



# **Public Transport Service Tendering and Contracting Manual**

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# Definitions

## Definitions

Throughout this manual, unless inconsistent with the context, these terms have the following meanings:

Alternative Tender	means a Tender that meets the transport objectives as specified in the RFT, but in a different manner. The Request for Tender describes the requirements of an Alternative Tender.
Authorised representative	means any person authorised to act on the Council's behalf with respect to the provision of the Service.
Authorised regulatory authority	Includes New Zealand Police, the New Zealand Transport Agency and WorkSafe New Zealand.
Commerciality ratio	means the ratio that shows the portion of the costs to provide public transport services that is met by users.
Conforming Tender	means a Tender that is within the scope of the Request for Tender and meets requirements of the Request for Tender.
Contract	means, in relation to any Services, the agreement between the Taranaki Regional Council and the Service Provider as a result of the Request for Tender process and which incorporates the documents specified in the Manual.
Contract price	means the sum payable to the Service Provider by the Council for the contracted Services as specified in the relevant Contract, including any adjustments for service variations and any adjustments made through indexation under the Contract.
Council	means the Taranaki Regional Council, a council constituted under the provisions of the <i>Local Government Act 2002</i> . In the context of this Tendering and Contracting Manual, reference to the Council includes any officer of the Council who is authorised to act on the Council's behalf with respect to the provision of public transport services.
Electronic ticketing machine (ETM)	means the electronic ticketing machine system specified by the Council in the Request for Tender or such other ticketing system as specified by the Council in writing from time to time.
Evaluation panel	means the persons appointed by the Council to undertake the evaluation of Tender responses.
Fare	means a monetary sum, or its equivalent in any form, payable by a Passenger for a Trip.
Fare schedule	means the schedule of maximum fares, which has been approved by the Council in respect of public transport service contracts.
Financial Incentive Mechanism	involves the Service Provider and the Council sharing fare revenue growth.
Fleet	means all of the individual Vehicles tendered by a Service Provider in respect of

	any one Request for Tender sufficient to meet the requirements of that Service at all times and complying with the Council's objectives for Vehicle Standards.
Group Tender	means a Tender that includes more than one single Request for Tender.
GST	means goods and services tax under the <i>Goods and Services Tax Act 1985</i> .
HSE Act	means the <i>Health and Safety in Employment Act 1992</i>
HSW Act	means the legislation implementing the <i>Health and Safety Reform Bill</i> which is expected to be enacted during 2015 replacing the HSE Act, and references in this Contract to provisions of the <i>HSW Act</i> include: <ul style="list-style-type: none"> <li>• the equivalent provisions in the Health and Safety Reform Bill; and</li> <li>• prior to the enactment of the <i>HSW Act</i>, the <i>HSE Act</i>.</li> </ul>
Indexation	means the method used to adjust contract payments for input price fluctuations.
Invitation to Tender	means the part of the Request for Tender which invites Tenders for that Request for Tender.
Mandatory features	means the features that a Service provider must provide or comply with as set out in Schedules A1 (Tender Checklist) and A2 (Service Provider Details).
Manual	means this <i>Public Transport Service Tendering and Contracting Manual</i> , revised by the Taranaki Regional Council in June 2014.
Passenger	means a person who uses the Service.
Partnering agreement	Means the new form of agreement under the new public transport operating model (PTOM).
Performance report	a report, compiled at the conclusion of a Contract that advises the Service Provider of the Council's level of satisfaction with the performance of the Service Provider.
Personnel	means those persons whom the Service Provider employs, engages or otherwise supplies to provide the Services on its behalf (in accordance with the Contract), including but not limited to the Supplier's employees, any contractor or subcontractor engaged by the Supplier from time to time to perform the Services, and any employee of a contractor or subcontractor so engaged.
Pre-qualification form	means the form which is issued with the RFT and which contains the Service Provider's answers to the mandatory requirements concerning the ability of the Service Provider to undertake the Contract.
PTOM	means the Public Transport Operating Model as developed by the Ministry of Transport. PTOM is a planning, procurement and business development framework. A key feature of the new model is an emphasis on regional councils and operators taking a partnering approach to the planning and delivery of public transport services in regions.
Peak-period	means 7.00am to 9.00am and 3.00pm to 6.30pm, Monday to Friday.
Public transport service	means a service for the carriage of passengers for hire or reward as defined in the <i>Land Transport Management Act 2003</i> .
Request for Tender (RFT)	means any request for tenders issued by the Council for the provision of



	Services, and includes the form of Contract, the invitation to tender and all of the service specification issued by the Council for the Services subject to the request for tenders.
Requirements for Urban Buses in NZ (RUB)	means the <i>Requirements for Urban Buses in New Zealand: New Zealand's common standard for urban bus quality (2011)</i> document.
Route	means the specified route between the commencement point and termination point of a Trip or multiple Trips having a stopping pattern along those streets and roads (or rights of way), as detailed in the route maps and route descriptions under the relevant Contract.
Service	means any timetabled Trip or combination of timetabled Trips to which the relevant Contract relates as identified in the Service Specification and subsequent variation (if any).
Service livery	means the distinctive colour scheme and branding used to identify vehicles operating under Contract to the Council.
Service provider	means a person who, or organisation which, holds a passenger services licence and contracted by the Council to operate services on behalf of the Council under a Contract, and where the context requires, employees of the Service Provider.
Service specification	means the specification describing the level of service required by the Council for the relevant Unit and detailed in the relevant Contract.
Supplier selection method	means the process by which Tenders from Service Provider(s) are evaluated and a preferred Service Provider selected.
The Plan	means the <i>Regional Public Transport Plan for Taranaki 2014-2024</i> (the Plan) and subsequent amendments.
Tender	means all the documents submitted by a Service Provider in response to the Request for Tender, including those which record the Contract Price, other relevant material in respect of the Request for Tender and all changes to the Tender agreed by the parties.
Term	means the period of time in which a Contract is in force including the initial term, a renewal of term and a transition term.
The region	means the Taranaki region.
Transport Agency	means the New Zealand Transport Agency.
Trip	means each timetabled trip included in each Route as set out in a Unit of the Contract.
Unit	means at a minimum, all services on a route for the full timetable, but can include more than one route where a group of routes forms a marketable whole as set out in the <i>Regional Public Transport Plan</i> .
Vehicle	means a vehicle currently being used or intended to be used by the Service Provider in the performance of the Contract.
Working day	means the period from 9.00am to 5.00pm between Monday and Friday

(inclusive), excluding Saturday, Sunday and all public holidays.

# Introduction

## 1. Introduction

### 1.1 This manual

When tendering public transport service Units the Taranaki Regional Council (the Council) is required to follow the Council's *Transport Activity Procurement Strategy for the Taranaki Region* and the New Zealand Transport Agency's (the Transport Agency) *Procurement Manual* for activities funded through the National Land Transport Programme. This Manual contains the standard terms and conditions for tendering and contracting a public transport service Unit, excluding Total Mobility services.

This Manual should be read by any Service Provider intending to submit a Tender for a public transport service Unit in Taranaki. If a Tender is accepted in accordance with this Manual, then this Manual together with the Tender documents, will form part of the Contract between the Council and the successful Service Provider.

### 1.2 Amendments to the manual and correction of records

In the event that any amendment or correction to the Manual is required, this will be in writing and circulated to all persons or organisations who obtained a copy of the Manual.

### 1.3 Other relevant documents

This *Public Transport Service Tendering and Contracting Manual* should also be read in conjunction with the following documents:

- a. The Council's *Regional Public Transport Plan (RPTP)* and any amendments which describe the Council's public transport vision, goals and policies.
- b. The Council's *Transport Activity Procurement Strategy for the Taranaki Region*.
- c. The Transport Agency's *Procurement Manual for activities funded through the National Land Transport Programme* and any subsequent amendments which sets the general tendering and contracting procedures within which the Council must operate.
- d. The Transport Agency's *Requirements for urban buses in New Zealand: New Zealand's common standard for urban bus quality (2011)*.
- e. Any *Request for Tender (RFT)* documents published by the Council from time to time and which describe the services being tendered and any special conditions pertaining to any or all contracts for those services.
- f. The Council's written answers to any questions relating to any RFT.
- g. The *Land Transport Management Act 2003*, *Land Transport Act 1998* and any other acts, regulations and ordinances together with amendments that apply to the supply and operation of public transport services.

All Service Providers should be aware of the requirements of the RFT documents and must be able to comply with the documents and all relevant government and local authority statutes, regulations, bylaws and approved codes of practice. The Contract Price should allow for the Service Provider to meet these obligations.

### 1.4 Investment funding

Any Contract awarded to a Service Provider is dependent upon the Council continuing to receive sufficient investment funding from the Transport Agency. Should the level of investment funding from the

## **Part 1: Introduction**

Transport Agency be reduced or withdrawn, then the Council may choose to exercise its right under clause 18.2.2 (Termination by the Council) to terminate or vary the Contract.

### **1.5 Assistance**

Additional information and assistance in completing the RFT forms in accordance with the requirements may be obtained by contacting the Taranaki Regional Council on (06) 765 7127 and speaking to the Transport Services Manager.

On no account will Council officers be prepared to discuss financial aspects of Tenders or provide information with respect to any other Service Providers, and they should not be asked to do so.

# Conditions of Contract

## 2. General Conditions of Contract

### 2.1 Interpretation

- a. Where the context requires, words importing the singular shall include the plural and vice versa, and words importing the masculine shall include the feminine and vice versa.
- b. The headings to clauses are for convenience only and shall not affect their interpretation.
- c. The Contract shall be governed by and construed with reference to the law for the time being in force in New Zealand.
- d. All prices and payments made under the Contract shall be in New Zealand currency and payable in New Zealand dollars.
- e. All communications between the Council and the Service Provider shall be in the English language.
- f. Where any period of time from a given day, act or event is prescribed or allowed for any purpose, the time shall, unless a contrary intention appears, be reckoned as exclusive of that day or the day of that act or event.
- g. The Service Provider and the Council hereby acknowledge that the Service Provider is an independent party in all respects and shall in no circumstances by virtue of the Contract or otherwise be deemed to be the employee, servant or agent of the Council.
- h. References to parties shall extend to their executors and administrators, or successors as the case may be.
- i. A reference to a statute or statutory provision includes:
  - A statutory provision which supplements, amends, extends, consolidates or replaces it.
  - Any applicable orders, regulations, instruments or other delegated legislation.

### 2.2 The Contract

This Manual, formalising the terms of Contract between the Council and the Service Provider, incorporates by reference the following papers:

- a. the RFT;
- b. the Tender submission;
- c. the Taranaki Regional Council's letter of offer;
- d. the Service Provider's letter of acceptance;
- e. any questions and answers from the pre-tender meeting;
- f. correspondence between the Council and the Service Provider relating to the contract; and
- g. minutes of meetings between the Council and the Service Provider.

### 2.3 The Contract term

The term of the Contract shall be as set out in the RFT unless otherwise determined in accordance with the provisions of this Manual.

### 2.4 Licensing

#### 2.4.1 Licensing

The Service Provider shall comply with all transport service licensing requirements as set by the *Land Transport Act 1998* and all other statutes, bylaws, regulations and codes of practice for the time being in force directly or indirectly concerning or affecting the Vehicles and drivers thereof.

The Service Provider will immediately give written notice to the Council of any action being taken which could result in the cancellation or suspension of any licence and which could place the operation of the Unit in jeopardy.

## **2.5 Subcontracting**

The Service Provider shall not subcontract or assign the Unit or part of the Unit to any other person without first obtaining the written consent of the Council, but shall be permitted to arrange cover by another person in circumstances which are outside the Service Provider's direct control. The period during which this may occur without the express permission of the Council shall not exceed five (5) consecutive operating days.

It shall be the responsibility of the Service Provider in these circumstances, to ensure that the Unit is operated to the extent reasonably possible in accordance with the RFT, and that the Conditions of Contract are observed and complied with in every aspect, including in relation to health and safety.

If the Council gives its express written permission for the Service Provider to subcontract or assign any Unit in accordance with this clause, then before any of the Services are performed under such a subcontract or assignment:

- the Service Provider shall ensure that any subcontractor it engages to perform any of the Services on its behalf is reputable, reliable and suitable to perform the relevant Services in accordance with the Contract. In particular, the Service Provider will ensure that any subcontractor and all additional Personnel are fully licensed, inducted, trained, experienced and equipped to perform the Services safely, to the standards required by the Contract, and in compliance with the Service Provider's obligations to comply with health and safety as outlined in this Contract.
- the Service Provider shall consult, cooperate with and coordinate its activities with any subcontractor to ensure that all applicable health and safety duties have been fully complied with.

The subcontracting of the Contract shall not relieve the Service Provider from any liability thereunder.

## **2.6 Assignment**

The Service Provider shall not transfer, assign or novate all or any of its rights or obligations under the Contract or any part of it without prior written consent from the Council. In giving such consent, the Council shall have a sole and unfettered discretion.

The Service Provider shall inform any potential assignee of the Service Provider's business of the obligation to perform in accordance with the Contract, and shall be responsible for ensuring that the Service continues to operate fully in accordance with the Contract.

The assignment or transfer of shares in or the restructuring of the Service Provider so that effective control of the Service Provider passes to persons other than those holding it at the date of the Contract shall be an assignment of the Contract for the purpose of this clause.

The Council may assign its rights and transfer its obligations under the Contract to its successors in title or to any body incorporated by statute to own the assets or provide the Services, without any prior notice to or consent from the Service Provider.

## **2.7 Taranaki Regional Council to be held harmless**

The Service Provider must keep the Council harmless and indemnifies the Taranaki Regional Council to the maximum extent permitted by law from all damages, expenses or costs whatsoever connected with its failure to perform the contract.

## **2.8 Force majeure**

If either the Council or the Service Provider is unable to carry out its obligations under the Contract due to a cause beyond that party's control (a 'Force Majeure event'), the party who cannot carry out its obligations under the Contract must give the other party to the Contract notice as soon as practicable of the cause, and insofar as it is known, the probable extent to which the party giving the notice will be unable to perform, or will be delayed in performing its obligations under the Contract. On the issue of notice of a Force Majeure event the obligations of the party giving the notice shall be suspended insofar as that party is prevented during the continuation or intervention of such cause to carry out its obligations under the Contract.

The party giving notice which is affected by the Force Majeure event must take all reasonable steps to reduce the effects of and eliminate the intervening event and must resume performance as promptly as is practicable.

A Force Majeure event does not include industrial action on the part of the Service Provider or the Service Provider's employees or agents, or inability on the part of the Service Provider to provide, obtain supplies or materials due to disputes with its third party suppliers or the consultant or its suppliers (where the Service Provider has not taken reasonable steps to ensure continuity of supply).

In the event that a Service Provider cannot perform its duties and obligations under the Contract for reasons of strike, lock out, work stoppage, or other labour hindrance or industrial action the full payment for any period may be reduced by the Council on a proportional basis which takes account of the actual services supplied compared to the agreed services under the Contract.

In the event that a Service Provider cannot perform its duties and obligations under the Contract for reasons of Act of God, earthquake, storm, flood, or landslide the payment for operational cost (excluding capital and overhead) for any period may be reduced by the Council on a proportional basis which takes account of the actual services supplied compared to the agreed services under the Contract.

## **2.9 Failure to operate**

If the Service Provider is unable to maintain the Service due to a Force Majeure event as provided for in Clause 2.8, the Service Provider shall:

- Ensure that alternative arrangements are made as soon as possible for Passengers,
- Advise the Council of the circumstances (including when the Service is likely to resume either in full or in part) immediately, and
- Within five (5) working days provide the Council with a full report with respect to the incident.

If the Service Provider is unable to maintain the Service due to a Force Majeure event as provided for in Clause 2.9 the Council may reduce the payment for any period on a proportional basis which takes account of the actual services supplied compared to the agreed services under this Contract

## **2.10 Amendment**

The Contract cannot be amended, modified, varied or supplemented except in writing signed by the duly authorised representatives of the parties.

The Council reserves the right to vary the terms of the Contract in order to comply with the Transport Agency's procurement guidelines, or any other applicable regulation or law.

## **2.11 Severance**

The illegality, invalidity or unenforceability of any provision in the Contract will not affect the legality, validity or enforceability of any other provisions.



## **2.12 Waiver**

No right under the Contract shall be deemed to be waived except by notice in writing signed by each party.

A waiver for either party will not prejudice its rights in respect of any subsequent breach of the Contract by the other party.

Any failure by either party to enforce any clause of the Contract, or any forbearance, delay or indulgence granted by the other party will not be construed as a waiver of either party's rights under the Contract.

## **2.13 Governing law**

The law applicable to the Contract and any matters arising out of it shall be the law of New Zealand. In executing the Contract the parties submit to the jurisdiction of the courts of New Zealand.

### **3. Health and safety**

#### **3.1 General Information**

The Service Provider acknowledges that the Council has appointed it as an expert contractor to provide specialist services in areas (namely the Services) in which the Council does not have internal expertise. The Service Provider therefore acknowledges and accepts that it shall have primary responsibility for ensuring that the Services are provided in a safe and lawful manner.

#### **3.2 Service Provider's compliance with health and safety**

The Service Provider shall comply with all applicable health and safety obligations under the HSW Act and all applicable regulations and approved codes of practice made under the HSW Act or otherwise relating to the health, safety and welfare of everyone concerned with the Contract including any occupants on the site, members of the public, as determined by local authorities, the Council's health and safety policy and/or any other legislation applicable to the Service.

#### **3.3 Service Provider's responsibility to others**

Without limiting its other obligations under this Contract, the Service Provider shall:

- a. ensure, so far as is reasonably practicable:
  - i. the health and safety of all Personnel, and that the health and safety of other persons is not put at risk from work carried out by or on behalf of the Service Provider under this Contract or from any other act or omissions by the Service Provider or the Personnel in performing the Services; and
  - ii. that any workplaces which the Service Provider manages or controls, the means of entering and exiting the workplaces, and anything arising from the workplaces are without risk to the safety of any person;
- b. ensure that, before commencing any work in connection with the Service, all Personnel who are to perform the Service are fully inducted and trained in connection with all health and safety matters relating to the Service, that they are informed about and comply with their own health and safety obligations, the Council's and Service Provider's health and safety management plans and any additional health and safety instructions, policies or procedures notified to the Service Provider by the Council or by any authorised regulatory authority from time to time;
- c. adequately supervise all Personnel involved in performing the Service, taking into account the nature of the work to be carried out by the Personnel, the risks associated with the work and the control measures the Service Provider has implemented to deal with these risks; and
- d. regularly assess health and safety risks arising from, or in connection with, the Service, and take all reasonably practicable steps to eliminate those risks, or to the extent that elimination is not reasonably practicable, to minimise them.

A 'workplace' includes any Vehicles used in the provision of the Service under the Contract.

#### **3.4 Health and Safety plan**

The Service Provider shall prepare a written health and safety management plan for the Contract (the 'Health and Safety plan'). The Health and Safety plan shall address how the Service Provider shall comply with the HSE Act and its health and safety obligations under the Contract and shall include the matters described below.

## Part 2: Conditions of Contract

The Service Provider shall maintain the Health and Safety plan and ensure that it is comprehensive and takes into account any requirements in the HSW Act, and any applicable regulations and approved codes of practice relating to health and safety.

The Service Provider will respond promptly to any questions that the Council has in relation to the Health and Safety plan. In the event that the Council has any concerns with the Health and Safety Plan, the Service Provider will take reasonable steps to amend the Health and Safety plan to address any such concerns to the Council's satisfaction.

The Service Provider shall notify the Council of any updates or revisions to the Health and Safety plan within thirty (30) working days of making any such changes and make the revised plan available for inspection by the Council when requested.

The Service Provider's Health and Safety plan shall incorporate the following together with all other matters that are required to be covered in the plan in order to comply with the Service Provider's obligations under the Contract:

- a. The prior identification and assessment of hazards arising in connection with the Service and the control measures to be taken to eliminate, isolate or minimise and monitor those hazards.
- b. Procedures for the systematic identification, assessment, recording and management of new hazards arising during the carrying out of the Service.
- c. Procedures for the recording and management of safety in relation to the Service and the Contract generally, including the allocation of responsibilities within the Service Provider's Personnel.
- d. The need for and provision of correct protective equipment and training in the safe use of protective equipment.
- e. Standard work procedure methodologies to minimise hazards.
- f. Procedures for the systematic identification, assessment, recording and management of emergency plans.
- g. The methods of training and supervision of the Service Provider's Personnel and other Personnel engaged in carrying out the Service and the lines of accountability and responsibility for such training and supervision.
- h. The methods of training and supervision of the Service Provider's subcontractors and the lines of accountability and responsibility for such training and supervision.
- i. The audit and inspection of the Service Provider's Health and Safety plan and health and safety system to ensure compliance with the safety requirements in the Contract.
- j. The promotion of Health and Safety principles and encouraging of a commitment to Health and Safety by the Service Provider's Personnel.

### 3.5 Auditing compliance with the Health and Safety plan

The Service Provider shall (at its cost) implement and carry out an audit and inspection regime annually or with such other frequency as the Council may reasonably require to ensure compliance by the Service Provider and all its Personnel with the Service Provider's Health and Safety plan and with the Service Provider's obligations under the Contract.

The Service Provider will promptly and comprehensively report the findings of any such audit and inspection in writing to the Council.

In addition, the Council may, at any time, require the Service Provider to submit to an audit and inspection of its health and safety records, practices, Health and Safety plan and health and safety system to be conducted by the Council and/or any third party appointed by the Council for that purpose. The Service Provider shall cooperate fully, and shall ensure that all Personnel cooperate fully with the Council and/or its nominated representative, including providing such information and statements to the Council and/or its nominated representative as either may require for the purposes of such audit or inspection.

### **3.5.1 Accident and incident investigation and reporting**

The Service Provider shall:

- a. maintain a register of notifiable events;
- b. proactively investigate notifiable events, identify their cause and implement (or ensure the implementation of), so far as is reasonably practicable, any corrective actions identified as a result of that investigation;
- c. ensure that all Personnel and any other persons under the Service Provider's control are appropriately supervised following a notifiable event;
- d. promptly report all notifiable events occurring in relation to the Service to any public authority as is required by law and/or regulations and provide a copy of the report to Council; and
- e. promptly notify the Council of any notifiable event which arises in consequence of the operation of the Contract. Such notification shall be given no later than the next working day, and in the event of a death or notifiable injury or illness, or otherwise at the request of the Council, shall be followed within seven (7) working days by a full written report outlining the circumstances.

This is in addition to any responsibility to notify any authorised regulatory authority of any such event.

### **3.6 Training**

The Service Provider must ensure that all Personnel are competent in the work being undertaken and in appropriate safety procedures. The Service Provider shall provide its Personnel and subcontractors with information about processes/materials which are hazardous. In addition the Service Provider must carry out workplace safety instructions and provide Personal Protective Equipment (PPE) and first aid kits wherever applicable.

The Council requires the Service Provider and any Personnel who are performing driving duties as part of the Service to have current first aid training.

### **3.7 Taranaki Regional Council health and safety requirements**

The Service Provider and its Personnel are required to comply with any additional health and safety requirements reasonably stipulated by the Council from time to time.

### **3.8 Service Provider's indemnity**

The Service Provider shall indemnify and shall keep indemnified the Council against all costs, damages, fines, penalties, loss and expense incurred or suffered by the Council for any breach by the Service Provider of the Health and Safety requirements of this Contract or the HSE Act, or any conviction or proceedings instigated against the Council arising from or incidental to such breach.

### **3.9 Costs**

The Service Provider confirms that it has taken account of its health and safety obligations under the Contract and at law in agreeing to perform the Service for the Contract Price.

The additional costs to the Council or of other attendances arising out of a breach by the Service Provider of its obligations relating to health and safety shall be payable by the Service Provider to the extent permitted by law.

## 4. Insurance

### 4.1.1 Public liability

The Service Provider shall at all times during the Term maintain in effect with an insurance company domiciled in New Zealand an insurance policy of the type known as "Public Risk" to the value of **six million dollars** in respect of each and every event. This policy will be constructed so as to indemnify the Service Provider and the Council, both separately and jointly, from any "Public Risk" liability, which may occur to them as a consequence of the undertaking of the Contract.

The Service Provider shall insure all Vehicles utilised in the provision of the service. The amount of cover shall be at least the current market value.

### 4.1.2 Evidence of Insurance

The Service Provider shall provide evidence (confirming details of insurance cover) to the Council either as part of the Tender submission or no less than thirty (30) working days prior to the commencement of the Service or by a date to be specified by the Council.

The Council shall thereafter require the Service Provider to produce within a reasonable time after issue or payment:

- A copy of the policy or policies; and/or
- Either the receipts for payment of the current premiums or certificates of currency.

### 4.1.3 Failure to insure

If the Service Provider fails to arrange or keep in force any insurance that it is required to arrange under the Contract, the Council may, after giving notification in writing, arrange or keep in force that insurance. The Council may pay the premium or premiums and may recover this amount, plus any Council Personnel times incurred, from the Service Provider or deduct the amount from any money due to the Service Provider.

## 5. Ethics

Throughout the duration of the Contract the Service Provider shall not engage in any practices that give one party an improper advantage over another, and/or engage in any unfair and unethical practices, in particular any collusion, gratuities, conflicts of interest, or secret commissions or such other improper practices.

The Service Provider shall immediately notify the Council of any potential conflict of interest that may develop during the duration of the Contract, including concerning the involvement or association of any the Council employee or Councillor, with the Service Provider (whether through a company, or other entity or as an individual) but excluding any professional relationship which would reasonably be expected to be known to the Council.

## 6. Change of trading name

The Service Provider shall give the Council thirty (30) working days written notice of any proposed change in the trading name of the Service Provider under which the service shall be operated.

## 7. Relationship management

The Council seeks to work with all Service Providers using the partnering philosophy. This will deliver the best results for all the stakeholders involved in the Council's public transport services. The elements of successful partnering include high levels of collaboration, integration of shared business processes, mutual transparency and trust.

The Council has adopted partnering principles including:

- Devising strategies that will grow and expand the public transport network as a whole
- Collectively market the network
- Plan for the initiation of new, improved or expanded services
- Define service standards and innovations to benefit passengers
- Identify the need for desirable business processes, infrastructure and supporting requirements for the network, such as passenger terminals, bus exchanges, ticketing systems and the like
- Share information that will benefit the network as a whole
- Identify and implement incentives for commercial behaviour that will attract and grow patronage.

Guiding principles of partnering are as follows:

- A one team approach
- Focus on total benefit for all partners
- Commitment of people and organisations to agreed outcomes and decisions
- Open, honest, transparent and non-adversarial communication
- Keep each other informed – “no surprises”
- Respect confidentiality
- Reduce duplication and waste
- Seek early corporate alignment with agreed partnership directions to eliminate sign-off blockage
- Timely action upon request

## 8. Business development plan

The Service Provider and the Council will form a business team for the purposes of jointly developing a business development plan for the Unit (the Business Development Plan). The Business Development Plan process is viewed as a way for the parties to work collaboratively in a structured and systematic manner to improve the service and grow patronage and in managing the contract obligations.

The Business Development Plan will set out activities, in the form of resourced project plans (action plans), to be carried out during the ensuing 12-month period:

## Part 2: Conditions of Contract

Refer to the Council's *Transport Activity Procurement Strategy* section 9 for additional information.

When accepted by the parties, the Business Development Plan will form part of the Contract for the relevant Unit and the parties will be bound by its terms.

The performance of the Service Provider and the Council against the Business Development Plan and action milestones specified in the Business Development Plan will be reviewed quarterly or upon such other dates as the parties agree to from time to time.

Refer Appendix I for an example of a Business Development Plan form.

## 9. Financial provisions

### 9.1 Security and performance bond

Bonds for service provision may be required for any Contract as specified by the Council in the RFT. However, generally no bond will normally be required from the Service Provider for Contracts where the Contract Price is less than \$1,000,000 (GST exclusive).

In the case of services provided with no bond, in the event of termination of the Contract due to the failure of the Service Provider to properly perform the Service Provider's duties under the Contract, or should the Service Provider withdraw from the Contract other than in accordance with the conditions set out for the orderly termination of the Contract, then any monies due to the Service Provider may be withheld to defray costs incurred by the Council associated with the re-tendering and re-letting of the Contract.

For a Contract whose total annual value is more than \$1,000,000 (GST exclusive), the Council will require a Performance Bond to the value of 5% of the first year Contract price.

The Performance Bond will be used by the Council to recover any cost, expense, loss or liability suffered or incurred by the Council as a result of the Service Provider not complying with its obligations under this contract. The Council will provide notice to the Service Provider of any such claim under the Performance Bond.

In the event of termination of the Contract due to failure of the Service Provider to comply with any of the requirements of the Contract, or should the Service Provider withdraw from the Contract otherwise than in accordance with the conditions set out in clause 19, the Council may use the bond to offset the costs arising from the Council's re-tendering or any other costs, expenses or damages incurred.

Following the Contract end date, the Performance Bond will be returned to the Service Provider by the Council upon receipt of a letter on the Service Provider's letterhead requesting return of the Performance Bond. Any such application to return the Performance Bond may not be made any earlier than the next working day following the Contract End Date. The amount returned will be in accordance with the Council's rights to make recovery against the Performance Bond under this clause.

#### 9.1.1 Bank account details

The Service Provider shall provide details to the Council of the Service Provider's bank account for the purpose of payment of amounts payable under the Contract.

#### 9.1.2 Services taxes

The Council shall not be liable for any corporate, personal or withholding taxes or other taxes and levies in respect of the Service Provider or its employees. The Service Provider warrants that no such taxes or withholdings are applicable in relation to the Services. The Service Provider shall fully indemnify the Council for any claim upon it by the Inland Revenue Department for any such corporate, personal or withholding taxes or other taxes or levies which should have been paid in respect of the Service Provider or its employees.

### 9.2 Revenue control system

The Service Provider shall implement, operate and maintain a revenue control system which will enable the revenue collected from the contracted Service to be accurately segregated from other commercial activities. The Service Provider will reconcile the total revenue collected in respect of the Contract, on a minimum monthly basis, and provide a record of the reconciliation to the Council as part of the reporting requirements.



## Part 2: Conditions of Contract

The Service Provider will provide documentation to the Council no less than thirty (30) working days prior to the commencement of the Service of the revenue control process to be used for the Contract.

### 9.3 Invoicing

Each invoice submitted to the Council under a Contract, will:

- be in the form of a valid tax invoice for GST purposes;
- describe in adequate detail the Services that are the subject of the invoice and the timing of the provision of such Services.

#### 9.3.1 Invoice information

All payments made under a Contract are subject to the Service Provider providing all information as required in the reports as detailed in a Contract and such other information requested by the Council by the due date and as and when the Council requests, relating to any amount invoiced or proposed to be invoiced by the Service Provider under a Contract.

All information shall be provided within six (6) working days of the month following the month to which such information relates. Invoices and the reports may be audited by the Council or the Transport Agency.

#### 9.3.2 Payments

The Contract Price is to be calculated by the Council as 12 equal payments. Payments shall be made in arrears not later than the 20th day of the month following the completion of each month of the Contract, adjusted for any deductions for non-compliance. Payment claims must be submitted to the Council within six (6) working days of each month. Payments may be withheld or delayed if any information required is outstanding at the time the payment is due or if insufficient information is supplied to enable a claim to be verified. No interest will be paid on withheld payments.

All sums due to either party under the Contract are exclusive of GST and all other applicable duties and taxes. Any applicable GST will be charged in accordance with the relevant law and regulations in force at the time of making the taxable supply and will be payable by the paying party on receipt of a valid GST invoice.

### 9.4 Contract price adjustments

The Contract Price may be adjusted in accordance with the following provisions:

#### 9.4.1 Service level variations

The Service Provider will provide the level of service proposed in the Contract/ Tender submission and accepted by Council, unless agreed in writing as a Contract variation, in which case the variations shall become part of the Contract.

- Variations to the levels of service to the Contract are to be agreed collaboratively between the Council and the Service Provider as calculated from the variation rates stipulated in the relevant Contract, after allowing for the effects of any inflation indexation. The Council has final discretion with regard to any variations.
- Where the Service Provider considers that it is unable to perform those variations then the Service Provider may give ninety (90) days notice of termination of the Contract.
- The Service Provider shall not vary the level of service required under the Contract without the prior written agreement of the Council. The Council can withhold its consent to any requested variation.
- Variations for all Contracts are not restricted in size.

#### **9.4.2 Fare level variations**

The Council, as it deems necessary, may make adjustments to the maximum fare schedule. Consultation will be undertaken with the Service Provider regarding any fare changes.

#### **9.4.3 Indexation**

Contracts will be cost indexed to compensate for input price fluctuation (inflation and deflation) using the appropriate index provided by the Transport Agency. The most recent version of the indices will always apply, including any changes to the composition or weighting of index components.

Adjustments will be paid on a quarterly basis, from the commencement of the Service operation. Price adjustments will reflect movements in the index from the quarter in which Tenders closed (July-September 2014).

The Service Provider shall not invoice the Council for indexation adjustments until the Council has first advised the Service Provider of the indexation adjustment payable. Accordingly, no interest is payable in respect of the adjustment made in accordance with this clause from the period commencing on the date on which the adjustment takes effect to the last day of the month following the month on which a valid tax invoice is received by the Council in accordance with the Contract.

#### **9.4.4 Deductions for non-compliance of performance standards**

Any Trip, which does not meet the performance standards imposed by the Contract, may lead to a request to the Service Provider for a suitable explanation of the non-compliance. A reply shall be received from the Service Provider to the Council within five (5) working days from the date of the request.

If no such reply is received, or if the Council is not satisfied with the reply and the reason for the non-compliance, the Council may impose a deduction from any payment due to the Service Provider. Payment deductions will be made by the Council one (1) month in arrears of payment due under this Contract to the Service Provider in accordance with Schedule C1: Performance Measures and Deductions.

The parties acknowledge that the deductions reflect compensation to the Council for the Service Provider's failure and the diminished value of the Service provided to both the Council and the public.

The Council's right to adjust the Contract Price under this clause does not limit the Council's rights and remedies under the remaining parts of the Contract or at law.

Any deductions for non-compliance will be taken into consideration when assessing future Tenders from the Service Provider.

#### **9.5 Financial incentive mechanism**

The Council will adopt a Financial Incentive Mechanism (FIM) for partnering Contracts. The RFT will include the methodology on the calculation of the FIM.

The FIM will share the financial results of the Unit's performance between the parties, on the following basis:

- Fare revenue (excl GST): sharing the upside fare revenue growth on a proportional basis – Council 60%, Service Provider 40%
- The FIM will not be capped
- The fare revenue benchmark will be set in the first year of the Contract i.e. no FIM will be payable in year one.

### 9.5.1 Rationale

The Council views that fare revenue is an objective measure in that the upside fare revenue growth is easily compared from one year to the next.

The FIM will not be capped to incentivise the Service Provider to seek continual improvement in the performance of the Unit. The greater the upside in fare revenue growth the more financial reward the Service Provider is able to receive.

The level of FIM has been set at 40% for the following reasons:

- To recognise the Service Provider's areas of expertise and input into the overall success of the Unit.
- To recognise other external factors impact on patronage revenue and not all of these are controllable by the Service Provider.
- To recognise the Council as the contracting partner carries the greater level of exposure to the risk and reward factors.
- The Council has in its *Regional Public Transport Plan* set targets to increase its Fare Box Recovery ratio, reducing the overall level of public subsidy required, so increases in fare revenue is a key input to achieving the targets. This will ensure that the efficiency and effectiveness of the Unit improves and the Unit continues to receive funding.

### 9.5.2 Areas of influence for the Service Provider

Historically, the Service Provider's ability to influence fares, service routes and frequency of routes is limited as these are controlled by the contracting party, which is the Council. However, in the spirit of a partnering contract the Service Provider will be expected to offer their expertise and professional advice on all aspects of the Service both on a day-to-day basis and as part of the annual business development planning process. The Council will consider all information and advice in good faith and carry out open and frank discussion with the Service Provider on ways to enhance the service to ensure a win/win for both parties. However, the Council will retain the right to make any final decisions.

### 9.5.3 Assessment period

The assessment period that will be used to set each year's revenue benchmark throughout the term of a contract will be yearly, on the anniversary of the Contract start date. The final year of the Contract will also be eligible for a financial incentive payment.

### 9.5.4 Fare changes

The Council is required to carry out an annual fare review. Where incremental fare changes are identified and planned for, no reassessment of the fare revenue benchmark will be carried out.

Where changes to the fare structure (the Council is required to review fare structures every six years) are identified, for example, changing to a fare structure based solely on zones and the change in fare structure is likely to materially increase the upside fare revenue change, then a reassessment of the proportional share would be reasonable.

### 9.5.5 Sources of revenue

The following sources of information will be used to calculate the level of fare revenue. All fare revenue will be included in determining the total annual fare revenue. This includes revenue from:

- stored value top-ups on electronic smart card media,
- third party agreements between the Council and commercial organisations as part of the Let's Go travel planning scheme,
- Council's agreement with any tertiary institutes, for example the Western Institute of Technology at Taranaki (WITT), and
- SuperGold Card Scheme.

**9.5.6 Sources of information**

The following table outlines the sources of information to be used in compiling the annual total fare revenue.

<b>Criteria</b>	<b>Source</b>
Accumulated annual patronage revenue	Reconciled monthly revenue (from sales and electronic ticketing system). Third party revenue including fare revenue from travel plans, WITT and SuperGold Card.

Excluded from this is any revenue generated from third party advertising, sale of Smart Cards or sale of miscellaneous promotional products.

**9.6 SuperGold Card Scheme**

The SuperGold Card (SGC) Scheme is a Crown funding initiative to provide free public transport to holders of SuperGold cards during off-peak hours. Off-peak hours mean:

- a. 9am to 3pm on working days
- b. 6.30pm to the end of scheduled services (which can be up to 5.30am the next day) on Working Days
- c. Saturdays, Sundays and public holidays.

The Service Provider will participate in and comply with any terms and obligations required under the SGC Scheme for the Units which are deemed eligible by the Transport Agency.

## 10. The Service

### 10.1 Service Provider to provide the service

The Service Provider shall provide the Service along the routes and in accordance with the timetables as agreed by the Council, and otherwise in accordance with the provisions of this Contract, the RFT and the Service Provider's Tender.

### 10.2 Duty to carry passengers

The Service Provider will use its best endeavours to carry all passengers who wish to use the Services within the legal loading limits of the relevant Vehicle. However, any authorised person of the Service Provider may refuse to carry any passenger, or require any passenger to disembark from the vehicle, if the authorised person considers, on reasonable grounds that:

- a. The safety of the authorised person or passengers would be threatened, or
- b. The person appears to be in a filthy condition, is consuming food or drink, is smoking, is under the influence of alcohol or drugs, or
- c. The person is noisy or violent or is disturbing the public peace, or
- d. The person has previously vandalised any Vehicle operated by the Service Provider, or
- e. The person has attempted to defraud the Service Provider, or
- f. The person is accompanied by an animal (unless it is a guide dog), or
- g. The person is unable or unwilling to pay the legally demanded fare for the journey, or has travelled beyond the point to which he or she has paid to travel and is unable or unwilling to pay the additional fare due previously, or
- h. The passenger is in possession of a dangerous item or equipment or containers containing hazardous material, e.g. fuel canister, etc.

## 11. Vehicles

### 11.1 Operator rating system

The Council intends to monitor the Service Provider's Operator Rating System score throughout the term of the Contract. Service Providers will be requested to provide evidence of their rating as part of any RFT submission.

### 11.2 Vehicle standards

Unless otherwise stated in the RFT this section provides reference to the minimum Vehicle quality standards for passenger service vehicles that are to be provided throughout the duration of the Contract.

The Council has adopted the *Requirements for urban buses in New Zealand: New Zealand's common standard for urban bus quality (2011)* (RUB), as amended from time to time, as its minimum vehicle quality standards for its urban Unit.

For vehicle(s) new to a Unit the vehicle(s) will comply with Sections 2 to 7 of the RUB, unless an exemption has been granted by the Transport Agency to the Council. For existing vehicle(s), the Vehicle(s) will comply with Section 8 of the RUB, unless an exemption has been granted by the Transport Agency to the Council.

The RUB document is available from the Council or the Transport Agency's website.

### 11.3 Fleet utilisation

The Service Provider shall provide sufficient vehicle(s) to fully meet the requirements of the Unit. This includes any variances for service demand, vehicle breakdowns and the Service Provider's own vehicle maintenance programme.

The Council may instruct the Service Provider to remove from the Unit any vehicle which does not comply with the vehicle standards and service conditions (Clause 11.3) until such time as the features in question are provided or the condition of the vehicle is brought up to standard. The Service Provider shall provide a complying replacement vehicle at no extra cost to the Council.

No vehicle is to be used in such a way as to impede the lawful use of any bus stop or bus stops by another vehicle operator.

Under the Contract the diversion of any vehicle in the fleet tendered and the substituting of a lesser quality vehicle to enable the Service Provider to use the higher quality vehicle for purposes outside the Contract (e.g. for short term charter) is not permitted.

The Council requires that the Service Provider use the fleet's highest quality vehicle(s) to the maximum extent in the provision of the service.

The Service Provider shall provide to the Council and maintain a fleet list for the contract. The fleet list will identify for each Vehicle:

- Make and model,
- Fuel type,
- Engine technology classification (e.g. Euro 4),
- Date of registration,
- Seating and standing capacity,
- Fuel consumption, and
- Tare weight.

The Service Provider shall immediately give written notification to the Council of vehicle(s) withdrawn from or added to the fleet list.

### 11.4 Vehicle service condition

Vehicles shall always be presented for service in a condition that is clean and tidy and safe for use by the public. It will be the responsibility of the Service Provider to ensure that they are cleaned daily as a minimum and more frequently if required. Efforts must be made to ensure that damaged upholstery, flooring, bodywork and paintwork are repaired promptly. Graffiti must be removed as necessary on a regular basis.

The Service Provider shall be responsible for the safety and roadworthiness of all vehicles used on the Unit. All vehicles shall be in a safe and roadworthy condition, registered and have a current 'Certificate of Fitness' and shall in every respect comply with all legal requirements.

The Council reserves the right to inspect any vehicle, including back-up vehicles, operating under the Contract, including their maintenance records, to ensure conformity with standards and to declare as unfit for service any vehicle which does not comply.

Where the Council considers a Service Provider's vehicle(s) may be unsafe or unroadworthy it may require the Service Provider to have an appropriate vehicle(s) testing agency carry out a check of the vehicles and shall provide a copy of that agency's report to the Council. The Service Provider shall be responsible for any costs involved.

Failure to comply with these requirements shall result in the Service Provider being directed to remove the Vehicle from service until such time as the requirements are fulfilled.

Should any vehicle be removed from service, the Service Provider will promptly provide a replacement Vehicle and show it to the Council for its inspection and approval.

### 11.5 Vehicle livery and branding

The Council may require that any or all vehicles operating under the Contract will be painted in a common livery. If so, this will be specified in the RFT.

Vehicle(s) must display the Council logo and Unit brand in the size and placement required by the Council. Any costs associated for the production and installation of the Council's branding as part of the commencement of the Contract will be met by the Council.

The Council's name and logo (currently Taranaki Regional Council) will take precedence over the Service Provider's logo and name.

The Service Provider shall make the vehicles available to apply relevant logos and brands, at a time and location to be agreed, at no cost to the Council.

The Service Provider shall not change or vary the external livery of vehicles used on the Service without the Council's prior written consent.

As the Service Provider introduces new vehicle(s) in to the fleet, the Service Provider shall be responsible for and meet the cost of applying the relevant livery and branding.

As the Service Provider removes vehicles from the fleet, the Service Provider shall be responsible for and meet the cost of, removing the livery and branding. The Service Provider will also be responsible for, and meet the cost of, removing the livery and branding from the vehicles in the event that they either choose not to contest the next tendering round or are unsuccessful in that tendering round.

## **11.6 Destination signs**

The Service Provider shall ensure that at all times the vehicle(s) clearly display the agreed Trip destination and route number (if applicable). All displays must be clearly legible from the outside of the vehicle and appropriately lit during hours of darkness. Additional signage requirements may be specified in the RFT.

When a vehicle is not in-service which includes positioning trips it shall display the words “Not in service”.

## **11.7 Back-up vehicles**

The Service Provider shall have sufficient back-up vehicles to enable the service to be maintained to the specified standard where for any reason the vehicles ordinarily used for the service are unable to be used or in the event that demand exceeds capacity. All back-up vehicles shall be painted in the service livery. In all cases, back-up vehicles used for the service shall be listed in Schedule A4.

In the event that demand on a scheduled service would exceed the number of passengers legally able to be carried by the vehicle, the Service Provider shall dispatch another vehicle to carry the extra passengers. The Service Provider will advise the Council of the use of an additional vehicle. The Council will reimburse the Service Provider for the use of the additional vehicle at the Service Provider’s variable price rate as required in *Schedule B1: Contract Price*.

Where the Service Provider is experiencing on-going capacity difficulties, as described above, in operating the vehicle, the Service Provider should notify the Council accordingly. This will allow Council and the Service Provider to take appropriate measures to rectify the issue.

In all cases, back-up vehicles must be of the same standard unless otherwise agreed by the Council, to the vehicles approved.

## **11.8 Commercial advertising on vehicles**

The Council may require the Service Provider to provide third party advertising space on and in the vehicles where it does not conflict with the Council’s livery and branding. Any revenue generated from third party advertising shall be split equally (50/50) between the Service Provider and the Council and will be treated as revenue and recorded on the monthly invoice. Where the Council requires the Service Provider to provide advertising space this will be specified in the RFT.

The Council as owners of the Service will, in negotiation with the Service Provider, set the advertising rates. All third party advertisers will be required to sign an Advertising Agreement. The terms and conditions of the Agreement will be negotiated with the Service Provider before the commencement of the Contract.

The areas considered suitable for third party advertising are the back exterior of the vehicles, the sides of the vehicles and inside the vehicle. The Service Provider will work with the Council to develop an advertising information package.

No other commercial advertising signs or labels on the exterior of the vehicle’s rear shall be allowed without the express permission of the Council. Permission may be granted on a case-by-case basis.

The Service Provider will be responsible for co-ordinating the application and removal of the commercial advertising. The cost of the application and removal of the commercial advertising must be met by the party seeking to advertise on and/or in the vehicle.

The removal of the commercial advertising must leave the vehicle in no worse condition than it was prior to the application of the advertising.



## 12. Communication and confidentiality

### 12.1 Council's representative

The Council shall at all times during the term of the Contract appoint an authorised representative. The Council's Representative is authorised to give and receive all directions and instructions in connection with the provision of the Service on behalf of the Council. Inquiries about any aspect of the Council must be directed to the Council's Representative in the first instance.

The Council may at any time appoint another person to be the Council's representative and will advise the Service Provider of such appointment in writing, including all relevant contact details.

### 12.2 Service Provider's representative

The Service Provider shall at all times during the term of the Contract ensure that a Representative is appointed who will personally supervise and coordinate the provision of the Unit. The Service Provider's Representative at the date of the Contract is the person named in Schedule A2 (Service provider Details) of the RFT. The Service Provider's Representative is authorised by the Service Provider to receive all directions and instructions in connection with the provision of the Unit.

The Service Provider's Representative must be contactable during normal working hours. The Service Provider may change the Service Provider's Representative by informing, on five (5) Working Days written notice to the Council, the new Representative's name.

The Council may at any time, by notice in writing to the Service Provider, object on reasonable grounds to the continuance of any person as the Service Provider's Representative. The Council's notice shall state the grounds upon which the objection is based. The Service Provider shall appoint another competent person to replace the person objected to by the Council.

### 12.3 Serving of notices

Any notice required to be given under this Contract or in connection with the matters contemplated by it shall, except where otherwise specifically provided, be in writing, to the address for service of the Service Provider or the Council. Notice may be served by:

- a. Personal delivery, in which case it will be deemed to have been given upon delivery at the relevant address.
- b. Post, sent by fast pre-post, in which case it will be deemed to have been given two (2) working days after the date of posting or if from or to any place outside New Zealand, sent by pre-paid priority airmail, in which case it will be deemed to have been given five (5) working days after the date of posting.
- c. Facsimile, in which case it will be deemed to have been given when dispatched, subject to confirmation of uninterrupted transmission by a transmission report (provided that any transmission that is completed after 5.00pm shall be deemed to have been delivered at 8.00am on the next working day following such receipt) unless a verifiable query as to material illegibility is promptly raised.
- d. Email, in which case it will be deemed to have been served after 4 hours of being sent or at 8.00am on the next working day following such receipt if sent after 5.00pm.

Any such notice which has been served on a non-working day is deemed served on the first working day after that day. Any notices served after 5.00pm on any day shall be deemed to be served on the next working day.

Either party to this Contract may notify the other party of any change to the address or any of the other relevant details, provided that such notification will only be effective on the date specified in such notice or five (5) working days after the notice is given, whichever is later.

## 13. Schedules and routes

### 13.1 Timetable

#### 13.1.1 Timetable to be operated

Unless otherwise specified or agreed in writing between the Council and the Service Provider, the Unit shall be operated in accordance with the timetable specified in the RFT and the Service Provider's Tender. Unless otherwise specified in the RFT Service Providers are welcome to submit Alternative Tenders based on a timetable which they consider will allow them either to operate the Unit more efficiently (hence to offer a lower Contract Price) or to offer an improved Service at little or no extra cost.

Where the Service Provider is experiencing difficulties in running the timetable submitted, the Service Provider should notify the Council accordingly. This will allow Council and Service Provider to monitor the timetable and take appropriate measures to rectify any problems.

Where the RFT specifies other Units with which a Service must connect, it shall be a requirement of the Contract that these connections are made. Service Providers should endeavour to provide services to best meet the needs of the passengers.

#### 13.1.2 Timetable provision

All timetables will be printed and supplied by the Council at no cost to the Service Provider. Consequently a Service Provider's contract price should not include a component for the production and printing of timetables.

The Council also provides timetable information at bus terminals, bus shelters, and for timetable holders at bus stops.

### 13.2 Route

#### 13.2.1 Route to be operated

Unless otherwise specified or agreed between the Council and Service Provider, Services shall run according to the Service Specification.

Where the Service Provider is experiencing difficulties in operating a route, the Service Provider should notify the Council accordingly. This will allow the Council and Service Provider to monitor the route and to take appropriate measures to rectify any problems.

#### 13.2.2 Bus centre facilities, parking areas and bus stops

The Service Provider shall use all bus station facilities, parking areas and bus stops on the route which are necessary to comply with the Contract.

Existing stops and shelters are located and maintained by the relevant territorial authority. The Service Provider should be aware that the territorial authority may raise objections to proposed changes to existing routes and stopping places where these are not in accordance with their requirements for traffic management.

The Service Provider shall ensure that no vehicle is used in such a way that it will impede the lawful use of any of these facilities by another vehicle. The Service Provider must also take all reasonable effort to ensure that no vehicle is used in such a way as to disturb the peace of residents particularly at the route termini or lay-over points.

## 14. Fares and ticketing

### 14.1 Fares

The fares charged in the operation of a Contract will be as specified in the RFT. Service Providers may not vary these fares, unless authorised in writing by the Council.

The Service Provider shall record details of all revenue received and tickets sold during the operation of the Contract. The Council may, without notice, audit the operation of the ticketing system to verify revenue received from the Service. The Service Provider is responsible for making good any loss of revenue through the negligence or dishonesty of its employees.

Fares will be reviewed annually and the fare structure reviewed at least every six years.

### 14.2 Ticketing

The Service Provider shall issue all passengers (with the exception of those for whom passes have been approved by the Council), with a ticket for the Trip or Trips undertaken.

Specific ticketing information pertaining to a Service will be included in the RFT.

Unless identified in the RFT, the cost of producing tickets will be covered by the Council.

#### 14.2.1 Electronic ticketing

If a smart card electronic ticketing system is to be a mandatory requirement for a Unit this will be specified in the RFT.

Where specified in the RFT the Council will supply the equipment required. Equipment and software must be installed on the Service Provider's Vehicles prior to the Contract commencing.

## 15. Marketing

### 15.1 Publicity and promotion

The Service Provider shall cooperate in any promotional or publicity schemes arranged by the Council that have a public transport orientation. The Council shall normally meet the costs of any such schemes, unless there are deemed to be clear financial benefits for the Service Provider for which a contribution may be requested.

The Service Provider shall at every relevant opportunity acknowledge the support of the Council whenever publicising aspects of the Service to the public or to other stakeholder groups.

Nothing in this Manual should be interpreted as precluding the Service Provider from undertaking publicity in excess of that required by the Council, provided that the publicity does not interfere with any contractual obligations and complies with any provisions in the RFT relating to advertising.

The Service Provider shall display on the inside of the vehicles any information provided by the Council which relates to the public transport activities of the Council and which may include publicity or other relevant information leaflets. The cost of providing any such material will be met by the Council, and the costs of erecting or displaying such material will be met by the Service Provider. The Service Provider shall ensure that all information and publicity is kept up to date and removed within five (5) working days of its expiry.

All promotional and publicity material issued by the Service Provider in respect of the Service will carry the Council's brand identifier and/or logo, at the discretion and in the format defined by the Council and will acknowledge the Council's contribution to the funding of the Service. The design specification shall be provided by the Council and may include the Service Provider displaying an acknowledgement of the Council's role on the exterior of vehicles.

The Council grants to the Service Provider a "royalty free" licence for the term of the Contract to use the trademark Taranaki Regional Council branding in accordance with the Council's brand specifications. The Service Provider shall obtain approval from the Council prior to publication of any material carrying the brand.

The Service Provider will make available to the Council any intellectual property rights owned by or licensed to the Service Provider in relation to the Services as requested by the Council. The Council may use any such intellectual property for the purposes of this Contract.

Any branding of the publicity material or other information about public transport services within the Taranaki region operated by the Service Provider must be in consultation with the Council. The Council reserves the right to approve the final brand application.

The Service Provider shall not brand any Route or Trip without the prior written consent of the Council, and the Council will own any resulting trademark or other intellectual property relating to such branding.

The Service Provider will discuss and agree with the Council any promotional or publicity scheme prior to its implementation.

### 15.2 Website

The Council will maintain a website of all public transport services at no cost to the Service Provider. Service Providers will be expected to cooperate with the Council ensuring the website information is up to date and that service notices and announcements are updated in a timely manner. The website address is [www.taranakibus.info](http://www.taranakibus.info).

### **15.3 Social Media marketing**

The Council is likely to utilise social media marketing such as Twitter and Facebook to promote its public transport services. These activities will be at no cost to the Service Provider. However, the Service Provider will be expected to cooperate with the Council when undertaking these marketing initiatives. The Council will consult with the Service Provider prior to undertaking such marketing initiatives.

## 16. Monitoring

### 16.1 Use of information

All information (data, documentation and records in any form) relating to the Passengers or their utilisation of the Services will be deemed to be the Council's information. Data includes without limitation patronage and revenue information. The Council may access data either through electronic ticketing, manual ticketing or by request to the Service Provider.

The parties agree that Passenger identity information is to be shared between the Parties.

### 16.2 Monitoring of the service by the Council

The Service Provider shall permit the Council or Council's authorised representative the right to inspect the Unit without notice to the Service Provider. The objective of such monitoring is to confirm compliance with the requirements of the Contract.

Council officers, and any other Council authorised representative, who show appropriate identification, shall be entitled to travel free on the Vehicles and be granted access to any sites used by the Service Provider for any purpose related to the Contract.

### 16.3 Monitoring by the Service Provider

It shall be the responsibility of the Service Provider to monitor the Service and the Passenger revenue received by the Service Provider for:

- over-riding of passengers;
- other types of passenger fraud; and
- theft or fraud by Personnel, agents or subcontractors of the Service Provider.

### 16.4 Taranaki Regional Council may remedy Service Provider failure

The Council may take all necessary steps to remedy any service failure or default of the Service Provider under the Contract.

The Service Provider shall pay all costs reasonably incurred by the Council in exercising or endeavouring to exercise its rights under this clause. Payment shall be made immediately on receipt of a written request for payment.

The Service Provider shall also:

- ensure that passengers present the appropriate identification cards, where they request fare concessions, and
- be responsible for fare revenue security.

### 16.5 Performance measures

The Service Provider acknowledges the importance to the Council of consistent achievement by the Service Provider of high quality, safety and performance standards with respect to the Service throughout the term of the Contract. The Service Provider therefore agrees to:

- meet or exceed the performance standards set out in Schedule C1 (Performance Standards).

## Part 2: Conditions of Contract

- provide the Service and perform its obligations under the Contract in accordance with the standards and requirements set out in the Contract.
- exercise proper skill, care and diligence in the performance of its obligations under the Contract.

Key Performance Indicators (KPI's) are a requirement set by the Transport Agency as stipulated in the Transport Agency's Procurement Manual (Chapter 11). These set a minimum standard to be achieved by the Service Provider and will be used to assess overall Contract compliance and applying non-compliance deductions.

Regular meetings between the Council and the Service Provider will help ensure that compliance is achieved and allows the Service Provider to advise of circumstances outside of their control that have impacted on their ability to meet the minimum KPI's.

Monitoring of these indicators will take place at regular intervals each year during the contract. Results will be communicated promptly to the Service Provider so that improvements can be made.

In particular, the Council shall monitor as a minimum the mandatory KPI's as shown in Schedule C1 Performance Measures and Penalties.

### 16.6 Service Provider's performance requirements

Without limiting the general effect of clause 16.4 (Performance measures), the Service Provider shall:

- a. Operate all Trips in accordance with the timetable.
- b. Display the correct route number and destination information.
- c. Adhere to the prescribed routes unless the Service Provider is physically or legally prevented from doing so.
- d. Supply appropriate information to passengers and display notices as required.
- e. Carry all intending passengers who wait at recognised stopping places.
- f. Carry all intending passengers who signal the driver by hand even if not at a recognised bus stop.
- g. Charge correct fares, sight the required identification, collect all due fares from Passengers and issue the correct tickets for journeys.
- h. Use the Vehicle(s) nominated by the Service Provider for the Service.
- i. Maintain its Vehicle(s) in accordance with the requirements of the Contract.

The Council will, at the conclusion of the Contract, compile a Service Provider performance report. This performance report will evaluate the overall satisfaction level of the Council with the Service Provider's performance. The Council will allow the Service Provider to comment on the performance report before it is included in the Contract file.

The Council will advise the Service Provider about the form of performance reporting before the Contract commences.

### 16.7 Customer service

At all times the Service Provider will employ appropriate Personnel who will be neatly attired in the Service Provider's standard uniform and are polite and courteous in dealing with the travelling public.

- The Service Provider's Personnel shall, in dealing with the public, be competent communicators and fluent in the English language.
- The Service Provider shall ensure that appropriate New Zealand workplace Personnel selection, recruitment and training procedures and minimum standards are implemented.

## Part 2: Conditions of Contract

- The Service Provider shall ensure that Personnel employed on the service are trained so as to be customer focussed at all times and place the customer's needs first (includes: general customer relations, acceptable behaviour, and providing assistance to disabled passengers) and to strive for excellence during the operational delivery of their roles.

The Service Provider shall not employ on the Service any person in contact with the public whose behaviour or attire is objectionable or otherwise inappropriate.

The Service Provider shall ensure that all Personnel that deal with the public are appropriately trained, qualified and experienced.

### 16.8 Driver training programme

The Council views a driver's professionalism and driving skills to be critical in the success of its public transport services. Therefore it is expected that the Service Provider will share these views and provide for continuous improvement of its drivers.

Service Providers are to ensure that Personnel training and selection procedures are established and followed to ensure that services operated by them are well regarded by the passengers who use them. The Service Provider may not make any extra charge for its Personnel's time or expenses in attending such courses.

Details of Personnel training programmes proposed or established are to be supplied. The Council recommends that as a minimum all drivers should have completed the customer service and personal safety courses provided by the Bus and Coach Association. Other training programmes should cover the following points:

- Driving skills required on urban and school buses.
- Familiarisation with routes and bus stops.
- Training in special service features required by the Council e.g. transfer/ticketing, zonal fares, electronic ticketing etc.
- Training in dealing with, and assisting, passengers with special needs. For example: in a wheelchair, sight impaired.
- Training in conflict resolution and assertiveness and protecting personal safety as a passenger service vehicle driver.
- Driving a bus on a scheduled passenger route.
- Driving a passenger service vehicle in a fuel efficient manner.
- Fostering effective passenger relations.

All new drivers who have less than 6 months experience as passenger service drivers, are to participate in a training programme before beginning full driving duties. All drivers should participate in a refresher course every 3 years. A refresher course must consist of a minimum ½ day course covering compliance, customer service and an overview of the above list.

Any driver who receives greater than 6 complaints in a 6-month period will be required to attend a refresher course, unless agreed in writing at the Council's discretion.

### 16.9 Complaints

The Service Provider will maintain a complaints register recording details of any complaints received relating to the performance of the Service, and any action taken in relation to the complaints. Where the complaint is found to be legitimate the Service Provider shall indicate what steps have been taken to ensure no repetition of the incident occurs.

The Council aims for 100% of all trips run to be free of any cause for complaint.



## Part 2: Conditions of Contract

Be it single or multiple complaints, each Trip will be classed as either 'with' or 'without' complaint. Where multiple complaints are received which relate to one incident, each complaint will be recorded and counted as a separate complaint.

Should the complaint relate to a performance attribute that is also subject to a non-compliance deduction, then both the complaint and performance attribute non-compliance deduction payments will apply.

The Council shall have the right at any time to inspect the complaints register kept by the Service Provider pursuant to Land Transport Rule – Operator Licensing 2007 and to pursue independent enquiries should it deem it necessary.

The Service Provider shall supply within six (6) working days of the month following, a summary of complaints and commendations disaggregated by:

Complaint directly to Service Provider  
Complaint via Council  
Complaint via other source  
By each route  
By peak or off-peak time (of incident)

for each of the following service attributes:

- Reliability
- Punctuality
- Vehicle cleanliness
- Vehicle comfort
- Driver behaviour
- Bus stops
- Failed to stop
- Failed to pick up
- Information
- Fares
- Other

plus the percentage of complaints cleared up within 10 working days.

In the event of any complaint to the Council regarding the service, either from a Passenger or any other party, the Service Provider will be advised of the complaint and must take appropriate action; including advising the Council of the action the Service Provider has taken in response to the complaint.

Performance Standards and Penalties are contained in Schedule C1 (Performance Standards) of this Manual. Section 18 includes information regarding the termination of the contract by Council where the Service Provider's performance has been unsatisfactory.

### 16.10 Surveys and free travel

The Service Provider will permit Council or Council's authorised representative to travel free on the Vehicle(s) operated under the Contract, in order for the Council to conduct interviews or Passenger surveys and to undertake monitoring exercises. Such travel could include positioning runs. Service Providers will endeavour to assist the Council wherever possible with information to enable the Council to most effectively coordinate its surveys.

## 17. Reporting

### 17.1 Report on operation of service

The Service Provider shall provide within six (6) working days to the Council (on a confidential basis), for each month, a monthly report on the operation, performance and patronage data of the Unit. The information shall be supplied with the monthly invoice.

The Service Provider shall implement systems that accurately record the following:

- Numbers of Passenger boardings by route and service,
- Number of Passenger boardings by fare category,
- Number of scheduled Trips completed in full,
- In- service bus kilometres delivered,
- In-service vehicle hours delivered,
- Percentage of scheduled Trips operating late (from Trip start, en route and at destination),
- Complaints summary and percentage cleared within 10 working days,
- All incidents and accidents,
- Fleet composition register,
- All revenues collected as part of the Service,
- Driver training undertaken in the month.

The Council may from time to time require more detailed information (as specified by the Council) to undertake an analysis of the Service for planning and monitoring purposes. The format of the information will be mutually agreed between the Council and the Service Provider.

Payments may be withheld or delayed if information required to be supplied under the Contract is outstanding at the time the payment is due, or if insufficient information is supplied to enable a claim to be verified. No interest will be paid on withheld payments.

The Service Provider shall maintain the financial and statistical information for the Contract and retain all the information for a period of twenty-four (24) months after the termination of the Contract.

### 17.2 Auditing

The Council (and/or its nominated consultant) will have the right to audit all obligations of the Service Provider under the Contract including but not limited to monitoring compliance by the Service Provider to the terms and conditions as set out in the Contract.

The data will be produced by the Service Provider on demand by the Council at any place Council reasonably requires, and the data requested for audit will be available for audit at least twenty-four (24) months after the period to which it refers.

An audit may include observing data being extracted by the Service Provider and requesting the Service Provider to repeat data extraction under controlled conditions.

The Service Provider will meet the cost of audit, if the audit shows that any information the Service Provider has supplied is materially inaccurate.

A full audit trail must exist to enable any nominated consultant appointed by the Council to verify any item in any invoice or report provided by the Service Provider under this Contract, including any information from the originating data, such as electronic ticketing reports, drivers' waybills, or ticket sales dockets.

### **17.3 Access to information**

At the Council's request, the Service Provider shall make available to the Council, on a daily basis, any records or documentation held by the Service Provider relating to the operation of the Unit. Information that is personal to the Service Provider and not required to be disclosed by the Service Provider under other provisions of the Contract shall be kept confidential by the Council (subject to the provisions of clause '17.4: Confidentiality').

### **17.4 Confidentiality**

Both parties must treat as confidential all Confidential Information of the other party which comes into their possession pursuant to or as a result of their being party to the Contract or the performance of the Contract. Neither party shall without the consent of the other disclose Confidential Information to any third party (other than its consultants and advisers). The obligations under this clause will survive the term or termination of the Contract and will be enforceable at any time at law or in equity.

### **17.5 Local Government Official Information and Meetings Act (LGOIMA)**

The parties acknowledge that the Council is subject to the LGOIMA and that under that Act the Council may be required to release information about the Service and the Service Provider.

## 18. Service non-compliance

The Council shall be entitled to deduct from payments due to the Service Provider, compensation for non-compliance with the terms and conditions of the Contract. In addition to any deductions imposed, the Council may issue a written notice of non-compliance. The non-compliance criteria and deductions are set out in Schedule C1 (Performance Measures and Penalties) of this Manual.

Any action by the Service Provider, which does not meet the terms of the Contract, may lead to a request to the Service Provider for a suitable explanation for the non-compliance. A reply should be received from the Service Provider within five (5) working days of the request. If no such reply is received, or the Council is not satisfied with the reply and reasons given, the Council may impose a non-compliance deduction. The Council shall be entitled to deduct this deduction from any payments due to the Service Provider.

The imposition of a non-compliance deduction includes but shall not be limited to those provided in Schedule C1 (Performance Measures and Penalties) of this Manual.

### 18.1.1 Minor non-compliance

Minor non-compliance issues that may involve the imposition of a non-compliance deduction include but shall not be limited to the following:

- a. Failure to operate a timetabled Trip without due cause, early or late.
- b. Failure to display accurate route information or destination information.
- c. Deviation from the prescribed route without due cause.
- d. Charging an incorrect fare or failure to collect a due fare or failure to issue the correct ticket.

## 19. Termination/Disengagement

### 19.1.1 Termination of a Contract:

A Contract continues until ended:

- By the expiry of a Contract; or
- By agreement between the parties; or
- In accordance with clauses 19.1.2 or 19.1.3.

### 19.1.2 Termination Notice:

The Council may end a Contract immediately by notice in writing to the Service Provider (the "Termination Notice") if the Service Provider:

- Does not perform the Contract Services in accordance with, or otherwise comply with the provisions of, the Contract and:
  - the default is a serious breach of Contract and cannot be remedied; or
  - the default can be remedied but has not been remedied with fourteen (14) days after the Service Provider receives notice of the default.
- Has been issued four written minor non-compliance notices within any twelve month period; or
- Materially or consistently fails to comply with the terms of the Contract. A material default may consist of, but is not restricted to the following:
  - finding that multiple (more than one) Vehicles in a Service Provider's fleet are in an unsafe condition;
  - inability or unwillingness of the Service Provider to meet the requirements, (including service levels) of the Contract;
  - the Service Provider has made a false declaration in its Tender submission for a Contract.
  - the Service Provider has breached its obligations relating to health and safety, whether or not such breach has caused harm to any person.
- Commits an act of bankruptcy or makes any assignment or composition with its creditors;
- Becomes liable to be placed in liquidation;
- Cannot pay its debts when they fall due, or is deemed not to be able to pay them in accordance with section 287 the *Companies Act 1993*; or
- Suspends payments to its creditors or ceases or threatens to cease operating or convenes a meeting of its creditors to propose a scheme of arrangement with them;
- Has a liquidator appointed or its board or shareholders propose or pass a resolution to appoint a liquidator;
- Has a receiver, manager, or statutory manager appointed;
- Has an application for it to be placed in liquidation presented or advertised;
- Passes or purports to pass a resolution for it to be placed in liquidation;
- Transfers or disposes of a substantial part of its assets for inadequate consideration, or threatens to do so;
- Has an order made against it for more than \$50,000 against its property or assets;
- Has a number of orders made against it for a total of more than \$50,000 against its property or assets;
- Has a final judgement for more than \$50,000 against it which remains unpaid for 14 days;
- Has a number of final judgements made against it for a total of more than \$50,000 against it which remains unpaid for 14 days;
- Repurchases its share capital or convenes a meeting of its shareholders to resolve to do so without the others prior written consent;
- Has a change in the effective control of that party.

Any termination of a Contract will be without prejudice to the rights of either party arising prior to termination.

A bond may be forfeited and used by Council to offset any expenses incurred in replacing the Service Provider.

## Part 2: Conditions of Contract

- s. Termination of the Contract by the Council where Lack or Withdrawal of Funding: The Council may terminate a Contract after giving not less than 90 days written notice for reasons of lack or withdrawal of funding. The Council will endeavour, but will not be bound, to treat all Service Providers equitably and consistently in this situation. In the case of a severe downturn in patronage which affects the financial viability of a Contract, the Council may in collaboration with the Service Provider reduce the period of notice required to be given to the Service Provider for termination to 30 days. The Council will have final discretion as to any reduction in notice.
- t. Uneconomic Service: If, during the period from the Commencement Date until expiry of the Contract, the Council may, in collaboration with the Service Provider determine that it is not able to continue to fund the cost of certain Services as a result of there being inadequate fare revenue or an inadequate Commerciality Ratio for the relevant Unit.

The Council may (at its final discretion), by providing at least 90 days prior written notice to the Service Provider:

- terminate the relevant Contract; or
  - reduce the Services (and reduce the Contract payment accordingly) under the relevant Contract, by service variation.
- u. Force Majeure: In the event that a Service Provider cannot perform its duties and obligations under the Contract for reasons of Act of God, earthquake, storm, flood, landslide or other natural event, for a protracted period of greater than 30 days then the Council may in collaboration with the Service Provider terminate some or all of the affected Contracts with a reduced period of notice of 30 days. The Council will have final discretion as to any termination of services due to Force Majeure.

### 19.1.3 Termination of the Contract by the Service Provider:

The Service Provider may terminate a Contract in the following circumstances:

**Service Variations:** Where a Service Provider considers that it is unable to perform service variations as ordered by the Council and where agreement cannot be reached with respect to those variations, a Contract may be terminated by the Service Provider by giving not less than 90 days written notice.

**Reduced Period of Notice:** In the case of a severe downturn in patronage which affects the financial viability of a Contract, the Council may in collaboration with the Service Provider reduce the period of notice required to be given by the Service Provider for termination pursuant to paragraphs 21.4.1 and 21.4.2 to 30 days. The Council will have final discretion as to any reduction in notice.

### 19.1.4 Transfer of service at expiration or termination of contract

Where the Contract is terminated, the Service Provider shall afford every co-operation to the Council in its endeavour to establish a replacement Service and in the transition of the Service to a new Operator. The Service Provider shall ensure that the Service is transferred to any new Service Provider with the minimum of disruption to passengers.

## 19.2 Liability exclusion

The Council's liability under a Contract is limited to the amount required to be paid by it under the agreement. It shall have no other liability whatever the cause.

## 20. Dispute resolution

### 20.1.1 General

Without limiting the application of the clauses below relating to dispute resolution, in the event of a dispute, disagreement or difference of opinion arising under the Contract, as to:

- the meaning or application of any part of a Contract; or
- any other matter touching or concerning a Contract

the parties shall actively and openly endeavour to amicably settle such disputes themselves, with a view to achieving prompt resolution.

### 20.1.2 Notice of dispute

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

### 20.1.3 Referral to mediation

If the dispute is not resolved within seven (7) working days of written particulars being given (or any longer period agreed to by the parties), either party may at any time subsequently by notice in writing to the other require the dispute to be submitted to mediation.

### 20.1.4 Mediation

A party must use the mediation process to resolve the dispute before commencing arbitration or legal proceedings.

If any dispute is submitted to mediation the following shall apply:

- The mediation shall be conducted by a single mediator.
- The Service Provider and the Council shall endeavour to agree on a mediator. If they fail to agree either party may request the President of the Arbitrators and Mediators Institute of New Zealand Inc. to appoint a sole mediator.
- The mediator shall discuss the matter with the Service Provider and the Council (separately or jointly as the mediator may determine) and endeavour to resolve the dispute by agreement.
- All discussions in the mediation shall be without prejudice and shall not, save in the case of proceedings to enforce settlement concluded by mediation, be referred to in any later proceedings.
- The Service Provider and the Council shall bear their own costs in mediation and shall pay the cost of the mediator in equal shares.

The terms of settlement are binding on the parties and override the terms of the Contract if there is any conflict. The terms of settlement may be tendered in evidence in any mediation or legal proceedings.

If a dispute is not resolved in 14 days after the mediator has been appointed, or within any extended time that the parties agreed to in writing, the mediation must cease.

### 20.1.5 Arbitration

If the parties cannot resolve the dispute by mediation then either party may by written notice to the other refer the dispute to arbitration, stating the subject matter and details of the dispute or difference and that the party desires to have the matter referred to arbitration. This is to be in accordance with the *Arbitration Act 1996* on the following terms:

- A single arbitrator shall be appointed and agreed upon by the parties.
- If the parties cannot agree on an arbitrator within 14 days, then the President of the Arbitrators and Mediators Institute of New Zealand Inc shall appoint the arbitrator.
- No person who has participated in an informal resolution of the dispute shall act as arbitrator.
- The arbitrator will proceed promptly to deliver an award. The parties shall cooperate fully in this respect.
- The parties agree that the arbitrator's decision shall be final and binding.
- The Service Provider and the Council shall bear their own costs in arbitration and (in the absence of an arbitrator's award to the contrary) shall pay the costs of the arbitrator in equal shares.
- Either party will be entitled to appeal to the High Court on any question of law arising out of the award.

## **20.2 Performance obligations**

Pending the settlement of a dispute under clause 20 (Dispute Resolution), the parties shall continue to perform all their obligations under the Contract except neither party shall be obliged to pay any money which is the subject of the dispute.

## **20.3 Compliance with dispute resolution regime**

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



## 21. Request for Tender process

### 21.1 Request for Tender

Through a RFT process, the Council will invite Tenders for the provision of public transport Units in the Taranaki region in accordance with this Tendering and Contracting Manual.

The specific Unit offered for Tender are those covered in the RFT provided separately. Tenders for each RFT will be dealt with, evaluated and awarded separately. The Council may accept a mix of Conforming and Alternative Tenders. A Service Provider wishing to submit a Tender should study the RFT documents carefully in conjunction with any other RFT documents. The RFT will prevail in the event of any inconsistency between this Manual and the RFT.

Upon receiving a written request for the RFT documents as either an Expression of Interest or after the RFT process commences, the Council will distribute the full set of RFT documents to interested Service Providers. In addition, the RFT documents may be sent out following a verbal request from an interested Service Provider.

The following documents make up the Request for Tender documentation:

- The Tendering and Contracting Manual – containing the general tendering and contracting requirements and instructions.
- The RFT– specifying any instructions necessary and the details and requirements for the services to be provided.

### 21.2 Pre-tender meeting

A pre-tender meeting may be held for the purpose of discussing any questions relating to the tendering process or the RFT. They will be held in the Council offices or in an urban centre where the Unit is to be provided. This meeting is to be held a minimum of two weeks following the RFT documents being sent out and two weeks before the Tender Close Date. The meeting will only be held if a Service Provider requests it.

No information given verbally at the meeting or at any other time will be binding on any party. Written documentation of questions and answers of the meeting will be sent within seven (7) working days to all Service Providers who have requested the RFT from the Council. These written questions and answers shall form part of the Contract for the relevant RFT.

Attendance at a pre-tender meeting is recommended but is not mandatory. Non- attendance shall not be a relevant factor with respect to Tender evaluation and will not affect the validity of any Tender lodged.

### 21.3 Standard advertising practice

The Council will advertise the RFT of high value contracts (i.e. where the first year cost of the service is greater than \$100,000) and may advertise the RFT of low value contracts (i.e. where the gross cost of the service is less than \$100,000) in the Public Notices or Tenders column of the following newspapers:

- a. The Dominion
- b. The NZ Herald
- c. Taranaki Daily News

Wherever practicable, these notices will be published on Saturdays.

All RFTs will also be notified on the Council's website ([www.trc.govt.nz](http://www.trc.govt.nz)) and on a recognised Tender website such as the central government GETS ([www.gets.govt.nz](http://www.gets.govt.nz)).

## **21.4 Clarifications**

Service Providers may request clarification of any aspect of the Council's RFT. All requests for clarification or further information should be in writing and directed to the Council no later than seven (7) working days prior to the RFT closing date.

The Council will issue a written 'Explanatory Notice' in response to any such request. All Explanatory Notices will be forwarded to all Service Providers who have received a RFT relating to that question. All such Explanatory Notices will thereafter be part of the Council's RFT. Verbal conversations shall not be binding and not form part of the Contract. However, if the Council feels any or all oral information given to a Service Provider is relevant to all prospective Service Providers, it shall be documented in writing and circulated to all parties.

### **Tender documentation**

Requests for information or clarification that relate solely to a Service Provider's Tender will be provided to the Service Provider requesting the information or clarification only. The Council may, at its sole discretion, call a meeting between the Council and the Service Provider to resolve any issues requiring information or clarification.

Where an aspect of a Tender is unclear, the Council may advise the Service Provider in writing that clarification is required where this does not involve a material change to the Tender. The Service Provider will then have five (5) working days from the date shown on the Council's letter to provide written clarification. Failure to meet this deadline will mean the Council may not consider the Tender further.

The Council is not obliged to contact referees provided by the Service Provider and may seek further information on any issue from sources other than the referees provided. By submitting a Tender, the Service Provider confirms that the Council is authorised to verify with any third person any information included in the Tender. This includes any Transport Agency representative or authorised vehicle testing agency reports resulting from an audit or other investigation on the Service Provider. Any information gathered will only be used for the purposes described in this clause and will not be disclosed to any third party.

Service Providers should not directly or indirectly lobby or attempt to influence any Councillor, officer or employee of the Council in relation to the RFT. Should a Service Provider attempt to do so, then the Service Provider shall be disqualified from the RFT process.

## **21.5 Amendments**

Where any amendment to the RFT is considered necessary by the Council, a Notice of Amendment shall be sent to all prospective Service Providers and shall upon issue become part of the Contract documents. Where the Council issues a Notice of Amendment, Service Providers shall have the right to withdraw their Tender, modify it in light of the Notice of Amendment and resubmit their Tender within the time specified in the Notice of Amendment.

Where the Tender Documents issued to prospective Service Providers are ambiguous or unclear a Service Provider may request the issue of an Explanatory Notice. If an Explanatory Notice is issued, it shall be sent to all prospective Service Providers and shall upon issue become part of the RFT.

## 22. Delivery models

The delivery model is the form of the relationship established between the Council and the Service Provider to purchase the outputs required to the Contract. The Council has identified the staged and partnering delivery models as the preferred models for public transport service Units.

### Staged

- Scale is small to medium
- Complexity, uncertainty and risks are low
- The Council wishes to maintain some form of involvement and control over the activity
- Scope is well defined and the opportunity for innovation is low

### Partnering

- Designed to encourage greater collaboration between Council and the Service Provider.
- A Service Provider bids on the basis of the first year gross price of providing a Unit.
- Upside fare revenue growth is shared between the Council (60%) and Service Provider (40%) through an agreed Financial Incentive Mechanism.

Further information can be found in the Council's *Procurement Strategy for Transport Activities* and the Transport Agency's *Procurement Manual*.

## 23. Selection method

The Service Provider selection method is the process by which a Service Provider's Tender is evaluated and a preferred Service Provider selected. Those that are available to be used by the Council are outlined below. The preferred Service Provider selection method for the Unit will be detailed in the RFT.

Direct appointment – is a supplier selection method where the Council selects a single Service Provider and negotiates terms including price.

Lowest price conforming – is a supplier selection method in which the preferred supplier meets all the requirements set out in the RFT and offers the lowest-priced proposal, after deducting any added value premium.

Price quality – is a supplier selection method where the attributes of suppliers whose proposals meet the RFT's requirements are graded, and the preferred supplier is selected by balancing price and quality through the use of a formula.

Price quality without disclosure – is a supplier selection method where the non-price attributes of Service Providers whose proposals meet the RFT's requirements are graded, and the preferred Service Provider is selected by balancing price and quality through the use of a formula. However, the estimate of the Contract is not disclosed in the RFT. This is used because Council views disclosure of the estimate will significantly influence prices tendered, or the Council is not confident of the accuracy of its estimate and wishes to mitigate the risk that it will distort supplier quality premium values by being significantly different from the lowest price tendered.

Further information can be found in the Council's *Procurement Strategy for Transport Activities* and the Transport Agency's *Procurement Manual* and *Council's Transport Activity Procurement Manual*.

## 24. Tender evaluation non-price attributes

Non-price quality attributes assists the Council in the evaluation of Tenders by distinguishing between Service Providers on the basis of their attributes including their experience, skills, track record and their understanding of what the Council requires to be delivered by the RFT. All RFTs issued by the Council will require the Service Provider to be assessed against non-price attributes. The Council may evaluate the non-price attributes on a basis of pass or fail or by grade. The RFT will state which attributes are to be used and the method of evaluation. The mandatory non-price attributes for every RFT are:

### **Relevant experience (Service Provider's previous experience that is relevant to the Unit)**

Relevant experience is included in the evaluation to reflect the risk to the Council of accepting Tenders from inexperienced Service Providers. This risk relates to the difficulty in assessing Service Providers without appropriate past experience on which to base the assessment and includes the following components.

- experience in operating public transport contracts the size and duration proposed,
- ability to continuously meet specified timetables and minimise controllable delays,
- experience in operating an electronic ticketing system,
- customer service interface, friendliness and marketing relationships, including providing demonstrated levels of customer satisfaction,
- ensuring customer safety and security.

The Council will automatically consider as part of this category any service currently being delivered on behalf of the Council.

Contact details of referees should be provided to support Service Providers' claims. Where a Service Provider may not have this experience the Tender evaluation panel may give consideration to the relevant experience held by the named personnel who are proffered for the Contract.

### **Relevant skills of the Service Provider and Personnel**

Relevant skills are included to assess the competence of Personnel that the Service Provider proposes to use, with particular regard to their skills and experience and includes the following components:

- management's commitment to health and safety: Service Providers will be assessed on the quality of their health and safety system,
- management experience in managing long term contracts,
- management experience in recruitment, training and retention of a skilled labour force, including labour force relationships,
- operational skill sets concerning bus and driver scheduling and bus fleet management,
- management experience in participating in partnering relationships,
- ability to deploy sufficient capacity across the assigned routes specified in this RFT,
- driver experience and skills including meeting minimum driver training requirements,
- provision of on-going and refresher training for drivers and other Personnel,
- support Personnel customer service experience,
- maintenance Personnel skills and experience in fleet management and vehicle maintenance programmes,
- responding quickly and effectively to emergencies and unforeseen circumstances e.g. bus breakdowns.

Contact details of referees should be provided to support Service Providers' claims. Where the Service Provider specifically names Personnel in the Tender the Service Provider must ensure that those people are available to provide the Service from the Contract commencement date.

### **Methodology**

Service Providers shall provide information on the methodology which relates to procedures the Service Providers proposes to use to achieve the Service. One aspect of methodology is providing the service as specified to the routes and timetable specified in the Service Specification. Others which the Council also values include:

## Part 2: Conditions of Contract

- approach to relationship management with the Council,
- approach to administering a revenue control system and monitoring overriding of passengers,
- approach to innovation, including suggestions to the Council for improvements to network schedules and variations,
- evidence of environmental management systems,
- systems for managing and responding to customer complaints,
- evidence of a business plan to ensure resources will be in place prior to the Contract commencement date,
- evidence of an asset management plan (including vehicle replacement),
- Vehicle quality.

### Track record (reputation of the Service Provider for 'delivering' services)

Track record is an assessment of a Service Provider's past record of delivering Services to the quality and safety standards required, on time and within budget and includes the following component:

- evidence of previously providing high standard public transport services and fulfilling contract obligations to the quality standards and service levels required.

The Council will automatically consider as part of this category the services currently being delivered on behalf of the Council.

### Resources

Resources are the equipment, including facilities and intellectual property that the Service Provider proposes to use to deliver the Service and includes the following components:

- must have a local office with Personnel available to the public Monday to Friday (excluding public and statutory holidays),
- must have a minimum of Vehicles to cover all assigned routes plus additional back up Vehicles,
- must have a local depot/yard to secure Vehicles.

### Financial viability

Financial viability is the Service Provider's ability to access the financial resources required to deliver the Service. The Service Provider must provide documented evidence of their organisation's financial viability. The Council reserves the right to seek additional information regarding the financial viability of any Service Provider.

## 24.1 Grading scale for non-price attributes

Where stated in the RFT the attributes that will be graded will be done so in the following manner. A scale of 0 to 100 is used when grading non-price attributes. Grades will be awarded in steps of five and the following grading scale will be used.

90, 95 or 100	Demonstrates exceptional compliance or ability to convey exceptional provision of the requirement
75, 80 or 85	Requirements are fully covered in all material aspects
60, 65 or 70	Requirements are adequately covered
50 or 55	Adequate, with some deficiencies that are not likely to have any adverse effect
40 or 45	Barely adequate and would need considerable improvement in this attribute, if selected
35 or less	Total non-compliance or inability to convey provision of the requirement

## 25. Types of Tender submissions

### 25.1 Conforming Tender

A Conforming Tender is a Tender submission which complies with all the requirements of the RFT documents. Service Providers may submit more than one Conforming Tender, though each Conforming Tender must be contained in separate envelopes.

Service Providers must submit a Conforming Tender for each RFT.

If a Group Tender (clause 23.2) is submitted then the Service Provider must also submit at least one Conforming Tender for each RFT that is applicable to the Group Tender.

### 25.2 Alternative Tender

An Alternative Tender is one that meets the transport objectives as specified in the RFT but offers alternatives to the conformance requirements. In other words, where allowed in the RFT, Service Providers may submit Alternative Tenders for the provision of service alternatives which allow the transport objectives to be provided in a more economic, cost effective or efficient manner, or which may offer a higher quality service.

If allowed for in the RFT, Service Providers that submit an Alternative Tender must specify how their alternative Tender differs from the outputs specified in detail in the RFT, and demonstrate how better value for money can be obtained through the alternative.

The Council will not consider Alternative Tenders that:

- are outside the scope or requirements of the RFT,
- vary the term, start date or end date of a contract, unless the Council has stated in the RFT that it will consider alternative Tenders that relate to these matters,
- vary the term of a term service contract.

The Council is not obliged to accept an Alternative Tender and the Council is not required to give any explanation if it declines to accept an Alternative Tender. Where applicable, the Council can accept a mix of Conforming and Alternative Tenders.

Each Alternative Tender must be submitted on separate Tender Submission Forms ensuring that all relevant information is securely attached and relates to that variation only.

### 25.3 Group Tenders

If the RFT permits Group Tenders, Service Providers may, at their option, group together services from a number of RFT's and submit one Tender Price for that group provided the Contract term dates are identical. This is called a Group Tender.

Each Group Tender must be submitted as for any other Tender except that the envelope is to include on the outside the words 'Group Tender' and the relevant RFT numbers included in that Group Tender.

If a Group Tender is submitted then the Service Provider must also submit separate Conforming Tenders for each individual RFT that is part of the Group Tender.

Group Tenders will be evaluated by comparing the Group Contract Price to the total of the lowest prices for each Conforming Tender that is part of the Group Tender. This process is repeated for all combinations of Group Tenders to establish the overall lowest price combination.

## **Part 2: Conditions of Contract**

Note: The Council is mindful of the need to offer contracts of all sizes to encourage competition. Group Tenders therefore may not be permitted, or restricted in some Tender rounds. Service Providers are therefore advised to check the RFT prior to submitting a Group Tender.



## 26. Tender submissions

### 26.1 Tender format

All Tenders must be assembled and submitted in accordance with the provisions set out in this Manual. Failure to observe the correct procedure in submitting Tenders may result in the Tender not being eligible for consideration.

### 26.2 Tender submission forms

Service Providers must submit all of the required information. To assist Service Providers, pre-prepared Tender Submission forms will be provided with the RFT. It is most important that all details are completed on each form in order that the Tender can be properly evaluated.

All additional information relating to the Tender must be clearly identified and securely attached to the appropriate form. Each additional page must be initialled at the bottom of the page.

### 26.3 Closing date and deposit of Tenders

All relevant Tender documentation must be delivered to the Council by the time and date specified in the RFT.

No documents other than the Tender Documents shall be contained in the envelopes. Envelopes must be posted or couriered to arrive before the closing date and time at the following address:

The Tenders Box  
Taranaki Regional Council  
Private Bag 713  
STRATFORD 4352

or delivered to: 47 Cloten Road, Stratford and deposited in the Tender Box at reception.

Tenders sent by post or courier must be sent in sufficient time to allow the Tender to be placed in the Tender Box before the Tender closing date and time. Tenders should be delivered between 8.00am and 5.00pm on business days, except on the closing date when the delivery must be by the closing time indicated in the RFT.

The Council will take every care to ensure posted or delivered Tenders are placed in the Tender Box promptly. However, the Council will not be responsible or liable in any way for any failure to place a posted or delivered Tender in the Tender Box by the Tender closing time. Tenders sent by facsimile or electronic mail will not be accepted.

Following closure of the Tender a letter will be sent to all Service Providers confirming receipt of their Tender.

Failure to observe the correct procedure in submitting Tenders may result in the Tender not being considered.

### 26.4 Late Tenders

The Council's policy is not to accept late Tenders. However, late Tenders may be considered where the Council determines that all reasonable steps were taken to ensure that the Tender was submitted on time. Also, the Council does retain the right to evaluate late Tenders in exceptional circumstances where there is no material prejudice to other Service Providers.

## **Part 2: Conditions of Contract**

The Council will have sole discretion as to whether to accept a late Tender. Late Tenders that were rejected will be returned unopened.

## 27. Tender evaluation

### 27.1 Evaluation panel

The Council will appoint an Evaluation Panel to evaluate each RFT.

The Evaluation Panel will assess each Tender against the actual requirements of the RFT and how the Service Provider proposes to manage and deliver the Unit.

The Council will appoint a qualified Tender Evaluator to assist in the Tender evaluation process. The Tender Evaluator shall not be an employee of the Council and will be appointed to provide independent evaluation advice to the Council.

### 27.2 Tender evaluation methods

Tenders will be evaluated using the evaluation method set out in the RFT. The main evaluation methods the Council may choose to use are outlined in the Council's *Transport Activity Procurement Strategy for the Taranaki Region*. The usual method of evaluation will be based on both the price and quality of the tender.

For more information on evaluation methods refer to the New Zealand Transport Agency's *Procurement Manual*.

### 27.3 Poor performance

The Council may decline to accept any Tender for a Unit from any Service Provider who, while operating contracted services in either the Council's area and/or elsewhere in New Zealand, has a history of recent poor performance and/or has consistently performed inadequately. In considering the issue of poor performance the Council will consider:

- whether the Service Provider has a poor safety record.
- whether there are other services where the Service Provider in question has consistently performed inadequately.
- whether the performance was in the recent past.
- whether the circumstances causing the previous poor performance have been rectified.

### 27.4 Negotiation of Contract Price

If only one Service Provider submits a Conforming Tender, the Council may negotiate with that Service Provider and may accept a negotiated price not exceeding the Contract Price. Where more than one Service Provider submits a Conforming Tender, no Tender negotiation shall be permitted, unless all the Tenders are related. Service Providers are related if they are organisations which are interconnected or associated, or are part of a larger organisation with which they are so interconnected or associated.

### 27.5 No alternative and conforming Tender

Where the Council receives no Alternative Tender and none of the Conforming Tenders conform, it may accept the Tender that is closest to conforming, provided the departure from the conformance requirements is not material.

## **27.6 Rejection of Tenders in the public interest**

Without limiting the Council's rights to abandon the RFT process and not award contracts, the Council may reject all Tenders if it deems that the public interest will be better served by that action. The Council will then consider whether or not to re-issue an RFT for the service.

## 28. Award of contract

### 28.1 Conditional letter of acceptance

Following evaluation of the Tenders a Tender Evaluation Report will be prepared for the Council with recommendations as to the successful Service Provider. This report will set out in full the Tender Evaluation procedure and the way in which the recommended Tender was determined.

The successful Service Provider will then receive a conditional letter of acceptance and will be required within seven (7) working days to accept or reject the conditional offer in writing. This acceptance letter may be conditional upon sufficient funding becoming available or other variable factors.

During this period total confidentiality must be maintained.

### 28.2 Formation and execution of contracts

Once the Council has received a letter of acceptance from the Service Providers and is satisfied that all conditions can be met, a Contract shall be formed between the Council and the Service Provider. The Contract will be materially consistent with the RFT and the Service Provider's RFT documents, including all changes that have been agreed by both parties. The successful Service Provider will be required to execute a Contract on this basis.

### 28.3 Notification of Tender outcome

All Conforming Tenders will receive advice of the successful Service Providers within ten (10) working days of a Contract being awarded. All Service Providers shall receive a report incorporating a summary of the Tender evaluation outcome, including the following:

- The name of the Service Provider.
- The price of the successful Tender for the first year.
- The number of Conforming and Alternative Tenders received.
- The range of prices of Conforming and Alternative Tenders for both individual Tenders and any Group Tenders.
- The total value calculated with the selected Service Providers, if other than the lowest-priced (before price adjustment) Conforming Tender.

In addition to the above, if an Alternative Tender is accepted the Council will advise the following:

- A statement of the public benefit that is expected to be obtained from the selected Alternative Tender compared with the lowest-priced (if available) Conforming Tender (after price adjustment) over the life of the Contract and the method by which such public benefit has been assessed.
- The estimated difference in price, over the life of the contract, between the selected Alternative Tender and the lowest-priced (again if available) Conforming Tender (after prices adjusted for Optional Features).

Notification shall not extend to cover disclosure of the details of the Tender Submission or the details of how the evaluation was arrived at.

If no Tender has been accepted within the validity period, each Service Provider will be notified in writing by the Council whether the RFT is still under consideration.

## 29. Tender conditions

### 29.1 General conditions

Notwithstanding any provisions in the RFT to the contrary, the Council reserves, after the closure of Tenders, the rights to:

- a. Reject any Tender.
- b. Reject all Tenders and not award a Contract in the best interest of the public.
- c. Consider, accept or reject any Alternative Tender.
- d. Negotiate with a Conforming bid Service Provider where only one Conforming Tender is received. Any negotiated price shall not exceed the Tender Price.
- e. Negotiate with an Alternative bid Service Provider where no Conforming Tender and only one Alternative Tender is received.
- f. Deal separately with any of the divisible elements of any Tender.
- g. Re-advertise for Tender.
- h. Waive and/or permit any irregularities or informalities in the Tender process, the Tender Evaluation process or in any Tender.
- i. Amend the closing date, the acceptance date or any other date in the RFT.
- j. Amend the RFT documentation by the issue of a written Notice of Amendment.
- k. Seek clarification of any Service Provider during the evaluation of Tenders.
- l. Suspend or cancel (in whole or in part) this Tender process.
- m. Meet with any Service Provider as part of the evaluation process in order to carry out an interview to obtain clarification on a Service Provider's Tender.
- n. Consider, accept or reject any Tender that does not fully comply with the RFT and/or its mandatory requirements.
- o. Consider, accept (only where the Council determines that all reasonable steps were taken to ensure that the Tender was submitted on time) or reject late Tenders.
- p. Inspect at reasonable times any premises, facilities and equipment of any Service Provider as part of the process of assessing the Service Provider's ability to meet the Council's criteria.

### 29.2 Errors and omissions

The Council is under no obligation to check any Tender for errors and/or omissions.

If the Council discovers errors and/or omissions in a Tender, the Council may notify the Service Provider as soon as practicable, and where, in the Council's opinion, the error and/or omission is an obvious error and the correction of the error does not involve a material change to the Tender Submission or modification of Envelope 1 (provided Envelope 2 has not been opened for that Tender Submission), then the Council may amend the error and invite the Service Provider to confirm that its Tender remains open for acceptance as amended. Unless the Service Providers confirms its Tender as amended, the Tender shall be deemed to be withdrawn.

In the event that any amendment or correction to the RFT is required, this will be in writing and circulated to all persons or organisations that have received a copy of the RFT. This shall be referred to as a 'Notice of Amendment'.

Confirmation of information in Envelope 2 may be sought, allowing the Service Provider to either confirm the information or withdraw the Tender Submission.

Records of communications between the Council and the Service Provider concerning these matters will be retained for audit purposes.

### **29.3 Tender confidentiality**

The information supplied by the Council or any Contract that may arise out of it, in connection with the Tender, is confidential. Service Providers must not release or disclose any of the information to any other person (other than their employees or advisors) without the prior written consent of the Council. Any publicity also requires the Council's prior written consent.

The Council will keep all Tenders received confidential. However the Council is subject to the *Local Government Official Information and Meetings Act 1987* and may be required to disclose information under that Act, under any other law, or as required by any Court.

### **29.4 Ownership of RFT documentation**

The RFT documents are the property of the Council and may not be copied or reproduced in any way (other than for the purposes of submitted Tenders) without the prior written approval of the Council.

All Tenders submitted to the Council in response to a RFT shall be retained by the Council, with the exception of unopened '2' envelopes.

### **29.5 Costs**

Service Providers must pay their own costs of preparing and submitted Tenders, including but not limited to any or all of the following costs:

- Any communications or negotiation with the Council.
- Any meetings or interviews with the Council.

### **29.6 Liability limitation**

The RFT is merely an invitation to Service Providers to put forward a Tender and does not constitute an offer or representation capable of giving rise to a contract whether collateral or otherwise or any other legal obligation on the Council to carry out an evaluation of Tenders in accordance with the RFT or accept any Tender.

The Council and its employees, agents or advisors will therefore not be liable in Contract or tort or in any way for any direct or indirect damage, loss or cost incurred by any Service Provider or other person in respect of the RFT process and for the avoidance of doubt shall not be liable for any loss suffered by an unsuccessful Service Provider arising from Council accepting a Tender which does not fully comply with the RFT and/or its mandatory requirements or from Council accepting a Tender after having departed from the evaluation methodology set out in the Tendering and Contracting Manual in any respect.

# Appendix





## Appendix I: Annual business development plan form

(Initiative title)

Problem statement	
Reason for initiative	
Goal	
Desired outcome	
Planned milestones	
Key dates	<b>Commencement date:</b> dd/mm/yyyy <b>Completion date:</b> dd/mm/yyyy <b>Key milestone 1:</b> Descripublic transportation      Date : <b>Key milestone 2:</b> Descripublic transportation      Date :
Our service - what will it look like when [initiative title] is complete	
Measures (add/delete where necessary)	<b>Impact on Cost / Financial measures</b> Change 1 OR [N/A] Change 2 Change 3
	<b>Service Delivery</b> Change 1 OR [N/A] Change 2 Change 3
	<b>Quality Improvements</b> Change 1 OR [N/A] Change 2 Change 3
	<b>Customer Service</b> Change 1 OR [N/A] Change 2 Change 3
	<b>Innovation</b> Change 1 OR [N/A] Change 2 Change 3
Process	<b>Resources (who, what, when, how)</b> Detail 1 Detail 2 Detail 3
	<b>Communication (who, when, how)</b> Detail 1 Detail 2 Detail 3
	<b>Reporting (when, format, to who)</b> Detail 1 Detail 2 Detail 3
<b>Signed by:</b> Taranaki Regional Council ..... [Service Provider]      ..... Date:      .....	



# **Schedule: Tender forms**



## **Schedule A1 – A7: Non-price information**

The following schedules contain all mandatory submission form information. Note that forms to be placed in Envelope '1' are prefixed with the number 1. Forms to be placed in Envelope '2' are prefixed with the number 2.

## Schedule A1: Mandatory information checklist

(TO BE PLACED IN ENVELOPE '1')

Contract/RFT  
Number:

It is a requirement of the Contract that the Service Provider shall be a fit and proper person and/or organisation to undertake the Service. To assist the Council in determining this, Service Providers are required to provide the mandatory information requested, complete the required mandatory forms and provide documentation in support of their Tender. Should a Service Provider's submission not include all these mandatory requirements it will be excluded from further consideration. Where a Service Provider's submission is judged to have failed, Envelope 2 Contract Price will be returned unopened.

### MANDATORY INFORMATION

- Copy of the Service Provider's Passenger Service Licence.
- A reference from the Service Provider's bank or accountant.
- Evidence that adequate public liability and motor vehicle insurance (including third party) is held i.e. a certificate of currency or written confirmation from the insurer.

Service Provider has completed the following mandatory forms:

- Schedule A1 Mandatory information checklist
- Schedule A2 Service Provider details form
- Schedule A3 Tender service form
- Schedule A4 Vehicle form
- Schedule A5 Health and safety compliance checklist
- Schedule A6 Certificate of non-collusion form
- Schedule A7 Declaration form
- Service Provider has supplied information on all of the non-price attributes.

This information will be used to evaluate the methodology proposed for the Contract.

---

Signed:

Company Name:

---

Date:

---

---

## Schedule A2: Service provider details

(TO BE PLACED IN ENVELOPE '1')

Contract/RFT Number:

Company name:

Trading name:

*(if different to above)*

Contact name and position in Company:

Postal address:

Street address:

Depot location/s:

Office phone number:

Email address:

Passenger Service Licence number:  
(attach copy of licence)

Operator Rating System rating:  
(attach NZTA summary)

Service Provider's representative:

Names of holders of certificate of law and practice:

Name of Chief Executive /  
Managing Director:

---

Signed:

Company Name:

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Date:

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---



## Schedule A3: Tender service form

(TO BE PLACED IN ENVELOPE '1')

This form provides details of the operating statistics. This form may be used for both Conforming and Alternative Tenders.

Contract/RFT  
Number:

Does the Tender fully comply with the timetable/s in the Service Specification?  
(Yes / No)

If 'No' please provide details of your Alternative Tender.

Does the Tender fully comply with the route/s) in the Service Specification?  
(Yes / No)

If 'No' please provide details of your Alternative Tender.

### Operating Statistics - kilometres

	No. of Vehicles (indicative only)	Annual in-service kms	Annual non- revenue kms	Total annual kms
Service				

### Operating Statistics - hours

	Annual in-service hours	Annual non-revenue hours	Total annual hours
Service			

### Features which differ from the requirements of the RFT

For Conforming Tenders identify areas of minor non-conformance. For Alternative Tenders detail the way in which your Alternative Tender departs from the RFT requirements.

Signed:

Company Name:

\_\_\_\_\_

Date:

\_\_\_\_\_

\_\_\_\_\_

## Schedule A4: Vehicle form

(TO BE PLACED IN ENVELOPE '1')

This form requires the Service Provider to provide details on the Vehicle/s (including backup vehicles) operating on the Unit. The Council reserves the right to request further information. Where more than one vehicle is to be operated a separate form for each Vehicle should be completed.

Contract/RFT Number:

### Vehicle details

Registration Number:

Fleet Number:

Make:

Model:

Date of Manufacture:

Fuel Type (*Petrol/Diesel/LPG*):

COF No.:

Seating capacity :

Standing capacity:

Photos of Vehicle (*provide for both internal and external – front and side*):

Provide as an attachment

The following section only applies to the RFT for the Urban Unit

Identify the Service the vehicle is to be used on (tick box)

Urban

School

Backup vehicle (tick box if vehicle is to used as a backup)

I/We certify that the above vehicle complies with the Vehicle specification as specified in the RFT.

Signed:

Company Name:

\_\_\_\_\_

Date:

\_\_\_\_\_

\_\_\_\_\_

## Schedule A5: Health and safety compliance checklist

(TO BE PLACED IN ENVELOPE '1')

Contract/RFT Number:

	Yes	No
The Service Provider agrees to comply with Health and Safety at Work Act and all applicable regulations and approved codes of practice relating to health and safety.	<input type="checkbox"/>	<input type="checkbox"/>
The Service Provider has a written health and safety management plan (HSMP) which complies with all relevant New Zealand legislation and codes of practice, and is available to all Personnel. (The Service Provider shall ensure the Health and Safety plan complies with the requirements set out in Clause 3.4 of the <i>Taranaki Public Service Tendering and Contracting Manual</i> ).	<input type="checkbox"/>	<input type="checkbox"/>
The Service Provider has a system to identify and record existing and new hazards and for assessing and implementing hazard control measures (attach documentation).	<input type="checkbox"/>	<input type="checkbox"/>
The Service Provider has nominated a Personnel member with primary responsibility for ensuring the Service Provider's compliance with its health and safety responsibilities (supply name and contact details.)	<input type="checkbox"/>	<input type="checkbox"/>
The Service Provider has a Safety Officer appointed for the Unit (supply name and contact details).	<input type="checkbox"/>	<input type="checkbox"/>
The Service Provider has a list of approved Personnel and agrees to inform the Council of Personnel changes prior to any Contract commencing and during the term of the Contract.	<input type="checkbox"/>	<input type="checkbox"/>
The Service Provider has supplied information on any substances to be used in the performance of the Service which may pose a health risk to any person.	<input type="checkbox"/>	<input type="checkbox"/>
The Service Provider agrees to maintain a register of notifiable events of the approved type.	<input type="checkbox"/>	<input type="checkbox"/>
The Service Provider agrees to supply appropriate safety and personal protective equipment and ensure that all employees are trained in the safe use of this.	<input type="checkbox"/>	<input type="checkbox"/>
The Service Provider is aware of its responsibility to ensure that all Personnel and any subcontractors on site comply with all relevant health and safety instructions, policies and procedures at all times.	<input type="checkbox"/>	<input type="checkbox"/>
The Service Provider has an Emergency Plan in place for dealing with emergency situations (attach documentation.)	<input type="checkbox"/>	<input type="checkbox"/>
The Service Provider is aware of and agrees to the Council terminating the Unit immediately for the Service Provider's non-compliance with its health and safety obligations where the Council (acting reasonably) considers such non-compliance to be material.	<input type="checkbox"/>	<input type="checkbox"/>

## Schedule A5: Health and safety compliance checklist

Contract/RFT Number:

Yes

No

The Service Provider has enclosed full details of its safety record for the last five years of its operations, including in respect of that period:

- Details of any fatalities, including circumstances in each case;
- Number of injuries where Personnel were off work for one day or longer;
- Number of work days lost to machinery failure or breakdown;
- Details of how many warnings, prohibition notices or improvement notices have been served on the Service Provider by any authorised regulatory agency, including details of circumstances in each case;
- Details of investigation involving the Service Provider by any authorised regulatory agency;
- Details of any prosecution and/or conviction for a breach of health and safety obligations.

---

Signed:

Company Name:

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Date:

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## Schedule A6: Certificate of non-collusion

(TO BE PLACED IN ENVELOPE '1')

Contract/RFT Number:

**Where a Tender is submitted by the representative of a company:**

This Tender is bona fide and intended to be competitive;

- a. We have not entered into any agreement with any person outside the company with the aim of preventing Tenders being made or as to the amount of the Tender or the conditions on which the Tender is made.
- b. We have not informed any person outside the company, other than the person calling for the Tenders, the amount or approximate amount of the Tender, except where the disclosure, in confidence, of the approximate amount of the Tender was necessary to obtain insurance premiums or other quotations necessarily required for the preparation of the Tender.
- c. We have not caused or induced any person to enter into such an agreement as is mentioned in paragraph b. of this certificate or to inform themselves of the amount or approximate amount of any rival Tender for the contract.
- d. We also undertake that we will not do any of the acts mentioned in a, b, or c above before the hour and date specified for the return of the Tender.

**OR**

**Where the Tender is submitted by an individual:**

- a. The Tender is bona fide and intended to be competitive and that I have not fixed or adjusted the amount of the Tender by or under or in accordance with any agreement or arrangement with any other person.
- b. I certify that I have not done and undertake that I will not do at any time before the hour and date specified for the return of the Tender any of the following acts:
  - i. Indicate to the person other than the person calling for the Tenders the amount or approximate amount of the proposed Tender, except where the disclosure, in confidence, of the approximate amount of the Tender was necessary to obtain insurance premiums or other quotations necessarily required for the preparation of the Tender;
  - ii. Enter into any agreement with any other person that they shall refrain from proposing or as to the amount of any Tender to be submitted;
  - iii. Offer to pay or give any sum of money or valuable consideration directly or indirectly to any person for doing or having done or causing or having caused to be done in relation to any other Tender or proposed Tender for the said work, any act or thing of the nature specified and described in this certificate.

---

Signed:

Company Name:

---

Date:

---

---

## Schedule A7: Declaration form

(TO BE PLACED IN ENVELOPE '1')

Contract/RFT  
Number:

It is a mandatory requirement that all parts of the Request for Tender are completed in full and that the following declaration is signed. The Council reserves the right to request further information.

I, the undersigned hereby declare that:

- i. all the relevant RFT documentation has been read and understood and that all conditions of the Contract (if awarded) will be adhered to in every respect;
- ii. neither the Service Provider nor anyone acting on the Service Provider's behalf has in any way offered nor will in any way offer any inducement in order to find favour in submitting Tenders or in undertaking the Services specified, and that the Tenders have not been and will not be fixed or adjusted under or by agreement with any other person;
- iii. neither the Service Provider nor anyone acting on the Service Provider's behalf has attempted in any way to fix Tenders or otherwise engage in anti-competitive behaviour; and
- iv. all of the relevant information submitted for this RFT is true and correct as at this date.

---

Signed:

Company Name:

Date:



## **Schedule B1: Contract price**





## Schedule B1: Contract price

(TO BE PLACED IN ENVELOPE '2')

This form provides details of the Service Provider's Contract price. This form can be used for both Conforming Tenders and Alternative Tenders.

Contract/RFT  
Number:

Vehicle operating costs

\$

Driver and operations costs

\$

Vehicle capital costs

\$

**FIRST YEAR CONTRACT PRICE (excluding GST)**

\$

Conforming Tender:

(please tick one or the other)

Alternative Tender:

### Alternative Tender

For each Alternative Tender the Service Provider must submit the total Contract Price plus an indication of all the features of the Tender which differ from the Specification. Either list these below or append them to this form and clearly label them "Alternative Tender Submission".

Alternative Tenders – features which differ from the primary specifications:

Reasons that the Alternative Tender better meets the public interests

### VARIABLE PRICE PER KILOMETRE (excluding GST)

The Variable price will be used by the Council for calculating Contract Price adjustments in the event of any Service Level Variations. Service Level Variations may result in an **increase** or **reduction** in the level of Service. Refer clause 9.4.1 of the Tendering and Contracting Manual.

Rate per vehicle per kilometre

\$

Rate per vehicle per hour

\$

Signed:

Company Name:

\_\_\_\_\_

Date:

\_\_\_\_\_

\_\_\_\_\_



## **Schedules C1 – C3: Additional information**



## Schedule C1: Performance measures and deductions

### Performance Measures

The following are the key performance attributes, indicators, measures and thresholds that will be used to monitor the Unit. In the event that the Service Provider is in breach of any of these performance measures, the Council may withhold any payment otherwise due to the company for that service which is in breach. In addition, the Council may also deduct from any payment otherwise due to the company, any costs which the Council has reasonably incurred in rectifying the breach.

Performance attribute	Performance indicator	Method	Minimum requirement
<b>Service reliability</b>	Percentage of scheduled trips operated in full. (Note that a trip leaving the origin stop >59 seconds early or >9 minutes and 59 seconds late is deemed not to have operated)	Monitoring and/or ETM reports	99% of all services must be operated in full
	Number of unauthorised route deviations	Reported or observed	None permitted
	Percentage of timetabled service trips that were cancelled	Reported or observed	None permitted
	Number of times bus did not stop for passenger	Reported or observed	99%
<b>Service punctuality</b>			
a. trip start	a. Percentage of scheduled trips leaving origin stop between 59 seconds before and 4 minutes and 59 seconds after the scheduled departure time.	Monitoring and/or ETM reports	98%
b. en route and at destination	b. Percentage of scheduled trips between 59 seconds before and 4 minutes and 59 seconds after the scheduled departure time at the selected points	Monitoring and/or ETM reports	98%
<b>Patronage</b>	Recording passenger boardings per trip operated	ETM reports and on-board monitoring	Must record all passenger boardings per trip
	Recording passenger boardings by passenger category (eg child, adult, SuperGold).	ETM reports and on-board monitoring	Must record all passenger boardings by passenger category per trip
	Number of over-riding of passengers	Reported	As stipulated by Council
<b>Reporting timeliness</b>	Number of specified data reports delivered within timeframes.	6 working days following the end of the preceding month	No more than 2 occurrences in a financial year
	Number of failures to provide material information required under the Contract e.g. invoice or passenger data	6 working days following the end of the preceding month	No more than 1 failure in a financial year
	Reporting any notifiable event which arises in consequence of operation of the Unit	Next working day following the event of the notifiable event	As required

## Part 4: Schedules

Performance attribute	Performance indicator	Method	Minimum requirement
<b>Customer satisfaction</b>	Percentage satisfaction for public transport users with defined public transport attributes.	Passenger surveys	Service must achieve ≥ 90% user satisfaction in surveys
<b>Passenger facilities (on-bus)</b>	Score (on a scale of 1 to 5) for specific passenger facility attributes (e.g. cleanliness, temperature, ride comfort, driver courtesy).	On-board monitoring	No more than 1 vehicle scores below 50% of the total marks per assessment
<b>Safety and security</b>	The maintenance of an up-to-date and comprehensive health and safety management plan and confirmation (through audit and monitoring) that the plan is being satisfactorily complied with.	Audit and monitoring	100%
<b>Contract conformance with fleet composition</b>	Comparison of fleet composition in use with tendered fleet composition and vehicle replacement policy conducted at random intervals (at a minimum, annually).	Monitoring	Urban vehicles: None - vehicles must meet standard, unless in exceptional circumstances and with approval of the Council. School vehicles: 95%
<b>Destination signs</b>	Incorrectly displayed route sign or not working	Monitoring	No more than 2 occurrences of either incorrectly displayed or not working per month
<b>Security camera operation and data provision</b>	All cameras must be in operation during in-service hours.	Monitoring	100%
	Requests for data images must be supplied within 24 hours	Monitoring	100%
<b>Complaints</b>	Number of complaints received, disaggregated by service attributes (e.g. punctuality, vehicle cleanliness, comfort).	Complaints register	No more than four legitimate complaints may be received in any working week and no more than ten in any calendar month
	Percentage of complaints cleared up within 10 working days.	Complaints register	100% of complaints resolved within 10 working days

## Part 4: Schedules

Performance attribute	Performance indicator	Method	Minimum requirement
<b>Driver standards</b>	Drivers must be tidily dressed whenever driving a bus, must be courteous at all times to the passengers, drive in a safe and legal manner, and be capable of communicating with passengers in the English language.	Monitoring / surveys	No traffic infringement notices issued to any drivers. Must achieve +90% satisfaction in surveys (aggregated responses from customers)
<b>Back-up vehicle</b>	In the event that a scheduled service is full, or a scheduled service is not able to operate, a back-up vehicle is required to be called to take over the operation of the Service.	Reported	100%
<b>Electronic Ticketing Machines</b>	All routes and all services must operate with a fully functioning ETM.	Reported	100%
<b>Revenue protection</b>	Managing the security of any cash carried by drivers. Recording and reconciling monies received against the financial information generated by the electronic ticketing system	Operator	Daily / Monthly reconciliations
<b>Contract compliance</b> Default under any other material requirement requested by the Council	Council has requested compliance and Operator fails to remedy within 5 working days	Assessed by the Council	100%

### Monitoring

The Council shall monitor the above standards and notify the company in the event of any non-compliance within 5 working days of the Council being aware of the non-compliance.

### Factors outside the control of the Company

Factors deemed to be outside the control of the company shall include events such as floods, earthquakes, but shall not include traffic conditions other than those caused by these factors, or vehicle breakdown.

### Non-compliance deductions

Where there has been non-compliance with the Performance Standards set above, the Council may adjust the Contract Price as follows. These deductions are in addition to all other adjustments or deductions allowed under the Contract and are in addition to any amounts payable by the Service Provider for remedying costs under clause 9.4.4 of the Conditions of Contract. The deductions shall be made on a monthly basis.

Performance attribute	Non-compliance deduction	
	Reported	Not reported
Service reliability	\$300 per Trip	\$1,000 per Trip
Service punctuality	\$300 per Trip	\$1,000 per Trip
Patronage	\$500 per occurrence	\$,1000 per occurrence
Reporting timeliness	\$500 per occurrence	N/A
Customer satisfaction	\$100 per % point below the ≥90% target	N/A
Passenger facilities (on-bus)	\$100 occurrence	\$500 per occurrence



## Part 4: Schedules

Performance attribute	Non-compliance deduction	
	Reported by Operator	Not reported by Operator
Safety and security*	\$100 occurrence	\$2,000 per occurrence
Contract conformance with fleet composition	\$1,000 per breach per vehicle	\$2,000 per breach per vehicle
Destination signs	\$100 per Trip	\$500 per Trip
Security cameras	\$1,000 per occurrence	\$2,000 per occurrence
Complaints	\$100 per occurrence	\$200 per occurrence
Driver standards	\$100 per occurrence	N/A
Back-up vehicle	\$300 per Trip	\$1000 per Trip
Electronic Ticketing Machines	\$100 per trip	\$500 per trip
Contract compliance	\$2,000 per occurrence breach	

\*The non-reporting of a health and safety breach may be considered grounds for termination of the Contract.

The Council reserves the right to vary the value of the non-service deduction depending on the type of Unit being tendered and/or waive the deduction for factors outside the Service Provider's control or where a satisfactory explanation has been given.

## Schedule C2: Performance bond

### Bond for performance of contract

Contract for \_\_\_\_\_ (Contract/RFT Number)

This Deed is made on \_\_\_\_\_ 20\_\_.

By \_\_\_\_\_ (the Service Provider)

And \_\_\_\_\_ (the Surety)

It is made in the following circumstances:

- A. The Service Provider has entered into an agreement with the Taranaki Regional Council (“the Council”) dated \_\_\_\_\_ to provide public transport services described in the Contract Documents forming the agreement and to carry out and fulfil the obligations imposed on the Service Provider by the Contract Documents.
- B. The Contract Documents require the Service Provider to provide the Council with security in the form of a bond to ensure performance of the Service Provider’s obligations under the Contract Documents.

By this deed:

1. The Service Provider and Surety are jointly and severally held and bound to the Council in the sum of \_\_\_\_\_ dollars and bind themselves, their successors and assigns jointly and severally for the payment of that sum.
2. The condition of this bond is that it shall be null and void if:
  - a. the Service Provider duly carries out and fulfils all the obligations imposed on the Service Provider by the Contract Documents; or
  - b. on default by the Service Provider, the Surety satisfies and discharges the damages sustained by the Council up to the amount of this bond; or
  - c. the Surety pays the whole of the bond amount to the Council; or
  - d. the Council provides a written release of the bond to the Service Provider or the Surety.
3. The Surety shall make payment to the Council under this bond upon receipt of a written demand purporting to be signed by the Council. Such payment will be made without reference to, and notwithstanding any instructions from the Service Provider to the Surety to the contrary.
4. Subject to clause 9, and except as provided in clause 2, this bond shall be and remain in full effect.
5. The Surety shall not be released from any liability under this bond by:
  - a. an alteration in the terms of the Contract between the Council and the Service Provider;
  - b. by alteration in the extent, nature or length of the Contract to be carried out or of the Service Provider’s obligations under the Contract;
  - c. any forbearance or waiver by the Council in respect of any of the Service Provider’s obligations or in respect of any default on the part of the Service Provider;

#### Part 4: Schedules

- d. any indulgence or additional or advance payment, forbearance, payment or concession given to the Service Provider;
  - e. the compromise or resolution of any dispute with the Service Provider; or
  - f. the failure to detect or prevent any default by the Service Provider under the Contract.
6. Payments under this bond shall be made free and clear of and without any deduction for any present or future taxes, levies, impost duties, fees, deductions set off or withholding of any nature.
  7. No waiver or any breach or failure to enforce any provision of this Deed at any time by the Council shall in any way limit or waive the right of the Council to subsequently exercise its rights under this Deed.
  8. All demands, notices and other communications provided for and permitted under this Deed which are required to be in writing shall be sent by registered mail with postage prepaid, by facsimile, by hand delivery or by courier as follows:

**In the case of the Council:**

The Taranaki Regional Council  
47 Cloten Road  
Private Bag 713  
Stratford  
Taranaki

Facsimile: (06) 765 5097

**In the case of the Service Provider:**

At their address for Service as set out in the Contract Documents.

**In the case of the Surety:**

[*Surety's address*]

or to such other address or person as any party may specify by notice in writing to the others.

9. All such notices or communications shall be deemed to have been duly given or made:
  - a. three days after being deposited in the mail by the sender with mail postage prepaid;
  - b. on delivery when delivered by hand or by courier; or
  - c. if sent by facsimile, when a completed transmission report is received by the sender unless a verifiable query as to material illegibility is promptly raised.
10. Where the Service Provider or any of the Surety:
  - a. fails to execute or become bound by this Deed; or
  - b. ceases for any reason to have any liability or continuing liability under this Deed including, without limitation, pursuant to a release by, concession from or compromise with the Council, then the remaining party who has signed this Deed shall continue to be bound by this Deed.

**Part 5: Schedules**

11. This Deed shall be governed by the laws of New Zealand. The Service Provider and the Surety submits to the non-exclusive jurisdiction of the courts of New Zealand.

**Service Provider**

Signed by the Service Provider \_\_\_\_\_

Address \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

In the presence of:

Witness \_\_\_\_\_

Occupation \_\_\_\_\_

Address \_\_\_\_\_

**Surety**

Signed by the Surety \_\_\_\_\_

Address \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

In the presence of:

Witness \_\_\_\_\_

Occupation \_\_\_\_\_

Address \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## Schedule C3: Contract agreement form

Contract/RFT  
Number:

This agreement is made on \_\_\_\_\_ day of \_\_\_\_\_ 20

Between **Taranaki Regional Council** (the Council)

Of **47 Cloten Road, Stratford**

AND \_\_\_\_\_ (Service Provider)

Of \_\_\_\_\_ (address)

The Service Provider has submitted a Tender for Contract \_\_\_\_\_

### Background

- The Council has issued a Request for Tender for a public transport service in accordance with the Council's Tendering and Contracting Manual.
- The Service Provider has submitted a Tender date \_\_\_\_\_ for the provision of the Unit and the parties have agreed that the Service Provider shall carry out those services in accordance with the Tender Documentation.

### Agreement

**IT IS AGREED THAT** the Service Provider will regularly and diligently provide the public transport services detailed in the Tender Documentation and RFTs. The Council and Service Provider may vary the level of service from time to time but no such variation shall take effect unless such variation is recorded in writing and agreed to by both the Service Provider and the Council.

Contract Starting Date: \_\_\_\_\_

Contract Duration: \_\_\_\_\_

First Year Contract Price: \_\_\_\_\_ (GST exclusive)

The Council has agreed to Contract the Service Provider to carry out the Service and the Service Provider has agreed to perform the Service for the Contract Price upon the terms set out above.

The Contract Documents shall comprise of the following documents which shall have precedence in the order shown:

1. This Contract Agreement.
2. The Notification of Acceptance of Tender.
3. All documented changes to the RFT documentation and/or the Service Provider's Tender agreed to by both parties.
4. The Service Provider's Request for Tender.
5. The documented minutes of relevant pre-Tender meetings.
6. The RFT.
7. The Standard Conditions of Contract.

**Part 4: Schedules**

**Addresses for notices:**

Council

Postal address: Taranaki Regional Council, Private Bag 713, Stratford 4352  
Courier address: Taranaki Regional Council, 47 Cloten Road, Stratford  
Telephone: (06) 765 7127  
Fax: (06) 765 5097

Service Provider

Postal address: \_\_\_\_\_  
Courier address: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Fax: \_\_\_\_\_

**Representatives**

Council

Name: \_\_\_\_\_  
Contact address: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Email: \_\_\_\_\_

Service Provider

Name: \_\_\_\_\_  
Contact address: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Email: \_\_\_\_\_

SIGNED on behalf of the Council by:

\_\_\_\_\_

in the presence of:

\_\_\_\_\_

SIGNED on behalf of the Service Provider by:

\_\_\_\_\_

in the presence of:

\_\_\_\_\_