

**THE OPERATOR'S CONDITIONS OF CONTRACT FOR DEDICATED SCHOOL TRANSPORT  
CONTRACTS FOR THE NORTH AYRSHIRE COUNCIL ("the Council")**

**("the Operator's Conditions")**

WHEREAS:-

- (1) SPT acts as the agent for the Council in respect of arranging school transport contracts for Pupils, under the Agency Contract between SPT and the Council regulating the period from 1 April 2017 to 31 March 2020;
- (2) SPT (for and on behalf of the Council) has appointed the Operator to deliver school transport to Pupils, in terms of a contract constituted by the Contract specification and letter of award issued to the Operator by SPT ("the Contract") which Contract specifies the identity of the Operator ("the Operator"); and
- (3) the Operator is responsible for all actions and omissions of its employees/subcontractors or assignees ("Drivers and Attendants") in terms of the Contract;

Therefore, the Operator will ensure that:-

- (1) the Operator, its Drivers and Attendants abide by the Operator's Conditions;
- (2) the Operator, its Drivers and Attendants are alerted to and reminded regularly of these Operator's Conditions;
- (3) the Operator, its Drivers and Attendants follow closely the Code of Conduct (Schedule1); and
- (4) any email communication with SPT will be directed to [Schoolcontracts@spt.co.uk](mailto:Schoolcontracts@spt.co.uk) compliant with the Data Protection Legislation, the Contractual provisions and the Operator's Conditions.

**The Operator's Obligations:**

**1. The Contract:**

- 1.1 The Operator shall perform the Contract in accordance with (1) the timetable, designated stopping places and specified route details required by the Contract specification and/or subsequently instructed by SPT (2) any daily worksheet transmitted to the Operator by email. For the avoidance of doubt, the Operator shall not make any change of any kind to the Contract without obtaining prior email approval of SPT and shall comply with all instructions by SPT with regard to places where Pupils shall join or leave the Contract vehicle and shall comply with any further instructions which may be issued by SPT in respect of any changes to hours of arrival and departure to and from the designated "pick-up" or "drop-off" location and as to holidays and in-service days.
- 1.2 Should the Operator become aware of an emergency situation or any circumstances arising or potentially arising during the operation of the Contract, for example, road-works, road closures, congestion, parking, traffic signalling issues or difficulties with other road users, which could adversely impact upon the Operator's ability to perform the Contract, according to the Contract specification, the Operator must follow the Contract specification as safely and closely as possible and immediately advise SPT's School's

Contracts Section by telephone 0141 333 3362 and thereafter confirmed by email to Schoolcontracts@spt.co.uk in such reasonable detail as SPT may require. The Operator shall then comply with any instructions given by SPT.

- 1.3 At any time during the period of the Contract, SPT reserves the right to modify any aspect of the Contract, including but not limited to the route, the timetable, operational days and the period of the Contract in accordance with operational requirements and the Contract price in a manner consistent with any modification to the Contract. SPT reserves the right to request a breakdown of the Contract price including all costs relating to labour, fuel, materials and other operating costs and overheads. The Operator will provide such information to SPT with three days of such a request. The Operator shall comply with any modification specified by SPT, within such reasonable time-scale as is required by SPT. Such modifications may include the termination of the Contract, without liability to SPT, if it is judged in the opinion of SPT that the Contract no longer appropriately meets or will no longer appropriately meet the needs of SPT or the Council. In such circumstances, SPT may terminate the Contract by giving such written notice to the Operator as may be reasonably practicable in the circumstances.
- 1.4 The Operator shall maintain sufficient records of vehicles, maintenance and personnel deployed on the Contract to satisfy SPT that all aspects of the Contract have been complied with at all times.
- 1.5 The Operator shall ensure that all Contract Vehicles, maintenance facilities and Drivers and Attendants used in the performance of this Contract, conform fully with all appropriate statutory requirements, particularly those of all current Road Traffic and Transport Acts. In this respect, the Operator will be held to have satisfied itself in respect of all documentation required, by way of certificates, licences and records of inspection and maintenance in relation to the carrying out of the Contract and will exhibit such information and documentation relating to legislative and regulatory compliance as and when required by SPT.
- 1.6 The Operator will maintain a list of all PVG Scheme members who have been deemed suitable by the Council, which record will inform at the date upon which the current clearance expires. Operators will ensure that applications for a new clearance are submitted 6-8 weeks prior to the expiry of the existing clearance.
- 1.7 Unless otherwise determined by SPT, this and any other contract which the Operator has with SPT and/or any third party on whose behalf SPT acts as agent shall be terminated immediately and be of no force or effect from the commencement of any period that:
  - (i) the Operator does not have a relevant Operator's licence or if any licence previously granted has been suspended for any reason;
  - (ii) the Operator does not have valid and satisfactory insurance to cover the operation of the Contract;
  - (iii) the Operator does not have a valid Test Certificate, appropriate for the class of vehicle, issued by the Department for Transport for every Contract vehicle;
  - (iv) the Operator does not have a valid Vehicle Excise Duty for every Contract Vehicle;
  - (v) any Driver does not have a valid driving licence appropriate for the class of vehicle required for use on the Contract; or
  - (vi) SPT reasonably considers that Operator may have otherwise breached the terms of the Contract or acted in an illegal manner.
- 1.8 The Operator agrees that where any Contract has been suspended or terminated or any other contracts have been suspended/terminated SPT may arrange for another operator to fulfil the Contract or contracts and any and all increased or additional costs incurred by

SPT shall be charged to the Operator and recovered either by deduction from any payments due to be made to the Operator by SPT in terms of this or any other contract or such other appropriate means as may be necessary.

- 1.9 The Operator shall within forty-eight hours of receipt of any oral or written complaint in respect of any aspect of the Contract, forward a copy of such complaint to SPT at [schoolcontracts@spt.com](mailto:schoolcontracts@spt.com), together with any reply issued by the Operator to the complainant. The Operator will respond promptly to SPT should SPT require further information. The Operator will liaise with SPT as required and endeavour to resolve any issue causing a complaint, as guided by SPT.
- 1.10 The Operator shall comply with all statutory and regulatory obligations regarding payment of wages, together with the recording and payment of Income Tax, National Insurance Contributions and Value Added Tax and shall ensure that all personnel are engaged subject to appropriate checks on their employment history and their entitlement to work in the United Kingdom.

## 2. The Contract Vehicles:

- 2.1 The Operator will ensure that all Contract Vehicles comply with the Contract specification and the Operator's Conditions. The Operator will not operate the Contract with any non-compliant vehicles.
- 2.2 Should an alternative vehicle be required, due to unforeseeable circumstances, the Contract may be fulfilled by another compliant vehicle of the same taxation class from the Operator's fleet. The Operator shall ensure that any replacement vehicle complies with the Contract specification. Should such an event occur, the Operator must immediately advise SPT by telephone, which message will be confirmed in writing by email addressed to [Schoolcontracts@spt.co.uk](mailto:Schoolcontracts@spt.co.uk). Should SPT's offices be closed, the Operator must advise SPT's School Contracts Section by no later than 9 am on the next working day. For the avoidance of doubt, a replacement vehicle **MUST NOT** be used in place of the original Contract vehicle in respect of any scheduled test, maintenance or repair of the original compliant Contract Vehicle.
- 2.3 All Contract Vehicles will be licensed, equipped, insured and maintained as required by statute and inspected in compliance with the requirements of any relevant licensing authority or SPT, evidence of such compliance of which will be made available to SPT upon request. Notwithstanding the foregoing, inspection and maintenance records for all Contract Vehicles shall be completed and maintained in such a manner as may be prescribed by SPT, which records will be provided by the Operator to SPT on demand.
- 2.4 The Operator will conduct a daily "pre-service inspection" of all Contract Vehicles. The Operator will employ a written "nil-defect" reporting system. Any failure to strictly adhere to this Condition will be treated as a material breach of the Contract and will result in the termination of this and any other contract.
- 2.5 The Operator shall, with or without SPT's prior notification, allow SPT's representatives to enter and inspect the Contract Vehicles. Such inspections may take place at the Operator's premises or maintenance facility or at an appropriate roadside location. The Operator will also permit SPT to inspect those premises or facilities, at SPT's request, which inspection may include access to the maintenance records relevant to the Contract vehicles. For the avoidance of doubt, SPT reserves the right to suspend or terminate this or any other contract should any such inspection result in a finding of material failings in respect of those premises, facilities, records or vehicles or if access to such is refused.

- 2.6 If it is necessary to involve a third party (for example, to provide a pit, vehicle hoists or ramp to inspect Contract Vehicles) to ensure that SPT can carry out a satisfactory inspection of the Contract Vehicles, maintenance facilities or records, this will be arranged by the Operator to meet SPT's requirements, at no additional cost to SPT. Alternatively, appropriate arrangements may be made directly by SPT, with all resultant costs being paid for by the Operator. In case of any doubt, the use of a portable drive-on ramp for inspection purposes is prohibited.
- 2.7 The Operator will ensure that all Contract Vehicles comply with any weight, height, width, length and seated passenger capacity requirements appropriate to the Contract.
- 2.8 The Contract Vehicle will be presented and operated during the Contract as follows:-
- The external identification, design and standard of presentation of Contract Vehicles shall be of a design and standard acceptable to SPT;
  - The name of the Operator will be clearly displayed on all Contract Vehicles;
  - The Contract Vehicle shall display that the Contract is being operated on behalf of the Council in a manner prescribed by SPT;
  - Any external advertising exhibited on any Contract Vehicle shall be acceptable to SPT and the Council;
  - SPT reserves the right to require the Operator to remove any advertising material that SPT in its discretion deems to be unsuitable;
  - All Contract vehicles will be clean and damage free, inside and out. The Operator must sweep his/her vehicles daily and clean regularly and when required. The Operator will provide details of its cleaning and washing procedures to SPT, on request and shall immediately comply with any SPT directions to improve the standard of same;
  - All Contract Vehicles will be properly heated and ventilated at all times;
  - The Operator will provide one seat per Pupil on all Contract Vehicles;
  - All Contract Vehicles will, in addition to any sign required by law, in respect of the carriage of school children display a sign supplied by SPT, which sign will be displayed in such a way, as not to impinge on the swept area of the windscreen;
  - On Contract Vehicles with 16 passenger seats or more, the destination must be clearly displayed on the destination screen or at the door of the Contract Vehicle. Any sign displayed must not be on the "swept area" of the windscreen; If a Contract Vehicle has 16 passenger seats or less then fully functional lap and diagonal seat belts fitted to a standard acceptable to the Department for Transport shall be provided for each Pupil. If the Contract requires that a Contract Vehicle be fitted with seatbelts, evidence of a seatbelt installation check carried out by the Department for Transport shall be provided. Where seatbelts have been "retro-fitted" to a Contract Vehicle, a copy of the appropriate notification to the Department for Transport shall be provided to SPT on request together with a copy of the MOT certificate detailing that the seatbelt installation check has been carried out;
  - In respect of Contracts involving water borne transport, the Operator will ensure that the vessel is in position at the boarding point by no later than the earliest specified acceptable time. The Operator will provide a suitable life jacket for every authorised Pupil;
  - All Contract Vehicles, with 18 passenger seats or more, will be fitted with power operated doors, controlled by the Driver from his cab;
  - All vehicles with 9 passenger seats or more will be fitted with a 'door open warning device' maintained in a fully operational condition for each and every entrance/exit door (including emergency exit doors) situated rearward of the Driver's seat, failure to provide which will constitute a material breach of the Contract, resulting in the termination of this Contract and any other contract;

- All Contract Vehicles will be equipped with two-way radio and/or mobile telephone, by which the Driver is able to communicate directly with the Operator and/or the Head Teacher. Communication equipment will be used in compliance with all legislative and regulatory requirements;
- Where childproof locks are fitted, such locks will be, set to the “child safe” mode at all times.

### 3. **Drivers And Attendants:**

The Operator will:-

- 3.1 not deploy Drivers and Attendants who are not competent, licensed, insured, PVG checked and confirmed as being suitable and possess all necessary certification, as required by statute;
- 3.2 not deploy a Driver or Attendant on a Contract until such time as membership of the PVG Scheme has been obtained from SPT and formal notification of the suitability of any individual has been received by the Operator from SPT; PVG checks will be reviewed every three years to ensure that the term of the Contract is fully covered by such check;
- 3.3 oblige Drivers, supported by Attendants if appropriate, to secure the safety of Pupils, themselves, pedestrians and other road users;
- 3.4 ensure that all Drivers and Attendants are familiar with SPT guidance on the PVG scheme;
- 3.5 ensure that no Driver or Attendant carries out any duties relating to the Contract, or any other contract, whilst having consumed alcohol or drugs or whilst under the influence of alcohol or drugs of any nature. The Operator will contractually oblige Drivers and Attendants to (1) advise the Operator of the nature and extent of all prescribed "over the counter" medication taken or any health condition, which may affect their ability to work safely, (2) agree to the release of such information by the Operator to SPT. The Operator will have appropriate policies and procedures in place, which Drivers and Attendants will adhere to in this regard. The Operator shall ensure that all personnel used on this and any other Contract are medically fit in all respects to perform the Contract, which medical fitness shall extend to any Driver's eyesight meeting all required standards.
- 3.6 instruct Drivers who use turning areas adjacent to or within school grounds to ensure that the Contract Vehicle is stationary prior to the time detailed in the Contract specification;
- 3.7 oblige Drivers to be responsible for opening and closing Contract Vehicle doors and will with the assistance of the Attendant, if relevant, supervise the safe setting down and picking up of Pupils;
- 3.8 instruct Drivers not to move the Contract Vehicle until they have endeavoured to ensure that all Pupils are seated, with seatbelts fastened. If a Contract Vehicle requires to turn around, that manoeuvre shall be completed before the Pupils are set down or picked up;
- 3.9 provide Attendants on all double or twin deck buses;
- 3.10 not permit Drivers or Attendants to smoke or utilise electronic or vapour cigarettes in the Contract vehicle or in the vicinity of the Contract Vehicle during performance of the Contract and ensure that the terms of the Smoking, Health & Social Care (Scotland) Act 2005 are adhered to at all times.

#### 4. The Operator's Obligations To SPT:

The Operator shall:-

- 4.1 not effect any change of any kind to the Contract Specification, except as otherwise provided herein, to cope with an emergency situation, without obtaining the prior written approval of SPT;
- 4.2 maintain sufficient records of vehicles, maintenance and personnel including PVG details, sufficient, to satisfy SPT that all aspects of the Contract have been complied with at all times;
- 4.3 provide SPT with such financial, or other information or documents with regard to the Contract, as SPT may require, and shall permit SPT access to the Operator's premises/facilities and Contract Vehicles at all times, to permit inspection of the same. For the avoidance of doubt, such inspections may include the copying and/or removal of documentation;
- 4.4 comply with all instructions from SPT, without eliminating the Operator's responsibilities, and those of its Drivers and Attendants, regarding safety and legislative requirements;
- 4.5 be responsible for the safe carriage of all Pupils and specifically, must ensure that (1) all seat belts and child car seats are utilised in accordance with current legislative requirements taking account of the age, height and weight of all pupils and (2) all Drivers and Attendants are appropriately trained to cope with specific contractual requirements, for example, the positioning and restraining of a wheelchair in a Contract Vehicle;
- 4.6 within forty-eight hours of receipt of any verbal or written complaint forward the complaint by email to SPT together with any reply from the Operator to the complainant. The Operator will respond to any enquiry from SPT in respect of any complaint, verbally by telephone within twenty-four hours and by email within forty-eight hours;
- 4.7 remove temporarily or permanently any Driver or Attendant from the operation of the Contract, as required by SPT, notwithstanding the terms of any other provision contained within these Operator's Conditions;
- 4.8 instruct any Operator who uses a vehicle owned by another operator to carry out the Contract, to display a sign stating that the vehicle is "on hire" to the Operator;
- 4.9 ensure that all Drivers and Attendants are at all times appropriately attired and that they comply at all times with the Code of Conduct;
- 4.10 return all signs supplied by SPT or the Council to SPT on conclusion of the Contract, or as otherwise required;
- 4.11 comply at all times with all statutory and regulatory obligations regarding the recording and payment of Income Tax, National Insurance Contributions and Value added Tax and shall ensure that all personnel are engaged subject to appropriate checks on their employment history and their entitlement to work in Scotland;
- 4.12 if so required by SPT nominate at least one individual with whom SPT may communicate on all aspects of the Contract including giving and receiving instructions on all operational, performance and financial matters arising;

- 4.13 inform SPT immediately upon it becoming aware of it being called to a Public Inquiry by The Traffic Commissioner; of any prosecution or legislative or regulatory action being raised against it or any office holder or of any such prosecution, legislative or regulatory action being taken or potentially taken against it, any office holder, transport manager or Driver and/or Attendant. The Operator shall provide such information as SPT may require;
- 4.14 if applicable:-
- (i) when required to do so by SPT, make a statement to SPT or to any prospective tenderer(s) for a contract for the work being carried out by the Operator as to whether TUPE is deemed to apply to any of the Operator's employees;
  - (ii) should the Operator deem that TUPE applies, be bound to advise SPT, or any prospective tenderers as aforesaid or anyone advised to the contractor by SPT of all necessary details of employees, benefits, wage rates etc, to which TUPE applies; and
  - (iii) indemnify SPT for any claims for loss or damage arising from claims from employees that a breach of the TUPE regulations occurred;
- 4.15 meet SPT as and when required, to discuss the performance of the Contract, which Contract review meetings shall be minuted by SPT and a copy of the minute will be made available to the Operator and the Council, upon request. SPT may require the Operator to provide written undertakings as to improvements in the operation of the Contract. Any failure to adhere to the terms of such undertakings will be regarded by SPT as a breach of these Conditions. Such meetings will be held at SPT's premises or such other venue as SPT may determine.
- 4.16 process Data in accordance with the Data Protection Legislation and an Information, Sharing, Exchange and Processing Agreement in substantially the same form as that attached to these Conditions and shall ensure that all Contract personnel including office staff, Drivers and Attendants are (1) made aware of the Operator's duties under this Condition, (2) are informed of the confidential nature of Personal Data, (3) do not publish, disclose or divulge any Personal Data and (4) undergo adequate training in the use, care, protection and handling of Personal Data.

## 5. **Operator's Obligations to Pupils:**

The Operator shall:-

- 5.1 ensure that Pupils arrive, board and alight safely at the designated location within the acceptable time limits specified in the Contract Specification or as subsequently agreed with SPT;
- 5.2 without exception, provide transport for all Pupils notified to it by SPT. The Operator shall under no circumstances, refuse to provide transport to any such Pupil, except with the prior approval of SPT and where relevant, the Council (for example, in cases of extreme difficulty);
- 5.3 convey such different and/or revised numbers of Pupils as may be required by SPT at any time during the period of the Contract irrespective of whether an additional vehicle is provided to fulfil the terms of the Contract, the Contract Price being increased only if the Operator can demonstrate that such changes have led to an increase in the cost of



operating the Contract;

- 5.4 issue travel passes to Pupils on any Contract if the Operator wishes to do so, at no additional cost to SPT. The Operator may be required to issue travel passes at no additional cost to SPT, for any Contract, if SPT considers that there is a need for travel passes on that Contract. Travel passes must be issued at no additional cost if the Contract will be delivered using vehicles with more than 16 passenger seats. Travel passes must be issued within any time period specified by SPT. Any travel passes will be valid until the end of the school year following the date of issue, and will be made to a satisfactory quality to last for the period of validity;
  - 5.5 in the event of travel passes having to be replaced, the Operator will cooperate with SPT to expedite such replacement. A replacement travel pass will be paid for by the Pupil, the cost of which will reflect the actual cost of the replacement travel pass which shall not exceed £3 in any event;
  - 5.6 report all concerns or complaints about Pupil misbehaviour to the Head Teacher in the first instance, which report will be confirmed in writing on request. If it is considered that the safety of Pupils, the Driver, the Attendant or members of the public is being put at risk, the matter must immediately be brought to the attention of the School Transport Section of SPT and in any event, by no later than 9am on the next Working Day after the date of the incident.
  - 5.7 not remove a Pupil from a Contract Vehicle during any Contract for any reason;
  - 5.8 not transfer Pupils from the Contract Vehicle to another without authorisation from SPT or unless instructed to do so, except in an emergency;
  - 5.9 not, either verbally, in writing, or by any other means, including email and social media, communicate with Pupils or parents of Pupils on any matter concerning this or any previous or prospective contract;
  - 5.10 maintain all necessary equipment (including child car seats) and have in place procedures at their premises to ensure that Contract Vehicles can safely move from and to those premises and access the nearest road in all situations of snow, ice or other inclement weather.
6. Operator's Liability And Insurance:
- 6.1 The Operator shall be responsible for and shall indemnify, save and hold harmless SPT, its servants, agents and principals from and against all liability for personal injury (whether fatal or otherwise), loss of or damage to property and any other loss, damage, costs and expenses which may arise out of, or in consequence of, the performance of this Contract by the Operator, its servants or agents or the presence on SPT's property or the property of a principal of SPT of the Operator, its servants or agents whether such injury, loss, damage, cost or expenses be caused by negligence or otherwise provided always that the Operator shall not be responsible to indemnify SPT for any injury, loss or damage caused solely by the negligence of SPT, its servants or agents and provided further that the Operator's liability to indemnify SPT as aforesaid shall be reduced proportionately to the extent that the act or negligence of SPT, its servants or agents may have contributed to the said injury, loss or damage.
  - 6.2 The Operator shall inform SPT of all accidents or other incidents involving Contract

Vehicles, or which occur within Contract Vehicles which result in damage to a vehicle or other property (including theft) or injury to or assault on any person. The Operator shall inform SPT immediately (0141 333 3781, [schoolcontracts@spt.co.uk](mailto:schoolcontracts@spt.co.uk)) in any case of personal injury or assault or any incident attended to by the police or other relevant authority and within twenty four hours of the accident or incident in other cases. Within forty eight hours of any accident or incident, the Operator shall provide a written report to SPT. The written report will contain confirmation that the incident in question has been brought to the attention of the Operator's insurers when it is necessary to do so. When required to do so, any necessary report shall be made to the police and the confirmation will be provided to SPT that this has been done.

6.3 The Operator will produce on demand for inspection by SPT the certificate(s) of insurance and the receipt(s) for payment of the current premiums or alternatively, evidence of the provision of appropriate security as required by statute in respect of all Contract Vehicles.

6.4 The Operator of any water-borne transport used on the Contract will have produced its marine inspection report required for the purposes of insurance, pre-Contract. Any such operator will immediately inform SPT of any change to the aspects reported on or incident that may affect the reliability or safety of the Contract Vehicle.

## 7. Sub-Contracting/Assignment:

7.1 The Operator is not permitted to sub-contract/assign the Contract except in the event of an emergency, in which circumstances the Operator will alert SPT's School's Transport Section on (0141 333 3781, [Schoolcontracts@spt.co.uk](mailto:Schoolcontracts@spt.co.uk)) immediately. If an emergency occurs beyond normal office hours, the Operator will contact SPT by email and outline the circumstances. That initial email communication will be followed by a verbal discussion with SPT School's Transport Section no later than 9am, the next Working Day, the outcome of which will be confirmed by email.

7.2 The Operator will remain liable to SPT for all actions and omissions of any sub-contractor/assignee.

7.3 SPT reserves the right to suspend or terminate the Contract and/or any other contracts should unauthorised sub-contracting/assignment in law or in practice occur.

## 8. Confidentiality:

8.1 The Operator shall keep confidential and not disclose, without SPT's prior written consent, any trade or business secrets or confidential information supplied by SPT to the Operator save where ordered to do so by a Court or Tribunal of competent jurisdiction.

## 9. Notices:

9.1 Any notice which is required to be given to SPT by the Operator may be given in the first instance by email to [Schoolcontracts@spt.co.uk](mailto:Schoolcontracts@spt.co.uk), which email shall be followed by a first class signed for letter should SPT so require, addressed to SPT's Senior Legal Advisor, 131 St Vincent Street, Glasgow, G2 5JF, or such other person as SPT may from time to time specify.

9.2 Any notice which is required to be given by SPT to the Operator may be given in the first instance by email, which email shall be followed by a first class signed for letter sent to

the address set out in the Operator's letter of award, or such other person or address as the Operator may from time to time specify to SPT.

10. Termination And Suspension:

10.1 SPT shall, in the circumstances detailed (i) to (vi ) below, be entitled to terminate or suspend this or any other contract with the Operator forthwith and to recover from the Operator the amount of any and all costs and/or losses resulting from such termination or suspension:-

(i) If the Operator shall have practised collusion in tendering for the Contract or any other contract with SPT, or shall have employed any corrupt, fraudulent or other illegal practices either in obtaining or performing the Contract, or any other Contract with SPT.

(ii) If the Operator becomes bankrupt or insolvent, or has a receiving order made against it, or compounds with or assigns for the benefit of its creditors or, being a company, commences to be wound up (not being a members voluntary winding up for the purposes only of solvent reconstruction or amalgamation) or carries on his business under a receiver for the benefit of creditors or gives, offers or promises any loan, fee, reward or advantage of any kind to any employee or Member of SPT.

(iii) If the Operator or any employee, agent, subcontractor, assignee or representative of the Operator fails in any material respect to observe the terms and conditions of this or any other contract or fails to execute with due diligence and expedition anything necessary for the proper performance of the Contract or any other contract, or acts in any way to undermine the good repute of SPT or the Council.

(iv) If any of the circumstances detailed in Regulation 73 of the Public Contracts (Scotland) Regulations 2015 apply.

(v) If the Operator fails to provide SPT with satisfactory evidence of its compliance with any obligation regarding the recording, accounting or paying of Income Tax, Corporation Tax, Value Added Tax, National Insurance Contributions, Minimum Wage or any benefit to which any employee may be entitled.

(vi) If the Operator defaults in performance of the Contract, to the extent that the Formal Notices issued to the Operator exceeds the limits specified in Condition 13.

10.2 SPT may arrange for another operator to fulfil the Contract or any other contracts and any and all increased costs incurred by SPT in so doing shall be for the account of the Operator and shall be retrieved either by deduction from payments otherwise due or such other appropriate methods as necessary.

10.3 SPT reserves the right to apply interest to any monies due to SPT which are unpaid for any period in excess of 30 days from the date on which payment is required from the Operator. Interest will be applied at the rate of 2% above the then applicable base lending rate of the Bank of Scotland.

10.4 The right of SPT to terminate or suspend the Contract or contracts in the circumstances outlined below are in addition to any other right to suspend or terminate the Contract or contracts as set out elsewhere in these Conditions.

10.5 For the avoidance of doubt, no payment will be made to the Operator for any period during which any Contract is suspended.

10.6 If this Contract is suspended or terminated in accordance with any provision of these Conditions, no tender submitted by the Operator will be considered for any contract that is required to replace the Contract that has been suspended or terminated.

11. Access To Premises, Contract Vehicles And Information:

11.1 The Operator will provide access as SPT requires to audit and inspect the Operator's premises, maintenance facilities and Contract Vehicles to examine any aspect of the operation of the Contract and/or finances of the Operator.

11.2 The Operator shall also permit access to its premises, maintenance facilities and Contract Vehicles to SPT's representatives for the purposes of:-

(i) surveys of income, travel passes, passengers and such other information as SPT may reasonably determine, any information ingathered becoming the property of SPT;

(ii) inspection of said premises, maintenance facilities or Contract Vehicles, inspection and maintenance records and vehicles to ensure compliance with the terms of these Operator's Conditions.

11.3 The Operator must provide, when requested, full details of the working hours of all Drivers and Attendants who carry out duties on Contracts, which records will include details of all work, including whether or not the Driver is full or part-time, temporary or permanent, or employed by another employer. Such records will be held and be available for inspection by SPT for a period of at least 6 months after the end date of the Contract.

12. Monitoring:

12.1 SPT may carry out comprehensive monitoring of all aspects of the operation and performance of the Contract. For the avoidance of doubt, such monitoring may include the use of still or video photography. Operators will permit SPT's representatives to be carried free of charge on vehicles or vessels as and when required to allow monitoring duties to be carried out.

12.2 Any breach of Contract will be brought to the attention of the Operator using the formal warning letter procedure or by such other means as may be appropriate in the circumstances. Operators will have the right of appeal against any warning.

12.3 Any warning for which no appeal is submitted or where any appeal has not resulted in the warning being rescinded will result in a formal recording of that warning and/or the appropriate financial deduction being made.

12.4 For the avoidance of doubt, should SPT be of the opinion that any aspect of the Contract is not being complied with, it may carry out repeat monitoring of a Contract or an Operator and issue formal warnings or take such other or further appropriate action as provided for herein.

13. Warnings Procedure:

13.1 SPT may issue a formal warning to the Operator in respect of any breach of Contract in accordance with the process outlined below. This process may be subject to review in

the future, which review will be intimated in writing and explained to the Operators as appropriate. Warnings are primarily issued to draw the Operator's attention to a breach or breaches of Contract to allow for remedial action to be taken in order to improve performance. A warning or warnings issued for a breach or breaches of Contract may, however, result in the termination of this or other contracts with SPT as set out below and elsewhere in these Operator's Conditions. Each formal warning will be "weighted" reflecting the seriousness of the breach of Contract and will, subject to the outcome of any appeal, result:

- (i) in the recording of the appropriate number of points against the particular Contract(s) to which the warning relates; and
- (ii) in a corresponding financial deduction being applied to the payment made to the Operator, as set out below.

13.2 Warnings will be "weighted" as follows:

- (i) any breach of Contract regarding the Operator's Vehicles, premises, maintenance facilities, inspection, maintenance or relevant record keeping. 5 points (major adverse impact);
- (ii) any breach of Contract which has not resulted in the suspension or termination of this or any other Contract, for example, a failure to adhere to any of the requirements to have relevant drivers and attendants confirmed by SPT as being suitable, following checks carried out via Disclosure Scotland. For the avoidance of doubt, such warnings will be applied against all Contracts held by the Operator to which these requirements apply according to their impact, for example 1 point (limited adverse impact) to 5 points (major adverse impact);
- (iii) any breach of Contract, which results in a limited adverse impact to SPT, the Council or a Pupil: 1 point (limited adverse impact);
- (iv) any breach of Contract which results in a significant adverse impact to SPT, the Council or a Pupil: 3 points (significant adverse impact);
- (v) any breach of Contract which results in a major adverse impact to SPT, the Council or a Pupil: 5 points (major adverse impact).

13.3 All warning points will remain in force for a period of twelve (12) months from the date those points were originally allocated.

13.4 For the avoidance of doubt, this and any other Contract may be suspended or terminated prior or subsequent to a formal warning being issued.

13.5 Any appeal must be submitted within fourteen days of receipt by the Operator of a formal warning or notification by SPT to impose a financial deduction. Any such appeal must fully detail, with supporting evidence, reasons why, in the opinion of the Operator, no formal warning or financial deduction should apply. Such submissions will be considered by SPT. Any warning in respect of which no appeal is submitted or where an appeal does not result in the warning being rescinded will result in a formal recording of that warning and the appropriate financial deduction being made.

13.6 If the Contract is not complied with, there will be a deduction from the normal current monthly payment equivalent to the subsidy for the whole journey concerned.

13.7 If mileage has not been operated without good reason, the Operator agrees that SPT may

deduct from the payment otherwise due to the Operator an amount equal to the average cost per mile operated for each mile not operated for the appropriate day of the week, plus a deduction equal to the average income normally received. The average cost per mile operated shall be calculated by dividing the monthly cost by the monthly Contract mileage. SPT shall as soon as reasonably practicable notify the Operator in writing of the deduction it decides appropriate and the reasons for such. Within fourteen days of such notification, the Operator's representations regarding the deduction will be considered by SPT which may, if it thinks fit, as a result of such representations, increase or decrease the amount of the deduction. SPT's decision whether altered or not, will be final.

13.8 At the discretion of SPT, deductions may not be made in respect of operating out-with the Contract Specification, or non-operation, or failure to comply with any aspect of the Contract if it is found that such failure is due to extenuating circumstances beyond the control of the Operator and as such are acceptable to SPT.

#### 14. Termination:

14.1 In addition to any other right available to suspend or terminate any Contract, SPT reserves the right to terminate the Contract and recover from the Operator any and all costs and/or losses when a Contract has within any period of twelve (12) weeks received a total of twenty (20) or more points or six (6) or more warnings and within any period of twelve (12) months received a total of thirty (30) or more points or ten (10) or more warnings.

14.2 In the event of termination of the Contract or any contract, SPT may also arrange for another Operator to fulfil the Contract or contracts and any and all increased costs incurred or to be incurred shall be for the account of the Operator and shall be retrieved either by deduction from payments otherwise due or such other appropriate methods as necessary.

14.3 SPT reserves the right to apply interest to any monies due, which are unpaid for any period in excess of thirty (30) days from the date on which payment is required from the Operator. Interest will be applied at the rate of 2% above the current base lending rate of the Bank of Scotland.

#### 15. Service Review Meetings:

15.1 The Operator shall meet SPT or its representatives as and when required, to discuss the performance of the Contract. Service Review Meetings shall be minuted by SPT and a copy of the Minute will be made available to the Operator. SPT may require the Operator to provide written undertakings as to improvements in the operation of the Contract. Any failure to adhere to the terms of such undertakings will be regarded by SPT as a breach of the Conditions of the Contract. Such meetings will be held at SPT's premises or such other venue as SPT may determine.

#### 16. Freedom of Information:

16.1 SPT and the councils on behalf of which SPT acts as agent are required to comply with FOISA and the EIRS. The Operator shall assist and co-operate with the Council and/or SPT (at the Operator's expense) to enable the Council and/or SPT to comply with any Information disclosure requirements.

- 16.2 The Operator shall provide SPT with a copy of all Information in its possession in the form that SPT requires within such period as SPT may specify and provide all necessary assistance as reasonably requested to SPT, to enable SPT to respond to a Request for Information within the time for compliance.
- 16.3 SPT reserves the right to disclose Information held by it in response to a Request for Information.
- 16.5 The decision of SPT in relation to the interpretation of FOISA and EIRS shall be final and conclusive in any dispute, difference or question arising in respect of disclosure.
- 16.6 The Operator acknowledges that SPT may disclose Information (a) without consulting with the Operator or (b) following consultation with the Operator and having taken its views into account.
- 16.7 The Operator shall ensure that it retains all information, relating to the Contract, including Information and shall permit SPT to inspect such Information and records as may be requested by SPT.
- 16.8 SPT may communicate Information to the Council, the Commissioner, the Driver and Vehicle Services Agency, the Police, licensing authorities and other agencies and authorities as may be relevant on any matter concerning performance of the Contract.
17. Data Protection:
- 17.1 The Operator shall keep abreast of and comply with the terms and principles of the Data Protection Legislation.
- 17.2 If not already done, the Operator shall simultaneously with the execution of this Contract, execute an the Information Sharing, Exchange and Processing Agreement with SPT and/or the Council in substantially the same form as that attached to these Conditions or in such other form as may be agreed with SPT and/or the Council from time to time.
- 17.3 The Operator shall engage with and abide by the training on Data Protection conducted by the Council and/or SPT.
- 17.4 Any breach by the Operator of the Data Protection Legislation or the said Information Sharing, Exchange and Processing Agreement shall be a material breach of the Contract.
- 17.5 SPT reserves the right to audit the Operator's compliance with the terms and principles of the Data Protection Legislation and the Information sharing, Exchange and Processing Agreement concluded with SPT and /or the Council. The Operator shall provide such information and/or access to its premises and records as SPT may require.
- 17.6 The Operator shall immediately advise SPT and /or the Council upon it becoming aware of any breach or potential breach of the Data Protection Legislation or its obligations under its Information, Sharing, Exchange and Processing Agreement and shall fully comply with all instructions given by SPT and/or the Council in this regard.
- 17.7 The Operator shall indemnify SPT and/or the Council against all liabilities, damages, costs, losses, claims, expenses, awards of compensation, monetary penalty notices or administrative fines imposed for breach of the Data Protection Legislation and/or expenses (including legal fees and expenses) suffered by SPT and/or the Council or awarded, levied or imposed against SPT and/or the Council as a result of any breach by

the Operator of its obligations under the Contract, the Data Protection legislation or any breach by SPT of the Data Protection legislation which is caused in whole or in part by any breach by the Operator of the Data Protection Legislation, such as unlawful processing of Personal Data held or processed by the Operator, its employees or agents.

18. Cyber Security:

18.1 For the purposes of this Clause 18, SPT "Data" means all information and materials of SPT which the Operator has custody or control of and/or which are accessed, transmitted or stored using or on the Operator's IT systems or equipment in the performance of this Contract.

18.2 The Operator shall use all reasonable endeavours including (but not limited to):

- (i) Using passwords to protect SPT Data;
- (ii) Preventing malicious software damage by installing and turning on anti-virus software;
- (iii) Keeping all IT equipment and up to date and portable and fixed devices safe;
- (iv) Avoiding phishing attacks;
- (v) Backing up SPT Data; and
- (vi) Ensuring that all relevant staff are trained as appropriate in Cyber Security,

to ensure that SPT Data is protected at all times, in accordance with SPT's written instructions and guidance available by the National Cyber Security Centre "NCSC", from:

- (1) unauthorised access or use by a third party; and
- (2) misuse, damage or destruction by any person.

18.3 If the Operator becomes aware of any actual or suspected action taken through the use of computer networks that result in an actual or potentially adverse effect on SPT's IT system and/or SPT Data residing on that system or any other unauthorised access or use by a third party or misuse, damage or destruction by any person "Cyber Incident", the Operator shall promptly (and, in any event, no later than 12 hours after becoming aware of the Cyber Incident or Other Incident), inform SPT by email to [reporting@spt.co.uk](mailto:reporting@spt.co.uk) where such notification shall specify (at a minimum):

- (i) the nature of the Cyber Incident or suspected Cyber Incident;
- (ii) the date and time of occurrence;
- (iii) the extent of the SPT Data affected and any measures taken or proposed to be taken; and
- (iv) any other information that SPT reasonably requires.

18.4 In addition, the Operator shall promptly, at its own expense:

- (i) provide SPT with all such information as SPT requests in connection with such Cyber Incident or suspected Cyber Incident;



- (ii) take such steps as SPT requires it to take to mitigate the detrimental effects of any such Cyber Incident or suspected Cyber Incident on SPT; and
  - (iii) otherwise cooperate with SPT in investigating and dealing with such Cyber Incident or suspected Cyber Incident and its consequences.
- 18.5 The Operator shall, if requested by SPT, take out and maintain insurance to protect against the risks of a Cyber Incident, and comply with the provisions of Condition 6 in respect of such insurance.
- 18.6 The Operator shall ensure that:
  - (i) all sub-contracts which may allow or cause access to SPT Data, contain no provisions that are inconsistent with this Condition 18; and
  - (ii) all Operator personnel and any sub-contractors who have access to SPT Data comply with this Condition 18.
- 18.7 In the event that SPT has any reason to believe that the Operator is in breach of any of its obligations under this Condition 18, SPT may, at its sole discretion:
  - (i) suspend the sharing of SPT Data until such time as SPT is reasonably satisfied that the breach will not re-occur; and/or
  - (ii) terminate the Contract immediately by written notice to the Operator if the Operator commits a material breach of these Conditions of Contract which (in the case of a breach capable of a remedy) it does not remedy within 5 business days of receiving written notice of the breach.
- 18.8 Where SPT exercises its rights under this Condition 18, it may request the return of SPT Data (in which case the Operator shall, no later than 7 days after receipt of such a written request from SPT, at SPT's option, return or permanently erase/destroy all materials held by or under the control of the Operator which contain or reflect SPT Data and shall not return any copies, extracts or other reproductions of SPT Data either in whole or in part), save that the Operator will be permitted to retain 1 copy for the purpose of complying with, and for so long as required by, any law or judicial or administrative process or for its legitimate internal compliance and/or record keeping requirements.
- 19. Variation:
  - 19.1 SPT reserves the right to vary these Operator's Conditions or any subsequent document forming the Contract by giving the Operator prior notice in writing of the variations.
- 20. Forbearance:
  - 20.1 No delay, neglect or forbearance on the part of SPT or the Operator in enforcing any of these Operator's Conditions shall be deemed to be a waiver of that Condition nor shall it prejudice in any way the rights of either party.
- 21. Law Of Scotland:

21.1 These Operator’s Conditions are subject to the jurisdiction of the Scottish Courts and shall be construed according to the Law of Scotland.

### **APPENDIX, PART 3**

#### **THE OPERATOR'S CONDITIONS OF CONTRACT FOR DEDICATED SCHOOL TRANSPORT CONTRACTS FOR THE NORTH AYRSHIRE COUNCIL ("the Council")**

##### **("the Operator's Conditions")**

WHEREAS:-

- (1) SPT acts as the agent for the Council in respect of arranging school transport contracts for Pupils, under the Agency Contract between SPT and the Council regulating the period from 1 April 2017 to 31 March 2020;
- (2) SPT (for and on behalf of the Council) has appointed the Operator to deliver school transport to Pupils, in terms of a contract constituted by the Contract specification and letter of award issued to the Operator by SPT ("the Contract") which Contract specifies the identity of the Operator ("the Operator"); and
- (3) the Operator is responsible for all actions and omissions of its employees/subcontractors or assignees ("Drivers and Attendants") in terms of the Contract;

Therefore, the Operator will ensure that:-

- (1) the Operator, its Drivers and Attendants abide by the Operator's Conditions;
- (2) the Operator, its Drivers and Attendants are alerted to and reminded regularly of these Operator's Conditions;
- (3) the Operator, its Drivers and Attendants follow closely the Code of Conduct (Schedule1); and
- (4) any email communication with SPT will be directed to [Schoolcontracts@spt.co.uk](mailto:Schoolcontracts@spt.co.uk) compliant with the Data Protection Legislation, the Contractual provisions and the Conditions contained herein.

##### **The Operator's Obligations:**

1. The Contract:
  - 1.1 The Operator shall perform the Contract in accordance with the timetable, designated stopping places and specified route details required by the Contract specification and/or subsequently instructed by SPT. For the avoidance of doubt, the Operator shall not make any change of any kind to the Contract without obtaining prior email approval of SPT and shall comply with all instructions by SPT with regard to places where Pupils shall join or leave the Contract vehicle and shall comply with any further instructions which may be issued by SPT in respect of any changes to hours of arrival and departure to and from the designated "pick-up" or "drop-off" location and as to holidays and in-service days.
  - 1.2 Should the Operator become aware of an emergency situation or any circumstances arising or potentially arising during the operation of the Contract, for example, road-works, road closures, congestion, parking, traffic signalling issues or difficulties with other road users, which could adversely impact upon the Operator's ability to perform the Contract, according to the Contract specification, the Operator must follow the Contract specification as safely and closely as possible and immediately advise SPT's School's Contracts Section by telephone 0141 333 3362 and thereafter confirmed by email to [Schoolcontracts@spt.co.uk](mailto:Schoolcontracts@spt.co.uk) in such reasonable detail as SPT may require. The Operator shall then comply with any instructions given by SPT.
  - 1.3 At any time during the period of the Contract, SPT reserves the right to modify any aspect of the Contract, including the Contract price in a manner consistent with any modification

to the Contract. SPT reserves the right to request a breakdown of the Contract price including all costs relating to labour, fuel, materials and other operating costs and overheads. The Operator will provide the information to SPT with three days of such a request. The Operator shall comply with any modification specified by SPT, within such time-scale as is required by SPT. Such modifications may include the termination of the Contract, without liability to SPT, if it is judged in the opinion of SPT that the Contract no longer appropriately meets or will no longer appropriately meet the needs of SPT or the Council. In such circumstances, SPT may terminate the Contract by giving such written notice to the Operator as may be reasonably practicable in the circumstances.

- 1.4 SPT shall, during the period of the Contract have the right to negotiate reductions in the amount paid to the Operator, in order to take account of reductions in operating costs, which may arise for any reason beyond the control of the Operator. SPT reserves the right to modify any Contract price in a manner consistent with any such modification.
- 1.5 The Operator shall ensure that all Contract Vehicles, maintenance facilities and Drivers and Attendants used in the performance of this Contract, conform fully with all appropriate statutory requirements, particularly those of all current Road Traffic and Transport Acts. In this respect, the Operator will be held to have satisfied itself in respect of all documentation required, by way of certificates, licences and records of inspection and maintenance in relation to the carrying out of the Contract and must display these to SPT as and when required. The Operator shall exhibit such information and documentation relating to legislative and regulatory compliance as and when required by SPT.
- 1.6 The Operator will maintain a list of all PVG Scheme members, which record will inform at the date upon which the current clearance expires. Operators will ensure that applications for a new clearance are submitted 6-8 weeks prior to the expiry of the existing clearance.
- 1.7 Unless otherwise determined by SPT, this and any other contract which the Operator has with SPT and/or any third party on whose behalf SPT acts as agent shall be terminated immediately and be of no force or effect from the commencement of any period that:-
  - (i) the Operator does not have a relevant Operator's licence or if any licence previously granted has been suspended for any reason;
  - (ii) the Operator does not have valid and satisfactory insurance to cover the operation of the Contract;
  - (iii) the Operator does not have a valid Test Certificate, appropriate for the class of vehicle, issued by the Department for Transport for every Contract vehicle;
  - (iv) the Operator does not have a valid Vehicle Excise Duty for every Contract Vehicle;
  - (v) any Driver does not have a valid driving licence appropriate for the class of vehicle required for use on the Contract; or
  - (vi) SPT reasonably considers that Operator may have otherwise breached the terms of the Contract or acted in an illegal manner.
- 1.8 Where any Contract has been suspended or terminated or any other contracts have been suspended/terminated SPT may arrange for another Operator to fulfil the Contract or contracts and any and all increased or additional costs incurred by SPT shall be charged to the defaulting Operator and recovered either by deduction from any payments due to be made to the Operator by SPT in terms of this or any other contract or such other appropriate means as may be necessary.
- 1.9 Should SPT provide an Operator with greater than seven days' notice that operation of the Contract shall not be required on a day or days, the Operator shall not receive payment for any day or days on which the Contract is not operated. Should SPT provide an Operator with less than seven days' notice but more than twelve hours' notice that operation of the Contract shall not be required on a day or days, payment will be made at 50% of the normal daily rate of payment for the day or days on which the Contract is not operated.

## 2. The Contract Vehicles:

- 2.1 The Operator will ensure that all Contract Vehicles comply with the Contract specification and these Conditions. The Operator will not operate the Contract with any non-compliant vehicles.
- 2.2 Should an alternative vehicle be required, due to unforeseeable circumstances, the Contract may be fulfilled by another compliant vehicle of the same taxation class from the Operator's fleet. The Operator shall ensure that any replacement vehicle complies with the Contract specification. Should such an event occur, the Operator must immediately advise SPT by telephone, which message will be confirmed in writing by email addressed to [Schoolcontracts@spt.co.uk](mailto:Schoolcontracts@spt.co.uk). Should SPT's offices be closed, the Operator must advise SPT's School Contracts Section by no later than 9 am on the next working day. For the avoidance of doubt, a replacement vehicle **MUST NOT** be used in place of the original Contract vehicle in respect of any scheduled test, maintenance or repair of the original compliant Contract Vehicle.
- 2.3 All Contract Vehicles will be licensed, equipped, insured and maintained as required by statute and inspected in compliance with the requirements of any relevant licensing authority or SPT, evidence of such compliance of which will be made available to SPT upon request. Notwithstanding the foregoing, inspection and maintenance records for all Contract Vehicles shall be completed and maintained in such a manner as may be prescribed by SPT, which records will be provided by the Operator to SPT on demand.
- 2.4 The Operator will conduct a daily "pre-service inspection" of all Contract Vehicles. The Operator will employ a written "nil-defect" reporting system. Any failure to strictly adhere to this Condition will be treated as a material breach of the Contract and will result in the termination of this and any other contract.
- 2.5 The Operator shall, with or without SPT's prior notification, allow SPT's representatives to enter and inspect the Contract Vehicles. Such inspections may take place at the Operator's premises or maintenance facility or at an appropriate roadside location. The Operator will also permit SPT to inspect those premises or facilities, at SPT's request, which inspection may include access to the maintenance records relevant to the Contract vehicles. For the avoidance of doubt, SPT reserves the right to suspend or terminate this or any other contract should any such inspection result in a finding of material failings in respect of those premises, facilities, records or vehicles or if access to such is refused.

- 2.6 If it is necessary to involve a third party (for example, to provide a pit, vehicle hoists or ramp to inspect Contract Vehicles) to ensure that SPT can carry out a satisfactory inspection of the Contract Vehicles, maintenance facilities or records, this will be arranged by the Operator to meet SPT's requirements, at no additional cost to SPT. Alternatively, appropriate arrangements may be made directly by SPT, with all resultant costs being paid for by the Operator. In case of any doubt, the use of a portable drive-on ramp for inspection purposes is prohibited.
- 2.7 The Operator will ensure that all Contract Vehicles comply with any weight, height, width, length and seated passenger capacity requirements appropriate to the Contract.
- 2.8 The Contract Vehicle will be presented and operated during the Contract as follows:-
- The external identification, design and standard of presentation of Contract Vehicles shall be of a design and standard acceptable to SPT;
  - The name of the Operator will be clearly displayed on all Contract Vehicles;
  - The Contract Vehicle shall display that the Contract is being operated on behalf of the Council in a manner prescribed by SPT;
  - Any external advertising exhibited on any Contract Vehicle shall be acceptable to SPT and the Council;
  - SPT reserves the right to require the Operator to remove any advertising material that SPT in its discretion deems to be unsuitable;
  - All Contract vehicles will be clean and damage free, inside and out. The Operator must sweep his/her vehicles daily and clean regularly and when required. The Operator will provide details of its cleaning and washing procedures to SPT, on request and shall immediately comply with any SPT directions to improve the standard of same;
  - All Contract Vehicles will be properly heated and ventilated at all times;
  - The Operator will provide one seat per Pupil on all Contract Vehicles;
  - All Contract Vehicles will, in addition to any sign required by law, in respect of the carriage of school children display a sign supplied by SPT, which sign will be displayed in such a way, as not to impinge on the swept area of the windscreen;
  - On Contract vehicles with 16 passenger seats or more, the destination must be clearly displayed on the destination screen or at the door of the Contract Vehicle. Any sign displayed must not be on the "swept area" of the windscreen;
  - If a vehicle with 16 passenger seats or less is used for any Contract then fully functional lap and diagonal seat belts fitted to a standard acceptable to the Department for Transport shall be provided for each Pupil. If the Contract requires that a Contract Vehicle be fitted with seatbelts, evidence of a seatbelt installation check carried out by the Department for Transport shall be provided. Where seatbelts have been "retro-fitted" to a vehicle, a copy of the appropriate notification to the Department for Transport shall be provided to SPT on request together with a copy of the MOT certificate detailing that the seatbelt installation check has been carried out;
  - In respect of Contracts involving water borne transport, the Operator will ensure that the vessel is in position at the boarding point by no later than the earliest specified acceptable time. The Operator will provide a suitable life jacket for every authorised Pupil;
  - All Contract vehicles, with 18 passenger seats or more, will be fitted with power operated doors, controlled by the Driver from his cab;
  - All vehicles with 9 passenger seats or more will be fitted with a 'door open warning device' maintained in a fully operational condition for each and every entrance/exit door (including emergency exit doors) situated rearward of the Driver's seat, failure to provide which will constitute a material breach of the Contract, resulting in the termination of this Contract and any other contract;

- All Contract Vehicles will be equipped with two-way radio and/or mobile telephone, by which the Driver is able to communicate directly with the Operator and/or the Head Teacher. Communication equipment will be used in compliance with all legislative and regulatory requirements;
- Where childproof locks are fitted, such locks will be, set to the “child safe” mode at all times.

### 3. Drivers And Attendants:

The Operator will:-

- 3.1 not deploy Drivers and Attendants who are not competent, licensed, insured, PVG checked and approved and possess all necessary certification, as required by statute;
- 3.2 not deploy a Driver or Attendant on a Contract until such time as membership of the PVG scheme has been obtained from SPT and formal notification of the suitability of any individual has been received by the Operator from SPT; PVG checks will be reviewed every three years on the basis that the term of the Contract is fully covered by such check;
- 3.2 oblige Drivers, supported by Attendants if appropriate, to secure the safety of Pupils, themselves, pedestrians and other road users;
- 3.4 ensure that all Drivers and Attendants are familiar with SPT guidance on the PVG scheme;
- 3.5 ensure that no Driver or Attendant carries out any duties relating to the Contract, or any other contract, while having consumed alcohol or drugs or be under the influence of alcohol or drugs of any nature. The Operator will contractually oblige Drivers and Attendants to advise the Operator of the nature and extent of all prescribed “over the counter” medication taken or any health condition which may affect their ability to work safely. The Operator will contractually oblige all Drivers and Attendants to agree to the release of such information to SPT therein. Drivers and Attendants will consent to the Operator reporting such health information to SPT. The Operator will have appropriate policies and procedures in place, which Drivers and Attendants will adhere to in this regard. The Operator shall ensure that all personnel used on this and any other Contract are medically fit in all respects to perform the Contract, which medical fitness shall extend to eyesight meeting all required standards.
- 3.6 instruct Drivers who use turning areas adjacent to or within school grounds to ensure that the Contract Vehicle is stationary prior to the time detailed in the Contract specification;
- 3.7 oblige Drivers to be responsible for opening and closing Contract Vehicle doors and will with the assistance of the Attendant, if relevant, supervise the safe setting down and picking up of Pupils;
- 3.8 instruct Drivers not to move the Contract Vehicle until they have endeavoured to ensure that all Pupils are seated, with seatbelts fastened. If a Contract Vehicle requires to turn around, that manoeuvre shall be completed before the Pupils are set down or picked up;
- 3.9 provide Attendants on all double or twin deck buses;
- 3.10 not permit Drivers or Attendants to smoke or utilise electronic or vapour cigarettes in the Contract vehicle or in the vicinity of the Contract Vehicle during performance of the Contract and ensure that the terms of the Smoking, Health & Social Care (Scotland) Act 2005 are adhered to at all times; and
- 3.11 not register any part of the Contract as a ‘Local Service’;

### 4. The Operator’s Obligations To SPT:

The Operator shall:-

- 4.1 not effect any change of any kind to the Contract Specification, except as otherwise provided herein, to cope with an emergency situation, without obtaining the prior written approval of SPT;
- 4.2 maintain sufficient records of vehicles, maintenance and personnel including PVG details, sufficient, to satisfy SPT that all aspects of the Contract have been complied with at all times;
- 4.3 provide SPT with such financial, or other information or documents with regard to the Contract, as SPT may require, and shall permit SPT access to the Operator's premises/facilities and Contract Vehicles at all times, to permit inspection of the same. For the avoidance of doubt, such inspections may include the copying and/or removal of documentation;
- 4.4 comply with all instructions from SPT, without eliminating the Operator's responsibilities, and those of its Drivers and Attendants, regarding safety and legislative requirements;
- 4.5 be responsible for the safe carriage of all Pupils and specifically, must ensure that (1) all seat belts and child car seats are utilised in accordance with current legislative requirements taking account of the age, height and weight of all pupils and (2) all Drivers and Attendants are appropriately trained to cope with specific contractual requirements, for example, the positioning and restraining of a wheelchair in a Contract Vehicle;
- 4.6 within forty-eight hours of receipt of any verbal or written complaint forward the complaint by email to SPT together with any reply from the Operator to the complainant. The Operator will respond to any enquiry from SPT in respect of any complaint, verbally by telephone within twenty-four hours and by email within forty-eight hours;
- 4.7 remove temporarily or permanently any Driver or Attendant from the operation of this Contract, as required by SPT, notwithstanding the terms of any other provision contained within these Operator's Conditions;
- 4.8 instruct any Operator who uses a vehicle owned by another operator to carry out the Contract, to display a sign stating that the vehicle is "on hire" to the Operator;
- 4.9 ensure that all Drivers and Attendants are at all times appropriately attired;
- 4.10 return all signs supplied by SPT or the Council to SPT on conclusion of the Contract, or as otherwise required;
- 4.11 comply at all times with all statutory and regulatory obligations regarding the recording and payment of Income Tax, National Insurance Contributions and Value added Tax and shall ensure that all personnel are engaged subject to appropriate checks on their employment history and their entitlement to work in Scotland;
- 4.12 if so required by SPT nominate at least one individual with whom SPT may communicate on all aspects of the Contract including giving and receiving instructions on all operational, performance and financial matters arising;
- 4.13 shall inform SPT immediately upon it becoming aware of it being called to a Public Inquiry by The Traffic Commissioner; of any prosecution or legislative or regulatory action being raised against it or any office holder or of any such prosecution, legislative or regulatory action being taken or potentially taken against it, any office holder, transport manager or Driver and/or Attendant. The Operator shall provide such information as SPT may require;
- 4.14 if applicable:-
  - (i) when required to do so by SPT, make a statement to the SPT or to any prospective tenderer(s) for a contract for the work being carried out by the Operator as to whether TUPE is deemed to apply to any of the Operator's employees;
  - (ii) should the Operator deem that TUPE applies, be bound to advise SPT, or any prospective tenderers as aforesaid or anyone advised to the contractor by SPT of all necessary details of employees, benefits, wage rates etc, to which TUPE applies; and



- (iii) indemnify SPT for any claims for loss or damage arising from claims from employees that a breach of the TUPE regulations occurred;
- 4.15 meet SPT as and when required, to discuss the performance of the Contract, which Contract review meetings shall be minuted by SPT and a copy of the minute will be made available to the Operator and the Council, upon request. SPT may require the Operator to provide written undertakings as to improvements in the operation of the Contract. Any failure to adhere to the terms of such undertakings will be regarded by SPT as a breach of these Conditions. Such meetings will be held at SPT's premises or such other venue as SPT may determine.

## 5. Operator's Obligations to Pupils:

The Operator shall:-

- 5.1 ensure that Pupils arrive, board and alight safely at the designated location within the acceptable time limits specified in the Contract Specification or as subsequently agreed with SPT;
- 5.2 without exception, provide transport for all Pupils notified to it by SPT. The Operator shall under no circumstances, refuse to provide transport to any such Pupil, except with the prior approval of SPT and where relevant, the Council (for example, in cases of extreme difficulty);
- 5.3 convey such different and/or revised numbers of Pupils as may be required by SPT at any time during the period of the Contract irrespective of whether an additional vehicle is provided to fulfil the terms of the Contract, the Contract Price being increased only if the Operator can demonstrate that such changes have led to an increase in the cost of operating the Contract;
- 5.4 not be permitted to register the Contracts as local Services;
- 5.5 issue travel passes to Pupils on any Contract if the Operator wishes to do so, at no additional cost to SPT. The Operator may be required to issue travel passes at no additional cost to SPT, for any Contract, if SPT considers that there is a need for travel passes on that Contract. Travel passes must be issued at no additional cost if the Contract will be delivered using vehicles with more than 16 passenger seats. Travel passes must be issued within any time period specified by SPT. Any travel passes will be valid until the end of the school year following the date of issue, and will be made to a satisfactory quality to last for the period of validity;
- 5.6 in the event of travel passes having to be replaced, the Operator will cooperate with SPT to expedite such replacement. A replacement travel pass will be paid for by the Pupil, the cost of which will reflect the actual cost of the replacement travel pass which shall not exceed £3 in any event;
- 5.7 report all concerns or complaints about Pupil misbehaviour to the Head Teacher in the first instance, which report will be confirmed in writing on request. If it is considered that the safety of Pupils, the Driver, the Attendant or members of the public is being put at risk, the matter must immediately be brought to the attention of the School Transport Section of SPT and in any event, by no later than 9am on the next Working Day after the date of the incident.
- 5.8 not remove a Pupil from a Contract Vehicle during any Contract for any reason;
- 5.9 not transfer Pupils from the Contract Vehicle to another without authorisation from SPT or unless instructed to do so, except in an emergency;
- 5.10 ensure that all Drivers and Attendants comply at all times with the Code of Conduct;
- 5.11 not, either verbally, in writing, or by any other means, including email and social media, communicate with Pupils or parents of Pupils on any matter concerning this or any previous or prospective contract;

5.12 maintain all necessary equipment (including child car seats) and have in place procedures at their premises to ensure that Contract Vehicles can safely move from and to those premises and access the nearest road in all situations of snow, ice or other inclement weather;

6. Operator's Liability And Insurance:

6.1 The Operator shall be responsible for and shall indemnify, save and hold harmless SPT, its servants, agents and principals from and against all liability for personal injury (whether fatal or otherwise), loss of or damage to property and any other loss, damage, costs and expenses which may arise out of, or in consequence of, the performance of this Contract by the Operator, its servants or agents or the presence on SPT's property or the property of a principal of SPT of the Operator, its servants or agents whether such injury, loss, damage, cost or expenses be caused by negligence or otherwise provided always that the Operator shall not be responsible to indemnify SPT for any injury, loss or damage caused solely by the negligence of SPT, its servants or agents and provided further that the Operator's liability to indemnify SPT as aforesaid shall be reduced proportionately to the extent that the act or negligence of SPT, its servants or agents may have contributed to the said injury, loss or damage.

6.2 The Operator shall inform SPT of all accidents or other incidents involving Contract Vehicles, or which occur within Contract Vehicles which result in damage to a vehicle or other property (including theft) or injury to or assault on any person. The Operator shall inform SPT immediately in any case of personal injury or assault or any incident attended to by the police or other relevant authority and within twenty four hours of the accident or incident in other cases. Within forty eight hours of any accident or incident, the Operator shall provide a written report to SPT. The written report will contain confirmation that the incident in question has been brought to the attention of the Operator's insurers when it is necessary to do so. When required to do so, any necessary report shall be made to the police and the confirmation will be provided to SPT that this has been done.

6.3 The Operator will produce on demand for inspection by SPT the certificate(s) of insurance and the receipt(s) for payment of the current premiums or alternatively, evidence of the provision of appropriate security as required by statute in respect of all Contract Vehicles.

6.4 The Operator of any water-borne transport used on the Contract will have produced its marine inspection report required for the purposes of insurance, pre-Contract. Any such operator will immediately inform SPT of any change to the aspects reported on or incident that may affect the reliability or safety of the Contract Vehicle.

7. Sub-Contracting/Assignment:

7.1 The Operator is not permitted to sub-contract/assign the Contract except in the event of an emergency, in which circumstances the Operator will alert SPT's School's Transport Section on [Schoolcontracts@spt.co.uk](mailto:Schoolcontracts@spt.co.uk) immediately. If an emergency occurs beyond normal office hours, the Operator will contact SPT by email and outline the circumstances. That initial email communication will be followed by a verbal discussion with SPT School's Transport Section no later than 9am, the next Working Day, the outcome of which will be confirmed by email.

7.2 The Operator will remain liable to SPT for all actions and omissions of any sub-contractor/assignee.

7.3 SPT reserves the right to suspend or terminate the Contract and/or any other contracts should unauthorised sub-contracting/assignment in law or in practice occur.

8. Confidentiality:

- 8.1 The Operator shall keep confidential and not disclose, without SPT's prior written consent, any trade or business secrets or confidential information supplied by SPT to the Operator save where ordered to do so by a Court or Tribunal of competent jurisdiction.

9. Notices:

- 9.1 Any notice which is required to be given to SPT by the Operator may be given in the first instance by email to [Schoolcontracts@spt.co.uk](mailto:Schoolcontracts@spt.co.uk), which email shall be followed by a first class signed for letter should SPT so require, addressed to SPT's Senior Legal Advisor, 131 St Vincent Street, Glasgow, G2 5JF, or such other person as SPT may from time to time specify.

- 9.2 Any notice which is required to be given by SPT to the Operator may be given in the first instance by email, which email shall be followed by a first class signed for letter sent to the address set out in the Operator's letter of award, or such other person or address as the Operator may from time to time specify to SPT.

10. Termination And Suspension:

- 10.1 SPT shall, in the circumstances detailed (i) to (vi) below, be entitled to terminate or suspend this or any other contract with the Operator forthwith and to recover from the Operator the amount of any and all costs and/or losses resulting from such termination or suspension:-

- (i) If the Operator shall have practised collusion in tendering for the Contract or any other contract with SPT, or shall have employed any corrupt, fraudulent or other illegal practices either in obtaining or performing the Contract, or any other Contract with SPT.
- (ii) If the Operator becomes bankrupt or insolvent, or has a receiving order made against it, or compounds with or assigns for the benefit of its creditors or, being a company, commences to be wound up (not being a members voluntary winding up for the purposes only of solvent reconstruction or amalgamation) or carries on his business under a receiver for the benefit of creditors or gives, offers or promises any loan, fee, reward or advantage of any kind to any employee or Member of SPT.
- (iii) If the Operator or any employee, agent, subcontractor, assignee or representative of the Operator fails in any material respect to observe the terms and conditions of this or any other contract or fails to execute with due diligence and expedition anything necessary for the proper performance of the Contract or any other contract, or acts in any way to undermine the good repute of SPT or the Council.
- (iv) If any of the circumstances detailed in Regulations 58, 59 and 73 of the Public Contracts (Scotland) Regulations 2015 apply.
- (v) If the Operator fails to provide SPT with satisfactory evidence of its compliance with any obligation regarding the recording, accounting or paying of Income Tax, Corporation Tax, Value Added Tax, National Insurance Contributions, Minimum Wage or any benefit to which any employee may be entitled.

- (vi) If the Operator defaults in performance of the Contract, to the extent that the Formal Notices issued to the Operator exceeds the limits laid down in terms of Part Two of the Standard Conditions.
- 10.2 SPT may arrange for another operator to fulfil the Contract or any other contracts and any and all increased costs incurred by SPT in so doing shall be for the account of the Operator and shall be retrieved either by deduction from payments otherwise due or such other appropriate methods as necessary.
- 10.3 SPT reserves the right to apply interest to any monies due to SPT which are unpaid for any period in excess of 30 days from the date on which payment is required from the Operator. Interest will be applied at the rate of 2% above the then applicable base lending rate of the Bank of Scotland.
- 10.4 The right of SPT to terminate or suspend the Contract or contracts in the circumstances outlined below are in addition to any other right to suspend or terminate the Contract or contracts as set out elsewhere in these Conditions.
- 10.5 For the avoidance of doubt, no payment will be made to the Operator for any period during which any Contract is suspended.
- 10.6 If this Contract is suspended or terminated in accordance with any provision of these Conditions, no tender submitted by the Operator will be considered for any contract that is required to replace the Contract that has been suspended or terminated.

#### 11. Operator Notice

Where the Operator is unable to or no longer wishes to operate the contract the Operator must notify SPT within 21 days of the award date of the Contract. If the Operator fails to notify SPT within 21 days then the right is reserved to retrieve any and all increased costs incurred or to be incurred by the Council from the Operator and shall be retrieved either by deduction from payments otherwise due or such other appropriate methods as necessary. Where an Operator is unable to or no longer wishes to operate the Contract and the contract award date is less than 21 days from the contract start date then the right is reserved to retrieve any and all increased costs incurred or to be incurred by the Council from the Operator and shall be retrieved either by deduction from payments otherwise due or such other appropriate methods as necessary.

#### 12. Access To Premises, Contract Vehicles And Information:

- 12.1 The Operator will provide access as SPT requires to audit and inspect the Operator's premises, maintenance facilities and Contract Vehicles to examine any aspect of the operation of the Contract and/or finances of the Operator.
- 12.2 The Operator shall also permit access to its premises, maintenance facilities and Contract Vehicles to SPT's representatives for the purposes of:-
  - (i) surveys of income, travel passes, passengers and such other information as SPT may reasonably determine, any information ingathered becoming the property of SPT;
  - (ii) inspection of said premises, maintenance facilities or Contract Vehicles, inspection and maintenance records and vehicles to ensure compliance with the terms of these Operator's Conditions.
- 12.3 The Operator must provide, when requested, full details of the working hours of all Drivers and Attendants who carry out duties on Contracts, which records will include details of all work, including whether or not the Driver is full or part-time, temporary or permanent, or employed by another employer. Such records will be held and be available for inspection by SPT for a period of at least 6 months after the end date of the Contract.

13. Default In Performance:

13.1 The Operator is required to perform the Contract in accordance with the Contract specification and the Operator's Conditions. SPT will investigate any allegation of a failure to perform the Contract or any alleged breach of the Operator's Conditions, examples of which are undernoted. SPT will invite the Operator to respond to SPT's findings. SPT will consider the Operator's response and decide whether or not the allegation is founded. If appropriate, SPT will issue a Formal Notice. On the issuing of a Formal Notice, SPT will instruct the Operator on the action to avoid or eliminate a similar failing in the future.

13.2 Examples of failure to perform the Contract:-

- (1) Failure to comply with the Contract or the Operator's Conditions;
- (2) Failure to perform the Contract criteria;
- (3) Failure to present valid insurance, MOT, vehicle registration document and/or other required documentation;
- (4) Failure to permit SPT access to the Operator's premises, maintenance facilities, paperwork or Contract Vehicles, when needed;
- (5) Failure to submit to the Council within such reasonable timescale given by the SPT, written evidence/assurance that improvements to procedures, behaviour, performance, facilities, premises, paperwork, Contract Vehicles required by SPT have been carried out;
- (6) Failure to deal with complaints received;
- (7) Failure to provide the Contract Vehicle and/or equipment required to fulfil the Contract;
- (8) Failure to respond to SPT's instructions;
- (9) Repeated failure to remedy any failures capable of being remedied;
- (10) Failure to liaise SPT in accordance with the Contract.

13.3 All Formal Notices shall be monitored on a four week basis limited as follows:-

<u>MONITORING PERIOD</u>	<u>FORMAL NOTICE LIMITS</u>
4 Week Period	No more than 2 Notices
12 Week Period	No more than 4 Notices
12 Month Period	No more than 6 Notices

13.4 Each Formal Notice issued shall detail the failure to perform the Contract, the remedial action required by SPT to correct the failure and, if appropriate, the time within which this remedial action should be completed.

13.5 Where Formal Notices are issued in excess of the Formal Notice Limits specified above, SPT may apply any of the following sanctions:-

- Suspend all Contract payments until the failure is rectified;
- Retain payment for the cost of failures which are not rectified, cannot be rectified or are not rectified timeously;
- Instruct the Operator to attend a meeting with SPT to explain the causes of defaults and propose future action to eliminate similar problems in the future;
- Instruct a third party to deliver the Contract in those areas in which the Operator has failed to meet the Contract criteria;
- Remove part of delivery of the Contract obligations from the Contract;
- Terminate the Contract and/or any other contracts operated by the Operator.

14. Freedom Of Information:

- 14.1 SPT and the Council are required to comply with FOISA and the EIRs. The Operator shall assist and co-operate with the Council and/or SPT (at the Operator's expense) to enable the Council and/or SPT to comply with the Information disclosure requirements.
- 14.2 The Operator shall provide SPT with a copy of all Information in its possession in the form that SPT requires within such period as SPT may specify and provide all necessary assistance as reasonably requested to SPT, to enable SPT to respond to a Request for Information within the time for compliance.
- 14.3 Should the Operator require a Request for Information, the Operator should transfer that request to SPT, as soon as practicable after receipt and in any event within two Working Days of receiving such Request for Information.
- 14.4 SPT reserves the right to disclose Information held by it in response to a Request for Information.
- 14.5 The decision of SPT in relation to the interpretation of FOISA shall be final and conclusive in any dispute, diligence or question arising in respect of disclosure.
- 14.6 In no event shall the Operator respond direct to a Request for Information.
- 14.7 The Operator acknowledges that SPT may disclose Information (a) without consulting with the Operator or (b) following instruction with the Operator and having taken its views into account.
- 14.8 In accordance with the Operator's Conditions the Operator shall ensure that it retains all information, relating to the Contract, including Information and shall permit SPT to respect such Information and records as may be requested by SPT.
- 14.9 The Operator consents to SPT communicating with the Council, Traffic Commissioner, the Driver and Vehicle Services Agency, the Police. Licensing authorities and other agencies and authorities as may be relevant on any matter concerning performance of the Contract.
15. Data Protection:
  - 15.1 The Operator shall comply with the terms and principles of the Data Protection Legislation and the Information Sharing, Exchange and Processing Agreement concluded with the Council.
  - 15.2 Any breach by the Operator of this Condition 14 or the said Information Sharing, Exchange and Processing Agreement shall be a material breach of the Contract.
  - 15.3 The Operator shall indemnify SPT against all liabilities, damages, costs, losses, claims, expenses and proceedings (including the costs of defending any action brought by the Information Commissioner, including criminal prosecution, arising out of any breach by the Operator of the Data Protection legislation or any breach by SPT of the Data Protection legislation which is caused in whole or in part by any breach by the Operator of the Data Protection Legislation.
16. Variation:

- 16.1 SPT reserves the right to vary these Operator's Conditions or any subsequent document forming the Contract by giving the Operator prior notice in writing of the variations.
17. Forbearance:
- 17.1 No delay, neglect or forbearance on the part of SPT or the Operator in enforcing any of these Operator's Conditions shall be deemed to be a waiver of that Condition nor shall it prejudice in any way the rights of either party.
18. Termination:
- 18.1 In addition to any other right available to SPT to suspend or terminate any Contract, SPT reserves the right to suspend or recover from the Operator any and all costs and /or losses caused by any termination or suspension.
- 18.2 In the event of any suspension or termination of a Contract, SPT may arrange for another operator to deliver the Contract, with the result that any increased costs incurred by SPT shall be for the account of the Operator and shall be retrieved by deduction from payments otherwise due or such appropriate methods as necessary. SPT reserves the right to apply interest to any monies due which are unpaid for any period in excess of thirty days from the date upon which payment is demanded from the Operator.
19. Law Of Scotland:
- 19.1 These Operator's Conditions are subject to the Law of Scotland.





**SCHEDULE 1 TO THE OPERATOR'S CONDITIONS OF CONTRACT FOR DEDICATED  
SCHOOL TRANSPORT CONTRACTS FOR THE NORTH AYRSHIRE COUNCIL  
("THE COUNCIL")**

**CODE OF CONDUCT FOR DRIVERS AND ATTENDANTS ("THE CODE OF CONDUCT")**

The Operator is responsible for taking all reasonable care of Pupils temporarily in their charge. These guidelines are indicative of good practice, but common sense and effective communication with the Operator and where appropriate, the Pupil's Head Teacher and any other relevant authority should prevail.

Drivers Will:

1. Carry out a pre-service inspection of the Contract Vehicle and record the results of the inspection, before the vehicle is used to fulfil the Contract ("the Contract Vehicle");
2. Comply with the Highway Code, drive in a courteous manner, adhere to speed limits and drive at all times in accordance with current road traffic legislation;
3. In the event of a Contract requiring motorway driving, seek specific instructions from SPT and adhere by them;
4. Be familiar and comfortable with operating any radio controlled communication equipment installed in the Contract Vehicle and have available the use of a hands free mobile telephone, in case of emergency;
5. Ensure that in the event of CCTV being installed in any Contract Vehicle, it shall be switched off for the period of the Contract;
6. Take account of the weather and in the event of serious adverse weather conditions, contact the Operator and the Head Teacher, as appropriate, to discuss options and take advice; In particular:
  - (i) the Driver will contact the Head Teacher either before the journey commences or at any stage during a journey to discuss any concerns the Driver may have and agree a solution, to ensure that Pupils travel and arrive at their destination safely, if it is agreed to abandon a morning journey in seriously adverse weather conditions, the Driver will return Pupils already picked up to their homes, or deliver the Pupil to the Pupil's school or to a safe, supervised location, all as agreed with the Head Teacher and intended to the Operator;
  - (ii) in periods of snow, ice or flooding, the Driver will use discretion to decide whether a road is passable or not. The Driver will endeavour to choose a route which ensures the health and safety of all Pupils and gives the greatest number of Pupils the best chance of getting to school in safety;
  - (iii) on homeward journeys, the Driver will endeavour to set Pupils down at their normal vehicle set down point. If it is likely that the Contract vehicle will be unable to take the Pupil to that point, the Driver will contact the Operator and/or the Head Teacher to make contingency plans to secure delivery of the Pupil to a safe and supervised destination;
  - (iv) in the event that the Contract Vehicle is not able to proceed to the final destination (school or home) because of blocked roads, the Driver shall ensure that Pupils stay on the Contract Vehicle, if safe to do so, until rescue can be organised by the Operator, with whom the Driver shall maintain contact;

7. In the event of a breakdown or accident, resulting in the Contract Vehicle being unable to be moved:
  - (i) contact the Operator immediately to intimate the circumstances and take advice on the best course of action, and
  - (ii) instruct Pupils to remain seated in the Contract Vehicle, with seat belts fastened, unless Pupil's health and safety may be prejudiced by so doing. If the Driver is of the view that in all the circumstances, the Pupils are safer by removing them from the Contract Vehicle, the Driver will ensure after consultation with the operator and the Head Teacher as may be appropriate, that the Pupils are directed to a safe location, until alternative transport arrives.
8. Carry photographic proof of identity at all times during the Contract and make the identity card available to anyone who may request sight of it.
9. Whilst engaged on a Contract, ensure that any Contract signs supplied by SPT are displayed.
10. Where Pupils have been issued with a travel pass to show their entitlement to use school transport, a Pupil claiming to be travelling to or from school shall not be refused travel when they are unable to produce their travel pass.
11. Under no circumstances refuse Pupils transport in terms of the Contract, without the express prior permission of the Council.
12. Approach each pick-up and drop-off point slowly and with care, keeping the Contract Vehicle doors closed, until the Contract Vehicle has come to a complete standstill.
13. Ensure that the Contract Vehicle is driven in a safe and secure manner at all times, having checked that doors are properly closed, and that no coats, bags, etc. are caught in the mechanism of the door from inside or outside and that all Pupils are seated in an appropriate child seat, as required, with all seat belts fastened, before moving off.
14. Check the nearside mirror, before moving, paying particular attention to nearside mirrors in case latecomers attempt to board the Contract Vehicle.
15. Discourage Pupils from standing near and crossing in front of the Contract Vehicle.
16. Ensure that all Pupils are picked up and set down at a suitable and safe place, paying special attention to any hazards, traffic or obstructions.
17. Ensure that the number of Pupils do not exceed the permitted vehicle passenger number.
18. Ensure that all internal doors and emergency exits to the Contract Vehicle remain free of any obstruction, giving a clear exit, in case of emergency.
19. Be confident in his/her ability to operate and secure all equipment that a Pupil may depend upon, whilst travelling in the Contract Vehicle, including any ramp or lift apparatus.
20. Comply with the current statutory responsibilities in respect of the use of seat belts and child car seats, taking account of the age, height and weight of Pupils, as first intimated to the Operator prior to commencement of the Contract, which age, height and weight will continue to be monitored by the Driver throughout the Contract to ensure that current legislation is complied with.

21. If the Contract serves a primary school, ensure that Pupils do not occupy the front seat of the Contract Vehicle, unless all rear seats are occupied. If the rear seats are fully occupied, the Driver will consult with the Head Teacher and take advice on the most responsible and appropriate child to sit in the front seat of the Contract Vehicle.
22. Ensure that Pupils remain seated with seatbelts fastened, whilst the Contract Vehicle is moving.
23. If seat belts are released, whilst the Contract Vehicle is moving, stop the Vehicle, when it is safe to do so and remain stationary, until the Pupil fastens the seat belts again. The Driver will report any premature/inappropriate release of any seatbelt to the Operator and to the Pupil's Head Teacher as soon as reasonably practicable.
24. Ensure that all child proof locks are locked in the "child safe" position before setting off.
25. Immediately advise the Operator of any difficulties on the route regarding road-works, parking or traffic volumes etc. which may cause difficulty in maintaining the Contractual operating times.
26. Fully co-operate at all times with SPT, the Council, DVSA, Head Teachers, the police and any other relevant authority as appropriate and when required.
27. Avoid physical contact with Pupils, but maintain a courteous and professional relationship with Pupils, avoiding inappropriate language and topics of conversation at all times and never engaging in personal telephone, text, email or social media contact with Pupils.
28. In the event of any misbehaviour by a Pupil, during the Contract, speak to the Pupil, in so far as that is possible and with the assistance of any Attendant, if available, warn the Pupil that the behaviour is to stop.
29. In the case of more serious behaviour or repeated misbehaviour, the Driver will attempt to identify the Pupil concerned and may, if appropriate, request and retain the Pupil's travel pass as proof of identity. In any event, the Driver will report any incident of serious misbehaviour or repeated misbehaviour to the Operator and to the Head Teacher as soon as reasonably practicable. The Operator will follow any verbal/telephone message of misbehaviour by an email to SPT's Schools' Team, confirming the circumstances of any incident.
30. In the event of a severe incident of misbehaviour that threatens the safety of the Driver, the Attendant, other pupils, or the ability of the Driver to drive the Contract Vehicle, the Driver will seek the assistance of the Attendant, if available, the Operator and/or the Head Teacher and/ or the police as required, stopping the Contract Vehicle at an appropriate location to enable the incident to be dealt with safely.
31. In the event of the Driver being concerned about the welfare (for example, bullying) or behaviour of a Pupil, the Driver will notify the Operator and the Pupil's Head Teacher, as soon as possible, which verbal notification will be followed by an email by the Operator to SPT's Schools' Transport Team, who will liaise formally with the Pupil's Head Teacher.
32. The Driver with the assistance of the Attendant, if required, should insist that all Pupils remain in the Contract Vehicle until the Contract is fulfilled. Should a Pupil insist upon leaving the Contract Vehicle at any time during the journey, prior to reaching the Contractual destination, the Driver will report the matter to the Operator as soon as possible and will report the incident to the Pupil's Head Teacher immediately upon arrival

at the school. If the journey is a home trip, the Driver will try to persuade all Pupils to remain in the Contract Vehicle until their designated drop-off point, but if a Pupil insists upon leaving the vehicle, the Driver will report the incident to the Operator and the Head Teacher.

33. With the aid of the Attendant, ensure that, as required by legislation, smoking (whether cigarettes, electronic, vapour or any alternative to same) is prohibited in or in the vicinity of the Contract Vehicle, at any time.
34. Ensure that no unauthorised person travels in the Contract Vehicle.

The Attendant will:

1. Carry photographic proof of identity at all times during the Contract and make such photographic proof available to anyone who may request sight of the same.
2. Ensure Pupil safety, when boarding or alighting the Contract Vehicle and be at or near the entrance/exit to the Contract Vehicle at these times.
3. Ensure that Pupils enter the Contract Vehicle from the pavement, not the road (unless using a ramp or lift at the rear) and that no Pupil boards or alights the Contract Vehicle, until it is at a complete standstill and safely parked.
4. Assist the Driver in ensuring that before moving off, all Pupils are seated on car seats/booster seats, if appropriate, with seat belts secured, all as required by current legislation and that all Vehicle doors are properly closed with no coats, bags, etc. caught in the mechanism of any door.
5. Discourage Pupils from standing up in a moving vehicle or standing near to, or crossing in front of the Contract Vehicle.
6. Assist the Driver in ensuring that the Pupils do not exceed the permitted passenger number.
7. Ensure that all Contract Vehicle internal doors and emergency exits remain free of any obstruction, allowing a clear exit in the case of emergency.
8. Ensure that Pupils remain seated, with seatbelts fastened, whilst the vehicle is moving. If a Pupil tries to remove a seat belt, the Attendant must advise the Driver to pull over, when safe to do so. The Attendant will support the Driver in encouraging any Pupil to refasten the seatbelt.
9. Monitor both decks of any Contract Vehicle, if and as appropriate, throughout the journey.
10. Not stand beside the Driver, whilst the Contract Vehicle is in motion or obstruct his view through the windscreen.
11. Not converse with the Driver, except when it is necessary for the safety of Pupils.
12. In the event of an emergency/breakdown, assist the Driver in contacting the Operator and/or the Pupil's Head Teacher and assist in instructing the Pupils on what to do. If Pupils are required to exit the Contract vehicle for health and safety reasons, the Attendant will support the Driver in ensuring that Pupils are moved to a safe location, until alternative transport arrives.

13. Fully co-operate at all times with all representatives of SPT, the Council, DVSA, Head Teachers, the police and any other relevant authority as and when required.
14. Avoid physical contact with Pupils, but maintain a courteous and professional relationship with Pupils, avoiding inappropriate language and topics of conversation at all times and never engaging in personal telephone, text, email or social media contact with Pupils.
15. Assist the Driver to ensure that, as required by legislation, smoking (whether cigarette, electronic, vapour or any alternative to same) is prohibited in or in the vicinity of a Contract Vehicle, by anybody, at any time.
16. Assist the Driver to ensure that no unauthorised person travels in the Contract Vehicle.

# The Operator's Information Sharing, Exchange and Processing Agreement



*[And SPT Logo etc?]*

**THIS AGREEMENT is made on the                      between**  
**The North Ayrshire Council and / or Strathclyde Partnership for Transport (SPT)**  
having its/their principal office at Cunninghame House, Irvine, KA12 8EE (“NAC”)  
131 St Vincent Street Glasgow G2 5JF respectively

and  
[                      ]  
 (“the Business Partner”)  
whose registered office is at  
[                      ]

## 1. CONTACT DETAILS

As the primary users of this sharing protocol, Place, Commercial Services will be the first point of contact.

<b>NAC/SPT: Routine</b>	Contact Name: Designation: Office Address: Estate Email: Telephone:	Susan Adamson/SPT Team Manager/SPT? Montgomery House 2A Byrehill Drive West Byrehill Industrial Kilwinning KA13 6HN/SPT? sadamson@north-ayrshire.gov.uk/SPT? 01294 541612/SPT?
<b>Emergency Escalation</b>	Contact Name: Designation: Office Address: Estate Email: Telephone:	Gordon Mitchell/SPT? Transport Manager SPT? Montgomery House 2A Byrehill Drive West Byrehill Industrial Kilwinning KA13 6HN/SPT? gmitchell@north-ayrshire.gov.uk/SPT? 01294 541601/SPT?
<b>Business Partner: Routine</b>	Contact Name: Designation: Office Address: Email: Telephone:	
<b>Emergency Escalation</b>	Contact Name: Designation: Office Address: Email: Telephone:	<b>ENTER AN ESCALATION CONTACT WITHIN</b> the Operator

## 2. TYPES OF INFORMATION AND CLASSIFICATION

Information which may be provided to the Business Partner as part of a support requirement could include, but may not be limited to:

<ul style="list-style-type: none"> <li>Name</li> <li>Address and postcode</li> <li>DOB</li> <li>Gender</li> <li>Telephone number</li> <li>Medical Details</li> </ul>	<ul style="list-style-type: none"> <li>Height &amp; Weight</li> <li>Destinations including those which are to be treated as non-disclosed by business partner</li> <li>Specific operation controls</li> <li>Additional information provided direct to contractor from client</li> </ul>
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The highest classification level of information potentially shared is:

NAC Classification	Brief Summary	Government Marking	Government Previous IL
Official -Protect	DPA Sensitive data (including special category data as may be defined within future legislation) and Council sensitive	Protect	IL2

NAC/SPT recognises that certain confidential information may be contained in the above which they wish to protect from any further disclosure. NAC/SPT agrees that this information may be disclosed to the Business Partner as a data processor in line with this agreement.

## 3. SHARING OF PERSONAL DETAILS

NAC/SPT will provide the Business Partner with, and the business partner may process for the purposes of this agreement, the information types as listed in section 2.

The Business Partner is authorised to further share this information only with:

- their own staff on a strict need to know basis;
- contractors (operators) appointed for the purpose of the provision of transport in line with their contract with NAC/SPT;
- NAC/SPT authorised personnel in line with this agreement.

Any further sharing or relocation of data is prohibited, without the consent of NAC/SPT. This includes any storage of NAC/SPT information, irrelevant of its life status, with another party.

Personal identifiable data sets will be shared as part of this protocol; therefore the Data Protection Act 1998 (DPA) applies, as does the European General Data Protection Regulation (2016/279) which comes into force on 25<sup>th</sup> May 2018 and any subsequent Data protection legislation that may be

introduced. The Business Partner will handle such data sets in line with the DPA and NAC/SPT's standard terms for Data Processors as contained within **Appendix 2**.

#### **4. DESCRIPTION OF SERVICES PROVIDED**

The Business Partner will arrange the provision of school and college transport journeys to and from various destinations as required and in line with the Agency Agreement between NAC and the Business Partner enduring for three years from 1 April 2017 ("the Agency Agreement").

This therefore requires the Business Partner to process NAC/SPT information securely and in line with this protocol including:

- Data that is located (resides) in one location;
- Data that is in a state of being transient (on the move);
- Paper processing of such information;
- Electronic processing of such information;
- Managing access to all data and information.

The Business Partner may process both electronic and paper assets. This will be done in line with this protocol and specifically with section 5c in relation to methods of exchange. The Business Partner will be required to destroy all, full or part, original and backup copies of information, both electronic and paper based in line with this protocol.

#### **5. HANDLING INSTRUCTIONS**

##### **a. Data Controller**

- NAC/SPT is the Joint Data Controller/Controller/Processor and nominates the Business Partner as Data Processor.
- NAC/SPT is responsible for, where required:
  - Ensuring informed consent and issuing Privacy/Fair Processing Statements;
  - Dealing with requests for information from Citizens relating to privacy notices, use of their data, or their consent;
  - Handling Subject Access Requests;
  - Dealing with complaints received by or on behalf of a citizen;
  - Notifying citizens in the event of a compromise of their data.

The Business Partner must advise NAC/SPT within 1 working day of receiving any requests from a data subject for personal information.

##### **b. Details of who data is shared with and frequency**

- Data will be shared as and when required to facilitate the Business Partner providing its contractual services under the Agency Agreement;
- The Business Partner is authorised to share the minimum amount of data necessary for provision of the contractual services with its appointed contractors;
- The Business Partner shall ensure that its appointed contractors process the information in line with this agreement;
- The Business Partner is not authorised to share NAC/SPT information with any other party or anyone not directly involved with service provision to the data subject;
- The Business Partner is not authorised to process or use NAC/SPT information for any other purpose than the services they are contracted to provide.

##### **c. Approved Exchange Method(s)**

Methods of data exchange acceptable for this agreement are:

###### Electronic

Information may be transferred electronically between both parties and will be secured appropriately to match the classification detailed in section 2. Sharing may therefore be undertaken by either:

1. Secured email transmission;
2. Secured media transmission;
3. The provision of a secured online electronic sharing repository.



**1. Secured Email Transmission** – NAC/SPT and the Business Partner will transfer information securely via:

- Sophos SPX (the Business Partner will be required to register).
- 7Zip or Winzip V9 and above where used securely as detailed in Appendix 1 with passwords of 9 characters or more containing upper and lower case letters, at least 1 number and 1 special character.

The Business Partner must ensure that where further sharing of information with its own contractors, for the purposes of this agreement, email accounts:

- Are used for business purposes only and are separate from any accounts used for personal business;
- No person other than those within the Business Partner's or appointed contractors' business with the strict need to know status have access to accounts and passwords used for sharing data;
- Are managed to ensure data is retained for only as long as necessary;
- Are accessed from computing equipment with up to date anti-virus software installed.

**2. Secured Media Transmission** – USB data keys, usb external hard drives and optical media may be used to transfer information where that media has AES256 or FIPS140-2 accreditation and has been agreed for use by Commercial Services and NAC's ICT Security Officer. For USB products those recommended by NAC/SPT's IT Services should be used.

**3. Online Sharing Repository** – NAC/SPT may provide the Business Partner with an online document sharing repository to allow the transfer of information between parties. Access will be controlled on a user named basis with access limited to information and areas required.

#### Paper

Paper may be used between parties to share information, this must be either:

- Hand delivered;
- Couriered;
- Special delivery with tracking and signing.

The Business Partner must ensure that all paper assets:

- Are given protection within Business Partner premises and contract vehicles and secured to ensure anyone without the strict need to know status cannot access;
- Are given protection, for example in a zipped bag, or a locked vehicle boot, if in a transient state and not left in public view, for example, on the seat of a contract vehicle.

#### General for both parties

- General post and unencrypted transfers are not to be used.
- The Sender will maintain an inventory of information sent.
- The Sender will advise the recipient to expect delivery
- The Sender will ensure that information has been received and initiate contact with the emergency contact if information did not arrive.

#### **d. Access Controls**

- Staff with access to NAC/SPT Personal or Personal Sensitive data must have a baseline security check.
- All staff must be background checked to include confirming identity, residence, qualifications, right to work in the UK, criminal background checks and references must be taken up.
- NAC/SPT information must not be left in unsecured areas within the Business Partner's premises.
- Personal owned equipment (non-business) must not be used to hold any NAC/SPT information.
- Equipment holding NAC/SPT information must be protected from use by non-authorised persons.
- Copying (other than for any purpose agreed with NAC/SPT) of NAC/SPT information is prohibited

#### **e. Data Destruction**

- NAC information must be deleted by the Business Partner on instruction from NAC/SPT including:
  - The destruction of all electronic copies of data and any backups held;
  - The shredding of paper to DIN level 4, or pulped/burned;
  - NAC/SPT must be notified in writing by the Business Partner confirming that all information assets, electronic and paper have been destroyed.

#### **f. Disclosure, Retention and Archiving**

- NAC/SPT information should be disclosed to Business Partner employees on a need to know basis;
- NAC/SPT electronic information must be saved to a restricted access network area;
- Business Partners storage and archive areas have at the very minimum access controls to secure the area and prevent unauthorised entry, be protected against water damage, have environmental controls, fire and smoke suppression equipment, CCTV and alarms;
- NAC/SPT information when held on office located PC or laptop equipment that does not conform fully to the point above, must be protected by AES256 or FIPS140-2 accredited encryption (windows BitLocker AES 256 is acceptable);
- Files must be transferred to NAC/SPT using secure methods as stated within this protocol;
- Encrypted emails must be from named and trusted Business Partner staff to a named person within NAC/SPT and vice versa;
- NAC/SPT information should not be retained on memory bearing media without authorisation from NAC/SPT i.e. laptops, usb devices, optical devices, smartphones, tablets, scanner hard drives etc;
- When Business Partner equipment is end of life, being decommissioned, re-used or provided to another party the process must ensure hard drive physical destruction or information removal by a method that makes reconstitution unlikely.

#### **g. Incident Management**

- The Business Partner must:
  - Nominate a senior manager to manage any incident and liaise with NAC/SPT during any investigation into a loss, compromise or damage to NAC/SPT information, and
  - Notify NAC/SPT of any new risk to NAC/SPT information or in the event of a compromise of confidentiality, integrity or availability, within 1 hour of discovering the event.

### **6. RISK MANAGEMENT**

NAC/SPT reserve the right to visit all Business Partner sites which are involved in receiving, storing or processing NAC/SPT data to ensure that security controls continue to meet NAC/SPT standards.

### **7. CONFIDENTIALITY**

1. The Business Partner agrees:
  - i) To keep confidential as aforesaid and not disclose to any third party the whole or any part of the information provided under this Agreement;
  - ii) Not to copy the information disclosed under this Agreement.
  - iii) To take the same degree of care in the protection of the information disclosed to it under this Agreement as it takes for its own information of like importance but shall not in any circumstances take less than reasonable care to prevent unauthorised dissemination thereof.
2. The information shall remain NAC/SPT's property and shall be promptly returned or destroyed by the Business Partner on receipt of NAC/SPT's verbal or written request.
3. Nothing contained in this agreement shall be construed as conferring upon the Business Partner any right to use or title to the information received by it from NAC/SPT other than as expressly provided herein or as conferred in writing upon the Second Party by NAC/SPT subsequent to the date of this agreement. Without prejudice to the foregoing, the NAC/SPT does not accept any liability whatsoever for any losses which may arise through the Business Partner placing any reliance on the information.

### **8. STATEMENT OF ACCEPTANCE**

The Business Partner has reviewed the foregoing terms and conditions and agree that all measures will be taken by the Business Partner to ensure that access to NAC/SPT information assets supplied

by NAC/SPT will be exercised only in accordance with the terms of this Agreement, and any other relevant Information Security Protocols or Confidentiality Agreements agreed.

This agreement shall be construed and governed in accordance with the laws of Scotland.

**For and on behalf of NAC:**

Signed: \_\_\_\_\_

Name: Russell McCutcheon

Position: Head of Service, Commercial Services

Dated: \_\_\_\_\_

**For and on behalf of SPT:**

Signed

Name

Date

**For and on behalf of the Business Partner:**

Signed: \_\_\_\_\_

Name: \_\_\_\_\_

Position: \_\_\_\_\_

Dated: \_\_\_\_\_

## Appendix 1 Using Winzip to Protect Files

### Encryption Levels

WinZip version 9.0 or later supports 128 and 256 AES encryption; these numbers refer to the size of the encryption keys that are used to encrypt the data. 256-bit AES is stronger than 128-bit AES, and should be used to protect Council information assets.

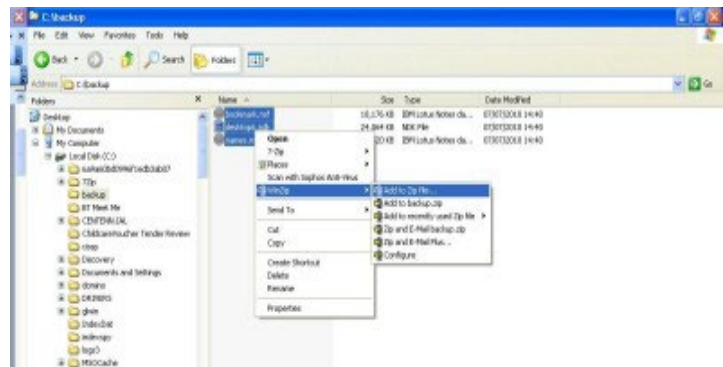
It must be noted that if your Zip file was encrypted using AES encryption, there are no reliable methods for recovering a lost password.

### Passwords are Important

The security of your data depends not only on you selecting 256 AES but also on the strength of your **password**, including factors such as length and composition of the password, and the measures you take to ensure that your password is not disclosed to unauthorised third parties.

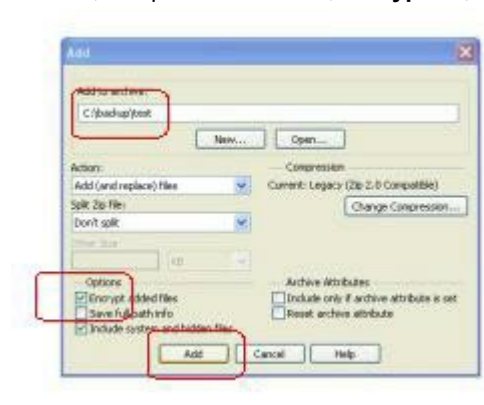
### Creating a Zip File

1. Open a folder window
2. Find and highlight (select) the files and/or folders you would like to zip
3. Right click in the highlighted area
4. In the WinZip submenu of the context menu that displays choose:



- **Add to Zip file:** To specify your own Zip file name, compression method, **encryption**, or an option to split the Zip file

5. Give the zip file a name
6. Select the Encrypt added files option
7. Select the ADD button



8. Select 256-Bit AES option
9. Enter a password following NAC good password guidelines
10. .zip file will be created and can be attached to an email
11. Securely provide password to recipient. See Sharing Passwords within this document.

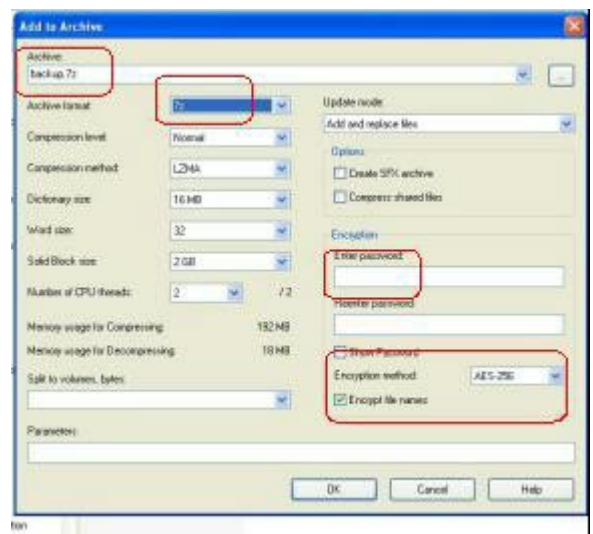
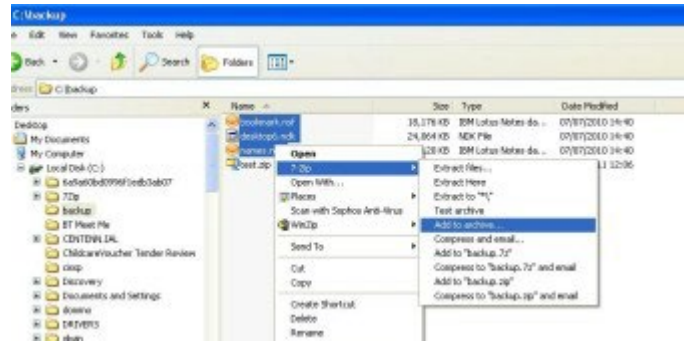


**Winzip version 2.0 encryption should NEVER be used to secure Council Restricted or Confidential assets.**

## Appendix 1 Using 7Zip to Protect Files

### Creating a Zip File

1. Open a folder window
2. Find and highlight (select) the files and/or folders you would like to zip
3. Right click in the highlighted area
4. In the 7Zip submenu of the context menu that displays choose:
  - **Add to Archive:** To specify your own Zip file name, compression method, **encryption**, or an option to split the Zip file
5. Select Archive Format  
leave as 7z if recipient using 7zip otherwise select zip to allow other zip products to be used
6. Give the zip file a name
7. Select the Encrypt file names option
8. Select AES-256
9. Enter a password following NAC good password guidelines
10. Select OK button
11. .zip / .7z file will be created and can be attached to an email
11. Securely provide password to recipient.  
See Sharing Passwords within this document.



### Decryption

Simply right-click on the file, select extract then enter the password when requested.

**Appendix 2**  
**Standard data protection agreement/clauses for the transfer/use of Personal Data from/between NAC(“the Council”)/SPT (as Joint Data Controllers/Data Controller/Processor) to a Data Processor within the European Economic Area (“the Operator”)**

*Clause 1*

**Definitions and Interpretation**

In this Agreement:-

1.1 **‘Data Processor’** shall mean the organisation known as the Operator in terms of the Agency Agreement for Dedicated School Transport between the Council and SPT in North Ayrshire dated [ ] (“the Agency Agreement”) and [Contract between the Council and the Operator dated ?] which has agreed to receive Personal Data from the Council/SPT for further processing in accordance with the terms of this Agreement.

1.2 **‘Personal Data’** is data processed, under this Agreement that identifies a living individual and as defined by the Act.

1.3 **‘Data Subject’** is the individual which the Personal Data identifies.

1.4 **‘Act’** means the Data Protection Act 1998 and any and all subordinate legislation made thereunder and any and all primary and secondary legislation for the time being re-enacting, consolidating or modifying the same.

1.5 **‘Data Processing’** is any processing, operation or action taken with Personal Data and which constitutes “processing” in terms of the Act and shall include, without limitation, the collection, use, disclosure, destruction and holding of the data and “process” or “processing” shall be construed accordingly.

1.6 **‘Ordered Services’** are the services set out in the Agency Agreement, that the Data Processor has agreed to undertake on behalf of the Council, in accordance with the terms of this Agreement.

1.7 **“Working Days”** means any day (excluding Saturdays, Sundays, and bank or public holidays) on which clearing banks are open for normal banking business in Ayrshire (ignoring 24 hour internet banking services).

1.8 **“Data Processor Personnel”** means the Data Processor and/or each of its sub-contractors and the officers, employees, agents, consultants, representatives and other personnel of each of the Data Processor and each sub-contractor.

1.9 Words and expressions defined in the Act shall bear the same meanings in this Agreement, save where the context otherwise requires.

1.10 Unless the context requires otherwise:

1.10.1 the words “include” or “including” or “in particular” are to be construed as meaning without limitation;

1.10.2 words in the singular include the plural and vice versa and words for any gender shall include all genders; and

1.10.3 reference to persons shall be deemed to include references to natural persons, to firms, to partnerships, to companies, to corporations, to associations, to organisations, to trusts (in each case whether or not having separate legal personality) but references to individuals shall be deemed to be references to natural persons only.

1.11 Reference to any statute or statutory provision includes a reference to statutory instruments and orders made further to it and includes consolidations or amendments or modifications or re-enactments.

1.12 The headings are inserted for convenience only and shall not affect the construction of this Agreement.

1.13 Unless otherwise stated, a reference to a clause or a schedule or a party or parties is reference to a clause in or a schedule or a party or parties to this Agreement.

1.14 Any reference in this Agreement to writing or cognate expressions includes a reference to facsimile transmission, electronic mail or other comparable means of communication.

1.15 References to any act or omission or breach or non-compliance by or on the part of the Data Processor shall be deemed to include a reference to any act, omission, breach or non-compliance by of any sub-contractor or any Data Processor Personnel.

## *Clause 2*

### **Assistance with compliance**

2.1 The Data Processor shall comply at all times with the requirements of the Act (as if it were a data controller) and shall perform its obligations under this Agreement in such a way as to ensure that the Council/SPT does not or is not likely to breach any of its obligations under the Act.

2.2 The Data Processor will comply with all reasonable requests by the Council/SPT (and/or its auditors, internal or external, and/or representatives subject to reasonable and appropriate confidentiality undertakings being given by the Council's/SPT's auditors or representatives and reasonable notice) to inspect and audit the Data Processor's Data Processing activities, facilities, processes and procedures, documents, resources and equipment (and/or those of its agents, subsidiaries and sub-contractors) to enable the Council/SPT to verify that the Data Processor is complying fully with its obligations under this Agreement and, for these purposes, the Data Processor shall allow the Council/SPT and/or its auditors or representatives access (and it shall ensure that its sub-contractors shall allow the Council/SPT and/or its auditors, internal or external, and/or representatives access to their premises) to all of the premises that it occupies (or other locations at which any Personal Data is being held and/or processed at that time) to enable such inspection and/or audit shall be carried out.

2.3 The Data Processor will provide the Council/SPT with full cooperation and assistance to ensure that each party complies with its requirements and obligations under the Act including without limitation by:

2.3.1 notifying the Council/SPT (within five (5) Working Days) if it receives a subject access request from a Data Subject to have access to his or her Personal Data and (at the same time) providing full details and a copy of such request;

2.3.2 notifying the Council/SPT (within five (5) Working Days) of any complaint received by it from a Data Subject about the processing of his or her Personal Data and providing (at the same time) the Council/SPT with full details and a copy of the complaint and ensuring that it does not make any admissions or do or omit to do anything without the prior written consent of the Council/SPT that may prejudice the Council's/SPT's ability to respond to or make a defence in respect of any such complaint;

2.3.3 providing reasonable assistance to the Council/SPT in dealing with or responding to any subject access request or any complaint referred to in Clauses 2.3.1 and 2.3.2;

2.3.4 providing the Council/SPT, within five (5) Working Days of the date of such request from the Council, with any Personal Data that it holds to enable the Council/SPT to respond to requests received by the Council/SPT from Data Subjects; and/or

2.3.5 providing the Council/SPT, within five (5) Working Days of the date of such request from the Council, with such information that it holds and that the Council/SPT may reasonably require regarding the provision of the Ordered Services and the performance by the Data Processor of its obligations under and pursuant to the terms of this Agreement including without limitation in relation to any subject access request or complaint received by the Council/SPT or the Data Processor.

2.4 As the Council/SPT is subject to the Freedom of Information Act (Scotland) 2002 and the Environmental Information Regulations (Scotland) 2004 (in each case and also together being referred to as "FOISA"), the Data Processor:

2.4.1 shall, following notification from the Council/SPT that it has received a request from a third party seeking information under FOISA, send to the Council/SPT within [2] Working Days of such notification, such information as may be requested by the Council/SPT and, in addition, such additional information that it holds on behalf of the Council/SPT under this Agreement and that the Data Processor believes (acting reasonably) is relevant for the purposes of such FOISA request;

2.4.2 shall not respond to any request for information (including Personal Data) received by it under FOISA (or any similar or equivalent legislation relating to freedom of information and in force in the jurisdiction to which it is subject) that it holds on behalf of the Council (including Personal Data) under this Agreement without consultation with the Council/SPT; and

2.4.3 shall provide, in response to a written request from the Council/SPT, a copy of any information it holds on behalf of the Council/SPT, whether or not this information is Personal Data and irrespective of the format in or the media on which such information is held or stored, within ten (10) Working Days of the date of such request (or such longer period as may be agreed in writing by the Council/SPT).

2.5 The Data Processor will promptly and properly deal with and respond to any and all reasonable requests and enquiries made by the Council/SPT relating to its Data Processing of the Personal Data.

2.6 The Data Processor shall notify the Council/SPT forthwith upon it becoming aware that it is or is likely to become unable to comply with either its obligations under this Agreement and/or the Council's/SPT's requirements or instructions (whether specific or general) regarding the processing of the Personal Data whereupon the Council/SPT shall be entitled, at its sole discretion, to either:-



2.6.1 suspend the right of the Data Processor to process Personal Data under or pursuant to the terms of this Agreement (to such extent and for howsoever long as the Council/SPT may determine) until the Data Processor is able to demonstrate to the reasonable satisfaction of the Council/SPT that the Data Processor is able and will continue to be able to so comply PROVIDING ALWAYS THAT if the Data Processor is unable to demonstrate to the reasonable satisfaction of the Council/SPT that the Data Processor is able and will continue to be able to comply with the terms of the Agreement, the Council/SPT shall be entitled to terminate this Agreement on ten (10) Working Days' written notice; or

2.6.2 terminate this Agreement on ten (10) Working Days' written notice.

### *Clause 3*

#### **Insurance cover**

3.1 The Data Processor shall hold and ensure that it continues to hold throughout the term of this Agreement a satisfactory level of and appropriate insurance cover with a reputable insurer to cover the Data Processor's obligations to the Council/SPT under this Agreement. The Data Processor will disclose to the Council/SPT satisfactory evidence of such insurance (including the amount and type of cover effected) and payment of current premiums as soon as reasonably practicable upon request by the Council/SPT.

### *Clause 4*

#### **Liability and Warranties**

4.1 The Data Processor is liable for and shall indemnify and keep the Council/SPT fully indemnified on demand from and against each and every action, proceeding, liability, loss, damage, cost, claim, fine, expense and/or demand suffered or incurred by the Council/SPT which arise from or in connection with or pursuant to any act or omission of or the performance of the Data Processor's obligations under this Agreement, including without limitation those arising out of third party demand, claim or action, or any breach of contract, negligence, fraud, willful misconduct, breach of statutory duty or non compliance with this Agreement or any part of the Act by the Data Processor or any of the Data Processor Personnel or any claim that is referred to in Clause 4.2.

4.2 The Data Processor acknowledges to and agrees with the Council/SPT that:-

4.2.1 Data Subjects who suffer damage (the "Damages") as a result or a consequence of the acts and/or omissions of or a breach of the provisions of this Agreement by or on behalf of the Data Processor shall be entitled to receive compensation from the Data Processor for such Damages; and

4.2.2 it shall be liable (to the exclusion of the Council/SPT, as between the Council and the Data Processor) for any such Damages that may be due to or awarded to any such Data Subject by any court, authority or person of competent jurisdiction and that the indemnity set out in Clause 4.1 shall apply in respect of any such Damages.

4.3 The Data Processor warrants, represents and undertakes to the Council/SPT that:-

4.3.1 it has full power and authority to receive, store and process the Personal Data, to use it for the purposes set out in this Agreement, including without limitation the Ordered Services and to give the warranties, indemnities and enter into and perform its obligations under and in terms of this Agreement;

4.3.2 it has in place, appropriate technical and organisational measures to prevent unlawful or unauthorised processing, accidental or unlawful destruction, accidental loss, alteration, unauthorised disclosure or access and adequate security procedures to ensure that unauthorised persons will not have access to the Personal Data, or to equipment used to process the Personal Data and that any persons it authorises to have access to the Personal Information will respect and maintain the confidentiality and security of the Personal Data;

4.3.3 it will comply with the Act (as it was a data controller) and, in particular the data protection principles set out in Schedule 1 of the Act in relation to the processing of the Personal Data in terms of this Agreement; and

4.3.4 it has no reason to believe that any legislation applicable to it in any way prevents, restricts or limits its ability or right to comply with and fulfill its obligations under this Agreement.

#### *Clause 5*

### **Restriction on transfer outside the European Economic Area (EEA)**

5.1 In processing Personal Data on behalf of the Council/SPT pursuant to its obligations under this Agreement, the Data Processor shall:

5.1.1 not process Personal Data outside the EEA without the express prior written consent of the Council/SPT and, where the Council/SPT gives such consents to a transfer, will:

5.1.1.1 take such steps as may be necessary to ensure that the obligations of the Council/SPT under the eighth data protection principle set out in Schedule 1 of the Act by providing an adequate level of protection to any Personal Data that is transferred have been complied with and will not effect any such transfer unless and until it has satisfied itself that an adequate level of protection is in place in respect of the Personal Data to be transferred and all necessary filings and registrations relating to any arrangements put in place with the third party located in such jurisdiction have been made; and

5.1.1.2 comply with all reasonable instructions notified to it by the Council/SPT in connection with such transfer; and

5.1.1.3 as soon as reasonably practicable (and in any event within five (5) Working Days) of a request from the Council/SPT, provide a written explanation and full details of the steps that have been taken or implemented by or on behalf of the Data Processor to comply with Clauses 5.1.1.1 and 5.1.1.2.

5.2 The Data Processor acknowledges and agrees that where Personal Data incorporates personal sensitive data and is to be transferred outwith the EEA that it may be necessary to ensure that additional safeguards and security measures are adopted by the Data Processor, such as strong encryption or keeping a written record of access to such sensitive personal data. Such measures will require to be agreed in writing with the Council/SPT prior to transfer.

#### *Clause 6*

### **Restrictions on use of Personal Data**

6.1.1 In processing Personal Data on behalf of the Council/SPT pursuant to its obligations under this Agreement, the Data Processor shall:

6.1.2 process the Personal Data only in accordance with instructions from the Council/SPT, which may be specific instructions or instructions of a general nature as set out in this Agreement or as otherwise notified in writing by the Council/SPT to the Data Processor during the term of this Agreement but for no other purposes whatsoever;

6.1.2 process the Personal Data only to the extent, and in such manner, as is necessary for the provision of the Ordered Services or the proper performance of its obligations under this Agreement or as is required by law or any regulatory body;

6.1.3 take reasonable steps to ensure the reliability of any Data Processor Personnel who have access to the Personal Data;

6.1.4 ensure that Personal Data is only disclosed to and/or accessed or processed by Data Processor Personnel who reasonably require the same in order to allow the Data Processor to comply with its obligations under this Agreement and that such Data Processor Personnel are informed of the confidential nature of the Personal Data and undertake to comply with the obligations of the Data Processor set out in this Agreement;

6.1.5 ensure that none of the Data Processor Personnel, use, publish, disclose or divulge any of the Personal Data to any third party unless expressly directed in writing to do so by the Council/SPT;

6.1.6 obtain the prior written consent from the Council/SPT in order to transfer the Personal Data to any sub-contractors for the provision of the Ordered Services or the performance of any of the obligations of the Data Processor under this Agreement;

6.1.7 where the Data Processor wishes to appoint a sub-contractor to assist it in providing the Ordered Services and performing its obligations under this Agreement and such assistance includes the processing of Personal Data on behalf of the Council/SPT, then any such appointment shall not be made unless and until the proposed sub-contractor has entered into a written contract (on terms satisfactory to the Council/SPT) with the Data Processor in terms of which such sub-contractor agrees to be governed by the same terms with respect to data protection requirements as are set out in this contract and placed upon the Data Processor;

6.1.8 not disclose, trade, give, barter, sell, give away, lend or transfer any Personal Data to any person or make any copy or copies of the Personal Data in any form or on any media whatsoever save to the extent that is absolutely necessary for the carrying on of the Ordered Services or the proper performance of the obligations of the Data Processor in terms of this Agreement or for back-up or security purposes deemed necessary by the Data Processor; and

6.1.9 without prejudice to the other provisions of this Agreement and the Act, exercise in respect of Personal Data and other information passed to it by the Council/SPT pursuant to the terms and/or for the purposes of this Agreement, no lesser security measures and degree of care than those which the Data Processor applies to its own personal data and confidential information.

6.2 The Data Processor shall not acquire any right, title or interest in and to any of the Personal Data or other information provided or disclosed by the Council/SPT pursuant to or form the purposes of this Agreement.

## *Clause 7*

### **Security provisions**

7.1.1 Without prejudice to the other provisions of this Agreement, in processing Personal Data on behalf of the Council/SPT pursuant to its obligations under this Agreement, the Data Processor shall implement and shall ensure that it has in place at all times during the term of this Agreement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Data Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected.

7.2 As soon as reasonably practicable (and in any event within five (5) Working Days) of a request from the Council/SPT, the Data Processor shall provide to the Council/SPT a written explanation and full details of the appropriate technical and organisational measures taken by or on behalf of the Data Processor to demonstrate and ensure compliance with Clause 7.1.

## *Clause 8*

### **Provisions for the return or destruction of Personal Data**

8.1 Forthwith upon termination of this Agreement (howsoever arising):-

8.1.1 the Data Processor shall cease to access, use or process any of the Personal Data (and shall ensure that its permitted sub-contractors do likewise); and

8.1.2 the Data Processor will return all Personal Data and all other information belonging to the Council and which is provided or disclosed to the Data Processor for the purposes of this Agreement and all copies of such Personal Data and information to the Council forthwith or, at the Council's written instruction, will destroy all such Personal Data and information, together with any and all copies of all such Personal Data and information and certify in writing to the Council that it has done so, save to the extent that the Data Processor is prevented by law from destroying all or part of all such Personal Data and information, in which event the Data Processor undertakes that all such Personal Data and information will be kept confidential and will not be disclosed to any third party or used or processed for any purpose.

8.2 The Data Processor agrees that if requested by the Council/SPT, its auditors (internal or external) or any regulatory body, it will allow the Council/SPT or a representative of it access on demand subject to reasonable notice to all of its premises (and it shall ensure that its permitted sub-contractors shall allow the Council/SPT access to their premises) to verify that the Data Processor has complied with its obligations in terms of Clause 8.1.