

**SCHEDULE 2 (LBS) OCTOBER 2009 (Updated June 2017)**  
**LOCAL BUS SERVICE CONDITIONS OF CONTRACT**

These conditions relate to the European Union and United Kingdom domestic legislative requirements and Leicestershire County Council requirements of this Contract covering the operation of large passenger transport vehicles (over 8 passenger seats) on local bus services.

**Note: The definition for “PTU” shown below has been updated, this is to take into account the change of name from the Passenger Transport Unit (PTU) to the Transport Operations Service (TO) from 1<sup>st</sup> September 2016.**

**Definitions used in this document**

Throughout this entire document except where the context clearly implies otherwise, the following definitions shall apply:

‘Contract’ means the Contract entered into between LCC and the Contractor(s).

‘Contractor’ means the Operator accepted on to a Contract and engaged by LCC to provide passenger transport services.

‘LCC’ or ‘Council’ means Leicestershire County Council which commissions the Services under the Contract or any officer or member acting on behalf of that authority.

‘Operator’ means a legally existing firm or individual that can provide passenger transport services.

‘PTU’ means the Transport Operations Service (TO) that was formerly known as the Passenger Transport Unit of Leicestershire County Council or any duly authorised officer acting on the PTU’s /TO’s behalf. All references to the Passenger Transport Unit should now be replaced by the Transport Operations Service.

‘Service’ or ‘Services’ mean the passenger transport services delivered by the Contractor to LCC under the Contract.

‘School Special’ means a local bus service Contract that operates specifically to and from a school/schools and whilst available to the general public the passengers will usually all be children.

‘Tender’ means the Operator’s Tender affording them acceptance on to a Contract.

‘Tenderer’ means an Operator submitting a Tender for acceptance on to a Contract.

**SECTION A: GENERAL CONDITIONS RELATING TO CONTRACTUAL OBLIGATIONS**

**Care and Diligence**

1. It is a specific condition of the payment of monies under this Contract operating within the Contract, that the Contractor shall ensure that vehicles and employees used in the provision of Services are fully licensed under the appropriate Acts of Parliament and regulations and that all the appropriate certificates and licences are at all times in full force and effect.

2. The Contractor shall exercise reasonable skill, care and diligence in the performance of all the duties agreed to be performed by them hereunder.

### **Compliance with LCC's specification and the PTU's Instructions**

3. The Contractor shall in carrying out their duties hereunder conform to and comply with the terms of LCC's specification, and provisions made in their Tender submission and all subsequent instructions of the PTU which shall be confirmed in writing so far as such instructions are applicable to the Services hereunder agreed to be performed by them, and in the case of any conflict between the terms of LCC's specification and any subsequent instructions the subsequent instructions shall prevail.
4. The Contractor shall obtain written prior approval of the PTU to any modification of any instruction earlier approved by the PTU.

### **Contractor's Personnel and Control and Supervision of the Personnel**

5. The Contractor shall ensure that all employees and other persons providing the Services are at all times properly and sufficiently qualified, competent, careful, skilled, honest, experienced, instructed and supervised as the case may be with regard to the Services and in particular to ensure adequate discharge of the Contractor's obligation in relation to
  - a) The task or tasks such a person has to perform;
  - b) All relevant provisions of the Contract;
  - c) All relevant policies, rules, procedures and standards of LCC.

### **Attendance at Meetings**

6. The Contractor shall attend or be represented by a person approved by the PTU at all meetings convened by the PTU in connection with the Service to which they may be invited, including regular progress and/or performance review meetings, and shall advise and assist the PTU on all matters relating to the Service which lie within the scope of the duties the Contractor has assumed under the Contract.

### **Arbitration, Enquiries, Litigation etc.**

7. The Contractor shall assist and advise the PTU with regard to any matter, or item, that may be the subject of arbitration, enquiry or litigation, and, if required by the PTU, the Contractor shall attend and give evidence and authorise, assist and advise the PTU in any arbitration or before any court of inquiry held in relation to the Service.

### **Recovery of Sums Due**

8. Whenever under the Contract any sum of money shall be recoverable from or payable to either party hereunder to the other, the same may be deducted from any sum then due, or which at any time thereafter may become due to the other party under the Contract provided that the parties have agreed the sum due in advance.

### **Indemnity and Insurance**

9. The Contractor shall indemnify and keep indemnified LCC against the injury to, or death of, any person, and loss of, or damage to, any property including property belonging to LCC

except and to the extent that it may arise out of the act, default or negligence of LCC, its employees or agents not being the Contractor or employed by the Contractor and except as aforesaid against all actions, claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect thereof, or in relation thereto.

10. Without thereby limiting its responsibilities under this condition, the Contractor shall insure with a reputable insurance company against the injury of, or death of, any person and the loss of, or damage to, any property arising out of or in consequence of the Contractor's obligations under the Contract and against all actions, claims, demands, proceedings, damages, costs, charges and expenses in respect thereof.
11. For all claims the insurance cover shall be as a minimum £5,000,000 (Five million pounds) Public Liability Insurance, £10,000,000 (Ten million pounds) Employer's Liability Insurance, where applicable, or such greater sum as the Contractor may choose in respect of any one incident and the Contractor's insurance policy effecting such cover shall have the interest of LCC endorsed thereon, or shall otherwise expressly by its terms confer its benefits upon LCC.
12. The Contractor shall supply to LCC forthwith upon request by LCC a certificate from their insurers or brokers confirming that the Contractor's insurance policies comply with these Conditions 9 to 11 and the Contractor shall supply to LCC copies of all insurance policies, cover notes, premium receipts and other documents necessary in LCC's opinion to establish compliance with these Conditions 9 to 11.

#### **Default in Performance of the Services**

13. The Contractor shall respond promptly to all complaints, oversights and omissions and shall immediately make good any default on its part at its own expense.
14. Where Services are required or ordered under the Contract and the Contractor fails to provide such Services or any element thereof in accordance with the Contract or any Contract awarded under it, or in the event of breach or default by the Contractor or LCC may take whatever actions it reasonably considers necessary or appropriate to effect a suitable remedy which may include (but not be limited to) LCC terminating part or all of the Contract or LCC terminating part or all of the Contract or obtaining substituted provision of the Services to be supplied. This shall be without prejudice to any other remedy for breach.
15. In taking such above mentioned remedial actions LCC shall be entitled to claim from the Contractor any reasonable and demonstrable excess of costs so incurred by LCC over the fees due in accordance with the Contract together with all associated costs, charges and expenses as direct losses (including professional fees and VAT). Such amount shall be due as a debt from the Contractor to LCC and payable within 30 days of demand.
16. Any dispute as to the reasonableness of a deduction to be made by LCC under Condition 15 may be referred for determination in accordance with Clause 22.
17. The rights of LCC under any of the Clauses 13 to 16 shall be without prejudice to its rights under all other Conditions.

#### **Termination of Contract**

18. The Council may terminate a Contractor's Contract by notice in writing with immediate effect where:

- a. the Contractor is an individual or a firm and a petition is presented for the Contractor's bankruptcy, or a criminal bankruptcy order is made against the Contractor or any partner in the firm, or the Contractor or any partner in the firm makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignment for the benefit of creditors, or if an administrator is appointed to manage the Contractor's or firm's affairs; or
  - b. the Contractor is a company, if the company passes a resolution for winding up or dissolution (otherwise than for the purposes of and followed by an amalgamation or reconstruction) or an application is made for, or any meeting of its directors or members resolves to make an application for an administration order in relation to it or any party gives or files notice of intention to appoint an administrator of it or such an administrator is appointed, or the court makes a winding-up order, or the company makes a composition or arrangement with its creditors, or an administrative receiver, receiver, manager or supervisor is appointed by a creditor or by the court, or possession is taken of any of its property under the terms of a fixed or floating charge; or
  - c. where the Contractor is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
  - d. or any similar event occurs under the law of any other jurisdiction.
19. The Council may terminate the Contract, or terminate the provision of any part of the Contract by written notice to the Contractor or the Contractor's Representative with immediate effect if the Contractor commits a breach of their obligation(s) under the Contract and if:
- a. the breach is not, in the opinion of the Council, capable of remedy; or
  - b. the breach is material to the Contract
20. Further terms of termination are shown in Section B.

### **Bribery and Corruption**

21. LCC shall be entitled to terminate the Contract, and recover any resulting loss from the Contractor, if the Contractor, or any of their employees or agents with or without his knowledge,
- a) has offered, given or agreed to give any person any gift or consideration of any kind:
    - i) as an inducement or reward for doing or not doing anything in relation to the obtaining or carrying out of the Contract with LCC; or
    - ii) for showing or not showing favour or disfavour to any person in relation to the Contract with LCC; or
  - b) has committed any offence under the Prevention of Corruption Acts 1889 to 1916, or given any fee or reward the receipt of which is an offence under Section 117(2) of the Local Government Act 1972.

## **Dispute Resolution**

22. In case any dispute shall arise between LCC and the Contractor concerning the Contract all parties shall undertake to meet or otherwise communicate in order constructively and in good faith to seek to resolve the said dispute and shall agree to implement the resolution so agreed.
- a) In the event that the procedure set out in Condition 16 above fails to secure a resolution of the dispute, then the matter may at the option of either party be referred to mediation.

## **Waiver**

23. Failure by LCC 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 LCC to enforce any provisions in accordance with its terms.

## **Observance of Statutory Requirements**

24. The Contractor shall comply with all statutory and other provisions to be observed and performed in connection with the Services provided under the Contract and shall indemnify LCC against any breach thereof and in particular the Contractor shall indemnify in full LCC, its servants and agents against any and all actions, claims, demands, proceedings, damages, costs, charges, expenses and fines whatsoever arising out of the Contractor's failure to comply with their obligations irrespective of any negligence or default thereunder of LCC, its servants or agents.

## **Force Majeure**

25. No party shall be entitled to bring a claim for a breach of obligations under the Contract or incur any liability to the other party for any losses or damages incurred by that other party to the extent that a Force Majeure event occurs and it is prevented from carrying out its obligations by that Force Majeure event.

## **Discrimination**

26. The Contractor will comply with its statutory obligations under the Sex Discrimination Act 1975, Race Relations Act 1976 and the Disability Discrimination Act 1995 or any statutory modification or re-enactment thereof relating to discrimination in employment.
27. The Contractor shall take all reasonable steps to secure the observance of the provisions of the Clause 26 by all servants, employees or agents of the Contractor and all sub-contractors employed in the execution of the Contract.

## **Confidentiality Data Protection and Freedom of Information**

28. Each party will keep confidential any trade, business and personal information supplied to it by the other party under or in connection with the Contract and shall not disclose any of that information to a third party unless with the prior written consent of the other party or when ordered to do so by a court or tribunal of competent jurisdiction or in the case of LCC as required under the provisions of Freedom of Information legislation.

## **Collusive Tendering**

29. In submitting a Tender the Contractor confirms that he has not fixed or adjusted the amount of the Tender by or under or in accordance with any Contract or arrangement with any other person. The Contractor also certifies that at no time, before or following the submission of the Tender, has the Contractor carried out any of the following acts:
- a) communicating to a person other than the person calling for the Tenders the amount or approximate amount of the proposed Tender, except where such disclosure was required for the purpose of obtaining insurance.
  - b) entering into any contract or arrangement with any person that he shall refrain from Tendering or as to the amount of any Tender to be submitted;
  - c) offering or paying or giving or agreeing to give any sum of money or valuable consideration directly or indirectly to any person for doing or having done or causing or having caused to be done in relation to any other Tender or proposed Tender for the said work any act or thing of the sort described above.

In the context of this condition the word 'person' includes any persons and any body or association, corporate or unincorporate; and 'any Contract or arrangement' includes any such transaction, formal or informal, and whether legally binding or not.

30. LCC shall be entitled to terminate the Contract in the event of a breach of this Condition 29.

### **Bankruptcy, Insolvency etc**

31. If the Contractor shall, from bankruptcy, insolvency, or any other cause be prevented or delayed in carrying out Services under the Contract or shall not carry out the same to the satisfaction of LCC, it shall be lawful for LCC after notifying the Contractor of their intention to do so, to employ any other person to proceed with and complete the delivery of Services in such manner as it may think fit and proper, and the said Contract shall at the option of LCC become voidable but without prejudice to any rights of action by LCC to which the Contractor may be subject for any neglect in or about the performance or non-performance of Services.

### **End of Contract Procedures**

32. At the end of the Contract (howsoever arising) and/or after the expiry of the Contract the Contractor shall provide all reasonable assistance and information to LCC and any new or replacement Contractor engaged by LCC to continue or take over the performance of the Contract in order to ensure an effective handover of all Services then in progress.

### **Law**

33. The Contract shall be interpreted in accordance with English law and subject to the exclusive jurisdiction of the English Courts.

### **Whistleblowing Policy**

34. The Contractor will ensure the dissemination of the Council's "Supplier Whistleblowing Policy" (a copy of which is available on request and from our website) among all current and future employees and subcontractors who have an active involvement in Contracts for the Council, and any other employees as appropriate.

## **Business Continuity**

35. The Contractor will throughout the Contract maintain in place business continuity arrangements and will review those arrangements at appropriate intervals during the Contract and if necessary update them, so as to ensure as far as reasonably practical, that in the event of unexpected circumstances, either within or external to the Contractor's organisation, service delivery to the Council is subject to the minimum of disruption.

## **Transfer of Undertakings Protection of Employment (TUPE)**

36. Where following expiry or earlier determination of the Contract provision of the Services is to transfer to another provider, the Contractor shall assist the Council in all respects with such transfer including, but not limited to, providing the Council with any information required to enable the Council to comply with its obligations under TUPE.

## **SECTION B: OPERATIONAL CONDITIONS RELATING TO THE CONTRACT**

### **INSURANCE, LICENSING, EMTIS PAYMENTS & FITNESS OF VEHICLES AND DRIVERS**

1. In particular, but without prejudice to the generality of the foregoing, it is hereby agreed and declared that it shall be the Contractor's sole responsibility:
  - (a) to obtain any necessary Public Service Vehicle (PSV) operator's licence or community bus permit, vehicle excise duty (road tax), vehicle insurance and MOT test certificate (when required). To display required discs.
  - (b) to ensure that all drivers hold any necessary PSV licence and any other necessary qualifications and comply at all times with any relevant regulations.
  - (c) to register with the relevant Traffic Commissioner(s) and copy to the PTU all necessary particulars of the service and any subsequent variations to those particulars or agreed under the Contract.
  - (d) to promote confidence in the professionalism associated with contract coach and bus operation.
  - (e) The costs levied by East Midlands Transport Information Service (EMTIS) shall be borne by the Operator, where the Contract has been awarded on a Minimum Subsidy Basis. If the Contract has been awarded on a Minimum Cost Basis the Council will be responsible for the costs levied by EMTIS. If the Operator fails to make any payment (pertaining to this contract and/or commercial services) due to East Midlands Transport Information Service (EMTIS) for the provision of information services on behalf of the Operator within a period of twenty eight (28) days from the date of the issue of the invoice from EMTIS, the Council shall be entitled to deduct such monies from any sum then due, or which at any time thereafter may become due to the Operator under this Contract or any other Contract with the Council.
2. Any vehicle used in the operation of this Contract must:
  - (a) be in a fit and serviceable condition for providing the service required.
  - (b) have exterior paintwork, interior seats and fittings in good condition such as to promote confidence in users.
  - (c) have effective heating, lighting and ventilation.
  - (d) be clean internally and externally at the start of each day's operation and be swept out in the course of the day as necessary.
  - (e) not be refuelled during scheduled journeys.
  - (f) not be left unattended with engine running or with passengers on board.
3. All vehicles which will not carry a escort must:
  - (a) have a powered passenger door operable by the driver from a normal seated position.



- (b) have any external door in the driver's direct line of sight fitted with glazed panels or mirrors fitted so as to allow the driver to see people moving in the vicinity of the door.

However, vehicles up to 16 passenger seats may be used without an escort and need not comply with (a) and/or (b) above if the driver has been appropriately trained and has signed a statement that confirms this.

- 4. Drivers and escorts must be registered under the LCC's Driver Registration Scheme and carry an identity badge issued by LCC whilst employed on the Contract.
- 5. All drivers, escorts, conductors and other platform staff used on 'School Special' Contracts are required to be checked through the Disclosure and Barring Service DBS (previously Criminal Records Bureau CRB) by the Council with repeat checks to be carried out at 3 yearly intervals. Contractors are required to pay the DBS fee for an enhanced check for relevant staff and the Council will process all such checks without an administration fee. These staff will be issued with an identity badge which must be displayed whilst on contract duty. The Council reserves the right to make enquiries of the DBS concerning the suitability of employees of Contractors involved in the carriage of children and/or other vulnerable people on local or community bus contract services.
- 6. Drivers are expected to give evidence of compliance with Certificate of Professional Competence regulations (a minimum of 35 hours training in a 5 year period). For more details please contact the PTU.

#### **ADDITIONAL VEHICLE REQUIREMENTS**

- 7. (a) All vehicles must have a front passenger door positioned so that boarding and alighting passengers walk past the driver. This enables the driver to check passes and/or to take fares and issue tickets as well as ensuring that passengers have alighted safely. Vehicles without a front passenger door as described above should not be used, except in an emergency and not without an escort/conductor. The escort/conductor will be expected to supervise boarding and alighting, check passes, issue tickets, take fares and issue tickets as appropriate.
- (b) Contracts must not be operated by vehicles with centre doors.
- (c) An allowance of up to 8% of journeys per invoice period (4 or 5 weekly or a calendar month) may be operated by a vehicle not conforming to the contract specification but the Council must be informed at the earliest opportunity and the Contractor must declare on the monitoring form any journeys operated by a non-specification vehicle. Whenever a vehicle to the contract specification is not available, a vehicle which meets the minimum vehicle specification option in the tender must be used. The Council will reduce the contracted price by 10% for the period that such vehicles are used but penalty points will not be awarded to the contract.
- (d) The use of a non-specification vehicle outside the 8% allowance must be agreed in advance with the Council and the contract price will be reduced by 20% for the period such vehicles are used. Failure to agree the use in advance or to declare journeys operated by a non-specification vehicle will also attract penalty points.
- (e) Every vehicle should be fitted with an electronic ticket machine capable of providing a report of tickets issued by individual journey and recording the acceptance of all types of passes.

- (f) The ticket machine must be appropriately fixed to the vehicle and a litterbin for used tickets must be fixed near to the vehicle exit

## **CONTRACT PAYMENTS AND PRICE VARIATIONS**

8. Payment will normally be made within 30 days of the receipt of a correct invoice and accompanying information as detailed below.
- (a) In the case of minimum subsidy Contracts the Council will pay the Contractor in respect of each 4 or 5 weekly period or calendar month following the receipt of an invoice and monitoring form covering that period.
- (b) In the case of minimum cost Contracts the Council will pay the Contractor in respect of each 4 or 5 weekly period or calendar month following receipt of an invoice and monitoring form covering that period. The amount to be paid will be the appropriate portion of the annual revenue guarantee less the income attributable to the service for that period, with the proviso that for any period in which the income attributable exceeds the revenue guarantee that surplus shall be carried forward and offset against the next and, if necessary, succeeding periods by credit note. The annual revenue guarantee will be allocated in 4-week, 5-week or monthly periods based on the equivalent split of the annual tendered price.
- (c) The information to be included in the monitoring form will be determined from time to time by the Council but will include:-
- Farebox revenue
  - Passenger journeys (including journeys made with return tickets, season tickets or other forms of multi-journey tickets)
  - Concessionary travel journeys
  - Lost mileage and journeys not operated
  - Journeys operated with a vehicle which does not comply with the contract specification.
- In addition, for minimum cost contracts, information relating to concessionary travel journeys must be supplied in a form to allow the Council to claim reimbursement from the relevant Travel Concession Authority.
- (d) Where monitoring forms are required they must be completed accurately. Failure to disclose lost or late mileage or non-specification vehicles on monitoring forms will attract penalty points and is likely to delay payment.
- (e) Contract payments will be based on an annualised rate. A daily rate, based on the annualised price, will only be used to reconcile contracts that start or finish part way through a financial year. In the case of School Special Services the Council will pay the Contractor in respect of each calendar month or 4 or 5 week period following the receipt of an invoice and monitoring form. The amount paid will be the daily rate (based on the annualised price over 190 schooldays) multiplied by the number of schooldays operated in the period.
- (f) In the case of non-operation of any contracted journey due to adverse weather conditions or similar the Council will pay the Contract at 65% of the normal rate.
- (g) No payment will be made for any contracted journey(s) cancelled by the Council with at least 5 working days notice. For any journey cancelled at less than 5 working days, the Council will pay 65% of the normal rate.

- (h) The preferred method of payment is by BACS, unless otherwise agreed by LCC.
9. No payment will be made for journeys that run early or, through the fault of the Contractor, run more than 30 minutes late or not at all. Payment will be reduced by a third for journeys which run, through the fault of the Contractor, between 10 and 30 minutes late. For these purposes the price of the Contract will be deemed to be spread evenly across the annual or daily Contract mileage as appropriate. Please note that it is expected that every effort is made to operate all journeys. Drivers should contact their supervisor before not operating journeys. Last journeys must always be operated and no sections of route should be missed out. Regular lateness should be reported to the Council.
  10. The Council will review the Contract price with effect from April 1<sup>st</sup> each year. The Council will give at least 4 months written notice of any such variation to the Contractor provided that this shall not apply to the first review in the case of a Contract started less than 4 months before April 1<sup>st</sup> in any year. The amount of such variation (if any) shall be entirely at the discretion of the Council and, if no notice is given, the Contract price (subject to any variation previously notified) shall continue to apply to the following year of the Contract.
  11. It shall be the responsibility of the Contractor to claim Bus Service Operators Grant if applicable. The contractor retains any benefits accruing.
  12. Pupils or students in possession of valid passes or permits issued or authorised by the Council shall be conveyed to their destination free of charge.
  13. The Contractor shall be responsible for all fees and charges associated with operating the Contract, for example bus station departure charges.

## **STATISTICS, AUDIT AND INSPECTION**

14. Council Officers may:
  - (a) Inspect the vehicle provided immediately before, during or after operation of any journey.
  - (b) By prior agreement inspect vehicles not in operation.
  - (c) Inspect maintenance facilities and records.
  - (d) Inspect tickets and/or passes of passengers.
  - (e) Request relevant information from drivers and passengers.
  - (f) Travel as an escort on any Contract journey.

In normal circumstances, inspections will be carried out so as not to delay subsequent journeys unduly.
15. Council Officers will be permitted access on demand to all relevant books, documents, vouchers, tickets and accounts at any reasonable time or times.

16. The Contractor shall provide the Council with accurate statistics showing performance of each service as the Council shall reasonably require.

## **FARES AND CONCESSIONARY TRAVEL**

17. Every passenger on payment of the fare shall be issued with a ticket showing the fare paid, and the Contractor shall maintain the system of daily waybills in sufficient detail to identify the revenue collected on each journey. Passengers travelling at concessionary rates should be asked to show appropriate authorisation.
18. Passengers travelling with Local Authority concessionary passes must be issued with a ticket – even if of nil value. Contractors who do not comply with this clause will not be able to operate any Leicestershire County Council local bus service Contract.
19.
  - (a) In the case of minimum subsidy local bus contracts the Contractor shall obtain consent from the Council of any changes in fare levels with at least 28 days notice. Passengers must be given at least 14 days notice of agreed changes.
  - (b) In the case of minimum cost local bus service contracts the Contractor shall charge such fares as are specified by the Council and those fares shall be varied in accordance with the Council's instructions.
  - (c) On local bus service contracts children's fares should be available at all times and these should not exceed half of the adult fare unless otherwise specified by the Council. Children are defined by age as being 5 to 15 inclusive. Children under the age of 5 shall be carried free of charge provided they do not occupy a seat to the exclusion of a farepaying passenger and a farepaying passenger accompanies them.
20. Drivers must be able to show on demand and correctly interpret the faretable for that service accurately and to accept travel concessions and other specified special tickets. On minimum cost local bus service Contracts no free travel is to be permitted without specific permit approved by the County Council, except for holders of valid driver and escort County Council registration badges – who are expected to show them in lieu of payment. The faretable for the service should be displayed in the interior of the vehicle. A sample ticket (enlarged) should be displayed in the vehicle, explaining the details printed on the ticket.

## **CONTRACT VARIATION & TERMINATION**

21. Variations may be made to the details of service, route, frequency, timings and vehicle as specified in individual Contract schedule(s) subject to the prior agreement between the Council and the Contractor.
22. Variations of a temporary nature (less than 6 weeks) and which represent no more than 10 miles per day change in mileage operated will not attract an alteration to Contract rates.
23. Additional or reduced picking up and setting down points on line of route will not attract any change in Contract rates.
24. Permanent variations in mileage smaller than 10% from the original Contract specification will not attract any change in Contract rates. For permanent variations greater than 10% and for temporary variations not described in condition 22 the tendered rate calculated per mile will be

used as appropriate. Please note that mileage reductions covered by the above will attract decreases in Contract payments. In the absence of a tendered rate per mile the mileage rate will be calculated on the basis of Contract price divided by Contract mileage.

25. Contracts may be terminated by either party at any time giving at least 4 calendar months written notice. Any Contract may also be terminated at other times and/or at less than 4 calendar months notice subject to mutual agreement. The rights of the parties to performance and to payment (or recovery of costs) are without prejudice to the notice of termination under this clause. The Contract may be terminated with immediate effect and without notice as provided for in Appendix A. The Council will seek to recover any additional costs incurred in lieu of notice as a result of immediate termination or termination of a Contract without appropriate notice.

## **PUBLICITY, NOTICES AND DATES OF OPERATION**

26. The Contractor shall ensure that the route number and destination and other information signs as specified by the Council and relevant to the Contract are displayed in the vehicle when operating services under this Contract. Contractors must not display the route number and destination at other times.
27. The route number and destination must be displayed by means of a back-lit blind, LED or dot matrix display and comply with Schedule 2 of the PSV (Accessibility) Regulations 2000. By prior agreement with the Council, and up to a period of 3 months from the start of a contract, the route number and destination may be displayed by means of a temporary board provided at the contractor's expense. Temporary boards will also be allowed in 'substitute' vehicle(s) as described in clause 7(c).
28. Copies of the service timetable must be carried and made available to passengers on request.
29. Drivers must be able to supply general information about terminal points of other services in towns served by the contract service and must be able to refer passengers to the National Transport Helpline (Traveline) for other queries.
30. In the case of minimum subsidy Contracts, the Council shall not be under any liability to the Contractor to provide publicity for the services specified in Schedule 1. Publicity must be provided by the Contractor at least to the level stated within Schedule 1.
31. On Bank and Public Holidays, Contract operation shall be as follows:
- Christmas Day, Boxing Day and New Year's Day - No service.
  - Bank Holidays which are not Christmas Day, Boxing Day, New Year's Day or Good Friday - Sunday Contracts to operate.
  - Good Friday - Normal day of operation
32. School Special Contracts shall operate whenever the establishments are open. The Council will notify the Contractor as far as possible in advance the dates when the establishments will be closed or a change to their pattern; if the notice is less than 5 working days then clause 8(g) will apply.

## **SUB-CONTRACTING & ASSIGNMENT**

33. The Contractor shall not assign, sub-contract or otherwise dispose of his interest under this Contract without receiving in advance the consent of the Council **PROVIDED** that this condition shall not prohibit the Contractor from arranging for the provision of a service under this Contract by vehicles operated by a third party in an emergency (in which case the Contractor shall inform the Council as soon as possible afterwards). In the event of sub-contracting taking place the Contractor remains liable for meeting all conditions of the Contract.

## **OTHER REQUIREMENTS OF CONTRACTOR AND DRIVER**

34. Drivers must be smartly and appropriately dressed so as to inspire confidence in passengers. This will either be through the wearing of the Contractor's uniform or a combination of the following: plain dark trousers, plain light shirt with collar, optional clip on tie, plain dark sweatshirt, plain jacket, plain dark hats of the baseball or fleece type. Female drivers to wear the same or similar. Clothing which is required for reasons of religion is acceptable provided offence is not caused to service users. This condition specifically rules out the wearing of denims and clothing that features slogans other than company logos.
35. Drivers must comply with contract driver conditions.
36. Drivers of School Special services must comply with Council "Guidelines for Drivers" (a copy of which is available on request and on our website).
37. Contract services should be on time at the start of each journey and thereafter at each timing/pick-up-point; no Contract should run early and late running is only excusable in circumstances beyond the Contractor's control. The correct route and pick up points should be followed unless the driver is prevented from doing so by roadworks or similar.
38. Smoking by passengers or the driver is not permitted on any vehicle operating Services under this Contract, and notices to that effect must be displayed in the vehicle. This includes the use of electronic cigarettes.
39. Drivers must exercise care for their passengers, preferably with the help of customer care training. This includes communications with customers, a considerate driving style, and showing particular attention to the needs of young children and elderly and disabled passengers. All drivers are expected to meet a minimum training level as defined by the Council. The Council will provide the minimum level of training if required by companies without their own training resources.
40. The driver must be contactable during the hours of operation of the Contract. Drivers must not use mobile phones whilst the vehicle is in motion. Any call taken or made when the vehicle is stationary must relate to the operation of the Contract.
41. The vehicle's audio and visual devices are not to be played on Contracts. No pre-recorded material should be played on School Special Contracts but the vehicle's radio may be played at a moderate volume. It will be the Contractor's responsibility to obtain any necessary licence(s) and to pay any fees due for playing such material in accordance with copyright law.
42. The Contractor must report by telephone to the PTU all accidents, breakdowns or other significant delays whilst operating the Contract service. This information is to be provided as soon

as possible after the breakdown or similar occurs. The Contractor must also give timely notification to the National Transport Helpline (Traveline).

43. The Contractor or his/her representative must be immediately contactable by telephone between 08:00 and 18:00 Monday to Friday and have available either a fax machine or e-mail facilities to assist in communications with the Council concerning the Contract.
44. In the event of a complaint about a service being received by the Council, the Contractor must supply an explanation of the event within one working day of being informed of it. If the complaint is made direct to the Contractor he must reply in writing to the complainant within 3 working days, with a copy of the reply sent concurrently to the Council's Passenger Transport Unit.
45. Where CCTV systems are in operation, the Contractor must comply with the relevant legislation governing the operation of CCTV systems. For CCTV systems provided by the Council, the Contractor will also adhere to the specific CCTV agreement. The Council will be the 'Data Controller' for any CCTV recordings made during operation of any journey provided under contract.
46. The Contractor will co-operate in the installation and use of CCTV, vehicle tracking device, communication device or other device(s) on the vehicle(s) normally operating the contract. The Contractor will comply with the Council's separately published agreements for such equipment.

#### **SEAT BELT REQUIREMENTS**

47. A notice relating to the wearing of seatbelts must be displayed on every vehicle fitted with seatbelts.

#### **FAILURE TO OPERATE SERVICE AS SPECIFIED**

48. The Council operates a system of penalty points for any failure to operate services as specified in individual Contract Schedules (including Schedule 1) and Schedules 2 Sections A and B to ensure any penalties applied are fair and consistent; the system in use is described in Appendix A to this schedule. This system does not remove the right of the Council, if and whenever there shall be any breach, non-observance or non-performance of any obligations on the part of the Contractor herein contained, by notice in writing from the Council to the Contractor forthwith to terminate the Contract. The Contract shall cease and terminate forthwith except to the extent the parties shall fulfil their obligations under the Contract up to the time of termination and without prejudice to the parties rights to seek compensation for any breaches.

## **SCHEDULE 2 - APPENDIX A: FAILURE TO OPERATE SERVICE AS SPECIFIED**

1. The penalty points system described in this appendix is designed to ensure that failures to meet the contract conditions are followed up with a penalty which is appropriate to the failure and fairly applied and which gives the Contractor an incentive to improve performance.
2. The following rules will determine the application of penalty points and the award and termination of contracts:
  - (a) Failure to comply with contract conditions will lead to the application of penalty points as detailed below, in a range from 1 to 20.
  - (b) Each set of penalty points will be attached to the Contract for a period of 1 year. If at any time a Contract has 20 or more points attached to it, that Contract will be terminated, either immediately or, at the discretion of the Council, after a notice period.
  - (c) Some failures will not have a penalty points score but will instead result in immediate Contract termination. Particularly serious failures may result in further action being taken against the Contractor. For example a vehicle allocated to a Contract that is deemed to be in a condition that would attract an immediate prohibition with 'S' notice would result in the termination of that Contract and the suspension of the Contractor from consideration of tender awards for a period of time.
  - (d) In awarding Contracts, consideration will be given to the past performance of Contractors on Contract services.
  - (e) Points applied will be factored according to the frequency of services on the Contract, as follows:

Contracts having more than 120 single journeys per week - penalty points detailed below x 0.25  
Contracts having 61 to 120 single journeys per week - penalty points detailed below x 0.5  
Contracts having 13 to 60 single journeys per week - penalty points detailed below x 0.75  
Contracts having up to 12 single journeys per week - penalty points applied as below
  - (f) If the same failure is recorded a second time after the first instance, within 56 days of that first instance but after sufficient time has been allowed for remedial action to be taken, double the factored penalty points will be applied.
  - (g) Following breaches of Contract Conditions Contractors may be suspended or excluded from further Contract awards, either temporarily or permanently.



3. Penalty points will be as follows:

<b>CONTRACT CONDITION SCHEDULE &amp; PARAGRAPH</b>	<b>PENALTY POINTS APPLIED FOR FAILURE TO OPERATE SERVICES AS SPECIFIED</b>
Contract Schedule 1	Variable at Council's discretion
Schedule 2 Section A	Variable at Council's discretion, unless otherwise stated
Schedule 2 Section B	As below:
1a	Contract terminated (no licences, tax, insurance or MOT) 7 (failure to display licences/tax)
1b	Contract terminated (driver licences and regulations)
1c	5 (service registration)
1d	Variable at the Council's discretion (professionalism)
1e	Contract terminated (not contributing to EMTIS)
2a	Variable at the Council's discretion (fit and serviceable)
2b	Variable at the Council's discretion (promote confidence in users)
2c	2 (effective heating, lighting and ventilation)
2d	2 (cleanliness)
2e	3 (refuelling on service)
2f	5 (vehicle unattended)
3	5 (powered passenger door and external visibility)
4	5 (CRB checked and displaying badge)
5	5 (non-registered drivers)
6	5 (non compliance with CPC regulations)
7a	5 (inadequate front passenger door)
7b	5 (centre doors)
7c	5 (use of vehicle not meeting minimum specification)
7d	5 (non-specification vehicle used over stated limit without prior agreement)
7e	5 (not using specified ticket machine)
7f	2 (non-fixed ticket machine or missing litter bin)
8&9	Variable at the Council's discretion (incomplete/no monitoring form; non declared lost and/or late mileage)
12	2 (for not accepting passes)
14	7 (refusal to allow Council Officers access to vehicle and/or documents)
15	Contract terminated (access to relevant books, documents etc)
16	5 (failure to provide accurate statistics)
17	5 (failure to issue tickets, maintain waybills and check passes)
18	Contract terminated
19a	5 (failure to gain consent to change) 2 (failure to notify passengers in advance)
19b	2 (charging incorrect fares)
19c	2 (incorrect child fares)
20	2 (carry and correctly interpret faretable) 2 (failure to permit free travel with valid pass) 2 (failure to display sample ticket)

21	7 (contract varied without prior agreement)
26	2 (displaying boards and blinds)
27	2 (incorrect display) 2 (using temporary display outside 3 month period)
28	1 (timetables available)
29	1 (general information provision)
30	7 (failure to provide publicity)
31 & 32	7 (operating days)
33	5 (sub-contracting)
34	2 (drivers appropriately dressed)
35	Various (comply with contract driver conditions)
36	2 (comply with driver guidelines)
37	7 (early running ) 3 (late running up to 30 minutes) 5 (late running 31 minutes to 60 minutes) 7 (over 60 minutes late or non-operation) 7 (incorrect route or pick up points)
38	2 (for failure to display sign), 7 (for driver smoking)
39	4 (customer care)
40	4 (no means of communication), 7 (using mobile phone whilst vehicle in motion)
41	2 (audio and visual devices)
42	2 (reporting incidents)
43	3 (being contactable)
44	2 (following up complaints)
45	2 (for breach of legislation or agreement, applicable to the Contract on which the CCTV system is in use on or destined for use on).
46	Contract terminated (non co-operation with installation and use of devices)
47	1 (seat belt notice)