



**CONDITIONS OF CONTRACT FOR A SUBSIDISED
PASSENGER FERRY SERVICE**

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STRATHCLYDE PARTNERSHIP for TRANSPORT

CONDITIONS OF CONTRACT FOR SUBSIDISED PASSENGER FERRY SERVICES

PART ONE

INTRODUCTION

In terms of the Transport (Scotland) Act 2005, Strathclyde Partnership for Transport of Consort House, 12 West George Street, Glasgow G2 1HN (hereinafter called "SPT") has the power to enter into agreements with any competent person for the provision of public passenger transport services. In such circumstances, the parties to any contract shall be SPT and the relevant transport operator.

The Operator must bring these Conditions of Contract to the attention of all relevant employees and will be responsible for the actions and omissions of such employees.

1. CONTRACT SPECIFICATION

- (a) The Contract Operator (hereinafter called "the Operator") shall provide the Services in accordance with the timetable and route details as agreed with the Operator and defined when the Contract is awarded. The Operator shall not make any change of any kind to the Services without obtaining the prior approval of SPT.
- (b) At any time during the period of the Contract, SPT reserves the right to modify any aspect of the Contract. SPT further reserves the right to modify the Contract price in a manner consistent with any modification to the Contract. The Operator shall comply with any modification specified by SPT within such time-scale as is required by SPT. Such modifications could include the termination of the Contract, without liability to SPT, if the Service provided under the Contract is or will become, in the opinion of SPT no longer justified for meeting the needs of the area or the needs of SPT or its client. In such circumstances, SPT may terminate the Contract by giving such written notice as may be reasonably practicable in the circumstances to the Operator. SPT may also suspend the operation of a Contract if the lack of justification for the Contract is believed to be for a temporary period.

2. TIMETABLE

- (a) The Operator shall clearly exhibit the agreed service timetable and fare-table in all vessels for the route or routes on which they operate. Any timetable modifications must be agreed in writing by SPT and all details must be published at least twenty one days prior to implementation.
- (b) Where, due to unforeseen circumstances (e.g. adverse weather or tide conditions) it is impossible to give prior notice of change, the Operator shall follow the contract specification as closely as is practicable and immediately advise SPT's Bus Operations Department in such reasonable detail as SPT may require. The Operator shall then comply with any instructions given by SPT.

- (c) The Operator shall, by no later than 31 March each year provide SPT with notice of dates and times when ferry sailings cannot operate during the following year due to known tide conditions.

3. STATUTORY REQUIREMENTS

- (a) The Operator, and any vessel and crew used for the purposes of this Contract, shall conform fully with all appropriate statutory requirements. In this respect the Operator will be held to have satisfied himself in respect of what documentation by way of certificates/licences and records of inspection and maintenance will be required in relation to the carrying out of the Contract and must display these to SPT as and when required. The Operator shall disclose such information and documentation relating to legislative compliance as is required by SPT upon request.
- (b) 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 and of no force and effect from the commencement of any period that:
 - (i) the Operator does not possess any required licence or if any licence previously granted has been suspended for any reason;
 - (ii) the Operator does not have a valid Certificate of Insurance to cover the Services provided;
 - (iii) the Operator does not have valid certification for every vessel used on the Contract(s);
 - (iv) any person employed by the Operator does not have a valid qualification or licence as required for the nature of the Contract or the type of vessel used;
 - (v) if the Operator uses a vessel previously prohibited from use on a Contract for any Contract let by SPT and which has not been subsequently authorised for use; or
 - (vi) if SPT considers the Operator may have otherwise acted in an illegal manner.
- (c) Where it is the opinion of SPT that an Operator has breached the terms of this Clause 3, SPT may, at its discretion, suspend the Operator from any or all Contracts to allow further investigation or may terminate the Contract or Contracts.
- (d) Where an Operator has been suspended from operation of a Contract or Contracts or any Contract or Contracts have been terminated as a result of action taken under sub-clause 3(c), SPT shall arrange for another Operator to fulfil the Contract or Contracts and any increased 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 or such other appropriate means as may be necessary.

4. VESSELS AND CREW

- (a) The vessel(s) used to operate the Contract must comply with the terms of the contract specification and these Conditions of Contract and be contractually agreed by SPT. The Operator will not, other than as detailed below, operate a Contract with any non-compliant vessel. Should a compliant vessel not be available to operate the Contract

through unforeseeable circumstances e.g. theft, the Contract may be operated by another vessel from the Operator's fleet. The Operator shall endeavour to ensure that any replacement vessel complies to the greatest extent possible with the contract specification. Should such an event occur the Operator must immediately advise SPT's Bus Contracts Section. Should SPT's offices be closed, the Operator must advise SPT's Bus Contracts Section within its next working day. For the avoidance of doubt, a replacement vessel that is not fully compliant **MUST NOT** be used to allow for any scheduled test, maintenance or repair of the contractually agreed vessel.

- (b) All vessels being used in the performance of this and any other Contract will be licensed, equipped, insured and maintained as required by statute. Notwithstanding the foregoing, inspection and maintenance records for all vessels shall be completed and maintained in such a manner as may be prescribed by SPT and provided to SPT on demand. It is the Operator's responsibility to ensure that all vessels are the subject of a daily "pre-service inspection" by the crew and that a written "nil defect" reporting system is adhered to. Any failure to strictly adhere to this requirement may result in the suspension or termination of this and any other Contract. All vessels will be in the charge of a competent crew who will also be licensed and insured as required by statute.
- (c) The Operator shall, without prior notification, allow SPT's duly authorised representatives to enter and inspect the Operator's vessels used for the purposes of the Contract, the Operator's maintenance facilities or arrangements and have access to the maintenance records kept for the said vessels. 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 vessels, facilities or records.
- (d) If it is necessary to involve a third party to ensure that SPT's representative(s) can carry out a satisfactory inspection of the Operator's vessels, premises or any aspect of the Contract, 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 associated costs being for the account of the Operator.
- (e) SPT may, by issuing a "Prohibition Order", instruct the Operator not to use any vessel which is found to be defective and which could affect the safety of passengers. In such circumstances the Operator will be required to provide at his own expense an alternative compliant vessel for the performance of the Contract. SPT will, notwithstanding Section 11 (Confidentiality), notify the Maritime & Coastguard Agency or other appropriate public Authority of any such prohibition order.
- (f) Prohibited vessels will unless otherwise instructed by SPT at the time of issuing the Prohibition Order be eligible for use on Contracts 24 hours after notice, if the specified format is received by SPT's Engineering Section from the Operator confirming that all defects have been rectified.
- (g) All vessels must comply with any weight, height, width, length and seated passenger capacity restrictions applicable to the Contract.
- (h) The overall livery of vessels shall be of a design and standard acceptable to SPT. No advertising material promoting the Operator or the goods or services of any third party may be carried or displayed anywhere in or on the vessel without the prior written consent of SPT. SPT reserves the right to require the Operator to remove any advertising or publicity material that SPT in its sole discretion deems to be unsuitable.

- (i) The Operator must ensure that the vessels used in the performance of any Contract are clean and damage free inside and out. The Operator must sweep his/her vessels daily and wash them regularly. The Operator will provide details of its cleaning and washing procedures to SPT on request and shall comply with directions given in order to improve the standard of same.
- (j) All vessels when used on Contract must be properly heated and ventilated at all times.
- (k) All vessels must be equipped with appropriate "Ship to Shore" communication facilities as required by legislation.
- (l) All vessel logos and notices supplied by SPT are to be clearly displayed in the appropriate manner, maintained in good condition and returned to SPT on request.
- (m) Subject to meeting the above requirements, Operators may choose their own vessels for the Contract, provided that they conform to any detailed requirements specified.
- (n) The Operator shall prominently display on all vessels used in the performance of the contracted services, a notice supplied by SPT indicating where passengers may make comments or suggestions about any aspect of the Contract.

5. FARES and INCOME

- (a) The Operator shall charge passenger fares at the rate set out in the Contract as may be amended from time to time.
- (b) SPT will specify the fares to be charged and shall notify the Operator of any change at least one month before it takes effect. The Operator may not make adjustments to the fares charged. Details of any alteration to fares authorised by SPT must be notified to passengers by on-vessel notices at least 21 days prior to implementation.
- (c) Approval to participate in any other fare scheme or promotion not promoted by SPT will only be given if appropriate reimbursement terms are agreed.
- (d) The Operator shall ensure that the relevant fare table is submitted to SPT no later than 21 days prior to the commencement of the Contract and no later than 21 days prior to any changes to the fare table and the Operator shall clearly exhibit the relevant fare table in all vessels for the route or routes on which they operate.
- (e) The Operator shall participate in the Strathclyde Concessionary Travel Scheme administered by SPT under the Transport Act 1985 and shall not, without the prior consent of SPT cease to participate in this scheme or, when applicable, shall not apply to the Secretary of State under Section 98 of the Transport Act 1985 for the cancellation or variation of any participation notice served on the Operator by SPT by notice under Section 97 of the Transport Act 1985. The Operator shall allow SPT's duly authorised representatives to board the Operator's vessels whenever such vessels are being operated under the Contract, for the purposes of gathering passenger information in connection with the said travel concession scheme. Any change in the terms of the scheme which results in a change in the Operator's costs or income will be reflected in a change of Contract payments to avoid any consequential financial gain or detriment to the Operator. All eligible passengers possessing travel passes issued in terms of the Scheme shall either travel free of charge or

pay the appropriate fare as set out in the service specification for concessionary and non-concessionary passengers.

- (f) The Contract shall be included in any pass or special ticket scheme including any "multi-modal" ticket scheme as directed by SPT and shall not participate in any other fare scheme or promotion without the prior written approval of SPT. When submitting tenders, Operator's assumptions on income must take account of such schemes in operation or about which notification has been given.
- (g) The Operator shall provide such financial or other information or supporting documentation with regard to the Contract as SPT may require and shall permit access to its premises at all times on reasonable prior notice to permit inspection.
- (h) All vessels shall carry ticket machines capable of issuing single and if required by SPT, return or such other range of tickets indicating fare paid, class of passenger/ticket, journey number and boarding point (by stage). Ticket machines must also record the number of tickets of each type sold and their total value on each trip. SPT may also require such alterations to the ticketing equipment as may be required in order to allow for the inclusion of new facilities and technology. All ticket machines will require to be "smart enabled". The Operator shall also ensure that emergency procedures, to the satisfaction of SPT, are available for use in the event of ticket machine failure. The ticket machine must also be capable of interrogation by appropriate ticketing analysis software and it shall be a requirement that the Operator allows installation of this software by, or on behalf of SPT to enable SPT to have access to relevant information in connection with subsidised services operated on its behalf. Other than this software, the fitting and maintenance of all ticket machine equipment shall be the responsibility of the Operator and be undertaken at the Operator's expense. The Operator may not alter the ticket machine equipment or emergency procedures in the absence of the prior written consent of SPT. Operators must ensure that at all times, the crew are fully trained regarding the use of the ticketing equipment and that full and accurate details including journey number are entered for all passengers carried on all journeys. Operators will also be responsible for ensuring the accuracy of the timing module on all ticketing machines. During the term of this Contract, SPT may provide the Operator with ticket machines. The Operator must install such machines on the vessel and use them as instructed by SPT. SPT will retain ownership of the ticket machines and any associated software.
- (i) When vessels are operated by one person, fares must be collected from passengers or, passes or other pre-paid tickets inspected as they board. When vessels are operated by more than one crew member, fares must be collected as soon as practicable after each passenger boards. Tickets must be issued to the exact value of all fares paid. Tickets must also indicate the information detailed at sub-clause 5 (h) above. All passes and tickets in lieu of cash payment or to allow travel at a reduced rate must be checked for validity. All fares collected from passengers will be at the Operator's risk.
- (j) The Operator shall permit SPT's representatives to act as inspectors on any vessel used by the Operator for the purpose of the Contract. The said representatives shall be permitted to travel on vessels provided for the Contract at no charge for the purpose of inspecting ticket fare receipts or other records or equipment kept by the Operator's crew or other staff and to ensure compliance with the Contract. SPT's representatives will take appropriate action in the event that any passenger does not have the correct ticket or pass for the journey being undertaken.

- (k) The Operator shall, in a manner approved by SPT, keep records of total daily passenger receipts for each Contract operated. Full and accurate details shall be supplied to SPT as required including patronage on a per journey basis in addition to completed traffic returns supplied by SPT at the commencement of the Contract.
- (l) The Operator will, at no cost to SPT, display on the vessels, in a position to be agreed, notices provided by SPT indicating that passengers may take advantage of any special ticket schemes promoted by SPT and applicable to the service on which the vessel is being used.

6. CONTRACT PAYMENT

- (a) On or about the last day of each month, SPT shall pay the Operator a sum equivalent to one twelfth of the relevant annual Contract price. Payment shall be made via BACS.
- (b) Any change in the passenger income element of the Contract price as indicated in columns B and/or C of Section 1 of the standard Tender Document shall not exceed that produced by applying a factor in accordance with changes in the relevant part of the maximum fare scale specified by SPT.

Notes: The passenger income element of the Contract price will normally only be changed when there is a change in the maximum permitted fare-scale. The change would be the average overall amendment to the fare scale derived as a weighted average for all subsidised local services provided by all Operators and expressed as a percentage reduced by an allowance for elasticity of ± 0.3 . Where the provision and use of subsidised local services provided by an Operator did not reflect the full extent of that part of the maximum permitted fare scale subject to change, consideration will be given to a different percentage impact on passenger income element. It is important to note that the change relates to the passenger income element when the tender or quotation was submitted and to the maximum permitted fare scale and **NOT** to actual income or actual fares charged where these are different.

- (c) The basis for payment of the Contract is that SPT shall meet the agreed Contract price subject to the provisions of this Clause 6 and Clauses 3 above, 13 below and Part Two of these Conditions. SPT shall not be responsible for any inaccuracies in costs or income estimates associated with the Contract price.
- (d) After the end of each month, the performance of the Operator shall be assessed in relation to the service specified in the Contract and the provisions of Part Two hereof and any balance payable to or receivable from the Operator shall be calculated in accordance with the terms of Part Two and paid or deducted in the subsequent month.
- (e) SPT must receive, by no later than the dates stipulated, a fully and accurately completed Traffic Return for each Contract held. In addition to Traffic Returns, the Operator shall submit to SPT detailed patronage information on a per sailing basis. This information shall be submitted as and when required by SPT in a format to be specified by them. SPT may require that Traffic Returns are completed and submitted electronically.
- (f) Contracts awarded for periods for twelve months or less will be on a fixed price basis. For Contracts awarded for periods in excess of twelve months, the tender price shall be reviewed on the last day of each July unless otherwise specified. Thereafter, 85% of the total cost indicated in Column A of section one of the Tender Document, (which should be net of any grants), will be adjusted each ensuing year by applying to the cost for the

previous period, that index which is the percentage variation in the Consumer Price Index (CPI) between the midpoints of the Contract Periods. In addition, 15% of the total cost indicated in Column A of the Tender Document will be adjusted each ensuing year by applying to the cost for the previous period that index which is the percentage variation in the year to the preceding April of the price of Ultra Low Sulphur Diesel, net of all taxes, as published in "Transport Statistics Great Britain" (Currently table 3.3).

Note: The Consumer Price Index is produced monthly in the National Statistics Office Monthly Digest of Statistics. It will be necessary for SPT to estimate index factors at the commencement of each period prior to publication of indices. Retrospective adjustments will only be made when there is a significant difference between the estimated and published index.

- (g) In negotiations for tender price adjustment for any reason, SPT reserves the right to be provided with a breakdown of the Contract price detailing all costs relating to labour, fuel, materials and all other operating costs and overheads. This is intended to provide a basis from which any claims for adjustment of the Contract price, to reflect the effect of inflation (or deflation), or changes in operational requirements can be measured.
- (h) 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 out-with the control of the Operator.

7. PUBLICITY

- (a) SPT may advertise the Contract and provide passenger information e.g. public timetables and changes to Contract in such manner as they may decide. Any Operator's advertising of the Contract must be with the prior approval of SPT and such publicity must state that the Service is operated on behalf of SPT. The Operator may not display its own advertising material or material advertising the goods or services of any third party anywhere on vessels operating the Contract without the prior approval of SPT and shall comply with all instructions given by SPT in this regard.
- (b) The Operator shall display in a manner prescribed by SPT on each vessel used in operating the Contract logos stating that the Service is being operated on behalf of SPT and where applicable a client or clients of SPT.

8. OPERATORS' LIABILITY AND INSURANCE

- (a) The Operator shall be responsible for and shall indemnify, save and hold harmless SPT, its servants, agents or 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.

- (b) The Operator shall inform SPT of all accidents or other incidents involving vessels, or which occur within vessels being used during the operation of the Contract which result in damage to a vessel or other property (including theft) or injury to or assault on any person; verbally, immediately in any case of personal injury or assault or other incident attended to by the police or other relevant authority and within twenty four hours of the accident or incident in other cases and within forty eight hours of the accident or incident 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 confirmation will be provided to SPT that this has been done.
- (c) It will be the responsibility of the Operator to produce for inspection by SPT the policy or policies of insurance and the receipt or receipts for the current premiums which he holds or alternatively evidence of the provision of appropriate security as required by statute.
- (d) The Operator must produce for examination by SPT the marine inspection report obtained for the purposes of insurance, before the Contract takes effect.

9. SUB-CONTRACTING

- (a) In situations of an emergency nature only, the Operator is permitted to sub-contract the operation of the Contract to ensure that it is carried out, but in such circumstances is required to advise the Bus Contracts Section of SPT in advance if at all possible and in all circumstances, by no later than within its next working day. In doing so, the Operator must ensure that all Conditions of Contract are met and shall remain liable to SPT for all actions and omissions of any sub contractor.
- (b) Other than in situations of an emergency nature, the Operator is not permitted to sub-contract the benefit of the Contract or any part thereof without the prior written consent of SPT. SPT reserves the right to suspend or terminate the Contract should unauthorised sub-contracting occur.
- (c) Any sub-contractor must be satisfactory to SPT. Should SPT, at its discretion not consider any proposed sub-contractor to be satisfactory, SPT reserves the right to arrange for an alternative Operator to carry out the services for the duration of the period during which the Operator is unable to do so. Any costs incurred by SPT in so doing shall be for the account of the Operator and shall be recovered by withholding payments otherwise due or by such other means as may be necessary.

10. ASSIGNATION

The Operator **must not** assign the operation of the Contract or any part thereof without the prior written consent of SPT i.e. should the Operator wish to sell any part of its business which includes the operation of Contracted Services or change status from e.g. a sole trader to a limited company then, before doing so, the Operator must seek the consent of the Bus Contracts Section of SPT.

11. CONFIDENTIALITY

- (a) The Operator undertakes to keep confidential and not to disclose without SPT's prior written consent any trade or business secrets or similar confidential information supplied by SPT to the Operator save where ordered to do so by a Court or Tribunal of competent jurisdiction.
- (b) SPT undertakes to keep confidential and not to disclose without the Operator's prior written consent any trade or business secrets or similar confidential information supplied by the Operator to SPT save where ordered to do so by a Court or Tribunal of competent jurisdiction or when required to do so in order to comply with the terms of the Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004. Without prejudice to the foregoing generality, SPT may communicate with the Maritime & Coastguard Agency, the Marine Accident Investigation Board, the Police, a licensing authority or any other appropriate public authority or agency on any matter concerning the performance of the Contract. SPT may also report all and any matters concerning the Contract to any principal on whose behalf SPT acts as agent.
- (c) The Operator shall comply with both the terms and the principles of the Data Protection Act 1998.

12. COMMUNICATION

- (a) Any notice or other communication which is required to be given to SPT shall be deemed to be properly given if it is addressed to the Senior Legal Advisor, Strathclyde Partnership for Transport, Consort House, 12 West George Street, Glasgow G2 1HN or such other person or address as SPT may from time to time specify.
- (b) Any notice or other communication which is required to be given to the Operator shall be deemed to be properly given if sent to the address set out in the Contract, or such other person or address as the Operator may from time to time specify.
- (c) Any notice required to be given hereunder shall in the absence of any provision to the contrary be sufficiently given if forwarded by first class mail, recorded delivery or fax or given by hand in writing to SPT or the Operator by the other. Every notice shall be deemed to have been received and given at the time when in the ordinary course of transmission it should have been delivered at the address to which it was sent.

13. TERMINATION AND SUSPENSION

SPT shall, in the circumstances detailed at (a)-(c) below, be entitled to cancel 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 cancellations or suspensions. SPT may also arrange for another Operator to fulfil the Contract or 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. SPT reserves the right to apply interest to any monies due to it 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. The right of SPT to cancel or suspend a Contract or Contracts in the circumstances outlined below are in

addition to any other right to suspend or terminate any Contract or Contracts as set out elsewhere in these Terms and Conditions of Contract.

- (a) If the Operator or his representative (whether with or without the knowledge of the Operator) shall have practised collusion in tendering for the Contract or any other Contract with SPT or shall have employed any corrupt or illegal practices either in obtaining or execution of the Contract, or any other Contract with SPT.
- (b) If the Operator becomes bankrupt or insolvent, or has a receiving order made against him or her, or compounds with or assigns for the benefit of his or her 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.
- (c) If the Operator or any employee, agent or representative of the Operator fails in any material respect to observe the terms and conditions of this or any other Contractor fails to execute with due diligence and expedition anything necessary for the proper performance of a Contract or Contracts, or acts in any way to undermine the good repute of SPT or any principal on behalf of which, SPT acts as agent.
- (d) If a Contract is terminated or suspended in terms of this clause 13 or otherwise terminated or suspended in accordance with any other provision of these Conditions of Contract, no consideration will be given to any tender submitted by that Operator for any contract required to replace the Contract that has been terminated or suspended.

14. VARIATION

SPT reserves the right to vary these Conditions of Contract or any document forming the Contract by giving the Operator prior notice in writing of the variations.

15. LAW OF SCOTLAND

This Contract is subject to the Law of Scotland.

16. GENERAL AND MISCELLANEOUS

- (a) No smoking is permitted by any crew member or other employee or passenger on or at the entrance to any vessel at any time when that vessel is being used in the performance of the Contract. The Operator must ensure that the terms of the Smoking, Health & Social Care (Scotland) Act 2005 are adhered to at all times.
- (b) The Operator shall maintain sufficient records of vessels and personnel to satisfy SPT that all aspects of the Contract have been complied with at all times.
- (c) The Operator shall provide to SPT or its representatives such financial, or other information or supporting documents with regard to the Contract as SPT may require, and shall permit access to the Operator's premises at all times on reasonable prior notice by SPT to permit inspection of such documentation.
- (d) The Operator (and relevant staff) shall comply with all instructions from SPT's representatives. This requirement does not obviate the Operator's responsibilities, and those of its staff, regarding safety and legislative requirements.

- (e) No delay, neglect or forbearance on the part of SPT in enforcing any right available to it, arising from these Terms and Conditions of Contract shall be or deemed to be a waiver of or in any way prejudice any right.
- (f) The Operator shall, within forty-eight hours of receipt of any oral or written complaint in respect of any aspect of the service provided, forward a copy of such complaint 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 orally within twenty-four hours and in writing within forty-eight hours.
- (g) Notwithstanding the terms of any other provision contained within these Conditions of Contract SPT may require the Operator to remove, temporarily or permanently any crew member or other employee from the operation of any or all Contracts which the Operator may have with SPT or any client of SPT.
- (h) If the Operator uses a vessel owned by another Operator to carry out the Contracted services, that vessel will prominently have on display a sign stating that the vessel is "on hire" to the Operator of the Contracted Service.
- (i) All crew members shall at all times be smartly attired.
- (j) The Operator must be a member of Traveline Scotland
- (k) All signs supplied by SPT or its client to the Operator shall be returned to SPT on conclusion of the Contract or as otherwise required.
- (l) The Operator shall, when required to do so by SPT, confirm in writing to SPT or to any prospective tenderer(s) for a contract for the work being carried out by the Operator, as to whether the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended) are deemed to apply in respect of any of the Operator's employees. If the Operator considers that the regulations do apply, he shall advise SPT or any prospective tenderer(s) of all necessary details of relevant employees, benefits, salary rates etc. The Operator shall fully indemnify SPT for any claims for loss or damage arising from any party alleging that a breach of the regulations has occurred.
- (m) The Operator will be responsible for payment of any and all harbour, pier and berthing dues incurred in the operation of the Contract and for entering into any contractual arrangements required by any Harbour Authority. The Operator must provide operational information to Harbour Authorities when requested to do so and in the format requested.
- (n) Other than responding to complaints as detailed in 16(f) above, the Operator shall not, either orally in writing, communicate to passengers or prospective passengers on any matter concerning the Contract unless the proposed communication has been approved by SPT.
- (o) The Operator shall if so required by SPT, operate all services subject to Conditions of Carriage approved by SPT and which will be available to all passengers.
- (p) If this Contract is suspended or terminated in accordance with any provision of these Conditions of Contract, 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.

PART TWO
Conditions of Contract

SERVICE PERFORMANCE AND MONITORING

1. INTRODUCTION

The Operator's performance of the Contract will be monitored in relation to service quality and quantity together with the collection of all income due.

2. ADDITIONAL INFORMATION

- (a) The Operator will be responsible for ensuring that all crew members operate within the Maritime & Coastguard Agency working time regulations and adhere to all Safety Codes for seafarers.
- (b) The crew will carry details showing the vessel trip number relative to the timetable which will be made available to SPT's representatives on request.
- (c) The Operator shall keep updated a list of crew names, together with their certificates of competency numbers and expiry dates.
- (d) In addition the Operator will supply such other information as SPT may from time to time reasonably require.

3. ACCESS TO PREMISES, VESSELS AND INFORMATION

- (a) SPT will retain the right to audit the information supplied and the Operator will provide access as required to premises and vessels to examine any aspect of the operation and finances of the Contract.
- (b) The Operator shall permit access to premises and vessels to any of SPT's authorised representatives for the purpose of surveys of income, tickets, passengers and such other information as SPT may reasonably determine. Such information as gathered shall be the property of SPT.
- (c) The Operator must provide, when requested, details of the working hours of all crew who carry out duties on Contracts. The records must include details of all working known, if the crew is full or part-time, temporary or permanent, if other employers provide employment. The records must be held for a period of at least 6 months after the end date of the Contract.
- (d) The Operator shall carry out regular checks on the licences and qualifications of their crew or the crew sub-contracted to operate their vessels. The record of such checks would preferably be a photocopy of the licence or other documentation and such checks shall be carried out no less frequently than every six months.

4. MONITORING

SPT's representatives will 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 must permit SPT's

representatives to be carried free of charge on vessels as and when required to allow monitoring duties to be carried out.

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.

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 penalty and/or the appropriate financial deduction being made.

If at any point on any specified journey a vessel operates out-with the route specified on the Contract specification or does not operate in compliance with the timetable without there being extenuating circumstances acceptable to SPT or, if a specified journey/journeys does not take place, or if the Contract is otherwise not adhered to, there will be a deduction from the normal current monthly payment equivalent to the subsidy cost of the whole journey.

5. EXTENUATING CIRCUMSTANCES

Deductions may not be made in respect of operating out-with the Contract specification, or non-operation, if it is found that such failure is due to extenuating circumstances beyond the control of the Operator and acceptable to SPT.

6. TRAFFIC RETURNS

(a) Traffic Returns will be provided which will be fully and accurately completed by the Operator and returned to SPT by the dates specified. The Operator will certify that all information regarding passengers carried, receipts, and mileage that is operated, lost or deemed to be lost is complete and accurate.

(b) A financial penalty will be applied in every case when either SPT does not receive a Traffic Return by the date specified in respect of each Contract held or if any Traffic Return received is inaccurately completed. Penalties will be applied on the basis that 5% of the normal current monthly Contract payment will be deducted on the first occasion during the period of the Contract to which the traffic return applies, for an inaccurately submitted Traffic Return or when no Traffic Return is received on time. On the second occasion an inaccurately completed Traffic Return is submitted or where no Traffic Return is received on time, the Operator will be required to attend a Service Review meeting as detailed in Clause 10 below. Contract payments will be suspended pending a satisfactory outcome of the Service Review Meeting.

(c) It will be necessary for all Operators to maintain and keep for a period of at least 6 months after the end date of the Contract, records of information in order to permit SPT staff to investigate the validity of claims in respect of operation of services.

7. WARNINGS

(a) Formal Warnings

SPT may issue a formal warning to the Operator in respect of any breach of Contract. Each formal warning will be "weighted" reflecting the seriousness of the breach of Contract and will, subject to the outcome of any Appeal result:

- (a) in the recording of the appropriate number of points against the particular Contract(s) to which the warning relates; and
- (b) in a corresponding financial deduction being applied to the payment made to the Operator in terms of Clause 6 of Part One of these Terms and Conditions of Contract.

Warnings will be "weighted" as noted below:

- (1) Any breach of Contract which has not resulted in the suspension or termination of this or any other Contract, regarding the Operator's premises, vessels, inspection, maintenance or relevant record keeping. For the avoidance of doubt, such warnings will be applied against all Contracts held by the Operator. 5 points (major adverse impact)
- (2) Any breach of Contract which results in a limited adverse impact to SPT, any contracting principal or service user. 1 point (limited adverse impact)
- (3) Any breach of Contract which results in a significant adverse impact to SPT, any contracting principal or service user. 3 points (significant adverse impact)
- (4) Any breach of Contract which results in a major adverse impact to SPT, any contracting principal or service user. 5 points (major adverse impact)

Should more than 3 warnings of an analogous nature be issued, warnings 4 to 6 will then be allocated the next level of points i.e. significant or major as appropriate as the breach will be regarded as having greater adverse effect on users of the Contract. All subsequent warnings will be allocated 5 points.

(b) Appeals

Any appeal must be submitted within 14 days after 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 be made. Such submissions will be fully considered by SPT. Any warning in respect of which no appeal is submitted or where any appeal does not result in the warning being rescinded will result in a formal recording of that warning and the appropriate financial penalty and/or the appropriate financial deduction being made.

8. TERMINATION

In addition to any other right available to cancel, suspend or terminate any Contract(s) SPT reserves the right to terminate the Contract or Contracts and recover from the Operator any and all costs and/or losses:

When an Operator has, within any period of 12 weeks received a total of 20 points and within any period of 12 months received a total of 30 points.

In the event of termination of a Contract or Contracts, SPT may also arrange for another Operator to fulfil the Contract or Contracts and any and all increased costs 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. SPT reserves the right to apply interest to any monies due 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.

9. SERVICE REVIEW MEETINGS

The Operator shall meet SPT or its representatives, as and when required to do so to discuss the performance of the Contracted Service(s). 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 Terms and Conditions of the Contract. Such meetings will be held at SPT's premises at Consort House, 12 West George Street, Glasgow or such other venue as may be appropriate in the circumstances.