the Council thereunder or as to the due performance by the Contractor of the Contract or as to any matter or thing arising out of the Contract in relation thereto shall be referred to the decision of the Chief Officer as sole arbitrator whose decision shall be final and conclusive between the parties. Provided always that if as regards such dispute as aforesaid the Council and the Contractor shall mutually agree in writing upon some person other than the Chief Officer as arbitrator such dispute shall thereupon be deemed to be referred to the decision of such other person or arbitrator in lieu of the Chief Officer and this Condition shall be construed and have effect accordingly.

25.00 TUPE

- 25.01 Potential tenderers are advised that the current suppliers may consider that the provisions of the Transfer of Undertakings (Protection of Employment Regulations) 2006 (TUPE) may apply to this contract. Tenderers are therefore advised to seek their own professional advice on the possible implications

26.00 Benchmarking

- 26.01 Under the local authority remit of Comprehensive Performance Assessment, the Council is encouraged to participate in information sharing and benchmarking in order to assist performance monitoring carried out with limited groups of authorities in strict confidence. All contracts therefore awarded by this authority may be subject to limited and confidential information sharing.

27.00 Precedence

- 27.01 These Conditions of Contract shall have precedence over any printed condition appearing on any acceptance form, delivery form or other documents or letter emanating from the Contractor.

28.00 Data Protection

- 28.01 Except as may be necessary in the performance of the Services, required by law or as provided below, the Service provider to this Agreement must not divulge to

any person without the written consent of the Council (which shall be within its absolute discretion) any documents, computer programmes, data (personal or otherwise), information, drawings, calculations, photographs (including video recordings) or the contents thereof relating to the Service or this Agreement or information contained therein or any materials provided by the Council to the Service Provider or any matter relating to the business of the Council or to any Service User which may come into the party's possession or knowledge as a result of this Agreement all of which said information is deemed to be confidential.