

# Public Service Contract

## Between:

**The Scottish Ministers acting through their executive agency Transport Scotland, Victoria Quay, Edinburgh, EH6 6QQ (the “Scottish Ministers” also referred to as “Transport Scotland” and “TS”)**

and

[ ] (the “Operator”)

## Whereas

- A. The Scottish Ministers wish to support the provision of local passenger bus services affected by the impact of the Covid-19 virus;
- B. The Scottish Ministers may in terms of section 70 of the Transport (Scotland) Act 2001 make grants on such conditions as they determine;
- C. In accordance with Regulation 33(1)(c) of the Public Contracts (Scotland) Regulations 2015, the Scottish Ministers have awarded a public service contract for the maintenance of bus transport services based on the routes and services operated by the Operator as at 29 February 2020. [Under section 3 of the European Union Withdrawal Act 2018, this regulation is now part of domestic law, subject to amendments made in the “The Regulations (EC) No 1370/2007 (Public Service Obligations in Transport) Amendment (EU Exit) Regulations 2020” (SI2020/504)]

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## 1. Definitions and Interpretation

1.1. In this Contract, words and expressions, except where the context otherwise requires, will have the meanings given to them below:

**Business Day** means any weekday during which the Scottish Clearing Banks (or a majority of them) are open for business;

**Business Hour** means any time between 9:00am and 5:00pm on any Business Day;

**Commencement Date** means 22 June 2020;

**Contract** means this Contract between the Scottish Ministers and the Operator, including the Schedules, and any agreement which replaces or supersedes any of the foregoing or any part of the foregoing, all as amended, supplemented or varied from time to time;

**Covid-19 Support Grant-Restart (or CSG-R)** means the **Grant** as defined below;

**Data Controller, Data Processor, Data Subject and Data Subject Access Request** have the meanings given in the Data Protection Laws ;

**Data Protection Laws** means any law, statute, subordinate legislation, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body which relates to the protection of individuals with regard to the processing of Personal Data to which a Party is subject including the Data Protection Act 2018 and any statutory modification or re-enactment thereof, and the UK GDPR;

**Dispute** will be construed in accordance with Clause 22;

**Dispute Resolution Procedure** will be construed in accordance with Clause 22;

**Environmental Information Regulations** means the Environmental Information (Scotland) Regulations 2004 (and any subordinate regulations made under them from time to time or any superseding or amending regulations) together with any guidance

and/or codes or practice issued by the Information Commissioner, the Scottish Information Commissioner and/or any relevant government department in relation to such regulations;

**Event of Default** means the occurrence of any of the events set out in Clause 23.1;

**Expiry Date** means 31 March 2021 and Expiry will be construed accordingly;

**Force Majeure Event** means:

- 1.1.1. war, civil war (whether declared or undeclared) or armed conflict;
- 1.1.2. nuclear explosion, radioactive, biological or chemical contamination, ionising radiation (but not arising from any act of terrorism); or
- 1.1.3. substantial damage arising from the effect of sonic booms,

in each case occurring after the Commencement Date.

**Freedom of Information (Scotland) Act 2002** means the Freedom of Information (Scotland) Act 2002 and any subordinate legislation made under this Act from time to time or any superseding or amending enactments or regulations, together with any guidance and/or codes of practice issued by the Information Commissioner, the Scottish Information Commissioner and/or any relevant government department in relation to such legislation;

**Grant** will be construed in accordance with Clause 5 and Schedule 2, and references to "Grant" include, where the context so requires or admits, references to instalments of the Grant;

**Grant Period** means the period commencing on the Commencement Date and finishing on the Expiry Date or, in the event of early termination the Termination Date, and is also referred to as "the CSG-R period" or "the period of CSG-R" or similar phrases having the same plain English meaning;

**■**means the occurrence of any of the following events (or any event analogous to any of the following in any jurisdiction) in relation to the relevant entity:

- 1.1.4. the entity passing a resolution for its winding up or a court of competent jurisdiction making an order for the entity to be wound up or dissolved or the entity being otherwise dissolved;
- 1.1.5. the appointment of an administrator of, or the making of an administration order in relation to, the entity or the appointment of a receiver or administrative receiver over the whole or part of the entity's undertaking, assets, rights or revenue;

- 1.1.6. the entity being unable to pay its debts or being deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
- 1.1.7. the entity entering into any arrangement, compromise or composition in satisfaction of its debts with its creditors;

however, a resolution by the relevant entity or a court order that such entity be wound up for the purpose of a bona fide reconstruction or amalgamation shall not amount to an Insolvency Event;

**Legislation** means any Act of Parliament, including any local, personal or private Act of Parliament, any subordinate legislation (as that expression is defined in section 21(1) of the Interpretation Act 1978), any exercise of the Royal Prerogative and any enforcement right arising under section 2-7 of the European Union Withdrawal Act 2018 and any bylaws, statutory instruments, orders, notices, directions, codes of practice, consents or permissions properly and lawfully made or given under any of the foregoing (including for the avoidance of doubt, any legislation enacted by any Scottish Parliament or assembly or similar body and any subordinate or delegated legislation made by the Scottish Ministers or other person deriving authority from such legislation);

**Operator Personnel** all persons engaged by the Operator in the performance of its obligations under the Contract including:

- 1.1.8. its employees and workers (including persons employed by a third party but working for and under the control of the Operator);
- 1.1.9. its agents, service providers and carriers; and
- 1.1.10. any sub-contractors of the Operator

**Party** means either of the parties to this Contract;

**Personal Data** has the meaning given in the Data Protection Laws;

**Reconciliation Exercise** means a reconciliation exercise carried out under Schedules 2 and 3;

**Schedule** means a schedule annexed to and forming part of this Contract;

**Services** means those public transport services as specified in Schedule 1.

**Termination Date** means the date of termination of this Contract prior to the Expiry Date and Termination will be construed accordingly;

**UK GDPR** means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27<sup>th</sup> April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data

Protection Regulation) as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018.

## 2. Termination of previous support Contract and Contract Term

- 2.1. The Contract takes effect on 22 June 2020 (the "Commencement Date"). The Contract expires on 31 December 2021 (the "Expiry Date"), unless it is terminated earlier in accordance with its terms.
- 2.2. The Parties agree that as of the Commencement Date, the earlier Covid Support grant dated [xx xxx xxxx] is terminated by mutual consent, with the exception of any provisions of that contract which are expressly stated to survive termination, and the payment of any outstanding sums due under the that contract.

## 3. Level of Service

- 3.1. The Operator will provide the Services in accordance with Schedule 1.
- 3.2. Any vehicles used to provide the Services must comply with all relevant regulatory requirements whether imposed by regulation or by any relevant regulator of public transport services. All Operator Personnel must possess all relevant qualifications, licences and accreditations as required by law.

## 4. Passengers and Fares

- 4.1. The Operator will take reasonable steps to make public the service routes, timetables and fares and will publish any alterations to routes and timetables in a timely fashion.
- 4.2. The Operator will not, without the consent of the Scottish Ministers, be permitted to implement commercial fare price increases during the CSG-R contract period. Subject to the provisions of Schedule 2, the Operator is permitted to make fare price adjustments which do not have the effect of producing a revenue yield. Payments specified in schedule 2 to this contract will be made based on the Operator's fare structure as at the Commencement Date.

## 5. The Grant

- 5.1. The Scottish Ministers will make advances by way of grant (the Grant) to the Operator towards provision of the Services during the Grant Period calculated in accordance with this Contract. The Grant will be paid in accordance with schedule 2 and subject to the Reconciliation Exercise process set out in schedule 2 and 3.
- 5.2. The Grant must be used solely to meet part of the costs and expenses of provision of the Services, including, without limitation, the capacity and capability of the Operator to

provide such Services, in accordance with this Contract and for no other purpose whatsoever.

## 6. Public Sector Contributions

- 6.1. Operators will make reasonable use of existing COVID related funding where possible, such as the Coronavirus Jobs Retention Scheme.
- 6.2. Any contributions in connection with the Services (except the Grant) either in cash or in kind from any public sector body (including any government body, institution or fund of the European Union, local authority, statutory undertaking or other body wholly or substantially funded by public money) must be duly reported as part of the Reconciliation process set out in Schedule 2.

## 7. Subsidy Control and Recovery

- 7.1. If any court in Scotland, or any regulatory or other competent body requires that the Grant be recovered from the Grantee (including but not limited to situations in which the Grant is found to be a subsidy which is incompatible with the United Kingdom's obligations under the UK-EU Trade and Cooperation Agreement (or any other binding international Treaty to which the UK is subject)), the Scottish Ministers may withhold payment of the Grant or any part of it or reclaim the Grant or any part of it. The Operator must repay any such sum within 20 Business Days together with any interest as may be imposed by such court or body. The Scottish Ministers must use reasonable endeavours (subject to any objection of confidentiality imposed) to advise the Operator in the event that the Scottish Ministers receive any notification which will or may lead to a request to reclaim the Grant under this provision.

## 8. Data Protection

- 8.1. The Parties acknowledge and agree that for the purposes of the Services under this Call Off Contract, each Party acts as Data Controller in their own right and is responsible for compliance with all obligations and duties under applicable Data Protection Laws in respect of any Personal Data which they may process in delivery of the Services.
- 8.2. Both Parties agree to negotiate in good faith any such amendments to this Contract that may be required to ensure that both Parties meet all their obligations under the Data Protection Laws.
- 8.3. The Service Provider will provide the Purchaser with the contact details of its data protection officer or other designated individual with responsibility for data protection

and privacy to act as the point of contact for the purpose of observing its obligations under the Data Protection Laws.

- 8.4. The Service Provider agrees not to transfer Personal Data to a third country other than within the European Economic Area without the Purchaser's prior written consent, unless required to do so by European Union or domestic law or regulatory body to which the Service Provider is subject; in which case the Service Provider must, unless prohibited by that law, inform the Purchaser of that legal requirement before processing the Personal Data only to the extent, and in such manner as is necessary for the performance of the Service Provider's obligations under this Contract or as is required by the Law;
- 8.5. The Service Provider must ensure that in respect of any transfer of Personal Data to a third country other than within the European Economic Area that:
  - a) the transfer is to a country approved by the European Commission as providing adequate protection pursuant to Article 45 of the UK GDPR;
  - b) there are appropriate safeguards in place pursuant to Article 46 of the UK GDPR; or
  - c) one of the derogations for specific situations in Article 49 of the UK GDPR applies to the transfer.
- 8.6. The Service Provider must notify the Purchaser prior to engaging a Data Processor in connection with the Services. The Service Provider must further keep the Purchaser informed of any intended changes concerning the addition or replacement of a Data Processor.
- 8.7. If the Service Provider engages a sub-contractor acting as Data Processor in connection with the Services, the Service Provider must ensure that the data protection requirements under Article 28 of the UK GDPR are imposed on the sub-contractor by way of a written and legally binding contract, in particular providing sufficient guarantees to implement appropriate technical and organisational measures. The Service Provider shall remain fully liable for the performance of the Data Processor's performance of the obligations.
- 8.8. The Service Provider must notify the Purchaser if it or a Data Processor engaged in connection with the Services:
  - a) receives a Data Subject Access Request (or purported Data Subject Access Request);
  - b) receives a request to rectify, block or erase any Personal Data;

- c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Laws;
- d) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by law or regulatory order;

and such notification must take place as soon as is possible but in any event within 3 business days of receipt of the request or any other period as agreed in writing with the Purchaser from time to time.

8.9. Taking into account the nature of the Processing and the information available, the both Parties must provide reasonable assistance to the other Party in complying with the Data Protection laws concerning the security of personal data, reporting requirements for data breaches and data protection impact assessments These obligations include:

- a) notifying a Personal Data breach to the other Party without undue delay and in any event no later than 48 hours after becoming aware of a Personal Data breach; and
- b) assisting the other Party with communication of a personal data breach to a Data Subject.

8.10. At the end of the provision of Services relating to processing the Service Provider agrees to delete or return to the Purchaser all Personal Data following a written request from the Purchaser and to delete existing copies, unless EU or domestic law or regulatory body requires storage of the Personal Data.

## 9. Freedom of Information

9.1. The Operator must:

- 9.1.1. transfer all requests for information which it receives regarding the Services to the Scottish Ministers within 2 Business Days of receipt; and
- 9.1.2. provide the Scottish Ministers with a copy of all such information in the form that the Scottish Ministers may reasonably require as soon as practicable and in any event within 10 Business Days (or such other period as the Scottish Ministers acting reasonably may specify) of the Scottish Ministers' request where the Scottish Ministers receive a request for information in relation to information that the Operator is holding on their behalf and which the Scottish Ministers do not hold themselves. In such cases the Scottish Ministers shall refer to the Operator such request for information that they receive as soon as reasonably

practicable and in any event within 5 Business Days of receiving a request for information and the Operator must.

9.1.3. The Operator must in all other respects make best endeavours to facilitate the Scottish Ministers' compliance with the Freedom of Information (Scotland) Act 2002 and the Environmental Information Regulations.

9.2. The Operator may make representations to the Scottish Ministers as to whether or not, or on what basis, any information requested should be disclosed.

## 10. Confidentiality

10.1. Each Party must keep secret and not disclose (and procure that their respective employees keep secret and do not disclose) any information of a confidential nature obtained by from the other Party by reason of this Contract except information which is in the public domain otherwise than by reason of a breach of this provision.

10.2. Notwithstanding the foregoing clause 10.1, the Scottish Ministers may publish or disclose this Contract or any part of it, any information concerning the Contract or matters arising out of or in connection with it, and any other information as they deem appropriate from time to time. The Scottish Ministers must use their best endeavours to notify the Operator prior to publishing or disclosing any such information directly relating to the Operator, and must take account of any relevant representations which the Operator may make. Without prejudice to the generality of the foregoing, the Scottish Ministers may disclose information provided by the Operator in connection with this Contract to the Office of the Traffic Commissioner where such information is reasonably required in connection with the Office of the Traffic Commissioner's functions.

10.3. Subject to the foregoing provisions of this Clause 10, the Scottish Ministers may use information obtained in connection with this Contract for policy review and development purposes. Such use of information within the Directorates of the Scottish Government and its Executive Agencies will not be considered to constitute a disclosure for the purposes of this Clause 10.

10.4. Notwithstanding any of the foregoing provisions of this Clause 10, or any other provision of this Contract either party may disclose any information:

10.4.1. as required by law or judicial order to be disclosed;

10.4.2. to its professional advisers provided always that the recipient of the information is subject to the same obligation of confidentiality as that contained herein.

10.5. The Operator must not, and must ensure and procure that its agents, employees, representatives and sub-contractors do not, except with the prior approval of the Scottish Ministers (which may be granted subject to such conditions as the Scottish Ministers see fit):

- 10.5.1. communicate with representatives of the press, television, radio or other communications media on any matter concerning the Contract; or
- 10.5.2. Disclose to third parties any information obtained by it from the Scottish Ministers under or in connection with the Contract.

10.5A. Clause 10.5 above does not prevent the Operator from issuing communications to the public in any form for the purposes of providing information on timetables, fares, services and other related information.

10.6. The obligations imposed by this Clause will continue to apply after the expiry or termination of this Contract.

## 11. Compliance with the Law

11.1. In providing the Services and otherwise when performing the Contract, the Operator must comply in all respects with the Applicable Law.

## 12. Bribery and Corruption

12.1. The Operator must not commit or attempt to commit any offence in its activities relating to the Contract:

- 12.1.1. under the Bribery Act 2010;
- 12.1.2. of fraud, uttering, or embezzlement at common law; or
- 12.1.3. of any other kind referred to in regulation 58(1) of the Public Contracts (Scotland) Regulations 2015.

12.2. Breach of Clause 12.1 will be treated as a material breach for the purposes of this Contract

## 13. Discrimination; and Blacklisting

13.1. The Operator must not unlawfully discriminate against any person in breach of the Equality Act 2010 in its activities relating to the Contract or any other contract with the Scottish Ministers.

13.2. The Operator must not commit any breach of the Employment Relations Act 1999 (Blacklists) Regulations 2010 or section 137 of the Trade Union and Labour Relations (Consolidation) Act 1992, or commit any breach of the Data Protection Laws by unlawfully processing personal data in connection with any blacklisting activities.

Breach of this clause is a material default which shall entitle the Scottish Ministers to terminate the Contract.

## 14. Operator's Status

- 14.1. At all times during the Grant Period the Operator will act as an independent Operator and nothing in the Contract establishes a contract of employment, a relationship of agency or partnership, or a joint venture between the Parties or between the Scottish Ministers and the Operator's Representative. Accordingly, neither Party is authorised to act in the name of, or on behalf of, or otherwise bind the other Party.
- 14.2. The Operator must not say or do anything that might lead any other person to believe that the Operator is acting as the agent of the Scottish Ministers.

## 15. Notices

- 15.1. Any notice, or other communication, which is to be given by one Party to the other under this Contract must be:
  - 15.1.1. given in writing;
  - 15.1.2. addressed in accordance with Clause 15.3; and
  - 15.1.3. Sent by letter (delivered by hand, first class post or by recorded delivery or special delivery), fax or e-mail.
- 15.2. Provided the relevant communication is not returned or rejected as undelivered, the notice or communication is deemed to have been given:
  - 15.2.1. 2 Business Days after the day on which the letter was posted; or
  - 15.2.2. 4 Business Hours, in the case of a fax or an e-mail.
- 15.3. For the purposes of this Clause the address of each Party is:

**The Scottish Ministers**  
**Transport Scotland**  
**Victoria Quay**  
**Edinburgh EH6 6QQ; and**  
**[Operator name and address]**

- 15.4. Either Party may change its address details by serving a notice in accordance with this Clause.

## 16. Recovery of Sums Due

- 16.1. Wherever under the Contract any sum of money is recoverable from or payable by the Operator, the Scottish Ministers may deduct that sum from any sum due to the Operator whether under the Contract or otherwise.

- 16.2. The Operator must make any payments due to the Scottish Ministers without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Operator has a valid court order requiring an amount equal to such deduction to be paid by the Scottish Ministers to the Operator.
- 16.3. If the payment or deduction of any amount referred to in Clause 16.2 above is disputed then any undisputed element of that amount must be paid and the disputed element must be dealt with in accordance with either the terms of this Contract relating to the resolution of disputes.

## 17. Severability

- 17.1. If any provision of the Contract is held to be invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision is severed and the remainder of the provisions of the Contract continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated.

## 18. Third Party Rights

- 18.1. Unless express provision to the contrary is made in this Contract, no rights are conferred under or arising out of this Contract upon any person other than the Scottish Ministers and the Operator (and their permitted successors and assignees) and, without prejudice to the foregoing, there will not in any circumstances be created by this Contract a third party right pursuant to the Contracts (Third Party Rights) (Scotland) Act 2017 in favour of any other person whatsoever.

## 19. Audit, Expenditure and Accountability

- 19.1. The Operator must ensure and procure that adequate internal expenditure controls are in place and that all resources are used economically, effectively and efficiently so as to comply with the terms of this Contract.
- 19.2. The Operator must ensure that there is no cross-subsidisation between the Services and any other service run by or activities of the Operator or between the Operator and any other Associated Company and that all transactions with any Associated Company are conducted on an arms-length basis and are so identified in all records and books of accounts.
- 19.3. The Operator must have clear, separate and transparent accounting systems for the financing and operating of the Services (in accordance with the Financial Transparency (EC Directive) Regulations 2009/2331) to ensure that the Grant is only

used for the Services and not for any other activity of the Operator and shall deal with the Scottish Ministers on an open book basis.

- 19.4. The Operator must ensure that, in the event that it operates any other service or carries out any other activities, a cost allocation mechanism is in place such that costs which are common to the Services and those other services and/or activities are correctly allocated and recorded in accordance with clearly established, consistently applied and objectively justifiable cost accounting principles.
- 19.5. The Operator must ensure that, in the event that it operates any other service or carries out any other activities, a revenue allocation mechanism is in place such that revenues which are common to the Services and those other services and/or activities are correctly allocated and recorded in accordance with clearly established, consistently applied and objectively justifiable cost accounting principles.
- 19.6. The Operator must keep and maintain throughout the Grant Period and thereafter, until 5 years after the final payment by the Scottish Ministers to the Operator pursuant to this Contract, adequate and proper records of and books of accounts recording the financial affairs of the Operator, the provision of the Services and all receipts and expenditures of monies advanced to the Operator by the Scottish Ministers by way of the Grant.
- 19.7. The Operator must, throughout the duration of the Grant Period and for a period of 5 years after the final payment has been made to the Operator by the Scottish Ministers pursuant to this Contract, provide the Auditor General for Scotland access at all reasonable times and on reasonable notice to its books and records for the purposes of carrying out any audit or examination which he is empowered to carry out pursuant to the Public Finance and Accountability (Scotland) Act 2000 or any other Legislation.
- 19.8. The Operator must provide to the Scottish Ministers (or any other person appointed by the Scottish Ministers) such information as they may reasonably require from time to time, including access to and/or copies of all records maintained by the Operator, concerning any of the Services and the Scottish Ministers must reimburse to the Operator its reasonable costs incurred in complying with this Clause 19.

## 20. Assignment and Sub-Contracting

- 20.1. Sub-contracting any part of the Contract will not relieve the Operator of any obligation or duty (or part thereof) attributable to the Operator under the Contract.
- 20.2. Where the Operator enters into a sub-contract in respect of the Services, it will ensure that payment is made to all sums due to the relevant subcontractor within a period of no more than thirty (30) days following receipt of a valid invoice.

## 21. Contract Amendments

- 21.1. Amendments to this Contract or variations of its terms will only be effective where constituted in writing and signed by or on behalf of each of the Parties.
- 21.2. The Scottish Ministers may from time to time issue a Service Variation Notice requiring a variation to the Services. A Service Variation Notice may be issued where:
  - 21.2.1. The Scottish Minister, acting reasonably, have concluded that the Services have become, or are about to become, inadequate or inappropriate, or where
  - 21.2.2. the Operator has notified the Scottish Ministers that a variation to the Services is required for operational, logistical, or public health reasons.
- 21.3. The Scottish Ministers retain absolute discretion in deciding whether a Service Variation Notice should be issued, having regard to the relevant public transport requirements and any views of the Operator, the relevant Local Transport Authority and the Traffic Commissioner which may be received (though for the avoidance of doubt it is not necessary to seek such views in all cases).
- 21.4. The Service Variation Notice will set out:
  - 21.4.1. the revised services to be performed by the Operator;
  - 21.4.2. any amendments to the Grant which result from the variation (such recalculation to be carried out in accordance with schedules 2 and 3) and;
  - 21.4.3. the date on which the new Services take effect (having regard to any notification requirements to third parties and relevant timescales, including but not limited to local authorities and the Traffic Commissioner).
- 21.5. Where a Service Variation Notice is issued, the Operator must comply with the variation on the date specified under clause 21.4.3.

## 22. Dispute Resolution Procedure

- 22.1. The Parties must attempt in good faith to resolve any dispute between them arising out of or in connection with the Contract.
- 22.2. Any dispute or difference arising out of or in connection with the Contract, including any question regarding its existence, validity or termination, which cannot be resolved, shall be determined by the appointment of a single arbitrator to be agreed between the Parties, and failing agreement within 14 days after either Party has given to the other a written request to concur in the appointment of an arbitrator, by an arbitrator to be appointed by the Scottish Arbitration Centre on the written application of either Party.

The seat of the arbitration shall be in Scotland. The language used in the arbitral proceedings shall be English.

22.3. Any arbitration is subject to the Arbitration (Scotland) Act 2010.

## 23. Default

23.1. The occurrence of any of the following circumstances or events constitute a Default:

- 23.1.1. the Operator knowingly and deliberately giving any fraudulent written information to the Scottish Ministers or contracts which Scottish Ministers may appoint in connection with this Contract or giving any other written information to the Scottish Ministers or contractors which read as a whole is incorrect or misleading, in a material respect;
- 23.1.2. the Operator ceasing or threatening to cease to carry on business or to provide the Services or any part of them;
- 23.1.3. the Operator committing a material breach of any provision of this Contract which if capable of remedy has not been remedied within 7 days of the Scottish Ministers notifying the Operator of such breach;

## 24. Waiver and Cumulative Remedies

24.1. Any failure of either Party to insist upon strict performance of any provision of the Contract, or the failure of either Party to exercise, or any delay in exercising, any right or remedy does not constitute a waiver of that right or remedy and does not cause a diminution of the obligations established by the Contract.

24.2. Accordingly, no waiver is effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with clause 15 (notices).

24.3. A waiver of any Default is not a waiver of any subsequent Default.

24.4. The rights and remedies provided by the Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy is not to be deemed an election of such remedy to the exclusion of other remedies.

## 25. Termination Rights

25.1. The Scottish Ministers may terminate the Contract giving four weeks' notice to the operator that the Contract will expire on 8 November 2020. CSG-R will be subject to review thereafter, and the contract can be terminated at four weeks' notice, or less if market circumstances indicated it is no longer required.

25.2. The Scottish Ministers may terminate the Contract by notice to the Operator with immediate effect if the Operator commits a Default and:

- 25.2.1. the Operator has not remedied the Default to the satisfaction of the Scottish Ministers within 20 Working Days, or such other period as may be reasonably specified by the Scottish Ministers, after issue of a notice specifying the Default and requesting it to be remedied;
- 25.2.2. the Default is not in the opinion of the Scottish Ministers, capable of remedy; or
- 25.2.3. the Default is a material breach of the Contract.

25.3. The Scottish Ministers may terminate the Contract in the event that:

- 25.3.1. the Contract has been subject to substantial modification which would have required a new procurement procedure in accordance with regulation 72(9) (modification of contracts during their term) of the Public Contracts (Scotland) Regulations 2015;
- 25.3.2. the Operator has, at the time of contract award, been in one of the situations referred to in regulation 58(1) (exclusion grounds) of the Public Contracts (Scotland) Regulations 2015, including as a result of the application of regulation 58(2) of those regulations, and should therefore have been excluded from the procurement procedure; or
- 25.3.3. the Contract should not have been awarded to the Operator in view of a serious infringement of the obligations under the EU-UK Trade and Cooperation Agreement or other international treaties to which the UK is a party that has been the subject of a determination of a competent adjudicator

25.4. In this Condition, 'the Treaties' has the meaning given in the European Communities Act 1972.

25.5. The Scottish Ministers may also terminate the Contract in the event of a failure by the Operator to comply in the performance of the Services with legal obligations in the fields of environmental, social or employment law.

25.6. The Operator may terminate the Contract:

- 25.6.1. With immediate effect if the Scottish Ministers commit a material breach of their payment obligations under the Contract,
- 25.6.2. Giving notice of not less than 28 calendar days where the Scottish Ministers issue a Service Variation Notice under cause 21.2.1, or where the Scottish Ministers confirm they will not issue a Service Variation Notice under clause 21.2.2,

25.6.3. By notice, where such notice is issued no later than seven days following a 12 week CSG-R Reconciliation Exercise under schedule 2, giving notice of not less than 28 calendar days.

## 26. Termination on Insolvency

26.1. The Operator shall notify in writing immediately, and the Scottish Ministers may terminate the Contract with immediate effect by notice, where in respect of the Operator:

- 26.1.1. a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignation for the benefit of, its creditors;
- 26.1.2. a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation);
- 26.1.3. a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986;
- 26.1.4. a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets;
- 26.1.5. an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given;
- 26.1.6. it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986;
- 26.1.7. being a "small company" within the meaning of section 382 of the Companies Act 2006, a moratorium comes into force pursuant to schedule A1 to the Insolvency Act 1986;
- 26.1.8. a debt relief order is entered into; or
- 26.1.9. any event similar to those listed above occurs under the law of any other jurisdiction.

## 27. Warranties

27.1. The Operator warrants and undertakes to the Scottish Ministers that as at the Commencement Date:

- 27.1.1. it is a limited liability company, duly incorporated and validly existing and not in liquidation or apparently insolvent under the laws of Scotland or any jurisdiction outside Scotland;
- 27.1.2. it has full power and authority to enter into, and to fulfil its obligations under, this Contract and that the Contract is executed by a duly authorised individual;
- 27.1.3. all authorisations, approvals, consents, licences, registrations and other matters, official or otherwise, required or advisable in connection with the entry into, performance, validity and enforceability of this Contract and in connection with the operation of the Services have been obtained or effected and are in full force and effect and there are no circumstances which indicate that any of the same are likely to be revoked in whole or in part in the ordinary course of events;
- 27.1.4. in entering the Contract it has not committed any offence under the Bribery Act 2010 or of fraud or uttering at common law;
- 27.1.5. no claim is being asserted and no litigation, alternative dispute resolution procedure or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under the Contract;
- 27.1.6. it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Contract;
- 27.1.7. no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Operator or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Operator's assets or revenue;
- 27.1.8. in the 3 years prior to the Commencement Date:
- 27.1.9. it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
- 27.1.10. it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established;
- 27.1.11. it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract;

27.1.12. there are no actual or potential conflicts between the interests of the Operator and the duties owed to the Scottish Ministers under the Contract, save as may have been specifically disclosed in writing to the Scottish Ministers prior to execution of the Contract.

## 28. Indemnity and Limitation of Liability

28.1. Without prejudice to any rights or remedies of the Scottish Ministers, the Operator indemnifies the Scottish Ministers against all claims, proceedings, actions, damages, demands, losses, charges, costs, expenses and any other liabilities which the Scottish Ministers may suffer or incur as a result of or in connection with:

- 28.1.1. any damage to property or in respect of any injury (whether fatal or otherwise) to any person which may result directly or indirectly from any negligent or wrongful act or omission of the Operator; or
- 28.1.2. any breach of this Contract.

28.2. Neither Party is liable to the other Party under the Contract for any:

- 28.2.1. loss of profits, business, revenue or goodwill; or
- 28.2.2. indirect or consequential loss or damage.

28.3. Neither Party limits or excludes its liability to the other Party for:

- 28.3.1. death or personal injury caused by its negligence;
- 28.3.2. misrepresentation;
- 28.3.3. any breach of any obligations implied by the Sale of Goods Act 1979 or sections 2 or 11B of the Supply of Goods and Services Act 1982; or
- 28.3.4. any breach of any obligations under Data Protection Laws.

## 29. Force Majeure

29.1. Each Party is relieved from liability for performance of its obligations under this Contract to the extent that it is not able to perform such obligations due to a Force Majeure Event. If either Party is affected by a Force Majeure Event, it must immediately notify the other Party of the nature and extent of the circumstances in question.

29.2. If at any time the Operator claims a Force Majeure Event in respect of any of its obligations under this Contract, the Scottish Ministers are entitled at their own cost to procure one or more third parties to provide the Services in so far as the Operator is unable to provide the Services or part of them for so long as the Force Majeure Event or its effect continues to prevent the Operator from performing all or any of its obligations under this Contract.

29.3. If the Force Majeure Event in question prevails for a continuous period in excess of 7 days, the Scottish Ministers and the Operator must without prejudice to the rights of the Scottish Ministers under Clause 29.2 enter into bona fide discussions with a view to alleviating the effects of the Force Majeure Event or to agreeing such alternative arrangements as may be fair and reasonable.

29.4. If no such terms are agreed within 2 Months of the commencement of the Force Majeure Event, and at that time such Force Majeure Event is continuing or its consequence remains such that the Operator is unable to comply with its obligations to any material extent, either Party may terminate this Contract by giving 30 Business Days' notice to the other party.

29.5. The Parties must, at all times following the occurrence of a Force Majeure Event, use all reasonable endeavours to prevent and mitigate the effects of such Force Majeure Event on the Services and the Operator must at all times during which a Force Majeure Event is subsisting take all steps to overcome or minimise the consequences of the Force Majeure Event.

29.6. The Party affected by a Force Majeure Event must notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes such Party to be unable to comply with its obligations under this Contract. Following such notification this Contract must continue to be performed on the terms existing immediately prior to the occurrence of the Force Majeure Event, unless the Scottish Ministers have exercised their rights under Clause 29.4.

## 30. Entire Agreement

30.1. Except where expressly provided in this Contract, together with the estimates and forecasts referred to in Schedule 2, this Contract constitutes the entire agreement between the Parties in respect of all matters dealt with herein. The Contract supersedes all prior negotiations between the Parties and all representations and undertakings made by one Party to the other, whether written or oral regarding any matters dealt with in this Contract, except that this clause does not exclude liability in respect of any misrepresentation.

30.2. The Operator acknowledges that it has entered into this Contract on the basis of its terms only and has not relied upon any statement or representation or warranty or other provision (in any case whether oral, written, express or implied) made or agreed by any person (whether a party to this agreement or not) except those repeated or referred to in this Contract.

30.3. In the event of, and only to the extent of, any conflict between the clauses of the Contract, the Schedules and any document referred to in the Contract, the following order of precedence applies:

- 30.3.1. the Clauses of the Contract
- 30.3.2. the Schedules
- 30.3.3. any other document referred to in the Contract

## 31. Governing Law

31.1. The Contract is governed by and interpreted in accordance with Scots Law and the Parties irrevocably submit to the jurisdiction of the Scottish courts.

**In Witness Whereof** this Public Service Contract typewritten on this and the twenty-two preceding pages together with the two Schedules annexed hereto are executed as follows:

**Signed** for and on behalf of **The Scottish Ministers**

Signature

Full name

Position

Date

Place

**Signed** for and on behalf of [ ]

Signature.....

Full name.....

Position.....

Witness' signature.....

Witness' full name.....

Witness' address.....

Date.....

Place (town).....

This is the Schedule referred to in the preceding Public Service Contract between The Scottish Ministers and [insert name of Operator]

## Schedule 1

### Levels of Service

1. The Operator will make available sufficient capacity to run the kilometres of service for the duration of the Grant, noted for each weekly period commencing 22.06.20 to 28.06.20 and up to the week ending 27.06.21 which will be collated in the form of a table, as set out in the example below:

| Week | Week commencing      | Kms to be operated (millions) |
|------|----------------------|-------------------------------|
| 1    | 22.06.20 to 28.06.20 |                               |
| 2    |                      |                               |
| 3    |                      |                               |
| ...  |                      |                               |
| 54   |                      |                               |

Where the Contract continues after 03 October 2021, the service level in terms of kilometres is to be maintained within the range specified for the final week of the above profile subject to any Service Variation Notice or the Contract being otherwise terminated.

2. This service capacity to be made available within Scotland. The Operator will propose the services they expect to run within the agreed service levels to be operated as set out in paragraph 1 above. It is expected the Operator will not simply replicate pre-existing networks and services but will as appropriate adapt service to current and expected patterns of demand to minimise to the extent practicable both overcrowding and under-utilisation. The Operator must continue to plan services and keep them under review in consultation with their local transport authorities, having regard to services which may support children to travel to school and that are required to minimise public transport connectivity disadvantages, including for island and rural communities. Where practicable and appropriate, the Operator must also plan and keep services under review in consultation with health boards regarding the services that should continue to be provided, having regard to the critical concerns of serving key workers such as NHS staff and taking reasonable steps to prevent overcrowding and maintaining physical distancing in accordance with Public Health Scotland guidance.
3. Furthermore, the Operator must take reasonable steps to respond positively and quickly to reasonable requests from local transport authorities to amend service patterns, hours of operation, vehicles used or levels of provision and to supply data on

service usage and operations during the Contract Period - including where possible to ensure a joined-up cross-modal service offer and to support wider COVID-19 response efforts. Operators are required to demonstrate on request all mitigation measures that have been taken where they have not responded positively or quickly to reasonable requests from local transport authorities.

4. In exceptional circumstances, Scottish Ministers retain the right to direct the operator to run certain services based on evidenced need, and will agree the operator any variation or additional compensation requirements to those specified in Schedule 2.
  - 4A. The operator will not be eligible for compensation of regular 4-weekly interim payments as set out in paragraph 6 of Schedule 2 for any service kilometres that the Scottish Ministers consider to be duplication of capacity based on evidenced need
  - 4B. The operator will not be eligible for compensation of regular 4-weekly interim payments as set out in paragraph 6 of Schedule 2 for any service kilometres that relate to the provision of bus tour services.
5. The Operator will use their reasonable endeavours to ensure vehicles are cleaned in accordance with guidance from public health bodies .As the circumstances relating to the outbreak evolves, the Operator will continue to engage with the Scottish Government, follow guidance from public health bodies, the guidance issued for operators of transport facilities and transport services (first released by the Scottish Government on 26 May 2020), and provide appropriate advice to customers using their services. Payments as detailed in schedule 2 are designed to accommodate physical distancing requirements whilst supporting the percentage service levels detailed in paragraph 1.

## Schedule 2

This is Schedule 2 referred to in the preceding Public Service Contract Payments, Data Provision and Reconciliation Process

1. The level of Grant provided to the Operator by the Scottish Ministers in respect of the public service obligations assumed by the Operator under Clause 3 (as read with Schedule 1) shall not exceed an amount corresponding to the net financial effect equivalent to the total of the effects, positive or negative, of compliance with the public service obligation on the costs and revenue of the Operator.
2. The Operator acknowledges that the level of compensation provided to the Operator by the Scottish Ministers in respect of the public service obligations assumed by the Operator under Clause 3 (as read with Schedule 1) is determined in accordance with the principles set out in Regulation (EC) 1370/2007.
3. The Scottish Ministers shall be entitled to carry out from time to time appropriate checks to ensure that the compensation provided to the Operator meets the requirements of Regulation (EC) 1370/2007.
4. The Operator undertakes to provide all such information and evidence as the Scottish Ministers may reasonably request from time to time in connection with the checks referred to in paragraph 3 of this Schedule 2; and to allow the Scottish Ministers and any of their officers, and/or any external accountants and contractors authorised by them, to have access during normal working hours during the Grant Period and for a reasonable period thereafter (on reasonable prior notice) to the accounting records held by or to the order of the Operator, so far as required to enable such checks to be carried out.
5. The Scottish Ministers reserves the right to change the terms of payment, including methodology or payment rates at any time during the scheme period. The Scottish Ministers will give the Operator no less than two weeks' notice of such changes.

## Payments

6. Payments to operators under CSG-R will be made up of the following elements:
  - Maintenance of National Concessionary Travel Scheme (NCTS) Reimbursement & Bus Service Operator Grant (BSOG) revenue at pre Covid-19 levels as described in paragraph 11 to 13 below for the duration of the CSG-R being paid.
  - One off payments for allowable mobilisation costs. This element to be paid to operators based on paragraphs 14 to 16;
  - Regular 4-weekly interim payments up to the maximum of service kms specified in paragraph 1 of schedule 1 of:  
£1.02 per live km from 22 June to 06 December 2020  
£0.93 per live km from 07 December 2020 to 31 March 2021  
£0.85 per live km from 01 April 2021 to 18 July 2021

£0.60 per live km from 19 July 2021 to 03 October 2021

This element to be paid to operators based on paragraphs 17 and 18.

7. Payment is subject to a reconciliation process as detailed in paragraphs 30 to 38 below.
8. Where Grant relates to the loss of fare box income on Local Transport Authority supported services, the Grant should be taken into account in determining contractual payments between the operator and the Local Transport Authority if in normal circumstances contractual payments are dependent on fare box.
9. Where Local Transport Authority related revenue received by the Operator is below forecasted levels and this materially affects the Operators capacity to deliver the levels of service as agreed in Schedule 1, the Operator can request a Service Variation Notice under clause 21.2.2. For the avoidance of doubt, a reduction or withdrawal of Local Transport Authority related revenue does not entitle the Operator to a corresponding increase in CSG-R payments.
10. Any revenue lost due to fare reductions will not be covered by the Grant.

### **NCTS / BSOG elements**

11. The NCTS payments to the operator will be made up of 90% of the relevant period forecast. Balancing payments will be payable no later than by the end of the third period after the period they relate to (except in disputed cases). The payments will be paid out using the grant support scheme only, however the Free Bus Scheme element will be monitored and recorded as normal and payment funding type records adjusted internally as required thereafter
12. The BSOG element will be paid as 1/13th of the estimates which the Operator had previously provided to Scottish Ministers for financial year 2020/21.
13. Where the Operator was in an over payment situation for NCTS reimbursement or BSOG pre COVID-19, or for the Covid-19 Support Grant, Scottish Ministers will continue to recover the over payment values by adjusting CSG-R payments made until such times as the Operator debt is repaid in full.

### **Mobilisation Payment**

14. The mobilisation payment is a standard rate of **£1,202** per vehicle to bring vehicles back into operation based on an average standard cost for materials and two weeks average engineering costs.
15. To be eligible, vehicles will need to have been taxed and in use in March 2020, have been subsequently de-taxed and/or made not roadworthy, and on or after 17 August, re-taxed and/or made roadworthy.
16. As part of the reconciliation process, information will be required on actual mobilisation costs and the number of vehicles mobilised to Transport Scotland. Any excess in flat rate payments over actual costs will be recovered as overpayments.

There will be no additional payment in the event that actual costs exceed flat rate payments.

### **Regular 4-weekly interim payments of £/ live kilometre (km)**

17. The 4-weekly payment will be calculated based on km forecasts already provided by the operator, adjusted according to agreed percentage service levels.
18. Any subsequent 4-weekly payments, subject to clause 25, will be based on live km operated as provided by the operator as under the data provision requirements below.

### **Overpayment of the Grant**

19. Additional payments or clawbacks will be made following the reconciliation process to ensure that total payments for each reconciliation period equal allowable costs less receipts.

### **Data Provision**

20. The Operator will be required to provide information on a regular basis, as reasonably requested by the Scottish Ministers, to determine payments and support the management of COVID-19 related impacts on transport networks.

#### **21. Initial Information Requirements**

- The number of PSVs re-mobilised since 17 August or to be re-mobilised (i.e. re-taxed and made roadworthy) in order to provide capacity necessary for the required bus services. (This does not include vehicles used exclusively for school home-school transport but does cover vehicles used for both home-school transport and bus services). A template will be provided for this information.
- Forecast of weekly live kilometres each operating company would have run for the period from the Contract Commencement Date to 17 January 2021 assuming no Covid-19 impact and forecast of live kilometres each operating company will actually run each week for the period from the Contract Commencement Date to 17 January 2021.

#### **22. Recurring information requirements**

##### In advance of each 4 week period

- Advance estimates of live km to be operated broken down between commercial and supported services.

##### Every 12 weeks in line with reconciliation dates

- Live km operated, separated into commercial and supported (split between supporting Local Transport Authorities) at operating company level
- Farebox and other revenue
- Patronage (concessionary and fare-paying)

##### Within [6 weeks] of the end of each reconciliation period

- Allowable costs and revenue as separately listed in Schedule 3.

23. The Operator will be required to provide the Traveline Scotland service with real time data feeds, where they have them, to include: real time location; capacity information (including actual bus capacity and real time space availability with physical distancing restrictions due to COVID-19) to be captured using the electronic ticketing machine supplier service (Ticketer), or other real time information systems.
24. If you have Ticketer machines, we will liaise directly with Ticketer to enable this on your behalf. If you do not already have the real time or capacity data feeds, Ticketer will be in touch shortly to arrange this with you. Once we have confirmation that the capacity data feed is established, Ticketer will invoice Transport Scotland for relevant costs for this service (12 month duration) and Transport Scotland will pay Ticketer direct.
25. The Operator will be required to provide the following information using the same operational formats and timings that would normally be used for claims for BSOG;
  - Services operated (total number run), including service numbers and registration numbers
26. The Operator should also continue to make claims for actual passengers carried under the National Concessionary Travel Scheme in their normal fashion.
27. When Transport Scotland activates the Multi-Agency Response Team (MART) for COVID-19 related impacts, the operator may be required to participate as MART members and provide when reasonably requested, timely and accurate returns to the Transport Scotland Resilience Room detailing operational challenges directly related to COVID-19 impacts. Such issues may include, but not be limited to, observations or issues with the passengers wearing face coverings, identifying where demand is exceeding capacity on services, stops or stations, or where there is poor compliance with physical distancing measures.
28. The Operator will be expected to provide accurate information in good faith, and in accordance with the Declaration set out at the end of these T&Cs.
29. Scottish Ministers reserve, within reason, the right to amend the information being requested from the Operator.

### **Reconciliation Exercise**

30. Each Reconciliation Exercise will establish the net revenue position using the allowable revenues and costs and to assess compliance with schedule 1 requirements. This will enable Transport Scotland to make additional payments or recover excess funds from each operator at the end of the reconciliation period.
31. A Reconciliation Exercise will be carried out every 12 weeks from the Commencement Date. The Scottish Ministers may also require a Reconciliation

Exercise to take place at any point during the contract term where the terms of the Contract are varied subject to clause 21.2, or on termination of the Contract. The Scottish Ministers will give the Operator at least two weeks' notice that such a Reconciliation Exercise is to be carried out.

32. The Operator will be required to submit a financial return (using a standard template) to Transport Scotland or its agents by the date specified by Transport Scotland, such date to be no less than two weeks from the date Transport Scotland gives notice of the Reconciliation Process.
33. Allowable costs are limited to those costs reasonably incurred in the provision of the Services and in accordance with the provisions of Schedule 3. Transport Scotland reserves the right to amend allowable and revenue cost items. For the avoidance of doubt, any costs relating to capital expenditure, unless otherwise provided for in the allowable costs list in schedule 3, is not allowable and will be excluded from the reconciliation process
34. Any profit before tax will be treated as an overpayment and recovered during reconciliation. The Scottish Ministers will also consider whether, on the basis of the information submitted as part of a Reconciliation Exercise, payment of the Grant constitutes overcompensation in terms of Regulation (EC) 1370/2007. In the event the Scottish Ministers, acting reasonably, conclude that the Grant has given rise to such overcompensation, the Scottish Ministers will notify the Operator of their conclusions and the Operator will be required to repay such overcompensation within 28 days of the notice.
35. The Operator may not make payments to its shareholders or owners (including those of its parent company or other member of the relevant corporate group) covering the period in which CSGR funding is received (except where shareholders or owners are directly involved in day to day operation and being paid in lieu of salary).
36. CSG-R cannot be claimed for pay increases and/or bonuses for plc Main Board Members
37. Information provided for this purpose may be shared with contractors that are engaged by Scottish Ministers to undertake the reconciliation exercise or other analysis of the CSG-R.
38. It is acknowledged that the information provided pursuant to this Schedule 2 is both confidential and commercially sensitive and Transport Scotland will where possible respect this and treat it as such. Where it proposes to disclose it, it shall comply with clause 10.2 of the Contract including in the case of request for information under the Freedom of Information Act 2002 and the Environmental Information Regulations to

the extent permissible at law and in accordance with the Scottish Ministers Code of Practice on the discharge of certain functions under the Freedom of Information Act 2002 and the Environmental Information Regulations (the “s60 Code of Practice”) as amended from time to time.

39. The permissible inflationary uplift for the financial year 2021-22 of up to 1% as detailed in notes 1 & 2 of The Allowable Costs as set out in Schedule 3 cannot be used to fund pay awards except where being applied to meet statutory minimum wage requirements.

## Schedule 3

### Allowable Costs List

This list of allowable costs sets out the only costs that can be recovered in the context of the Covid Support Grant: Restart from the date it starts. All revenue and costs included in the reconciliation exercise will need to be evidenced and justified in accordance with the principles set out in the scheme and will be subject to audit by TS or its agents or by the Traffic Commissioner and DVSA. Transport Scotland reserves the right to amend the guidance on allowable revenue and cost items.

#### Section 1 – Revenue

| Cost Occurrence | Line item                    | Notes   | Eligibility | Note |
|-----------------|------------------------------|---|-------------|------|
|                 | Commercial Revenue           | Farebox revenue for the relevant period.  | Included    |      |
|                 | Concessionary travel revenue | Concessionary travel reimbursement for the relevant period.   | Included    |      |
|                 | Other Revenue                | All commercial and tendered local bus revenue for the relevant period (including from on-bus advertising) where applicable to a route which can claim BSOG needs to be included in revenue (and the costs included in costs). Any revenue from services not eligible for BSOG, such as “closed door” contracts, private hires, rail replacements, holiday tours etc should be excluded and any costs associated with such operations should also be excluded. | Included    |      |

#### Section 2 – Funding

| Cost Occurrence | Line item              | Notes  | Eligibility | Note |
|-----------------|------------------------|--|-------------|------|
|                 | Covid-19 Support Grant | Actual Covid-19 Support Grant funding that replaces NCTS funding for the relevant period | Included    |      |
|                 | Covid-19 Support Grant | Actual Covid-19 Support Grant funding that replaces BSOG funding for the relevant period | Included    |      |

| Cost Occurrence | Line item  | Notes  | Eligibility | Note |
|-----------------|--|--|-------------|------|
|                 | Funding from UK Government Coronavirus Job Retention Scheme (CJRS) | Grant from Covid Job Retention Scheme received in respect of the relevant period. For the period before flexible CJRS terms were introduced on 1 July 2020, this funding should not be reduced by removing staff from furlough rotations outside of three weekly CJRS rotations. | Included    |      |
|                 | Any Other relevant Government Funding                              | For example Covid-19 Rates Relief for the relevant period  | Included    |      |

### Section 3 - Costs

| Cost Occurrence | Line item            | Notes  | Eligibility | Note                                  |
|-----------------|----------------------|--|-------------|---------------------------------------|
| Recurring       | Driver Payroll Costs | Total driver costs for the relevant period including: salary, Employer NICs, Employer Pension Contributions. Excluding Coronavirus Jobs Retention Scheme revenue. Prior to introduction of flexible CJRS terms on 1 July, this excludes all additional costs incurred for the relevant period if staff are removed from CJRS rotations outside the three weekly rotation windows. Costs for staff furloughed in the relevant period will not be covered by CSG-R and should be met by funding from CJRS. | Included    | <b>Note 1 and 5 apply. See below.</b> |
| Recurring       | Fuel Costs           | Total fuel costs incurred as a result of service provided for the relevant period.   | Included    | <b>Note 1 and 5 apply. See below.</b> |
| Recurring       | Tyre Costs           | Tyre costs for the relevant period.  | Included    | <b>Note 1 and 5 apply. See below.</b> |
| Recurring       | Costs of sale        | This should include costs associated with services incurred for the relevant period such as: fees for contactless machines, charges for handling the   | Included    | <b>Note 1 and 5 apply. See below.</b> |

| Cost Occurrence | Line item  | Notes   | Eligibility | Note                           |
|-----------------|--|---|-------------|--------------------------------|
|                 |  | ticket revenue, debit\credit card transaction fees, bank fees for ticketing revenue.  |             |                                |
| Recurring       | Engineering Staff Costs (Other than those associated with one-off mobilisation of buses) | Total engineering staff costs for the relevant period including: salary, Employer NICs, Employer Pension Contributions. Excluding Coronavirus Jobs Retention Scheme revenue. Prior to introduction of flexible CJRS terms on 1 July, this excludes all additional costs incurred for the relevant period if staff are removed from CJRS rotations outside the three weekly rotation windows. Excluding costs associated with mobilisation of mothballed vehicles (which are captured and funded separately). Costs for staff furloughed in the relevant period will not be covered by CSG-R and should be met by funding from CJRS. | Included    | Note 2 and 5 apply. See below. |
| Recurring       | Other Engineering Costs (Other than those associated with one-off mobilisation of buses) | Other engineering costs for the relevant period. Excluding costs associated with mobilisation of mothballed vehicles (which are captured and funded separately).  | Included    | Note 2 and 5 apply. See below. |
| Recurring       | Traffic Staff Costs  | Total traffic staff costs for the relevant period including: salary, Employer NICs, Employer Pension Contributions. Excluding Coronavirus Jobs Retention Scheme revenue. Prior to introduction of flexible CJRS terms on 1 July, this excludes all additional costs incurred for the relevant period if staff are removed from CJRS rotations outside the three weekly rotation windows. Costs for staff furloughed in the relevant period will not be  | Included    | Note 2 and 5 apply. See below. |

| Cost Occurrence                         | Line item             | Notes   | Eligibility | Note                           |
|---|-----------------------|---|-------------|--------------------------------|
|   |                       | covered by CSG-R and should be met by funding from CJRS.  |             |                                |
| Recurring                               | Other Traffic Costs   | Other traffic costs for the relevant period.  | Included    | Note 2 and 5 apply. See below. |
| Recurring                               | PCV Costs             | PCV licence costs for the relevant period.  | Included    | Note 2 and 5 apply. See below. |
| Recurring                               | Operating Lease Costs | Lease rentals for the relevant period on assets such as property, vehicles, plant, equipment and other assets which are treated as operational costs OR Lease expenses for the relevant period such as IFRS16 finance costs. An operator may have a mix of both across their operations but individual assets cannot be assigned to both categories.  | Included    | Note 2 and 5 apply. See below. |
| Recurring                               | PCV Insurance Costs   | Budgeted PCV insurance premium and claims costs for the relevant period   | Included    | Note 2 and 5 apply. See below. |
| One Off Exceptional Covid Related Costs | Safe operation costs  | One off reasonable costs incurred from the start date of the public service contract until its termination/end for safe operation and specifically as a consequence of implementing Covid-19 measures. This includes PPE for staff, increased signage, introduction of driver barriers/screens for drivers. In the event of a dispute, the question of whether PPE and safe operation costs claimed are reasonable shall be determined by Transport Scotland acting at its sole discretion. Other costs incurred will be considered on a case by case basis by Transport Scotland acting at | Included    | Note 4 and 5 apply. See below. |

| Cost Occurrence                     | Line item               | Notes  | Eligibility | Note                           |
|-------------------------------------|-------------------------|--|-------------|--------------------------------|
|                                     |                         | its sole discretion. If in doubt about which costs are likely to be allowable under this item, operators should discuss and agree with Transport Scotland.   |             |                                |
| Recurring Exceptional Covid Related | Safe operation costs    | Recurring safe operation costs for the relevant period reasonably incurred in implementing Covid-19 measures. This includes the costs of procuring and replenishing hand sanitiser and additional cleaning of vehicles. In the event of a dispute, the question of whether PPE and safe operation costs claimed are reasonable shall be determined by Transport Scotland acting at its sole discretion. Other costs incurred will be considered on a case by case basis by Transport Scotland acting at its sole discretion. If in doubt about which costs are likely to be allowable under this item, operators should discuss and agree with Transport Scotland. | Included    | Note 4 and 5 apply. See below. |
| Recurring                           | Other operational costs | Other operational costs for the relevant period reasonably incurred such as routine cleaning costs, contracted out labour, etc. All costs associated with creating a safe working environment due to COVID-19 should be reported under the 'Safe operation costs' line in this list. If in doubt about which costs are likely to be allowable under this item, operators should discuss and  | Included    | Note 2 and 5 apply. See below. |

| Cost Occurrence | Line item                  | Notes  | Eligibility | Note                           |
|-----------------|----------------------------|--|-------------|--------------------------------|
|                 |                            | agree with Transport Scotland prior to submission.   |             |                                |
| Recurring       | Marketing costs            | Marketing costs for the relevant period in particular for social distancing messaging, journey planning, contactless payment, smart ticketing and communicating service changes and ramp up.   | Included    | Note 2 and 5 apply. See below. |
| Recurring       | Administration Costs       | Administration costs for the relevant period. All costs associated with creating a safe working environment due to COVID-19 should be reported under the 'Safe operation costs' line in this list. If in doubt about which costs are likely to be allowable under this item, operators should discuss and agree with Transport Scotland prior to submission.   | Included    | Note 2 and 5 apply. See below. |
| Recurring       | Administration Staff Costs | Total administration staff costs for the relevant period including: salary, Employer NICs, Employer Pension Contributions. Excluding Coronavirus Jobs Retention Scheme revenue. Prior to introduction of flexible CJRS terms on 1 July, this excludes all additional costs incurred for the relevant period if staff are removed from CJRS rotations outside the three weekly rotation windows. Costs for staff furloughed in the relevant period will not be covered by CSG-R and should be met by funding from CJRS. | Included    | Note 2 and 5 apply. See below. |
| Recurring       | Non-Motor Insurance Costs  | Budgeted non-motor insurance costs for the relevant period.  | Included    | Note 2 and 5 apply. See below. |
| Recurring       | Property and Plant Costs   | Business as usual maintenance and operation costs for the relevant period  | Included    | Note 2 and 5 apply. See below. |

| Cost Occurrence | Line item                   | Notes   | Eligibility | Note                           |
|-----------------|-----------------------------|---|-------------|--------------------------------|
| Recurring       | Depreciation/Amortisation   | Depreciation / Amortisation Costs on all assets for the relevant period   | Included    | Note 2 and 5 apply. See below. |
| Recurring       | Pensions Costs              | Budgeted employer pension deficit repair payments for the relevant period.  | Included    | Note 2 and 5 apply. See below. |
| Recurring       | Technology Costs            | Business as usual systems and technology costs, for example accountancy and financial processing costs for the relevant period  | Included    | Note 2 and 5 apply. See below. |
| Recurring       | Management Fees             | Management fees which relate to the operation of Scottish local bus services for the relevant period and excluding costs captured elsewhere within this schedule of allowable costs. Excluding costs related to PLC Board remuneration and payouts. | Included    | Note 2 and 5 apply. See below. |
| Recurring       | Audit Costs                 | Internal and external audit fees for the relevant period  | Included    | Note 2 and 5 apply. See below. |
| Recurring       | Professional Services Costs | Professional services reasonably procured as part of BaU activities for the relevant period   | Included    | Note 2 and 5 apply. See below. |

#### Section 4 - Other Costs

| Cost Occurrence | Line item                         | Notes  | Eligibility | Note                           |
|-----------------|-----------------------------------|--|-------------|--------------------------------|
| Committed Costs | Fuel Hedging and Derivative Costs | Budgeted hedging and derivative payments for fuel in the relevant period.  | Included    | Note 3 and 5 apply. See below. |
| Committed Costs | Operational debt costs            | <i>Budgeted debt finance interest costs for the relevant period reasonably allocated to Scottish local bus services such as vehicle finance costs. Excluding principal repayments.</i> | Included    | Note 2 and 5 apply. See below. |

#### Notes:

Operators are asked to note the following conditions attached to expenditure reimbursement:

1 For the financial year 2020-21, business as usual cost contained within the above schedule will be reimbursed by TS up to a maximum of X% of pre Covid-19 costs, where X% is the percentage services actually being delivered in the relevant period as per the relevant

PSC schedule. For the financial year 2021-22, reimbursement will be subject to an inflationary uplift of up to 1% of pre Covid-19 costs.

**2** For the financial year 2020-21, business as usual cost contained within the above schedule will be reimbursed by TS up to a maximum of 100% of pre Covid-19 costs. For the financial year 2021-22, reimbursement will be subject to an inflationary uplift of up to 1% of pre Covid-19 costs.

**3** Fuel Hedging and Derivative Costs will be included at pre Covid-19 levels and upon provision of evidence by the operator that the hedging deal and associated costs were committed pre-Covid-19

**4** Reasonable costs based on the forecast provided to Deloitte. Initially paid in the £/live KM rate with expenditure evidenced at reconciliation.

**5** Costs which cover both local bus services and home to school transport should be separated out in line with your usual management accounting policies. Where there are difficulties in separating these costs, please revert to Transport Scotland for further advice with details of the relevant costs.

Operators are asked to note the intention for TS to pay for one off costs incurred for mobilisation of mothballed vehicles, due to Covid-19 on a cost per vehicle basis. This takes into account: engineering staff costs, inspection costs etc but not costs associated with getting staff back from furlough early