

# CONDITIONS OF CONTRACT FOR THE PROVISION OF CONTRACTED PUBLIC TRANSPORT SERVICES IN THE OTAGO REGION: PTC2011-1

## Definitions

1 In this contract, unless the context otherwise requires:

*“Assessed gross cost”* means the first year net cost price of the contract (being the net cost price nominated in the tender accepted by the Council) plus the estimated fare revenue (exclusive of GST) as set out in the request for tenders;

*“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 net contract price (GST exclusive) as stated in the contractor’s tender accepted by Council;

*“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;

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

*“Fare schedule”* means the schedule of fares which has been approved by the Council for the service and is set out in Schedule 3;

*“GoBus”* means registered trademark for Council’s marketing brand for network services;

*“GoCard”* means the Council’s integrated ticketing system for the collection and disbursement of fare revenue amongst all contractors providing services on Council’s networks;

*“Maximum fare”* means the maximum fare set by Council through Council’s Annual Plan process applicable to all contracted public transport services;

*“Net cost”* means the cost to be paid by the Council to the contractor for the provision of the service exclusive of fares collected by the contractor;

*“NZTA”* means the New Zealand Transport Agency, and includes any successor to NZTA;

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

*“SuperGold card”* means Ministry of Social Developments subsidised travel scheme;

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

## **Interpretation**

- 2        *“Person”* includes a corporation sole, body corporate and an unincorporated body of persons.
- 3        Parts of speech and grammatical forms of a word that is defined have corresponding meanings in this agreement.
- 4        Words in the singular include the plural and words in the plural include the singular.
- 5        *“Operating day”* means a day upon which the service is to be provided by the contractor.
- 6        *“Working day”* means a day of the week, other than:
- 6.1      A Saturday, a Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign’s birthday and Labour Day; and
- 6.2      A day in the period beginning 25 December in a year and ending on 2 January in the following year; and
- 6.3      If 1 January falls on a Friday, the following Monday; and
- 6.4      If 1 January falls on a Saturday or Sunday, the following Monday and Tuesday, as the case may be.
- 7        The headings in this document may be considered in ascertaining its meaning.
- 8        References to any statute, regulation, rule or other legal requirement including:
- 8.1      A reference to any amendment to that statute, regulation, rule or other legal requirement;
- 8.2      Any statute, regulation, rule or other legal requirement made in substitution for that statute, regulation, rule or other legal requirement.

## **Relevant Law**

- 9        The contract is governed by and construed with reference to the law of New Zealand.

## **Currency**

- 10      All prices and payments made under the contract must be in New Zealand currency and paid in New Zealand.

## **Language**

- 11      All communications between the Council and the contractor must be in English.

## **Time**

- 12      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.
- 13      The 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.

- 14 The 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.
- 15 The 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**

- 16 The contractor is an independent contractor in all respects.
- 17 The contractor is not an employee or agent of the Council.
- 18 The Council and the contractor are not in partnership, nor engaged in a joint venture.

### **Contract Type**

- 19 This contract is a net cost contract.

### **Commencement of Contract**

- 20 The contract is in full force and effect when the Council gives the contractor notice of acceptance of the contractor's tender.

### **Entire Agreement**

- 21 This contract comprises:
- 21.1 The contractor's tender;
  - 21.2 These conditions of contract;
  - 21.3 The Schedules attached;
  - 21.4 The Council's acceptance of tender.
- 22 This contract contains the entire agreement between the contractor and the Council.

### **The Service**

- 23 The contractor must provide the service:
- 23.1 On the routes set out in Schedules 1A and 2; and
  - 23.2 In accordance with the timetables in Schedules 1 and 1A; and
- 24 The contractor must provide the service strictly in accordance with the terms and conditions of the contract.
- 25 The contractor must operate each and every trip shown in the timetable in Schedules 1 and 1A and:
- 25.1 Begin a trip at the specified departure time in Schedules 1 and 1A; and
  - 25.2 Follow the corresponding route for each timetabled trip as set out in Schedules 1A and 2.
- except in circumstances beyond the control of the operator.

### **Commencement of Service**

26 The contractor must commence the service on 1 July 2011.

### **Duration of Service**

27 The contractor must provide the service until the contract expires or is otherwise terminated in accordance with this contract.

### **Duration of Contract**

28 This contract shall expire on the date set out in the Council's acceptance of the contractor's tender unless earlier terminated in accordance with the provisions of this contract.

### **Savings**

29 The expiry or termination of the contract does not:

29.1 Extinguish any rights or obligations or remedies which accrue to the contractor or the Council before its expiry;

29.2 Extinguish the dispute resolution provisions in clause 203.

### **Fares**

30 The contractor must issue to each passenger on boarding, a ticket for the journey to be undertaken by that passenger.

31 Any fares charged must be collected and ticketed in accordance with Schedule 3.

32 Fares collected belong to the contractor.

33 If a fare is charged for a passenger by the contractor, the fare:

33.1 Must not exceed the maximum fare set out in Schedule 3; and

33.2 Must be the relevant fare as registered in the Council's GoCard system for the journey undertaken by the passenger.

34 The contractor must ensure that Council approved identification cards are presented by passengers seeking fare concessions.

35 The contractor is responsible for fare revenue security.

### **SuperGold Card**

36 The contractor must for the services provided under this contract participate in the Governments SuperGold off peak travel scheme.

37 For the services provided under this contract, the contractor shall only be entitled to reimbursement of fares at the level set by the Crown.

38 The reimbursement rate for the services provided under this contract at the commencement of the services is expected to be 65% of the adult cash fare.

- 39 The Crown may in its sole discretion either decrease or increase the reimbursement rate from time to time.
- 40 The Council shall not be liable for any loss in revenue resulting from a decision by the Crown to vary the rate of reimbursement.
- 41 The contractor shall ensure that only those passengers who qualify receive the free off peak service.

### **Integrated Ticketing**

- 42 The contractor must participate in the Council's GoCard integrated ticketing system when providing the service.
- 43 The contractor must at all times comply with the "business rules" of the Council's integrated ticketing system.
- 44 The contractor must pay for the installation of the integrated ticketing system equipment.
- 45 The contractor must pay the rental, stipulated by the Council for the hire of the integrated ticketing equipment.
- 46 The Council shall be entitled to use any and all data and information obtained through the ticketing system for any planning, management, contract performance, and reporting purposes that Council in its sole opinion considers necessary.
- 47 Council will settle fares in accordance with the Ticketing system settlement process which is separate to the monthly contract payment process. Fare revenue will be settled on a twice monthly basis.
- 48 In order to meet the requirements of Council's ticketing system the contractor shall:
- 48.1 Ensure all equipment is installed and operational prior to the commencement of services.
  - 48.2 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).
  - 48.3 Provide an appropriate level of training to all drivers in the use of the system to ensure that all drivers are competent in the use of the system.
  - 48.4 Ensure that all staff required to use the reporting and management software have an adequate understanding of the system and its requirements
  - 48.5 Rent one ticketing machine per bus including all back up buses required for this contract at \$130.00 plus GST per machine per month (to be CPI adjusted annually). Plus an additional onsite training machine.
  - 48.6 Rent one depot reader at \$150.00 plus GST per month (to be CPI adjusted annually).
  - 48.7 Purchase all necessary consumables for the ticketing equipment provided by Council.
  - 48.8 Ensure each driver is issued with his or her own data module on a daily basis.
  - 48.9 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.

- 48.10 Maintain a register of all ticketing equipment and modules held by the contractor.
- 48.11 Install and provide for the maintenance of all ticketing equipment in accordance with Council's suppliers requirements.
- 48.12 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.
- 48.13 Ensure that all drivers correctly code all shift duties, trips and routes.
- 48.14 Ensure all drivers correctly enter the appropriate fare and destination.
- 48.15 Ensure the depot reader and Council supplied PC are connected and accessible to the ticketing system provider at all times.
- 48.16 Ensure all shorts and overs are recorded in to the ticketing system on a daily basis.
- 48.17 Comply with all requests from Council's ticketing system provider.

### **Duty to Carry Passengers**

- 49 The contractor must carry all passengers who wish to use the service.
- 50 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:
  - 50.1 The driver's personal safety is threatened;
  - 50.2 The person appears to be under the influence of drink or drugs, is in a filthy condition, or is consuming food or drink;
  - 50.3 The person is noisy or violent or is disturbing the peace;
  - 50.4 The person is accompanied by an animal, unless that person's sight is impaired and the animal is a guide dog;
  - 50.5 The person has previously vandalised vehicles operated by the contractor or has previously defrauded or attempted to defraud the contractor.
- 51 The contractor's driver may refuse to carry a passenger who is unable to pay the correct fare for the passenger's intended journey.

### **Vehicle Standards**

- 52 Each vehicle used for the service must conform to the vehicle quality standards in Schedule 4.
- 53 The contractor's fleet as a whole, available for the service, must conform to the fleet profile in Schedule 4.
- 54 The contractor's "fleet as a whole" includes backup vehicles available to the contractor for use in the service.
- 55 For the avoidance of doubt:
  - 55.1 Backup vehicles must conform to the vehicle quality standards in Schedule 4 and

55.2 Backup vehicles must be of such a standard that the fleet profile is maintained at all times.

56 If the contractor intends to use backup vehicles provided by another person, the contractor must, before commencement of the service, provide written evidence to the Council of the agreement of the other person and that agreement must give the contractor priority to the use of the backup vehicle, when required to maintain the service.

### **Vehicle Service Condition**

57 The contractor must present all vehicles for use in the service in a clean and tidy condition.

58 All vehicles used in the service must be safe for use by the public.

59 The contractor must ensure that all vehicles are swept clean when in service.

60 The contractor must ensure that vehicles are wet mopped or otherwise cleaned at daily intervals.

61 The contractor must repair all damage to upholstery, floorings, body work and paint work within three working days.

62 The contractor must remove graffiti on a daily basis.

63 If the contractor fails to comply with the requirements in clauses 57 to 62 inclusive, the Contract Manager may direct the contractor to immediately remove the vehicle from service, until the non-compliance is remedied.

### **Branding**

64 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.

65 The contractor must identify individual vehicles uniquely by name or number.

66 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 Contract Manager. The Council will not approve any advertising that covers any of the side windows of a vehicle.

### **Signage**

67 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 approved by the Contract manager before it is used.

68 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.

69 The contractor must display on all vehicles providing the service a "GoBus" promotional sign 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 subsidised public transport service.

### **Initial Vehicle Inspection**

- 70 The contractor must provide the Council within three working days of the Council's acceptance of the contractor's tender, a completed vehicle standards assessment forms as shown in Table 1 and Table 2 of Schedule 4 accurately recording the details of the vehicles to be used in providing the service and demonstrating that the vehicles and fleet meet the vehicle quality standards and fleet profile in Schedule 4.
- 71 If the contractor fails to comply with clause 70, Council may by notice to the contractor immediately terminate this contract.
- 72 The contractor must make available all vehicles in the contractor's "fleet as a whole" in Dunedin for inspection by the Council no later than 10 working days before the start of the service.
- 73 Council's written approval of all vehicles in the "fleet as a whole" must be obtained by the contractor at least 5 working days before the start of the service.
- 74 No other vehicle may be introduced to the service unless first inspected and approved in writing by the Council.

### **Further Vehicle Inspections**

- 75 The Council may at any time inspect any vehicle, including backup vehicles, which may be used in providing the service.
- 76 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.
- 77 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.
- 78 If the contract manager considers that a vehicle does not meet the vehicle quality standards in Schedule 4 or the vehicle does not otherwise conform to the requirements of this contract, or is otherwise unfit for service, then the Contract manager may, in his or her absolute discretion, direct that the vehicle be removed from service immediately.
- 79 If the Contract manager directs that any vehicle be removed from service, the contractor must immediately comply with the Contract Managers's direction.
- 80 If the Contract manager directs that any vehicle be removed from service, the vehicle shall not be returned to service until the Contract manager is satisfied the vehicle complies with all the terms of this contract and is otherwise fit for service.
- 81 Nothing in clauses 78 to 80 inclusive derogates from clauses 164 to 167 inclusive and 169.
- 82 For the avoidance of doubt:
- 82.1 A contractor who uses or fails to remove vehicles from service in accordance with the direction given by the Contract manager under clause 78 or
- 82.2 Returns a vehicle to service when the Contract manager has not given written permission for the vehicle to be returned to service



is deemed, for the purposes of clauses 169 and 170, to have used a vehicle on the service that does not meet the vehicle service standards specified in this contract.

### **Smoky Buses**

- 83 Vehicles used for the provision of the service must not emit excessive smoke.
- 84 The Contract manager may direct that any vehicle which is, in his or her sole opinion, emitting excessive smoke be removed from service immediately.
- 85 If the Contract manager directs that any vehicle emitting excessive smoke be removed from service, the contractor must immediately comply with the Contract Manager's direction.
- 86 If the Contract manager directs that any vehicle be removed from service under clause 84, the vehicle must not be returned to service until the Contract manager is satisfied that the vehicle will not emit excessive smoke and has given written permission for the vehicle to be returned to service.
- 87 Nothing in this clause derogates from clauses 164 to 167 inclusive and 169.
- 88 For the avoidance of doubt:
- 88.1 A contractor who uses or fails to remove vehicles from service in accordance with the direction given by the Contract manager under clause 84; or
- 88.2 Returns a vehicle to service when the Contract manager has not given written permission for the vehicle to be returned to service

is deemed, for the purposes of clauses 169 and 170, to have used a vehicle on the service that does not meet the vehicle service standards specified in this contract.

### **Exhaust Emission Tests**

- 89 The exhaust emissions of vehicles used to provide the service must be tested, at the contractor's cost, when requested by the Contract manager to ensure that the vehicle complies with the Land Transport Rule: Vehicle Exhaust Emissions 2007, Rule 33001/2.
- 90 The contractor must present vehicles for exhaust emission tests at such times and places as the Contract manager requires.
- 91 If at any exhaust emission test, the vehicle emits clearly visible smoke, the contractor must immediately remove the vehicle from service and must not return the vehicle to service until, on further testing, the vehicle does not emit clearly visible smoke and the contract manager gives written permission for the vehicle to be returned to service.
- 92 The contract manager's interpretation of the exhaust emission test results shall be final and binding on the contractor.
- 93 For the avoidance of doubt, a contractor who:
- 93.1 Fails when required by the contract manager to present a vehicle for a exhaust emission test; or
- 93.2 Uses a vehicle which has failed an exhaust emission test without the contract manager's written permission for the vehicle to be returned to service

is deemed, for the purposes of clauses 169 and 170, to have used a vehicle on the service that does not meet the vehicle service standards specified in this contract.

## **The Contract Price**

- 94 The contract price is the net contract price shown in the contractor's tender, accepted by the Council.

## **Payment**

- 95 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 shown in Schedule 5.
- 96 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.
- 97 Payments due under the contract will be made each month, if the contractor has submitted a tax invoice.
- 98 Each monthly payment will be calculated as follows:
- 98.1 1/12th of the contract price plus any price variation made under this contract less the total of:
- 98.1.1 Any amounts which the Council may deduct in accordance with the contract; and
- 98.1.2 1/12th of the contractor's share of the annual call centre costs; and
- 98.1.3 The monthly rental payable by the contractor for ticketing equipment provided by the Council.

## **Deductions for Non-Operation**

- 99 If the contractor is unable for good cause to operate the service, the Council may in its absolute discretion:
- 99.1 Not pay for any journey not operated at all by the contractor; or
- 99.2 Reduce the payment to the contractor by such sum as the Council in its absolute discretion thinks fit, to take account of the difference between the contracted service and the actual service provided by the contractor.
- 100 Council's assessment of the deduction is final and binding upon the contractor.
- 101 In clause 99 "good cause" has the same meaning as in clauses 173 to 175 inclusive. Clause 99 does not derogate from 165 to 170 inclusive.

## **Contract Price Adjustments**

- 102 The contract price maybe adjusted in accordance with clauses 103 to 114 inclusive.

## **Service Level Variations**

- 103 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 to meet changing circumstances.
- 104 No decrease can be made to the service without the prior written agreement of the Council and the contractor.

- 105 The Council may request an increase in service. If the Council requests an increase in service, the contractor must undertake the increase in service requested by the Council. The increase in service shall be paid for by the Council at the variable rates set out in the contractor's tender accepted by the Council unless otherwise agreed.
- 106 No variation in the service level shall be greater than plus or minus 50% of the assessed gross cost of the service.
- 107 Subject to clause 106, the contractor and the Council may agree to any change in the terms of this contract.
- 108 If the Council requests an increase in service and the contractor declines to provide the increase in service in accordance with the variable price rates in the contractor's tender accepted by Council then the Council may terminate the contract and shall be entitled to:
- 108.1 Forfeit the whole or any part of the bond given under clause 159 of the contract; and
- 108.2 Recover from the contractor any costs incurred by the Council as a result of terminating the contract.

### **Payment Deductions**

- 109 The Council shall be entitled to deduct from any payments due to the contractor any liquidated damages recoverable by the Council under this contract, and
- 110 The fare adjustment differential as calculated in accordance with clause 115

### **Input Price Variation**

- 111 The assessed gross cost of the contract shall be adjusted every quarter as set out in Section 10.27 rule 1 of the NZTA "Procurement Manual for Activities Funded Through the National Land Transport Programme".
- 112 The first adjustment to the assessed gross cost shall be made from the quarter ending 31 March 2011.
- 113 The "assessed gross cost" will be the first year net cost price of the contract plus the estimated fare revenue (exclusive GST) as set out in the request for tenders.
- 114 Council will adjust payment to the contractor by the difference between the "assessed gross cost" adjusted in accordance with clauses 111 to 113 inclusive, of this contract and the assessed gross cost at tender acceptance in accordance with Section 10.27 rule 1 of the NZTA "Procurement Manual for Activities Funded Through the National Land Transport Programme.

### **Fare Adjustment**

- 115 The Council may change the maximum fares as described in schedule 4.
- If the maximum fare for the service is increased then;
- 115.1 The amount of the increase belongs to the council.
- 115.2 The contractor must fully account to the Council for the increased fare.
- 115.3 Subject to 115.4, on each anniversary of the increase in fare the contractor must pay to the council (without any demand being made) the amount of the increased fare collected by the contractor.

115.4 The amount payable by the contractor to the Council shall not have the effect of reducing the fare revenue collected by the contractor for the last twelve months below the estimated fare revenue for the contract at time of tender; and the amount payable by the contractor to the council under clause 115.3 shall, if necessary, be reduced accordingly.

If the maximum fare is decreased then Council shall compensate the contractor by paying the difference between the estimated fare revenue for the contract at time of tender, or the actual revenue for the twelve months preceding the fare increase whichever is the lesser and the actual revenue collected for each twelve month period after the decrease in fares commences. Council shall compensate the Contractor until such time as the contract expires or the level of fare revenue equals or exceeds the estimated fare revenue for the contract at the time of tender or, as the case may be, the actual revenue for the twelve months preceding the fare increase.

116 Where a fare change is made, the contractor may, within three months of the change, cancel the contract but if and only if:

116.1 The contractor demonstrates to the Council satisfaction that the contractor will be worse off in continuing to provide the service as a direct result of the fare change; and

116.2 The Contractor gives a minimum of 90 days notice in writing to the Council.

117 If the contractor exercises the right to terminate the contract under clause 116, the Council:

117.1 Shall forfeit the bond given under clause 159 of the contract; and

117.2 May without limiting any of its other rights and remedies, recover from the contractor all its costs in:

117.2.1 Arranging any replacement service; and/or

117.2.2 Providing a replacement service to the extent that the costs of replacement service exceed the costs to the Council of providing the service under this contract.

## **Drivers**

118 The contractor must ensure that all drivers are adequately trained to provide safe, courteous, and reliable service.

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

120 All staff in contact with the public must wear a name badge of 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.

## **Call Centre**

- 121 The contractor must participate in the Council's call centre.
- 122 The contractor must pay a call centre fee of \$15,000.00 plus GST each year.
- 123 The sum of \$15,000.00 is subject to annual adjustment based on the changes in the consumer price index for year ending 30 June, for each year of this contract.

### **Passenger Relations**

- 124 The contractor must at all times employ fit and proper staff to deal with passengers.
- 125 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.
- 126 The contractor must ensure that the service is seen by passengers as "user friendly".
- 127 If the contractor is likely to be dealing with passengers with special needs, staff must be trained by the contractor to enable them to deal appropriately with such passengers.
- 128 The contract manger may, direct, in his or her absolute discretion, the removal from public contact on the service of any employee of the contractor whose behaviour or attire is, in the opinion of the contract manger, objectionable or whose behaviour causes complaints from passengers.

### **Complaints**

- 129 The contractor must maintain a complaints register. It shall keep in the register details of all complaints received by the contractor in providing the service and of action taken in response to the complaints.
- 130 The Council may at any time inspect the complaints register. The contractor must make the complaints register available immediately to the Council on request. If requested, the contractor must provide the Council immediately with a true copy of the complaints register or any part of the register specified by the Council.
- 131 The contractor must retain the complaints register for at least two years from the date of the last entry.
- 132 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.
- 133 The contractor must deal with complaints to the satisfaction of the Council.
- 134 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.
- 135 The complaints made to the GoBus call centre will be forwarded by email to the contractor and the Council. The contractor must send a written response to the complaint to the Council within three working days of receiving the complaint from the GoBus call centre.

- 136 The contractor must supply to the Council a monthly schedule detailing the date, time and nature of complaints received and the response of the contractor to each complaint, within four working days of the end of each calendar month.
- 137 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.

### **Timetables**

- 138 The contractor must ensure the Council's timetable booklets are available in all vehicles used in service.
- 139 The contractor may provide, at its own cost, individual route timetables for any one or more of the routes in the service. The form, content and design must be approved in writing by the Council before distribution. Such route timetables must include both the Council logo and the contractor's logo, if any.

### **Publicity**

- 140 The contractor must cooperate in any promotional or publicity of public passenger transport undertaken by the Council.

### **Subcontracting and Assignment**

- 141 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.
- 142 Council may in its absolute discretion refuse or decline consent to subcontract or assign the whole or any part of the service.
- 143 The written approval given by the Council may be on such terms as the Council, in its absolute discretion thinks fit.
- 144 Notwithstanding any assignment or subcontracting, the contractor remains liable to the Council for all the contractor's obligations under the contract.
- 145 Despite clause 141, 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:
- 145.1 The circumstances have arisen are beyond the control of the contractor; and
  - 145.2 The contractor immediately notifies the contract manager of the circumstances and gives the Council full particulars of the bus operator who will be temporarily providing the service; and
  - 145.3 The period of temporary cover does not exceed two operating days, without the express written consent of the Council; and
  - 145.4 The contractor remains fully liable to the Council under this contract for the provision of the service during that period.

### **Other Legal Obligations**

- 146 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.
- 147 Without limiting clause 146,

- 147.1 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.
- 147.2 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.
- 147.3 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.
- 147.4 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.
- 147.5 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.

### **Health and Safety**

- 148 The contractor must, at the contractor's cost, comply with the Health and Safety in Employment Act 1992 and Schedule 6 of this contract.

### **Accidents**

- 149 The contractor must notify the Council within one working day of any incident involving personal injury which occurs during the provision of the service.
- 150 Within five working days of any event involving serious injury or, within five working days of a request by the Council, the contractor must provide the Council with a full written report of the incident and such other, further reports that the Council may subsequently require.
- 151 The contractor must maintain a register of all accidents and incidents involving vehicles used in the service and record full details of accidents and incidents in the register.
- 152 The contractor must make the accident/incident register immediately available to the Council on request.
- 153 The contractor must immediately provide to the Council a true copy of the accident/incident register, or any specified part of the register, when requested by the Council.

### **Insurance**

- 154 The contractor must at its own cost maintain from the commencement of the service to the end of the contract:
  - 154.1 Public liability insurance cover of \$3,000,000.00 for each and every event; the cover must indemnify the contractor, the Council, and NZTA jointly and severally against all liability which may arise during the contract; and
  - 154.2 Comprehensive motor vehicle cover, including cover against third party claims, on all vehicles used or intended to be used to provide the service;
- 155 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.

- 156 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.
- 157 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**

- 158 The contractor must fully indemnify and keep indemnified the Council and NZTA 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 and/or NZTA arising out of such actions, proceedings, claims, or demand.

### **Bond**

- 159 The contractor must provide at its own cost, for the duration of the contract, a bond in the form set out in Schedule 7.
- 160 The bond must be given by a surety acceptable to the Council.
- 161 The bond must be for the aggregate of the sum of \$22,000.00 and 1/12th of the assessed gross cost of the contract (GST inclusive).
- 162 The bond must be completed and provided to the Council within 10 working days of acceptance of the contractor's tender.

### **Monitoring and Liquidated Damages**

- 163 The Council will monitor the service.
- 164 The Council may give a written warning to the contractor where the contractor has without good cause:
- 164.1 Failed to operate a trip in accordance with the timetable (non arrival); or
  - 164.2 Operated a trip early (departed in or out of termini more than 59 seconds ahead of scheduled time); or
  - 164.3 Operated a contracted trip late (departed in or out of termini more than 2 minutes, 59 seconds after the scheduled time); or
  - 164.4 Failed to supply accurate route or destination information; or
  - 164.5 Deviated from the prescribed route; or
  - 164.6 Failed to pick up passengers at designated stops for the service; or
  - 164.7 Used a vehicle on the service that does not meet the vehicle service standards specified in this contract.
- 165 When a warning notice is issued by the Council, 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 173 to 175 inclusive.



- 166 Any objection shall be dealt with by the contract manger whose decision shall be final and binding on the contractor.
- 167 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 \$250 per trip or part thereof.
- 168 Where the contractor's failures occur on two or more operating days within a 10 operating day period, clauses 169 and 170 shall apply.

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

- 169 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:
- 169.1 The contractor fails repeatedly to provide the service;
  - 169.2 The contractor fails to remedy a breach of any condition of the contract within five working days of being given written notice to remedy the breach;
  - 169.3 The contractor, having remedied a breach of any condition of the contract commits three further breaches within any 12 month period;
  - 169.4 The contractor abandons the contract;
  - 169.5 The contractor makes any assignment for the benefit of creditors;
  - 169.6 The contractor enters into any composition with creditors;
  - 169.7 The contractor is insolvent, is adjudged bankrupt or is put into liquidation;
  - 169.8 Any creditor becomes entitled to exercise any right to realising the security over the contractor's assets;
  - 169.9 Any creditor takes possession of any of the contractor's assets;
  - 169.10 A receiver is appointed for the whole or any part of the contractor's assets;
  - 169.11 Any of the contractor's assets are taken in execution of any judgment;
  - 169.12 The contractor has made any mis-statements in the contractor's tender;
  - 169.13 The contractor fails to obtain approval of the vehicle fleet the contractor intends to use to provide the service, at least 10 working days before the commencement of the service;
  - 169.14 The contractor fails to provide the bond required by condition 159 within 10 working days of acceptance of the contractor's tender.
- 170 For the purpose of clause 169, the contractor shall be conclusively deemed to have repeatedly failed to provide the contracted service if:
- 170.1 The contractor without good cause:
    - 170.1.1 Failed to operate a contracted trip in accordance with the timetable (non arrival); or

- 170.1.2 Operated a contracted trip early (departed in or out of termini more than 59 seconds ahead of the scheduled time); or
- 170.1.3 Operated a contracted trip late (departed in or out of termini more than 2 minutes, 59 seconds after the scheduled time); or
- 170.1.4 Failed to display accurate route or destination information; or
- 170.1.5 Deviated from the prescribed route; or
- 170.1.6 Charged an incorrect fare or failed to collect a due fare or failed to issue the correct ticket for a trip; or
- 170.1.7 Failed to supply information or knowingly supplied incorrect information to the public or to the Council; or
- 170.1.8 Failed to pick up passengers at designated stops for the service; or
- 170.1.9 Used a vehicle on the service that does not meet the vehicle service standards specified in this contract.

and the contractor's failures occurred on two or more operating days within a 10 operating day period.

- 171 The rights and remedies of the Council under clauses 169 and 170 are in addition to, and without prejudice of its rights and remedies under clauses 164 to 168 inclusive of these conditions of contract.
- 172 For the purposes of clause 169.4 the contractor shall be conclusively deemed to have abandoned the contract if the contractor fails to operate the service for a period of 24 hours or more without good cause.
- 173 "Good cause" will exist if the failure to operate the contracted service occurs:
  - 173.1 Without any fault on the part of the contractor; and
  - 173.2 For reasons entirely beyond the control of the contractor; and
  - 173.3 The contractor notifies the Council of the interruption to the service and the reasons for it as soon as possible and at the latest not more than 24 hours after cessation of the service first commenced.
- 174 "Good cause" does not include industrial action directly or indirectly involving the contractor or the contractor's employees.
- 175 The contractor has the onus of demonstrating good cause to the satisfaction of the Contract manager
- 176 The contractor shall have no claim at all against the Council if the Council exercises any of its powers to cancel the contract.
- 177 The Council on cancelling the contract may:
  - 177.1 Forfeit the bond given under clause 159 of the conditions of contract; and
  - 177.2 Without limiting any of its rights or remedies recover from the contractor all its costs in:

- 177.2.1 Cancelling the contract; and/or
- 177.2.2 Arranging a replacement service; and/or
- 177.2.3 Providing any replacement service to the extent the costs of the replacement service exceed the costs to the Council of the cancelled contract.

178 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.

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

179 The Council may terminate the contract by giving not less than 90 days written notice of the contract.

180 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.

181 If the Council exercises its right to terminate the contract under clause 179 the Council shall release the bond given under clause 159 of the contract.

### **Renewal**

182 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**

183 During any period of notice, the contractor must:

183.1 Continue to provide the service; and

183.2 Cooperate fully with the Council to establish a replacement operator.

184 If the contract expires, is cancelled, or is terminated, the contractor must take all reasonable steps to ensure the service is transferred to a new operator of the same or substantially similar service with a minimum disruption to passengers.

### **Access to Information**

185 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.

### **Patronage Reports**

186 Throughout this contract, the contractor must allow the Council access to the patronage information obtained through the integrated ticketing system.

187 The contractor must comply with the business rules of the ORC integrated ticketing system and take responsibility for the quality assurance of the data by ensuring that alldrivers enter the correct route, trip, zone changes, fares, bus and driver details, and log on and off in accordance with the ticketing provides instructions..

## **Surveys**

- 188 The contractor must permit an authorised representative of the Council to travel free on vehicles operated under the contract to enable them to conduct interviews, survey passengers and undertaker any other monitoring. Such travel could include positioning runs.

## **Service of Notices**

- 189 Notices given under this contract must be served on the addresses for service of the Council and contractor.
- 190 Notices may be served by personal delivery, post or fax.
- 191 Notices served by post shall be conclusively deemed to have been received within 72 hours of posting.
- 192 Notices served by fax should be conclusively deemed to have been served when transmitted.
- 193 The Otago Regional Council's address for service is:

Delivery:	70 Stafford Street, Dunedin
Postal:	Private Bag 1954, Dunedin
Fax:	03 479 0015

## **Contractor's Representative**

- 194 The contractor's representative must have full authority to deal with the Council on all matters relating to the contract.
- 195 The contractor may on five working days' written notice to the Council change the contractor's representative by naming a new representative.

## **Contract Administrator**

- 196 The contract administrator shall be appointed by Council to undertake the day to day administration of this contract.
- 197 The contract administrator does not have delegation to vary this contract.
- 198 The Council may on five working days written notice to the contractor change the Contract Manager by naming a new contract administrator.

## **Contract Manager**

- 199 The Council's Manager Support Services is the Contract Manager.
- 200 The Council may on five working days written notice to the contractor change the Contract Manager by naming a new contract manager.

## **Principals Representative**

- 201 The Council's Director Corporate Services is the Principals representative.

202 The Council may on five working days written notice to the contractor change the Principals representative by naming a new representative.

### **Disputes**

203 Any disputes shall be determined by the Principals representative.

### **Change of Name**

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

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

205 The contractor must not accept gratuities.

206 The contractor must not collude with any other bus operator, or any other person whatsoever.

207 The contractor must notify the Council of any potential conflict of interest that may affect the performance of this contract.

### **Registration of Commercial Public Transport Services**

208 The Council must consider every notification of a commercial public transport service received by it under the Public Transport Management Act 2008 on its merits.

209 The Council may accept for registration a commercial public transport service although it duplicates, in whole or in part, or otherwise affects the service provided by the contractor under this contract.

210 The Council gives no warranty and makes no representation it will decline to register any commercial public transport service that may duplicate in whole or in part or otherwise affect the service provided under this contract.

211 It is not an express or implied term of this contract that the Council will decline to register any commercial public transport service that may affect the service provided under this contract.

212 Registration of a public transport 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.