

# Updated Notice to Tenderers 3

Amendments highlighted in blue clause 23, 24, 119, and 121

## Public Transport Service Conditions of Contract

### PTC 2017/7

Unit 7 – Arrowtown to Queenstown and Kelvin Heights  
to Frankton Flats (via Remarkables Park)

10 July 2017



Contract PTC2017-7

**SIGNED** for and on behalf of **OTAGO REGIONAL COUNCIL**  
by:

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P Bodeker  
(Chief Executive)

Witnessed by

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**SIGNED** by the Contractor by:

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Director

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Director

Witnessed by

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## Conditions of Contract

Otago Regional Council

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## Interpretation and Definitions

### Definitions

In this contract, unless the context otherwise requires:

*“Call centre”* means Council’s service provider contracted for the supply of bus related information to members of the public;

*“Contract price”* means the first year gross contract price (GST exclusive) as stated in the Contractor’s tender accepted by Council, unless otherwise agreed;

*“Contractor”* means the person who is awarded the contract to provide the service;

*“Contractor’s representative”* means the person authorised by the Contractor to deal with the Council on all matters pertaining to this contract;

*“Council or principal”* means the Otago Regional Council, a body corporate under the Local Government Act 2002 and includes any successor to the Council, its officers, employees and duly authorised agents;

*“Contract Manager”* means the person authorised by the Council to manage the contract as notified under this contract;

*“Concession”* means a fare approved by Council and provided to a particular class of passenger, and included in the fare schedule;

*“Crown”* includes any Minister, Ministry, department of state, Crown entity or Crown agency or any other instrument of the New Zealand Government;

*“Electronic Ticketing System”* means the Electronic Ticketing System (ETS) specified by Otago from time to time, including any multi-operator ticketing system.

*“Fare”* means the fare set by Council for the Service from time to time and notified to the Contractor, including any concessions;

*“Fare schedule”* means the schedule of fares set by Council for the Service from time to time, and notified to the contractor.

*“Financial Incentive Mechanism”* means the Contractor’s share of increased fare revenue calculated in accordance with Schedule 7;

*“Gross price”* means the cost to be paid by the Council to the Contractor for the provision of the service as tendered and adjusted in accordance with the conditions of contract to reflect changes in the Public Transport (Bus) Cost index published by the New Zealand Transport Agency and available on its website;



*"Integrated Ticketing System"* means any Electronic Ticketing System (ETS) specified by the Council from time to time, including any multi-operator ticketing system;

*"NZTA"* means the New Zealand Transport Agency a Crown entity, and includes any successor to NZTA;

*"Off peak"* means bus passenger transport services commenced between 9.00am and 3.00pm inclusive and after 6.30pm on Mondays, to Fridays inclusive excluding public holidays and all passenger transport services undertaken on Saturdays, Sundays and public holidays;

*"Operating day"* means a day upon which the Service is to be provided by the Contractor, "operating day" does not include Christmas Day, Good Friday and Easter Sunday. Otago Anniversary day is an "operating day";

*"Peak"* means transport services which are not off peak;

*"Person"* includes a corporation sole, body corporate and an unincorporated body of persons.

*"Personnel"* means all persons used by the Contractor to carry out the Contract, including the Contractor's employees, agents, subcontractors and the employees of subcontractors;

*"Provisional Item 1"* means the alternative timetable providing for two directional peak services between Arrowtown -Queenstown – Arthurs Point;

*"Provisional Item 2"* means the proposed variation to provide additional evening trips between Arrowtown -Queenstown – Arthurs Point;

*"Provisional Item 3"* means the alternative timetable 30 minute frequency Kelvin Heights to Frankton Flats Shopping;

*"Provisional Item 4"* means the proposed variation to provide additional evening trips Kelvin Heights to Frankton Flats Shopping;

*"Provisional Item 5"* means the proposed variation to extend the Kelvin Heights to Frankton Flats Shopping service to Quail Rise;

*"Requirements for urban buses in New Zealand, New Zealand's common standard for urban bus quality (2014)"*. Unless otherwise stated, any reference to the "RUB" standard will refer to the full standard as set out in the document "Requirements for urban buses in New Zealand", and not to the Section 8 Existing Buses standard in the same document. For the avoidance of doubt RUB includes all non-mandatory requirements expressly stated by Council in the Vehicle Quality Standards and described in the RFT documents;

*"RFT documents"* means all the documents described in the Request for Tenders RFT 2017/7 as RFT documents;

*"RPTP"* means the operative Regional Public Transport Plan for Otago made by Council under the Land Transport Management Act or its equivalent;

*"Service"* means the contracted public transport service which is the subject of this contract;

*“Stage 2”* means the proposed variation to the service to create a looped service between Arrowtown and Queenstown, including services via Malaghans Road;

*“SuperGold card”* means Ministry of Social Development’s subsidised travel scheme;

*“Unit”* means Unit 7 as described in the Otago Regional Council’s Public Transport Plan 2014, its addendums and in the RFT documents;

*“Variable rates”* means the rates in the successful tenderers Response Form B2 or otherwise agreed;

*“Vehicle”* means the vehicle or vehicles to be used by the Contractor to provide the service;

*“Vehicle Quality Standards”* means the vehicle quality standards contained within Schedule 5 Vehicle Quality Standards including RUB;

*“Working day”* means a *day* of the week, other than:

- A Saturday, a Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign’s birthday and Labour Day; and
- A day in the period beginning on 25 December in a year and ending on 2 January in the following year; and
- If 1 January falls on a Friday, the following Monday; and
- If 1 January falls on a Saturday or Sunday, the following Monday and Tuesday, as the case may be; and
- If Waitangi Day or Anzac Day fall on a Saturday or Sunday, the following Monday.
- The day the Council observes as Otago Anniversary Day; and
- Any other day which by law is a public holiday.

## **Interpretation**

1. Parts of speech and grammatical forms of a word that is defined have corresponding meanings in this agreement.
2. Words in the singular include the plural and words in the plural include the singular.
3. The headings in this document may be considered in ascertaining its meaning.
4. References to any statute, regulation, rule or other legal requirement include:
  - A reference to any amendment to that statute, regulation, rule or other legal requirement;
  - Any statute, regulation, rules or other legal requirement made in substitution for that statute, regulation, rule or other legal requirement.

## **Relevant Law**

5. This contract is governed by and construed with reference to the law of New Zealand.

## **New Zealand currency to be used**

6. All prices and payments made under this contract must be in New Zealand currency and paid in New Zealand.

## **Use of English Language**

7. All communications between the Council and the Contractor must be in English.

## **Definition of Time Period**

8. A period of time described as beginning at, on, or with a specified day, act or event includes that day or the day of that act or event.
9. A period of time described as beginning from or after a specified day, act or event does not include that day or the day of that act or event.
10. A period of time described as ending by, on, at or with, or as continuing to or until, a specified day, act, or event, includes that day or the day of the act or event.

11. A period of time described as ending before a specified day, act or event does not include that day or the day of that act or event.

## **The Relationship between the Contractor and Council**

12. The Contractor is an independent Contractor in all respects.
13. The Contractor is not an employee or agent of the Council.
14. The Council and the Contractor are not in partnership nor engaged in a joint venture.

## **Principles for Working Together**

15. A collaborative approach between Council and the Contractor will promote a high-quality customer experience and increased patronage growth. The principles of collaboration are:
  - a) Recognising the objectives of both parties are different, but both share a desire to increase patronage;
  - b) A commitment to working together to reduce the reliance on public subsidy;
  - c) Building trust; and
  - d) No surprises.
16. The collaborative approach will be implemented by:
  - a) Annual Business Planning (Schedule 6)
  - b) Financial Incentive Mechanism (Schedule 7)
  - c) Key Performance Indicators (Schedule 8).

## **Contract Type**

17. This contract is a gross price contract with a revenue based Financial Incentive Mechanism.

## **Commencement of Contract**

18. This contract is in full force and effect when the Council gives the Contractor notice of acceptance of the Contractor's tender.

## **Entire Agreement**

19. This contract comprises:
  - a) The Contractor's tender;
  - b) The RFT documents;
  - c) The Council's acceptance of tender.
20. This contract contains the entire agreement between the Contractor and the Council.
21. If there is any inconsistency between the documents comprising this contract, then precedence is determined in the following order:
  - a) The Council's acceptance of tender.
  - b) These conditions of contract.
  - c) The Request for Tenders.
  - d) The Contractor's tender.

## The Service

### The Contractor must provide the service

22. The Contractor must provide the service strictly in accordance with the terms and conditions of the contract.
23. The Contractor must operate each and every trip shown in the timetable in Schedule 1 and if requested, Provisional Item 1, 2, 3, 4 and 5 and Stage 2:
  - a) Begin each trip at the specified departure time as set out in Schedule 1; and
  - b) Follow the corresponding route for each timetabled trip as set out in Schedules 2 and 3 except in circumstances beyond the control of the Contractor.

### Commencement of Service

24. The Contractor must commence:
  - a) the Service on and from 20 November 2017.
  - b) The Council shall advise the Contractor in writing no less than 2 months prior to the proposed date for the commencement of service for Provisional Items 1, 2, 3, 4 and 5.
  - c) The Contractor must commence Provisional Item 1, 2, 3, 4 and 5 on the date/s advised by the Council in accordance with b).
  - d) Stage 2 on the commencement date specified by Council in a written notice giving at least 4 months prior to the commencement date.

### Duration of Service

25. The Contractor must provide each component of the service from its commencement date under clause 24 until the contract expires or is otherwise terminated in accordance with this contract.

### Duration of Contract

26. This contract shall expire on the completion of the last timetabled trip commenced before 11.59pm on 19 November 2026, unless earlier terminated in accordance with the provisions of this contract.

## **Contract expiry does not extinguish certain rights**

27. The expiry or termination of the contract does not:
- a) Extinguish any rights or obligations or remedies which accrue to the Contractor or the Council before its expiry;
  - b) Extinguish the dispute resolution provisions in clause 234-238(inclusive), except as provided in clause 262
  - c) Extinguish the Contractor's obligations under clauses 272-274 inclusive.

## **Duty to Carry Passengers**

28. The Contractor must ensure:
- a) All passengers who wish to use the service are collected from all bus stops on the routes in this contract on all trips, and
  - b) If a service is not run, without good cause, that no passenger is required to wait for more than 15 minutes of the scheduled departure time for a replacement service, and
  - c) That any passenger in a wheelchair or with a child in a pram/stroller/carrier as far as is reasonably practicable is given priority use of the priority wheelchair space on the bus, and
  - d) Where additional capacity is required, the Contractor and Council will cooperate to provide that additional capacity. No additional payment shall be made to the Contractor for supplying additional carrying capacity, unless it is demonstrated by the Contractor there is an additional cost actually incurred by the Contractor. Any payment will reimburse the Contractor only for the cost actually incurred.
29. The Contractor's driver may refuse to carry any passenger or require any passenger to disembark from the vehicle, if the driver believes, on reasonable grounds:
- a) The driver's personal safety or any passenger's safety is threatened;
  - b) The person appears to be under the influence of alcohol or drugs, is in a filthy condition, or is consuming food or drink;
  - c) The person is noisy, abusive or violent or is disturbing the peace;
  - d) The person is accompanied by an animal, unless that person's sight is impaired and the animal is a guide dog;
  - e) The person has previously vandalised vehicles operated by the Contractor or contracted by Council or has previously defrauded or attempted to defraud the Contractor or the Council.

- f) The person has, on some prior occasion been banned from using a Council contracted service for any reason.
- 30. The Contractor's driver may refuse to carry a passenger who is unable to pay the correct fare for the passenger's intended journey. Except where the driver believes that to decline the passenger may put the passenger's safety at risk. In such circumstances the driver must immediately advise the shift supervisor, record the passenger's details including name, address, any proof of identification and contact details. All details including the extend of the trip must be provided to Council no later than close of business on the following working day.
- 31. The Contractor must refuse to carry a passenger if the Council has instructed the Contractor in writing that person is not to be carried as a passenger.

### **Managing Customer Experience**

- 32. The Contractor must at all times employ fit and proper staff to deal with passengers.
- 33. Staff must be neatly and cleanly attired, and polite and courteous in dealing with the travelling public. The staff must be capable of communicating with passengers in English.
- 34.
  - a) At all times the Contractor must have a driver incentive programme approved by the council. The initial programme shall be the driver incentive programme included in the Contractor's tender with any changes required in writing by the Council.
  - b) The purpose of the driver incentive programme is to promote, monitor, and reward high standards of driver behaviour/s that directly contribute in a positive way to the overall customer experience.
  - c) The driver incentive programme must define the behaviour to be measured and include the methodology for monitoring and rewarding positive driver behaviour and a budget showing the amount which the Contractor will allocate (in addition to Council's contribution clause 34 d)) annually towards the driver incentive programme.
  - d) The Council must pay up to \$10,000 per annum as a contribution to the costs of the driver incentive programme. Council's contribution is deemed to be included in the Contract Price.
- 35. The Contractor's personnel must be trained by the Contractor to deal appropriately with all passengers including those customers with impairments and disabilities.
- 36. The Council may, acting reasonably, direct the Contractor to remove any employee from public contact if the employee's behaviour or attire is, in its opinion, objectionable or causes complaints from the public.
- 37. The Contractor must report to the Council in writing without delay if any employee's employment with the Contractor ends because of dishonesty or any other form of misconduct. The Contractor must include in the report the full name of the employee and all the circumstances of the dishonesty or misconduct.



## Customer Feedback

38. The Contractor must maintain a customer feedback register. It shall keep in the customer feedback register details of all customer feedback received by the Contractor in providing the service and of action taken in response to the complaints.
39. The Council may at any time inspect the register. The Contractor must make the customer feedback register available immediately to the Council on request. If requested, the Contractor must provide the Council immediately with a true copy of the customer feedback register or any part of the register specified by the Council.
40. The Contractor must retain the customer feedback register for the duration of the contract. The Contractor must provide a complete copy of the register to the Council when the contract ends.
41. The Contractor must provide to the Council a record of any complaints received directly by the Contractor, no later than one working day after the complaint is received by the Contractor. The Contractor must advise the Council in writing within three working days of the complaint being received by the Contractor of the action taken by the Contractor in response to the complaint.
42. The Contractor must deal with complaints to the satisfaction of the Council.
43. Any complaints addressed directly to the Council shall be recorded by the Council in the Council's transport complaints database. Complaints received directly by the Council that require response from the Contractor will be faxed, emailed or delivered to the Contractor, if possible on the day received by the Council. The Contractor must provide a written response to any such complaint forwarded by the Council within three working days of receiving it from the Council.
44. Customer feedback received by the Council's call centre will be forwarded by email to the Contractor and the Council. The Contractor must send a written response to the Council within three working days of receiving customer feedback from the Council's call centre.
45. The Contractor must supply to the Council a monthly schedule detailing the date, time and nature of customer feedback received and the response of the Contractor to customer feedback, within four working days of the end of each calendar month.
46. All complaints form part of the Contractor's track record and may be taken into account by the Council in evaluating any future tenders made by the Contractor and/or in considering any extensions of contract.
47. The Council and the Contractor will work constructively together to resolve any persistent issues raised by members of the public.

## **Timetables**

48. The Contractor must ensure the Council's timetable booklets are available in all vehicles used in service.

## **Revenue Management**

### **Fares**

49. The Contractor must charge and collect the fare payable by each passenger, including all personnel of the Contractor other than the driver, for the journey to be undertaken by that passenger.
50. The Contractor must record each passenger and his or her journey through the ticketing system which the Council directs the Contractor to use.
51. The Contractor shall charge the fares set by the Council in its fare schedule and notified to the Contractor.
52. Unless the Council advises the Contractor in writing, the Contractor must issue to each passenger on boarding, a ticket for the journey to be undertaken by that passenger.
53. The Contractor must not charge a passenger more or less than the fare set by Council.
54. The Contractor must not lower or raise fares generally.
55. The Council reserves the right to alter fares and shall give the Contractor not less than 10 days' notice of any such alteration.
56. The Contractor must ensure that Council-approved means of identification are presented by passengers seeking fare concessions.
57. The Contractor is responsible for ensuring fare security at all times.

### **SuperGold Card**

58. The Contractor must for the services provided under this contract participate in the Government's SuperGold off peak travel scheme and must sign a participation agreement if called upon by the Council to do so.
59. The Contractor must comply with any Government requirements for SuperGold.
- 60.
- a) The Crown may in its sole discretion either decrease or increase the reimbursement rate from time to time.
  - b) The Council may in its sole discretion discontinue its participation in the Scheme.

- 61.
- a) The Council shall not be liable for any loss or for any consequential effect on the Financial Incentive Mechanism resulting from:
  - b) a decision by the Crown to vary the rate of reimbursement for SuperGold off peak travel
  - c) a decision by the Council to withdraw from the Scheme.
62. The Contractor must ensure that only those passengers who qualify receive the free off peak service.

### **Ticketing Revenue**

63. "Ticketing revenue" includes all payments received by the Contractor for fares, travel products, card issuance fees, concession payments (including but not limited to SuperGold reimbursement), stored value top-ups and any other payment received by the Contractor from a third party for the use or provision of the Service.
64. All ticketing revenue is the Council's property.
65. The Contractor is responsible for the security of ticketing revenue.
66. The Contractor must at all times operate in accordance with the ticketing revenue control procedures in the Contractor's tender.
67. The Contractor may amend the ticketing revenue control procedures only with the prior written approval of the Council, which approval shall not be reasonably withheld. The Contractor must at all times operate in accordance with the amended plan.
68. The Contractor must enquire into the honesty of all persons employed or to be employed by it to perform this contract.
69. Without limitation, the enquiries required by clause 68 above include:
- a) Obtaining details of that person's criminal history, if any;
  - b) Other checks with Police;
  - c) Checks with previous employers;
  - d) Checks with the Council.
70. The Contractor must not use any person to carry out this contract unless the Contractor is satisfied on reasonable grounds that the person is honest, trustworthy and appropriately skilled.
71. All ticketing revenue collected must be accurately recorded and balance with the information recorded through the ticketing system.

72. The Contractor must notify the Council in writing immediately if it becomes aware of any discrepancy between its record of the ticketing revenue collected and the information recorded through the Council's ticketing system.
73. Each working day Contractor must bank all ticketing revenue received into a bank account (ticketing revenue account). The account must be in the name of the Council, or, with the written approval of the Council, the name of the Contractor, or name of both the Contractor and Council.
74. The Contractor must advise the Council in writing of the name of the bank and of the ticketing revenue account details at least 10 working days before the commencement of the Service.
75. The Contractor must not change the bank or bank account details without first obtaining the written approval of the Council.
76. The Contractor must ensure, if requested, that the Council receives hard copy bank statements for this ticketing revenue account on a weekly basis.
77. The Contractor must ensure, if requested, the Council has remote access to view the balance held in the ticketing revenue bank account at all times.
78. The Council must treat all banking information supplied or accessed by it in accordance with this contract as confidential and must only use that information for the purposes of this contract.
79. The Contractor must maintain at all times a credit balance in the ticketing revenue account. The credit balance at any time must not be less than the total ticketing revenue payable by the Contractor to the Council.
80. The Contractor must pay the ticketing revenue to the Council received without deduction or set-off of any kind whatsoever.
81. All ticketing revenue remains the property of the Council despite being paid into a ticketing revenue account in the name of the Contractor or of the Council and the Contractor.
82. If the ticketing revenue account is in the name of the Contractor or of the Council and the Contractor, then
  - a) The Contractor holds the ticketing revenue in the ticketing revenue account as bare trustee for the Council; and
  - b) The Contractor must notify the Bank of the Council's interest in the account and provide a written acknowledgement by the Bank of the Council's interest to the Council; and
  - c) The Contractor must do everything necessary when requested by the Council to register a financing statement in favour of the Council in respect of the ticketing revenue account under the Personal Property Securities Act 1999.
83. If any money is withdrawn from the ticketing revenue account and is not paid to the Council, the Council has a first charge over any asset (including any other cash fund) to which the money can be traced. The amount secured by the first charge is the total amount of the ticketing revenue appropriated by the Contractor.

84. To give effect to the charges in clauses 82 and 83, the contractor grants to Council a security interest in;
- a) All ticketing revenue received by the contractor;
  - b) All funds held by the contractor which includes ticketing revenue;
  - c) All bank accounts into which ticketing revenue is deposited and the proceeds of all such bank accounts; and
  - d) When called upon by Council the Contractor must do everything necessary to requisite a financing statement in favour of the Council under the Personal Property Securities Act 1999 over any property described in (a), (b) or (c) of this clause.
85. Nothing in clauses 81 to 84 inclusive releases the Contractor from its own liability for any shortfall in accounting for and paying ticketing revenue to the Council.
86. The Contractor must fully indemnify the Council immediately on demand for all shortfalls between ticketing revenue received and ticketing revenue actually paid to the Council.
87. When accounting to the Council for ticketing revenue, the Contractor must supply to the Council the following documentation on request:
- a) Daily cash reconciliation summary.
  - b) Daily cash reconciliation summary for each driver.
  - c) All supporting information, including driver pay-in receipts.
88. The Contractor must keep complete, accurate, readily intelligible and verifiable records of all ticketing revenue received by the Contractor and provide copies of those records to the Council immediately upon request by the Council.
89. If the Contractor becomes aware of any issues at all with ticketing revenue security, the Contractor must immediately:
- a) Inform the Council in writing, stating what the concern is, why the concern has arisen, what action has been taken and what preventative steps have been implemented to prevent repetition.
  - b) If it appears any offence may have occurred, report the matter to the Police and provide the Council with written evidence that the incident has been reported to the Police.
  - c) Notify its insurer and provide the Council with written evidence that a claim has been made; the Contractor must inform the Council of its insurer's response; if a claim is accepted by the insurer, any insurance proceeds must be assigned by the Contractor to the Council if the Contractor has not fully compensated the Council for the loss of ticketing revenue.
90. Ten working days before the commencement of the contract, the Contractor must give the Council a direct debit authority enabling the Council to withdraw the ticketing revenue due to it on the settlement dates set by the Council.

91. The Contractor must not revoke the authority given under clause 90 until after this contract ends.
92. The Council must issue to the Contractor a written settlement statement at least three working days before withdrawing any funds.
93. The Council may change the practices and procedures relating to accounting for and payment of ticketing revenue by the Contractor to the Council. The Council must give the Contractor three months' written notice before commencing any new procedures.
94. The Contractor must note that stored value and top up payments are not subject to GST.

### **Integrated Ticketing**

95. The Contractor must participate in the Council's integrated ticketing system, which is currently provided by Electronic Ticketing Systems Limited, and/or any replacement, when providing the Service.
96. The Contractor must at all times comply with the "business rules" for the operation and use of the Council's integrated ticketing system. The Council may modify or replace the "business rules" at any time by giving written notice to the Contractor.
97. Before the Service begins, the Contractor must install at its own cost, and to Council's ticketing equipment supplier's specification, the integrated ticketing system equipment on the buses and in the premises to be used in the Service.
98. The Contractor must pay the rental, stipulated by the Council for the hire of the integrated ticketing equipment to the Council.
99. Data collected by the integrated ticketing system is the property of the Council.
100. The Contractor may use the data only for the purposes of providing the Service and complying with this contract.
101. Council may share data collected through the integrated ticketing system with the Contractor if Council considers it necessary for planning, management or contract performance purposes.
102. The Contractor must return any data provided by the Council immediately upon request by the Council and in any event, immediately on the end of the contract.
103. To meet the requirements of Council's ticketing system the Contractor must:
  - a) Ensure all equipment is installed and operational prior to the commencement of services.
  - b) At its own cost provide and maintain a dedicated secure internet access and computer connection for a personal computer PC (to be supplied by Council).
  - c) Use the Council supplied PC solely for the ticketing system.
  - d) Provide at the Contractors own cost an appropriate level of training to all drivers, operational, and support staff in the use of the system to ensure that all are competent in the use of the system

- e) Rent one onsite ticketing machine for training purposes and one ticketing machine per bus including all back up buses required for this contract at \$200.00 plus GST per machine per month (to be increased annually in accordance with the Public Transport (Bus) Cost Index published by NZTA from 1 September 2017).
  - f) Rent one depot reader at \$210.00 plus GST per month (to be increased annually in accordance with the Public Transport (Bus) Cost Index published by NZTA from 1 September 2017).
  - g) Purchase all necessary consumables for the ticketing equipment provided by Council through Council's Ticketing provider.
  - h) Ensure each driver is issued with his or her own data module, login ID and personal PIN number on a daily basis.
  - i) Ensure all modules are downloaded to the depot reader at the completion of each drivers shift and not later than 12.30am for the previous day's service.
  - j) Maintain and supply to Council no less than twice yearly and/or upon request a register of all ticketing equipment and modules held by the Contractor.
  - k) Provide for the routine maintenance of all ticketing equipment in accordance with Council's suppliers requirements (for the avoidance of doubt routine maintenance does not include repairs).
  - l) Ensure that all duty rosters are provided to the ticketing system supplier in an approved format and in a timeframe acceptable to the ticketing system provider and Council.
  - m) Ensure that all drivers correctly code all shift duties, trips and routes into the ticketing equipment.
  - n) Ensure all drivers correctly enter the appropriate fare, boarding location and destination into the ticketing equipment.
  - o) Ensure the depot reader and Council supplied PC are connected and accessible to the ticketing system provider at all times.
  - p) Ensure all shorts and overs are recorded into the ticketing system on a daily basis.
  - q) Comply with all requests from Council's ticketing system provider.
  - r) Ensure that all drivers enter all information required including but not necessarily limited to the correct duty, route, trips, zone changes, fares, bus and driver details and log on and log off in accordance with the instructions of the ticketing system provider.
104. During the contract, the Council will change the integrated ticketing system. The Council will pay for the initial installation of any new ticketing system and equipment which is expected to occur between January and June 2018. The Contractor will be required to pay for further equipment installations required during the term of this Contract.
105. The Contractor must cooperate with the Council and its integrated ticketing system supplier in making its fleet and premises available at all reasonable times for installation and maintenance of equipment used in the Service.
106. Council will arrange initial training for the Contractor's staff in the use of any new system at the Council's cost on a train the trainer basis. The Contractor must ensure all employees who participate or may participate in providing the Service are fully trained in and are competent in the use of any integrated ticketing system.

107. Where a new integrated ticketing system is installed, then a new rental may be set by the Council for the equipment installed on the Contractor's buses and in the Contractor's premises. The Council will adjust the gross price of the contract by the difference in the cost between the current rental prescribed in clauses 103e) and 103f) and the amount of the new rental payable (whether upwards or downwards).

## Closed Circuit Television

108. The Land Transport Rule: Passenger Service Vehicles 1999 requires that drivers must be able to observe all passengers. Therefore the minimum of three close circuit television (CCTV) cameras is required per vehicle. Cameras must be in a position to monitor:
- Entrance platform and passenger/driver interface;
  - Road ahead of vehicle; and
  - Rear of interior seated area looking forwards from rear towards seated areas.
109. The Contractor must ensure the reliability of the CCTV camera operation. Fleet reliability for cameras is 98 percent operational at the time of request. Council may request an audit of the cameras at any time. The Contractor must fully cooperate with any audit initiated or requested by Council.
110. Where the Contractor identifies a visual image (including but not limited to a video sequence) that may be of use to Council or the Police the Contractor must supply the image or images to the appropriate agency. Council may request copies of images (or to view images) at any time.
111. Images must be able to be viewed at any time by the Council. Council requires that by 1 November 2018 images and video shall be available in real time. The images must be able to be downloaded from the camera via a USB stick or through Wi-Fi, or mobile connection in a common usage format. Images requested from any vehicle must be made available to Council in electronic format no later than the next Working Day. Images must be of a sufficient quality to allow facial recognition.

## Telematics

112. The Contractor must fit and use a bus telematics system as a tool to monitor fleet and driver performance. The Contractor will be responsible for the internet fees, any maintenance and support and all other costs associated with the telematics system and must provide Council with access to view the information in real-time.
113. Telematics data must be retained by the Contractor for six months. Reporting on events, incidents, must be available both on an event exception basis on pre-agreed criteria and as detailed performance analysis. Council reserves the right to have the data made publicly available.



114. Council may request an audit of telematics operation at any time. The Contractor must fully comply cooperate with any audit initiated or requested by the Council.
115. During the contract the following technology may be installed by Council on some or all buses and in the Contractor's premises:
- a) Global Positioning Systems (GPS) or Automated Vehicle Locators (AVL) and associated communication links
  - b) Real time public transport information (from service commencement)
  - c) Public wi-fi (from service commencement)
  - d) Audible bus stop announcements
  - e) Any other passenger transport technology
116. If any of these features are installed:
- a) The Council will pay the installation costs directly associated with equipment supplied by Council. The Contractor must cooperate with the Council and its supplier by making its fleet and premises available at all reasonable times for the installation and maintenance of equipment.
  - b) Council and its supplier will provide initial training in the use of the new feature at the Council's costs. Training for the new technology will be provided by the Council at the Council's cost on a "train the trainer" basis.
  - c) The Contractor must ensure all employees who participate or may participate in providing the Service are fully trained and competent in the use of the new feature.
  - d) The Council may set a rental for the new feature payable by the Contractor. The Council will add the annual amount of rental payable by the Contractor to the gross price of the contract.
  - e) Where the equipment/systems supplied by Council replace equipment/systems in use by the Contractor then any costs associated with the operation of the existing equipment/system shall be deducted from the gross price of the contract.
  - f) The Contractor must at all times operate the new feature and carry out all routine maintenance requirements at its own cost.
  - g) Where necessary the Council will arrange for the support and maintenance (other than routine maintenance) of the new feature.

- h) The Contractor is entitled to extra payment for the installation of the new feature where the Contractor can demonstrate to the satisfaction of Council acting reasonably that additional costs have been incurred by the Contractor.
  - i) The Contractor is entitled to extra payment for the use and maintenance of the new feature where the Contractor can demonstrate to the satisfaction of Council acting reasonably that additional costs have been incurred by the Contractor. Any claim by the Contractor shall take into consideration any operational efficiencies and cost savings received as a result of the new feature.
  - j) **The implementation and maintenance of the system management and configuration protocols (as Defined by Council and the Contractor) of Council's public WiFi system shall be deemed to be included in the Contract Price.**
117. The Contractor must take all reasonable steps to prevent damage and/or maintain the functionality of any Council supplied equipment, and will be liable for any damage or malfunction caused by the Contractor or its staff.
118. In the event that any of the equipment and/or system fails the Contractor must immediately notify Council and its supplier or nominated repairer of the fault and without delay replace, or make available for replacement or repair immediately.

## The Contract Price

119. The contract price is the gross contract price in the Contractor's successful tender, unless otherwise agreed. The contract price will be adjusted to include:
- a) Provisional Item 1- at the date on which the Provisional Item 1 commences operating;
  - b) Provisional Item 2- at the date on which the Provisional Item 2 commences operating
  - c) Provisional Item 3- at the date on which the Provisional Item 3 commences operating
  - d) Provisional Item 4- at the date on which the Provisional Item 4 commences operating
  - e) **Provisional Item 5- at the date on which the Provisional Item 5 commences operating**
  - f) Stage 2- at the date on which the Stage 2 service commence operating.
120. The variable rates are specified in the Contractor's successful tender unless otherwise agreed.
121. The gross contract price must be adjusted each quarter, from the quarter ending 30 September 2017, in accordance with changes in the Public Transport (Bus) Cost Index published by NZTA. Any consequential price adjustments must be calculated and paid by the Council to the Contractor, or by the Contractor to the Council, as the case may be, as soon as practicable after publication of the index for the related quarter.
- a) For the avoidance of doubt the;
    - i) "Provisional Items 1, 2, 3, 4 **and 5.**"
    - ii) "Stage 2 Arrowtown to Queenstown loop"
- As tendered shall be adjusted in accordance with clause 121

122. The Contractor must pay all the costs of providing the service except where this contract expressly provides otherwise.

### **Contract Price Reset**

123. The annual gross price of this contract will be reset as at 1 October 2023 by adjusting the tendered gross price of the contract in accordance with the Public Transport (Bus) Cost Index published by NZTA, unless Council or the Contractor can demonstrate it would be substantially disadvantaged by the application of the reset.
124. The annual gross price of this contract will also be reset if the Contractor wishes to turn this unit into a non-subsidised unit and keep the fares. If the Contractor wishes to operate the Service without subsidy, Council may in its sole discretion agree to reset the gross price of the contract at \$0 or less.
- 125.
- a) The Council and the Contractor may agree to reset the cost price of this contract as part of any variation.
  - b) In the event that Council procure the replacement fleet then the cost of capital shall be taken into consideration and the gross cost reset.

### **Service Level Variations**

126. Either the Council or the Contractor may request changes to the route, capacity, frequency and/or timing of the whole or any part of the Service (service level variations), so long as consistent with Otago's Regional Public Transport Plan (RPTP).
127. Potential Service level variations will be discussed during the business planning process in Schedule 6
128. The Council in its sole discretion may require by written notice to the Contractor:
- a) An increase in the level of Service;
  - b) A decrease in the level of Service;
  - c) Any other Service level variation.
129. Council's notice must state:
- a) The variation required.
  - b) The date the variation is to commence.
  - c) Council's assessment of the value of the variation.

130. The Council's notice must be given at least three months prior to the date the variation is to commence, unless that variation is for a planned event of function for which no additional peak buses are required in which case at least one month's notice prior to the event and/or function shall be given.
131. The Contractor must implement the Service level variations required by the Council's notice. Clause 234 to 243 inclusive shall apply if the value of the variation assessed by the Council is disputed by the Contractor.
132. The Contractor may by request in writing to the Council ask for:
- a) An increase in the level of Service.
  - b) A decrease in the level of Service.
  - c) Any other Service variation.
133. The Contractor's request must state:
- a) The proposed variation.
  - b) The date the variation is proposed to commence.
  - c) The Contractor's assessment of the value of the variation.
134. If the Council receives a request from the Contractor for a Service level variation, the Council may:
- a) Accept the request as proposed.
  - b) Accept the request with modification.
  - c) Reject the request.
135. If the Council accepts the Contractor's request with modification, then the Contractor may accept or reject the Council's reply. If the Contractor rejects the Council's reply, then the Service level variation is not agreed and shall not occur.
136. The value of any Service level variation shall be determined by using the variable rates.
137. The variable rates must be adjusted from the quarter ending 30 September 2017 in accordance with the Public Transport (Bus) Cost Index published by NZTA and continue to be so adjusted.
138. The price of the variation shall be added to the gross price of the contract.

## Payment

139. The Contractor must submit to the Council a tax invoice for all payments claimed. The tax invoice must be supported by a properly completed claim form in a format approved by Council
140. The Contractor must render tax invoices for each calendar month. The tax invoice and supporting information must be received by the Council within four working days of the end of the calendar month to which the invoices relates.
141. Payments due under the contract will be made each month, if the Contractor has submitted a tax invoice.
142. Each monthly payment will be calculated as follows:
143. 1/12th of the contract price plus any price variation made under this contract less (including any adjustment under clauses 119,121, and 123-125 inclusive) the total of:
- Any amounts which the Council may deduct in accordance with this contract; and
  - 1/12th of the Contractor's share of the annual support fee; and
  - The monthly rental payable by the Contractor for ticketing and any other equipment and/or systems provided by the Council.

## Deductions

144. If the Contractor does not operate the service or any part of the service, the Council may in its absolute discretion:
- a) Not pay for any journey or part journey not operated by the Contractor; or
  - b) Reduce the payment to the Contractor by such sum as the Council reasonably thinks represents the reduction in service and or loss to Council, to take account of the difference between the contracted service and the actual service provided by the Contractor.
145. Clause 144 does not derogate from clauses 230 to 233 inclusive and clauses 244 to 262 inclusive.
146. Council may also deduct from any contract payment due to the Contractor:
- a) Any liquidated damages.
  - b) Any rents payable by the Contractor under this agreement.
  - c) Any ticketing revenue owed by the Contractor to the Council.
  - d) Any other sum which the Council is entitled to deduct under this contract.

147. The Council's assessment of any deduction is final and binding on the Contractor.

### **Fare Adjustment**

148. The Council may at any time change the fares in the fare schedule by written notice to the Contractor.

### **Privacy**

149. Subject to any legal requirements, all information received by the Council concerning the Contractor's personnel will be treated confidentially and solely for the purposes of managing public transport in Otago.

### **Drivers**

150. The Contractor must ensure that all drivers are adequately trained in all respects of the Service relating to their role and to provide a safe, courteous, and reliable service.

151. All drivers must at all times hold a valid driving licence for the class of vehicle.

152. All staff in contact with the public must wear a name badge or identification label which is clearly visible at all times so that they can be readily identified by members of the public with whom they come into contact.

153. All drivers and other staff dealing with the public must be clean, tidy, and wear the Contractor's unique uniform and observe a standard of personal hygiene appropriate for dealing with the public.

### **Annual Support Fee**

154. The Contractor must use the Council's call centre. In addition to the Contractor's own depot customer support services and functions the Contractor and the Council shall arrange (in conjunction with the Unit 6 Contractor) for the provision of frontline customer support in the Wakatipu Basin including an on-street presence. The support fee outlined in clause 155 shall be used to fund the Operators share of the joint customer support facility.

155. The Contractor must include in the contract cost and pay to Council a support fee of \$100,000.00 plus GST each year.

156. The sum of \$100,000.00 is subject to quarterly adjustment based on the changes in the NZTA's Public Transport (Bus) Cost Index from the quarter ending 30 September 2017. The Council, in its sole discretion, may reduce the gross price of the contract by the amount of the support fee.

## **Publicity**

157. The Contractor must cooperate in any promotion or publicity of public passenger transport undertaken by the Council.
158. The Contractor must not engage with the television, radio and newspaper media on matters related to this Contract without Council's prior written consent.
159. The Contractor must acknowledge the support of Council whenever publicising aspects of the Service to the public or to other stakeholder groups.
160. The Contractor must obtain Council's written approval of any promotional or publicity scheme prior to its implementation.
161. No advertising (whether for the Contractor or any other person) shall be displayed in or on any vehicle used in the Service unless the Council has first given its written approval.
162. The Contractor shall make available to Council up to 25 percent of the fleet for advertising at any one time. The contractor shall not be entitled to royalties or revenue for fleet used by Council for advertising.

## **Fleet**

### **Vehicles**

163. The Contractor must when providing the service use the vehicles listed in its tender and/or any other vehicle approved by Council in writing for this contract.
164. The Contractor must obtain Council's written permission to add or remove vehicles to or from the approved vehicle list for this Contract.
165. Each Vehicle used in the service must conform to the vehicle quality standards set out in Schedule 5.
166. The contractor must only use back up vehicles in support of the primary vehicles as a result of:
  - a) Mechanical failure
  - b) Vehicle servicing or inspection requirements
  - c) Panel repairs

### **Initial Vehicle Inspection**

167. If the Contractor is purchasing a vehicle for use in the Service, the Contractor must within 5 working days of acceptance of tender, provide to the Council evidence from the supplier confirming that the Contractor has ordered the vehicle and the supplier will provide the date on which the vehicle will be available for Service.
168. The Contractor must make available in Queenstown all vehicles which will be available for use in the Service at the start of the service for inspection by the Council no later than 10 working days before the start of the service.
169. Council's written approval of all vehicles which will be available for use at the in the Service at commencement of the service must be obtained by the Contractor at least 5 working days before the start of the service.
170. No other vehicle may be introduced to the Service unless first inspected by Council and approved in writing by the Council for use in the performance of this contract.
171. No vehicle may be used in the Service if it was not included in the Contractor's tender, without the prior written consent of the Council.

### **Further Vehicle Inspections**

172. The Council may at any time inspect any vehicle, including backup vehicles, which may be used in providing the service.



173. When requested by the Council, the Contractor must make any vehicle available for inspection by the Council at the time, and place, specified by the Council.
174. The Contractor must keep complete, accurate, readily intelligible and verifiable records of the maintenance of vehicles that may be used in the Service.
175. The Contractor must immediately make available to the Council, on request, maintenance records of vehicles used in providing the Service, including the maintenance records of backup vehicles.
176. If the Council considers that a vehicle does not meet the vehicle quality standards in Schedule 5 or the vehicle does not otherwise conform to the requirements of this contract, or is otherwise unfit for service, then the Council may, acting reasonably, direct that the vehicle be removed from service immediately.
177. If the Council directs that any vehicle be removed from service, the Contractor must immediately comply with the Council's direction.
178. If the Council directs that any vehicle be removed from service, the vehicle shall not be returned to service until the Council is satisfied the vehicle complies with all the terms of this contract and is otherwise fit for service and gives written permission for the vehicle to return to service.
179. Nothing in clauses 176 to 178 inclusive derogates from clauses 230 to 233 inclusive and clauses 244 to 262 inclusive.
180. For the avoidance of doubt, if the Contractor;
  - a) Uses or fails to remove a vehicle from service in accordance with the direction given by the Council
  - b) Returns a vehicle to service when the Council has not given written permission for the vehicle to be returned to service the Contractor is deemed, for the purposes of clause 230 i), to have used a vehicle in the Service that is not approved by Council for use in the Service.

## **Branding**

181. The vehicles used in the service must be clearly identified with the name of the Contractor and any "brand name" if operating under a trading name different from the Contractor's legal name.
182. The Contractor must identify individual vehicles uniquely by number.
183. The colour scheme, including the company logo or brand name, used on the exterior of a vehicle, must be identical on each vehicle which may be used by the Contractor to provide the Service, unless the Contractor has obtained the prior written approval of the Council. The Council will not approve any advertising on any of the windows of a vehicle.

184. Council may, either before or after the commencement of the services, at its own cost apply a network colour scheme and/or branding to vehicles used in the Service. The Contractor must on written request make available to the Council vehicles used in the Service for the network colour scheme and/or branding to be applied.
185. If Council has applied a network colour scheme and/or branding in accordance with clause 184, then the contractor shall maintain that branding and colour scheme while the vehicle remains in use in the service as if the colour scheme and/or branding were its own livery.
186. If the network colour scheme and/or branding applied by Council in accordance with clause 184 is significantly different from the immediately previous colour scheme and/or branding of any vehicle used in the Service, then except where the vehicle requires repainting due to the age and condition of the paint/signage Council will pay the reasonable cost of restoring the vehicle's immediately previous colour scheme and/or branding when the vehicle permanently ceases to be used in the Service.
187. As the Contractor removes vehicles from the fleet, the Contractor must remove, at its own cost, the Council logos and network specific branding from those vehicles (e.g. the graphics, but not the colour of the bus). The Contractor must remove at its cost, the Council logos and network specific branding from the vehicles on termination of the contract unless the Contractor enters into a new contract to provide the Service or obtains the Council's written approval to retain the logos and branding.

## **Signage**

188. The Contractor must display clearly on the front and left side of the vehicles used to provide the service destination route indicators to inform intending passengers of the destination and route of the trip being operated. The signage must be compliant with the NZ Transport Agency's Requirements for Urban Buses 2014.
189. The Contractor must display inside all vehicles used in the service any information provided by the Council which relates to the public transport activities of the Council; such information may include publicity or other material. The Council will meet the costs of providing such material and the Contractor must pay the costs of erecting or displaying such material.
190. The Contractor must display on all vehicles providing the Service any branding or promotional sign supplied by Council on the left-hand side of the bus near the front boarding door and any other sign required by the Council that advises the travelling public that the bus is part of a contracted public transport service. Council branding and signage shall be attached at Council's costs.

## **Head signs**

191. The Contractor must not display any head sign or wording, unless first approved by Council in writing.

## **Subcontracting and Assignment**

192. The Contractor must not subcontract or assign the whole or any part of the service without having first obtained the written consent of the Council.
193. Council may in its absolute discretion refuse consent to subcontract or to assign the whole or any part of the service.
194. The written approval given by the Council may be on such terms as the Council, in its absolute discretion thinks fit.
195. Notwithstanding any assignment or subcontracting, the Contractor remains liable to the Council for all the Contractor's obligations under the contract.
196. Despite clause 192, the Contractor may arrange temporary provision of the whole or any part of the service in accordance with this contract by another bus operator provided that:
- a) Circumstances have arisen are beyond the control of the Contractor; and
  - b) The Contractor immediately notifies the Council of the circumstances and gives the Council full particulars of the bus operator who will be temporarily providing the service; and
  - c) The period of temporary cover does not exceed two operating days, without the express written consent of the Council; and
  - d) The Contractor remains fully liable to the Council under this contract for the provision of the service during that period.
197. All costs of subcontracting or assignment (including the costs and expenses of Council in relation to the subcontracting or assignment) are payable by the Contractor.

## **Health and Safety**

198. The Contractor must implement and operate in accordance with the health and safety plan endorsed by Council.
199. The Contractor must review its health and safety plan:
- a) At six monthly intervals;
  - b) After any health and safety incident in which any person has suffered serious harm or if serious damage to third party property has occurred,
  - c) Whenever requested by the Council in writing,
  - d) Whenever there are amendments to the Health and Safety at Work Act, or other relevant legislation.

200. The health and safety plan may be amended by the Contractor with the prior written approval of the Council. The Contractor must implement and operate in accordance with any amended health and safety plan.
201. The Contractor must also:
- a) Comply with all its legal obligations relating to health and safety.
  - b) Train its personnel to comply with its health and safety plan.
  - c) Supervise its personnel to ensure that all health and safety obligations are carried out.
  - d) Take all practical steps to ensure no person is put at risk and suffers harm in the performance of its obligations under this contract.

## **Accidents**

202. The Contractor must:
- a) Maintain a register of all accidents.
  - b) Investigate accidents and identify their cause.
  - c) Ensure that all persons under the Contractor's control are appropriately supervised.
  - d) Provide Council with a copy of any report, which the Contractor is required to make to a public authority on any accident, which is associated with the provision of the Service.
  - e) Report to Council any accidents that occur in the operation of the Service, including during positioning journeys. Such notice shall be given not later than the next Working Day.
  - f) Inform the Council of all remedial action and any steps taken to prevent recurrence of the accident.
203. A report must also include:
- a) Details identifying the bus.
  - b) The name of the driver.
  - c) Whether the bus was in service.
  - d) The time, date and location of the incident.
  - e) A description of the incident.

- f) Any effects on third persons or the property of third persons.
- g) Whether Police or other emergency services were involved.
- h) Whether regulatory authorities were notified.
- i) The outcome of incident.

204. This notice is additional to any responsibility to notify any regulatory authority.

### **Contractor's Indemnity**

205. The Contractor shall fully indemnify and shall keep fully indemnified Council against all costs, damages, loss and expense incurred or suffered by Council for any breach by the Contractor and its personnel of the Health and Safety requirements of this Contract or any health and safety legislation, or any conviction or proceedings instigated against Council arising from or incidental to such breach.

### **Costs**

206. Compliance with Health and Safety obligations is entirely at the Contractor's cost.
207. The Contractor shall not be entitled to claim for any adjustment to the Contract Price arising in relation to Health and Safety issues or enforcement or proceedings under any health and safety legislation.
208. All costs to Council arising out of a breach by the Contractor of its obligations under Clauses 198 to 203(inclusive) shall be payable by the Contractor to the Council on demand.

### **Other Legal Obligations**

209. The Contractor and all persons engaged by the Contractor to provide the services, must at all times comply with all legal requirements relating to the performance of this contract.
210. Without limiting clause 209,
- a) Before commencement of the service, the Contractor must at its own cost, obtain all necessary licences and all other authorisations required by law to provide the service.
  - b) Throughout the term of the contract, the Contractor at its own cost, must maintain all necessary licences and all other authorisations required by law to provide the service.

- c) Before the commencement of the service and at all times while the service is being provided under this contract, all persons engaged by the Contractor to provide the service must hold all necessary licences and other authorisations required by law for the provision of the service.
- d) The Contractor must ensure that all vehicles used in the service are licenced, registered, warranted and certified and have any other approvals required by law and are maintained to the standard required for such approvals.
- e) The Contractor must immediately give notice to the Council of the cancellation or suspension of any licence or other legal authorisation necessary for the provision of the service or anything which might result in such suspension or cancellation.

## Quality Assurance

- 211. The Contractor is responsible for monitoring the quality of the Service provided and ensuring that the Service complies with the requirements of the Contract.
- 212. The Contractor shall implement and operate the Quality Assurance Plan in accordance with its tender.
- 213. The Quality Assurance Plan shall include each of the following as a minimum:
  - a) Detail and/or reference all inputs and procedures to enable the Contractor to provide the Service to the required standards and comply with the requirements of this Contract.
  - b) Confirm the Contractor's team and their roles.
  - c) Detail monitoring, testing and verification procedures for all deliverables under the contract.
  - d) Management process for occupational Health and Safety issues.
  - e) The Contractor's regime for ensuring adequately skilled and trained personnel are assigned to tasks under the contract;
  - f) The Contractor's Vehicle maintenance plan.
  - g) The Contractor's regime for handling passenger complaints.
  - h) The Contractor's methodology for the identification of Contract issues and problems, including escalation procedures.
  - i) The Contractor's self-monitoring and reporting regime.

214. The Quality Assurance Plan may be amended by the Contractor with the written approval of the Council. The Contractor must implement and operate in accordance with the amended plan.
215. Council may audit the Contractor's compliance with the Quality Plan and the Contractor's reporting. The Contractor shall make all information available as shall reasonably be required by Council to ensure such compliance.
216. From time to time Council may request a Contractor Performance meeting to discuss performance issues. The Contractor must attend.

## **Insurance**

217. The Contractor must at its own cost maintain from the commencement of the service to the end of the contract:
- a) Public liability insurance cover of \$5,000,000.00 for each and every event; the cover must indemnify the Contractor, the Council jointly and severally against all liability which may arise during the contract; and
  - b) Comprehensive motor vehicle cover, including cover against third party claims, on all vehicles used or intended to be used to provide the service.
218. Insurance cover must be provided by an insurer approved by the Council and on terms and conditions approved by the Council. Proof of insurance shall be provided to the Council within three working days of acceptance of the Contractor's tender by the Council.
219. The Contractor must provide Council with written proof of annual renewals of all insurance required by this contract.
220. The Contractor must, without delay, provide on request by the Council, insurance certificates evidencing that the insurance cover required by this contract is in place.
221. The Contractor must not do anything which invalidates any insurance cover required by this contract. The Contractor must not do anything which allows an insurer to decline any claim made under an insurance policy required by this contract.

## **Indemnity**

222. The Contractor must fully indemnify and keep indemnified the Council against all actions, proceedings, claims, demands for any loss, damage or injury caused by the Contractor and against all costs and expenses (including legal fees and witness expenses) incurred by the Council arising out of such actions, proceedings, claims, or demand.

## Bond

223. The Contractor must provide at its own cost, for the duration of the contract, a bond in the form set out in Schedule 4.
224. The bond must be given by a surety acceptable to the Council.
225. The bond must be for the aggregate of the sum of \$40,000.00 and 1/6th of the first year gross price of the contract, plus 1/6<sup>th</sup> of the additional Stage 2 gross price cost (GST inclusive).
226. The bond must be completed and provided to the Council within 10 working days of acceptance of the Contractor's tender.

## Key Performance Indicators

227. Council will monitor and report on a number of key performance indicators (KPI's) for public transport set out in Schedule 8.
228. The contractor must provide in a format approved in writing by the Council the information set out in Schedule 8 at the intervals stipulated in that schedule.

## Warranties

229. The Contractor warrants:
- a) All information in its tender is true and correct.
  - b) If it becomes aware of any matter which affects the truth or completeness of any part of its tender (except price) it shall notify the Council in writing without delay.
  - c) The plans that are part of its tender are fit for purpose.
  - d) If it becomes aware of any defect in any of its plans, it shall notify the Council in writing without delay and seek the Council's approval to an amendment of the plan to remove the defect.
  - e) All information provided by the Contractor to the Council during this contract will be true and complete.

## Warnings and Liquidated Damages

230. The Council may give a written warning to the Contractor where the Contractor has without good cause:
- a) Failed to operate a trip in accordance with the timetable (non arrival); or



- b) Operated a contracted trip early (departed out of any terminus or timing point more than 59 seconds ahead of scheduled time); or
  - c) Operated a contracted trip late (arrived at a terminus more than 59 seconds after the scheduled time of arrival); or
  - d) Operated a contracted trip late (departed out of a terminus or timing point more than 59 seconds after the scheduled time); or
  - e) Failed to supply and/or display accurate route or destination information; or
  - f) Deviated from the prescribed route; or
  - g) Failed to pick up passengers at any designated stops for the service; or
  - h) Charged an incorrect fare or failed to collect a due fare or failed to collect any other payments due or failed to issue a correct ticket; or
  - i) Used a vehicle on the Service that is not approved by Council for use in the Service.
231. When a written warning is issued by the Council under clause 230 the Contractor has one working day from service of the notice to object to the notice and give particulars to enable the Council to evaluate whether there is good cause. The onus is on the Contractor to demonstrate good cause. Good cause has the meaning in clauses 247 to 249 inclusive.
232. Any objection shall be dealt with by the Council whose decision shall be final and binding on the Contractor.
233. If the Contractor has not established good cause, then the Council, in its absolute discretion, may deduct from the next contract payment due to the Contractor, liquidated damages calculated to cover the estimated cost to the Council in dealing with the matters giving rise to the breach. Liquidated damages applicable to this contract are \$280 per trip or part thereof.

## **Dispute Resolution**

### **General**

234. Without limiting the application of the clauses below relating to dispute resolution, in the event of a dispute, disagreement or difference of opinion ('dispute') arising under the Contract, as to:
- a) The meaning or application of any part of this Contract; or
  - b) Any other matter touching or concerning this Contract.
  - c) The parties shall actively and openly endeavour to amicably settle such dispute themselves, with a view to achieving prompt resolution.

## **Notice of Dispute**

235. A party claiming that a dispute has arisen must give written notice to the other party, specifying the nature of the dispute. On receipt of such a notice, the parties shall endeavour to resolve the dispute amicably and expeditiously using informal dispute resolution techniques agreed by them.

## **Referral to Senior Management**

236. If the parties are unable to settle a dispute amicably under clauses 234 and 235 by conference or negotiation, either party may issue a notice referring the dispute to the senior management of the parties to resolve.
237. Within 10 Working Days of service of such a notice, senior management representatives of each party shall meet and attempt to resolve the dispute. Any resolution shall be recorded in writing and binding when signed by both parties.

## Referral to Mediation

238. If the senior management representatives either fail to meet or fail to resolve a dispute within 10 Working Days of its referral to them under clause 236, or where neither party requires referral to senior management within 10 Working Days of the giving of notice of a dispute under clause 235, either party may at any time subsequently by notice in writing to the other require the dispute to be submitted to mediation.

## Mediation

239. If any dispute is submitted to mediation under clause 238, the following shall apply:

- a) A single mediator shall conduct the mediation.
- b) The Contractor and Council shall endeavour to agree on a mediator.
- c) If the Contractor and Council cannot agree on a single mediator within 10 Working Days of service of notice of intention to commence mediation, either party may request the President of the Arbitrators and Mediators Institute of New Zealand Incorporated to appoint a sole mediator.
- d) The mediator shall discuss the matter with the Contractor and Council (separately or jointly as the mediator may determine) and endeavour to resolve the dispute by agreement.
- e) All discussions in the mediation shall be without prejudice and shall not, save in the case of proceedings to enforce settlement concluded by mediation, be referred to in any later proceedings.
- f) The Contractor and Council shall bear their own costs in mediation and shall pay the cost of the mediator in equal shares.

## Arbitration

240. If the parties cannot resolve the dispute by mediation under clause 239, then either party may by written notice to the other refer the dispute to arbitration in accordance with the Arbitration Act 1996 on the following terms:

- a) A single arbitrator shall be appointed.
- b) If the parties fail to agree on an arbitrator, then the President of the Arbitrators and Mediators Institute of New Zealand Incorporated shall appoint the arbitrator.
- c) The place of arbitration shall be Queenstown.
- d) No person who has participated in an informal dispute resolution of the dispute shall act as arbitrator.

- e) The arbitrator shall proceed promptly to deliver an award. The parties shall cooperate fully in this respect.
- f) The parties agree that the arbitrator's decision shall be final and binding.
- g) The Contractor and Council shall bear their own costs in arbitration and (in the absence of an arbitrator's award to the contrary) shall pay the costs of the arbitrator in equal shares.
- h) Either party will be entitled to appeal to the High Court on any question of law arising out of the award.

### **Performance of Obligations**

- 241. Pending the settlement of the dispute, the parties shall continue to perform all their obligations under the Contract except neither party shall be obliged to pay any money which is the subject of the dispute.
- 242. Clause 241 does not apply if Council has cancelled the contract under clause 244 unless the Contractor has obtained an injunction in accordance with clause 243.

### **Compliance with Dispute Resolution Regime**

- 243. A party to the Contract may not commence any court or arbitration proceedings relating to a dispute unless it has complied with the clauses above relating to dispute resolution (except where the party seeks urgent interlocutory or injunctive relief).

### **Cancellation by Council for Non-Performance**

- 244. The Council may in its absolute discretion by written notice to the Contractor cancel the contract with immediate effect on service of the notice if:
  - a) The Contractor abandons or repudiates the contract;
  - b) The Contractor makes any assignment for the benefit of creditors;
  - c) The Contractor enters into any composition with creditors;
  - d) The Contractor is insolvent, is adjudged bankrupt or is put into liquidation;
  - e) Any creditor becomes entitled to exercise any right to realise any security over the Contractor's assets;

- f) Any creditor takes possession of any of the Contractor's assets;
  - g) A receiver is appointed for the whole or any part of the Contractor's assets;
  - h) Any of the Contractor's assets are taken in execution of any judgment;
  - i) The Contractor has made any misstatements in the Contractor's tender;
  - j) The Contractor fails to obtain the approval of Council to the vehicle fleet the Contractor intends to use to provide the Service, at least 10 working days before the commencement of the Service;
  - k) The Contractor fails to provide the bond required by clause 223 within 15 working days of acceptance of the Contractor's tender;
  - l) The Contractor fails to pay to the Council any ticketing revenue to which the Council is entitled, after having been given written notice by Council to pay the ticketing revenue;
  - m) The Contractor fails to comply with any other obligations under this contract relating to ticketing revenue and that non-compliance results in a loss of revenue and/or data to the Council.
  - n) The Contractor fails to provide a remedial action plan for approval of Council under clause 253 or clause 260.
  - o) The Contractor fails to obtain Council approval of a remedial action plan under clause 261.
  - p) The Contractor fails to implement a remedial action plan approved by Council.
245. Despite the Contractor implementing a remedial action plan approved by Council, the Contractor, without good cause, breaches the obligation that is the subject of the remedial action plan after having received written notice from Council warning of the Council's ability to cancel the contract under this clause.
246. For the purpose of 244a), the Contractor shall be conclusively deemed to have abandoned the contract if the Contractor fails to operate the Service for a period of twenty-four (24) hours or more without good cause.
247. "Good cause" will exist if the failure occurs:
- a) Without any fault on the part of the Contractor; and
  - b) For reasons entirely beyond the control of the Contractor; and
  - c) The Contractor notifies the Council of the interruption to the Service and the reasons for it as soon as practicable.
248. "Good cause" does not include;
- a) Lockouts by the Contractor

- b) Industrial action taken by the Contractor's employees where Council having given the operator the opportunity to outline its reasons considers the contractor is or has been acting unreasonably; or
  - c) Any other act or omission of Contractor's personnel;
249. The Contractor has the onus of demonstrating good cause to the satisfaction of the Council.
250. The Council acting reasonably may, by written notice to the Contractor, require the Contractor to prepare and submit to Council for approval a remedial action plan if the Contractor breaches any of its obligations in this contract (other than an obligation which entitles the Council to cancel the contract under clause 244 within the time prescribed by Council in the notice.
251. The notice given by Council under clause 250 must state:
- a) The breach which is the subject of the notice;
  - b) The requirement to provide a remedial action plan for approval by Council;
  - c) The time within which the remedial action plan is to be provided to Council for approval;
  - d) The matters which the remedial action plan must contain;
  - e) A warning that if the Contractor fails to provide Council with a remedial action plan within the time prescribed by Council in the notice, the Council may cancel the contract under clause 244.
252. The remedial action plan prepared by the Contractor must contain:
- a) Full particulars of the breach;
  - b) The reasons for the breach;
  - c) The steps taken by the Contractor to correct the breach;
  - d) The further steps to be taken by the Contractor to remedy the breach and to prevent its repetition;
  - e) The time within which the matters in clause 252d) will be achieved;
  - f) When and how the Contractor will report to Council on the implementation of the remedial action plan.
253. The Contractor must provide a remedial action plan required by Council under clause 250 within the time prescribed in the notice given by the Council. If the Contractor fails to do so, the Council may cancel the contract under clause 244n).
254. The Council may approve or, acting reasonably, reject the remedial action plan.
255. If the Council approves the remedial action plan, the Contractor must implement the remedial action plan.
256. If the Council rejects the remedial action plan, it must give its reasons in writing and require the Contractor to amend and re-submit the remedial action plan for approval by Council within the time specified by Council in its written notice of rejection.

257. The notice to the Contractor under 256 must warn the Contractor if the remedial action plan is not re-submitted to the Council or if it is not approved by Council, the Council may cancel the contract under clause 244n) or clause 244o).
258. If the Contractor submits an amended remedial action plan the Council may approve or acting reasonably reject the amended remedial action plan.
259. If the Council approves the amended remedial action plan, the Contractor must implement the amended remedial action plan. The amended remedial action plan is a remedial action plan for the purposes of clauses 244n)- 244p) inclusive.
260. If the Contractor fails to provide an amended remedial action plan, then the Council may cancel the contract under clause 244n).
261. If the Council acting reasonably does not approve an amended remedial action plan, then the Council may cancel the contract under clause 244o).
262. If the Council gives notice of cancellation under clause 244, then clauses 234 to 239 inclusive do not apply.
263. The Council on cancelling the contract may:
- a) Forfeit the bond given under clause 223 of this contract; and
  - b) Without limiting any of its rights or remedies recover from the Contractor all its costs in:
    - I. Cancelling the contract; and/or
    - II. Arranging a replacement Service; and/or
    - III. Providing any replacement Service to the extent the costs of the replacement Service exceed the costs to the Council of the cancelled contract.
264. Cancellation of the contract shall not affect any of the rights and obligations of either party for any breach accruing before the cancellation of the contract.
265. The rights and remedies of the Council under clauses 244a) to 244p) inclusive are in addition to and without prejudice to its rights and remedies under clauses 144 and 230 to 233 inclusive of these conditions of contract.

### **Termination of the Contract by Council on Notice**

266. Without limiting the preceding clause, the Council may terminate the contract if the Crown reduces or stops the passenger transport funding currently provided to the Council. In such event, the Council shall endeavour, in its absolute discretion, to treat all affected Contractors fairly and equitably.
267. If the Council exercises its right to terminate the contract under clause 266 the Council shall release the bond given under clause 223 of the contract.

### **Termination where Service not Viable**

268. Council and the Contractor will do all things reasonably practical to retain Crown funding.

269. Council may terminate the Contract, by giving not less than 90 calendar days written notice, in either of the following circumstances:
- a) Where the NZ Transport Agency funding is discontinued in whole or part.
  - b) Where Council, in its sole opinion, after having regard to the level of patronage, revenue, and the potential for growth in revenue, is satisfied the Service should no longer be supported by public funding.
270. Where Council terminates the Contract, the Council shall pay the Contractor a sum equal to the last 3 months contract payments before the termination date in full and final settlement of any claims which the Contractor may have. The Council shall not be liable to make any other payments to the Contractor or any other person.

## **Renewal**

271. The Contractor has no right to renew the contract, nor any entitlement to a new contract for the same, or any other service.

## **Contractor's Obligations on Cancellation, Termination or Expiry**

272. During any period of notice, the Contractor must:
- a) Continue to provide the service; and
  - b) Cooperate fully with the Council to establish any replacement operator.
273. If the contract expires, is cancelled, or is terminated, the Contractor at its own cost must take all reasonable steps to ensure the service is transferred to any new operator of the same or substantially similar service with a minimum disruption to passengers.
274. The Contractor must without delay return all Council property to the Council.

## **Access to Information**

275. The Contractor is to make available on a confidential basis to an authorised representative of the Council, any records or documentation relating to the operation of the contract. Council officers may visit the Contractor's premises, examine any or all records or documents and interview employees.

## **Surveys**

276. The Contractor must permit an authorised representative of the Council to travel free on vehicles operated under the contract to enable him or her to conduct interviews, survey passengers or undertaker any other monitoring. Such travel could include positioning runs.



## **Service of Notices**

277. Notices given under this contract must be served on the addresses for service of the Council and Contractor.
278. Notices may be served by personal delivery, post or fax.
279. Notices served by post shall be conclusively deemed to have been received within 72 hours of posting.
280. Notices served by fax should be conclusively deemed to have been served when transmitted.
281. The Otago Regional Council's address for service is:
- |           |                             |
|-----------|-----------------------------|
| Delivery: | 70 Stafford Street, Dunedin |
| Postal:   | Private Bag 1954, Dunedin   |
282. The Contractor's address for service is set out in its tender.
283. Any party may change its address for service by written notice to the other party.

## **Contractor's Representative**

284. The Contractor's representative is specified in its tender.
285. The Contractor's representative must have full authority to deal with the Council on all matters relating to the contract.
286. The Contractor may on five working days' written notice to the Council change the Contractor's representative by naming a new representative.

## **Contract Manager**

287. The Council's Manager Support Services is the Contract Manager.
288. The Council may on five working days written notice to the Contractor change the Contract Manager by naming a new contract manager.
289. The Contract Manager has any power, duty or function given to the Council in this contract.

## **Change of Name**

290. The Contractor must give the Council 15 working days written notice of any change of trading name.

### **Gratuities, Collusion, Conflict of Interest**

- 291. The Contractor must not accept gratuities.
- 292. The Contractor must not collude with any other bus operator, or any other person whatsoever.
- 293. The Contractor must notify the Council of any potential conflict of interest that may affect the performance of this contract.

### **Registration of Exempt Public Transport Services**

- 294. The Council must consider every notification of a proposal to operate an exempt service received by it under the Land Transport Management Act 2003 on its merits.
- 295. The Council may accept for registration an exempt service although it duplicates, in whole or in part or otherwise affects the service provided by the Contractor under this contract.
- 296. The Council gives no warranty and makes no representation it will decline to register any exempt service that may duplicate in whole or in part or otherwise affect the service provided under this contract.
- 297. It is not an express or implied term of this contract that the Council will decline to register any exempt service that may affect the service provided under this contract.
- 298. Registration of an exempt service that may affect the service provided under this contract does not entitle the Contractor to any compensation whatsoever from the Council or to any other remedy against the Council, or to terminate this contract.