**TOTAL MOBILITY SCHEME**

**Contract for the Provision of**

**Total Mobility Services in the**

**Bay of Plenty Region**

**Between Bay of Plenty Regional Council**

**And**

**[insert Transport Operator company name]]**

Council Contract No. [insert]

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Contract Signing Page

CONTRACT dated this day of 2024

**PARTIES**

Bay of Plenty Regional Council (“**Council”**).

[Insert name of Transport Operator company] (NZBN: [Insert]) (“**Transport Operator”**).

**BACKGROUND**

1. The Total Mobility Scheme assists eligible people, with long-term impairments to access appropriate transport to meet their daily needs and enhance their community participation. This assistance is provided in the form of subsidised door to door transport services, provided by transport operators engaged by Council.
2. Council administers the Total Mobility Scheme in the Bay of Plenty Region.
3. The Council has agreed to fund a Total Mobility service that assists people with impairments to access subsidised door-to-door transportation services.

The Transport Operator is a small passenger services vehicle operator carrying on business in the Bay of Plenty Region.

The Council wishes to engage the Transport Operator to provide the Services and the Transport Operator wishes to provide the Services on the terms and conditions set out in this Contract.

**AGREEMENT**

Council appoints the Transport Operator to perform and supply, and the Transport Operator agrees to perform and supply, the Services upon the terms and conditions of this Contract.

**Important:** By signing this Contract, the Transport Operator acknowledges that:

It has read and understood the terms of this Contract.

It has had the opportunity to seek advice about this Contract before signing it.

It is satisfied as to the amounts payable for performance of its obligations.

**EXECUTED AS A CONTRACT**

|  |  |
| --- | --- |
| **SIGNED** for and on behalf of )**BAY OF PLENTY REGIONAL**  )**Council** by an authorised signatory ) |   |
| SIGNED for and on behalf of )**[INSERT TRANSPORT OPERATOR COMPANY NAME]** as Transport Operator)by its director/authorised signatory: ) |  Print Name Signature |

Schedule 1: Contract information

|  |  |
| --- | --- |
| **Contract Number** | CON000[insert] |
| **Contact Details** | **Council:** Bay of Plenty Regional Council, PO Box 364, Whakatāne 3158.**For the attention of:** [insert job title / team]**Email:** [insert]**Transport operator:**[Address as it appears on the Companies Register or postal address for service of notices if not a registered company]**Email:** [insert] |
| **Term**  | **Commencement date:** 1 June 2024.**Initial term:** 1 year from Commencement Date.**Renewals:** 2 renewals of 1 year each. |
| **Maximum Contract Price** | $[insert] plus GST. |
| **Contractor insurances** | **Public liability:** $5,000,000.00 per event.**Motor vehicle legal liability:** $10,000,000.00 per event |

Schedule 2: Conditions of contract

# Definitions

In this Contract, unless the context requires otherwise:

**Bay of Plenty Region** means the area within the Bay of Plenty Regional Council boundaries, the current boundaries as at the Commencement Date are shown generally on the map in Appendix 8.

**Certificate of Fitness** means evidence of a vehicle inspection issued under the Land Transport Rule Vehicle Standards Compliance 2002 Rule 35001/2002 Land Transport Rule 35001: Vehicle Standards Compliance 2002 as at May 2021.

**Cleared Transactions** means transactions that are both valid and not subject to an active query.

**Client** means a person with an impairment who has been assessed as eligible to use the Service and is the holder of a Total Mobility ID Card.

**Commencement Date** means the Commencement Date specified in Schedule 1.

**Companion Driving Service** means any services provided to a Client that is not transportation from one location to another, or the use of a wheelchair hoist in conjunction with such transport.

**Contract** means this Contract and its schedules and appendices.

**Council** means the Bay of Plenty Regional Council.

**Council Information** means all information and data relating to Council, including trade secrets, Intellectual Property (including any New IP), ideas, research and development, development work in progress, projects, formulas, processes, compositions, production processes and techniques, client and supplier lists, technical data, designs, drawings, specifications, business and marketing plans and proposals.

**Driver** means any individual driver used by the Transport Operator to provide Services.

**Escalation Manager** means the person nominated by the relevant party per clause 28.2

**Fare** means the Council fare for a Trip, calculated in accordance with this Contract**.**

**Fare Schedule** means the Transport Operator’s Fare schedule which sets out the rate to be charged to Clients, set out in Appendix 2, subject to any amendments approved by Council in accordance with this Contract.

**GST** means Goods and Services Tax as defined in the Goods as Services Tax Act 1985.

**Hoist Payment** has the meaning given in Appendix 1 TM flat rate hoist payments.

**HSWA** means the Health and Safety at Work Act 2015 together with any applicable regulations made thereunder.

**Insolvency Event** in respect of any person, means an event whereby that person:

* is, becomes, or is deemed to be, insolvent or bankrupt,
* makes an assignment for the benefit of, or enters into or makes any arrangement or composition with, its creditors,
* goes into receivership or has a receiver, trustee, and manager (or either of them) (including a statutory manager) appointed in respect of all or any of its property,
* goes into voluntary administration, or
* any resolution (or similar in respect of a limited partnership) is passed, or any proceeding is commenced, for the winding up, liquidation or dissolution of the person other than for the purposes of a solvent reconstruction.

**In-Vehicle System** means the “in-vehicle” electronic swipe card reader and tracking system used by the Driver for recording transactions and Services. The System must support the most up-to-date version of RideWise throughout the Term.

**KPI** means each of the Contractor’s key performance indicators as set out and measured in Appendix 6 – Key Performance Indicators.

**Maximum Contract Price** means Maximum Contract Price specified in Schedule 1, being the maximum total amount payable by Council to the Transport Operator pursuant to this Contract.

**Personnel** means any member, director, officer, driver, employee, agent, contractor, assign or any other person of a party.

**RideWise** means the RideWise administrative management software solution (or such replacement solution that may be notified by Council to the Transport Operator in writing) used to manage the Total Mobility Scheme, and to which the Parties have access.

**Services** means the services to be performed by the Transport Operator, as described in clause 3.

**Subsidy** means a subsidy that Council shall pay the Transport Operator per trip, being the lower of:

* 75% of cost of the Trip, or
* $37.50.

**Term** means the duration of this Contract, being the Initial Term plus the Renewal Terms (if any) described in clause 5.1 , unless terminated earlier in accordance with this Contract.

**Total Mobility Scheme** means the Total Mobility scheme which assists eligible people, with long-term impairments to access appropriate transport to meet their daily needs and enhance their community participation. This assistance is provided in the form of subsidised door-to-door transport services by a Council approved transport operator.

**Total Mobility ID Card** means a Total Mobility photo identity card issued by the Council, used by a Client when accessing the Total Mobility Scheme.

**Transport Operator** means the company incorporated and existing under the laws of New Zealand which has entered into this Contract and is named as the Transport Operator.

**Trip** means a trip undertaken by a Driver with a Client, which is eligible for the Subsidy in accordance with this Contract.

**Vehicle** means a vehicle used by the Transport Operator to provide the Services that complies with the requirements of this Contract.

**Verification Letter** means a letter issued by Council confirming that a person is eligible to participate in the Total Mobility scheme as a Client.

**Waka Kotahi** means Waka Kotahi New Zealand Transport Agency and its successors and lawful assigns.

**Waka Kotahi Rules** means those land transport rules relevant to the Services published by Waka Kotahi from time to time (and including Operator Licensing 2017, Work Time and Logbooks 2007, Driver Licensing 1999 and any amendment to those rules and all rules passed in substitution for those rules).

**Wheelchair Accessible Vehicle** means a Vehicle capable of transporting a Client whilst in their wheelchair and without the Client having to exit their wheelchair whilst being loaded or unloaded into the Vehicle.

**Working Day** means a day (other than a Saturday, Sunday, or a statutory holiday) in the Bay of Plenty Region, New Zealand.

# Interpretations

## In the construction and interpretation of this Contract, unless the context otherwise requires:

1. the background and headings do not affect interpretation of the Contract,
2. words importing one gender include other genders and a singular includes the plural and vice versa,
3. a reference to a clause or schedule is a reference to a clause or schedule of this Contract,
4. a reference to a “month” means calendar month,
5. a law or statute includes that law or statute as amended from time-to-time and any regulations, Waka Kotahi Rules, NZQA unit standards, Orders in Council, and other instruments issued or made relevant to the Services from time-to-time, as well as instruments passed in substitution,
6. references to “written” and “in writing” include any means of permanent visual representation,
7. a reference to one Party notifying another or giving a notice to another, or agreeing, consenting, approving, or objecting to any matter or nominating or making any nomination or giving any direction means that Party doing so in writing, and
8. where a Driver is obligated to comply with the terms of this Contract, the Transport Operator is liable for that Driver’s compliance as if the Transport Operator was the Driver named in that term.

# Services

## The Transport Operator is a small passenger service operator as defined in the Land Transport Rule: Operator Licensing 2017 or any applicable replacement rule or legislation. The Land Transport Rule: Operator Licensing 2017 will apply to both the Transport Operator and all Drivers.

## The Transport Operator will provide small passenger transport services to Clients for travel within the Bay of Plenty Region and all other services required by this Contract, which together will be the Services. Trips outside of the Bay of Plenty Region, including trips starting within the Bay of Plenty Region and finishing outside of the Bay of Plenty Region, are not eligible for the Subsidy.

## The Transport Operator will charge the Client and the Client will pay the Transport Operator the Fare less the Subsidy for the Trip.

## Council will subsidise each Trip taken by a Client in accordance with this Contract by paying the Transport Operator the Subsidy for the Trip.

## Council will pay the Transport Operator the Hoist Payment for each applicable Trip, as described in Appendix 1 – TM flat rate hoist payments.

##  In summary, the Services will be provided in the following manner:

1. A Client will book a Trip in accordance with the Transport Operator’s booking procedure, for example, by telephone or using a booking App. The Transport Operator will ensure that Client bookings take precedence over other standard bookings.
2. The Transport Operator will use reasonable endeavours to provide the Trip requested at the booked time.
3. Where a Client flags down a Vehicle on the street and requests a Trip, the Transport Operator will provide the Trip if the vehicle flagged down is a Vehicle and the driver is a Driver within the meaning of this Contract.
4. Upon making the booking, the Client will notify the Transport Operator that they are an eligible participant in the Total Mobility Scheme and will present a Total Mobility ID Card or Verification Letter to the Driver at the commencement of a Trip.
5. The Transport Operator will allocate and dispatch a Vehicle and Driver to pick up and provide the Trip to the Client.
6. Upon pick up, the Client will present his or her Total Mobility ID Card or Verification Letter to the Driver and the Driver will enter the details on the Total Mobility ID Card or Verification Letter into the In-Vehicle System.
7. Provided that the Driver is satisfied that the Total Mobility ID Card or Verification Letter is valid and has been issued to the person who has booked the Trip, the Driver will charge the Client and the Client will pay only the Fare (as set out in the Fare Schedule) less the Subsidy for the Trip.
8. The Transport Operator will be entitled to claim the remainder of the Fare for the Trip from Council by submitting an invoice to Council in accordance with the requirements of this Contract.

## The Total Mobility Scheme does not include Companion Driving Services.

## Hours of Service. A Transport Operator must ensure it is able to provide Services 24 hours per day, seven (7) days per week in accordance with the Land Transport Act 1998 and Waka Kotahi Rules, unless reduced hours of service are agreed in writing by the Council at its discretion.

## General standards of Service. In providing the Services, the Transport Operator must:

1. maintain standards of skill, timeliness, diligence, and prudence at least consistent with those expected of a skilled and experienced operator in New Zealand, providing services that are similar to the Services,
2. ensure the Services are completed in an efficient and timely manner,
3. comply with all Milestones (if any) and any other specifications relating to the Services as set in this Contract,
4. unless otherwise agreed and specified in this Contract, provide at its own cost all equipment and resources required to provide the Services,
5. not damage the reputation or goodwill of Council, its suppliers or other parties dealing with Council, and
6. comply with all relevant laws and maintain all licences, approvals and permits required to be held by the Transport Operator in order for it to provide the Services.
7. Ensure that it and its Drivers comply with Appendix 4: Operation of In-Vehicle System.

# Key Performance Indicators

## The Transport Operator acknowledges that:

1. The KPIs have the following purposes:
2. to enable Council to measure the productivity, effectiveness and efficiency in relation to the Transport Operator’s performance of the provision of the Services; and
3. Setting performance targets for Transport Operator.
4. In performing the Services it must meet or exceed the KPIs, and
5. Each KPI is reasonable and that the Transport Operator has the capabilities to meet each KPI throughout the Term.

## The Transport Operator will promptly notify Council of any failure by the Transport Operator to meet any KPIs.

## Without limitation to any other rights or remedies Council may have under this Contract or at law, the following shall apply if the Transport Operator fails to achieve any KPIs:

1. within 10 Working Days of the date on which either party notifies the other of a failure by the Transport Operator to meet any KPI, Council may, by written notice, require the Transport Operator to attend a meeting with Council on a date and at a location nominated by Council, and
2. at that meeting, the parties shall:
3. Discuss the reasons for the Supplier’s failure to achieve the KPIs.
4. Use their reasonable endeavours to agree on the remedial actions that the Transport Operator will take to ensure that it is able to meet the KPIs.
5. Minute the meeting and each sign a copy of those minutes as an agreed record of the meeting.

## Without limitation to any other rights or remedies, Council may, under this Contract or at law, if the Transport Operator fails to comply with its obligations to meet any of the KPIs on at least three occasions during the Term (whenever occurring and irrespective of which KPIs that the Transport Operator has failed to comply with on each occasion) and Council has requested the Supplier to attend a meeting for the purposes of clause 4.1 in respect of at least two failures occurring prior to the third or later failure, the Transport Operator shall be deemed to have committed a breach of this Contract entitling the Council to:

1. suspend the provision of the Services and withhold any payments due to the Transport Operator under this Contract, until such time as Council is satisfied in its sole discretion that the Transport Operator has taken sufficient remedial actions, to ensure that it can meet all KPIs for the duration of the Term, or
2. terminate this Contract immediately by notice in writing to the Transport Operator.

## Without limiting any rights of Council in relation to the KPIs, the Transport Operator and Council will review the Transport Operator’s performance under this Contract against the KPIs and discuss any areas of improvement required as part of the Contract Management and Compliance Meetings described in Appendix 5 – Contract management and compliance.

# Contract term and termination

## Term of contract

1. This Contract shall commence on the Commencement Date and continue for a period of one (1) year (“Initial Term”) unless it is terminated earlier in accordance with the terms of this Contract or otherwise at law.
2. Council has the right to renew the Contract for a further two terms of one year each (each a “Renewal Term”) by written notice to the Transport Operator prior to the expiry of the then-current Term. Without limiting Council’s discretion, Council may take into account the Transport Operator’s performance (including its KPI performance) and the updated Fare Schedule provided in accordance with clause 19.2, in determining whether to renew the Contract.
3. The terms applicable during any Renewal Term will be the terms of this Contract in force at the time immediately prior to the commencement of the Renewal Term, except that the remaining number of rights to renew, if any, shall be decreased by one.

## Termination

1. Council may terminate this Contract on giving 20 Working Days’ notice to the Transport Operator if:
2. the funding source which the Council receives to operate the Service is withdrawn, or is no longer available, or
3. the Transport Operator or any Driver, fails to comply with any of the terms and conditions of the Contract, and such failure is not remedied within five (5) Working Days of the Council giving notice to the Transport Operator, or
4. the Transport Operator, having remedied a failure for which notice has been given, is served with three further failure notices within a 12-month period from the date upon which the first notice was given, or
5. Either party may terminate this Contract at its discretion by giving the other party three (3) months’ written notice.
6. Either party (“**First Party**”) may terminate this Contract immediately by giving written notice to the other party (“**Defaulting Party**”) if:
7. the primary, or all of, the business activities of the Defaulting Party are suspended or cease for more than five consecutive Working Days,
8. an Insolvency Event occurs in relation to the Defaulting Party,
9. the Defaulting Party suspends payments of its debts generally or is or becomes unable to pay its debts when they are due, or
10. if the Defaulting Party is the Transport Operator, the Defaulting Party has acted in a way that in Council’s reasonable opinion, brings the Council’s reputation into disrepute.

## Upon termination or expiry of this Contract:

1. the Transport Operator shall immediately deliver to Council:
2. all documents, papers, records, and Council Information in the Transport Operator’s possession relating to Council, the Services, or this Contract and, except to the extent required to comply with any statutory document retention requirements, the Transport Operator shall permanently destroy all copies thereof (whether held in hard copy or electronically), and
3. all assets and property of Council in the possession of the Transport Operator.
4. The Council will pay the Transport Operator for claims properly due and payable under this Contract, up to the date of termination.
5. The Transport Operator will reimburse the Council pro rata for funds provided by the Council for installation of equipment if the Contract terminates prior to the minimum service period specified in clause 24.4. If not reimbursed, the Council shall be entitled to set off such sums against any sums that would otherwise be due to the Transport Operator.
6. The parties shall take all reasonable action to affect an orderly termination of the Transport Operator’s duties under this Contract.

## Termination of this Contract is without prejudice to the rights and obligations of the Parties’ accrued up to an including the date of termination or any rights which are intended to survive termination.

# Total Mobility Scheme changes

## Council may provide the Transport Operator with 20 Working Days’ written notice of any changes to the Total Mobility Scheme or Services. These changes may include, but are not limited to, the maximum amount subsidised by Council, the rate of the subsidy, or the conditions of use. In the event the Transport Operator does not wish to continue with the Contract following any such change, it may terminate this Contract by giving notice per clause 5.2 Council. Costs incurred by the Transport Operator due to any such changes shall be borne by the Transport Operator.

# Health and Safety

## The Transport Operator shall have in place and comply with a health and safety management plan. The Transport Operator shall provide Council with a copy of its health and safety management plan on or prior to the Commencement Date. The Transport Operator shall procure that each of its permitted subcontractors have in place and comply with a health and safety management plan and shall procure that each subcontractor provides Council with a copy of its health and safely management plan prior to commencing any services in connection with this Contract.

## The Transport Operator must notify Council of risks to health and safety arising from the Services which are reasonably foreseeable to the Transport Operator or its permitted subcontractors and which may affect Council, the Transport Operator, or its permitted subcontractors arising out of, or in any way connected with, the activities of the Transport Operator or its permitted subcontractors in connection with this Contract, and the Transport Operator shall (and shall procure that its permitted subcontractors shall) have due regard to such risks in performing its obligations under this Contract.

## Without prejudice to its obligations under clause 7.2 above, the Transport Operator shall (and will procure that its permitted subcontractors shall):

1. upon the request at any time of Council, submit to, and fully co-operate with, any safety vetting process required by Council, including Council’s SHE safety vetting process, and provide a written statement of the Transport Operator’s own safety requirements,
2. notify Council immediately in the event of any incident involving any person which occurs in the course of the performance of this Contract where that incident is a “notifiable event” (as that term is defined in the H&S Act) (including, without limitation, any incident which causes any personal injury or damage to property which could give rise to personal injury),
3. assess all reasonably foreseeable risks to health and safety that may affect Council or any third party arising out of or in any way connected with the performance of this Contract, and provide a copy of such assessment to Council upon request, and promptly take all reasonable steps to eliminate or adequately control such risks and notify and co-operate with Council accordingly,
4. fully co-operate with Council and any other parties as necessary to ensure that all reasonably foreseeable risks to health and safety (including fire) are eliminated or adequately controlled,
5. take all practicable steps to ensure that no act or omission is a breach of any duty or obligation of the Transport Operator under the Health and Safety at Work Act 2015 and associated regulations, or any safety requirements as may be notified to the Transport Operator by Council, and
6. ensure that all its employees, agents, subcontractors and representatives associated with provision of the obligations under this Contract are adequately trained and supervised in the safe use of all machinery, tools, processes, substances, protective clothing, and other equipment, which may be required to be used in relation to this Contract.

# Passenger safety standards

## All practicable steps will be taken by the Transport Operator to ensure the safety of employees, including Drivers, while at work and further to ensure that no action or inaction of any employee while at workplaces at risk or harms any other person including any passengers.

## The Transport Operator must ensure all Drivers are complying with work time & logbook requirements, such as correctly completing their logbook.

## All passengers that are transported in a wheelchair in a Hoist Vehicle must be restrained with either a:

1. harness belt, or
2. lap belt, or
3. lap-sash belt.

## The Transport Operator must ensure that restraints are connected to floor-mounted anchor fittings at the rear of the wheelchair to stop any forward motion of the Client, as defined in the Australian/New Zealand Standard AS/NZS 10542:2009 (Parts 1 and 2).

## Passengers are not to be lifted into the Hoist van via the hoist, unless they are seated securely in a wheelchair, walking frames or other mobility devices which reasonably require the use of a hoist to get in and out of the vehicle.

## Drivers are not permitted to carry any Client who refuses to wear the appropriate seatbelt, unless a Client provides an appropriate Waka Kotahi exemption document, or a medical certificate exempting the Client from wearing a seatbelt.

## A Driver may refuse to carry a Client if in the reasonable opinion of the Driver the Client:

1. is violent or abusive towards to the Driver, or
2. is otherwise determined by the Driver (acting reasonably) to be unfit to be a Client.

## The Transport Operator will ensure that staff training and selection procedures are established and followed, to ensure that the Services are well regarded by the Clients who use them. The Transport Operator will ensure that staff likely to be dealing with Clients who have special needs attend a training course to equip them to meet those needs. The Transport Operator may not make any extra charge for its staff’s time or expenses in attending such courses.

## The Transport Operator will not use in the provision of the Services any person to provide Services who is in contact with the public and whose behaviour or attire is objectionable or otherwise inappropriate.

# Audit provision

## Bay of Plenty Regional Council will be allowed to conduct audits of the Services including:

1. Fleet Vehicles, Vehicle Standards compliance and Driver requirements compliance.
2. Transaction processes for file creation and verification of submitted reimbursement claims and of the standard generally of Services performed by the Transport Operator.

## During such audits, the Transport Operator shall provide to Council, or its representative such information, assistance and cooperation as is required by Council (acting reasonably) for the audits.

## Council may audit a Transport Operator giving no less than three working days’ notice before the audit.

## The Transport Operator shall ensure that all Services’ transactions are fully auditable and queries by Council regarding any such transactions must be responded to within three working days.

## Flagged transactions in RideWise:

1. Council will monitor all transactions via RideWise transaction access, and all flagged anomalies will be checked. Transport Operators will be asked to investigate and report back on anomalies that need further explanation.
2. The Transport Operator may be held financially accountable in cases of anomalies which breach the terms and conditions of this Contract. This may include repayment of funds to the client, Council and Waka Kotahi
3. All transactions will be responded to by the Transport Operator or resolved before the end of the payment month. Any flagged transactions outstanding resolution after three months will be voided by Council.
4. Council has the right to refuse payment if a flagged anomaly has not been resolved to the satisfaction of the Waka Kotahi Policy document or is in breach of any part of this Contract.

# Monitoring Services

## Council or its representative shall have the right to observe the operations of the Transport Operator, including the delivery of Services, including the right to conduct interviews with any person, including Drivers, involved in the delivery of Services providing no less than three (3) Working Days’ notice is given to the Transport Operator (except in the case of a health and safety audit in relation to an incident where 24 hours of notice may be given); and access the in-vehicle and GPS records for each Vehicle upon 24 hours of notice in writing be given to the Transport Operator.

# Access to Transport Operator sites

## The Transport Operator will allow and will ensure its staff and subcontractors allow Council access on reasonable notice to any premises where data, information and records relating to Services are stored.

## Council will comply with the Transport Operator’s (or its permitted subcontractor’s) security procedures and building regulations for access to their premises. Where no conditions of access are specified, BOPRC’s representatives shall undertake their tasks in a proper, diligent, and competent manner.

## Council may have access to premises for the purposes of conducting a review, audit or inspection as to the provision of Services or the compliance by the Transport Operator of its obligations under this Contract.

# Insurances

## The Transport Operator will affect and maintain with a reputable insurance company public liability insurance cover of not less $5,000,000.00 per event. The public liability insurance referred to in this clause will:

1. be held by the Transport Operator for the entire term of this Contract; and
2. be with insurers reasonably acceptable to Council.

## The Transport Operator will affect and maintain with a reputable insurance company motor vehicle legal liability insurance cover of not less than $10,000,000.00 per event.

## On or prior to the Commencement Date, the Transport Operator will provide Council with evidence of the insurances required by clauses 12.1 and 12.2.

## Without limiting clauses 12.1 and 12.2, the Transport Operator will effect and maintain with a reputable insurance company such other general insurances on and in relation to its business and assets as is usual or best practice for companies or persons carrying on the same or substantially similar business.

# Business continuity

## The Transport Operator must ensure that it maintains business continuity management systems that are consistent with best industry practice for business continuity in New Zealand, including (but not limited to) a business continuity plan which:

1. Identifies all material risks that may interrupt or hind performance of the Services.
2. Identifies ways in which the material risks identified can be managed, avoided, reduced, or transferred so as to minimise the impact of these risks on Council and to enable the Transport Operator to continue to perform its obligations as required under this Contract.
3. Allows for any scenario which Council or the Transport Operator considers a business continuity plan is necessary including, but not limited to, the following scenarios:
4. a technical failure involving a Vehicle but not the In-Vehicle System: the Transport Operator will ensure that the business continuity plan for this scenario includes a procedure for reallocating a Vehicle or Vehicles.
5. a technical failure involving the In-Vehicle System: the Transport Operator will ensure that the business continuity plan for this scenario is developed in collaboration with the In-Vehicle System provider to minimise the time in which the In-Vehicle System is faulty or not operational.

# Liability and Indemnities

## The Transport Operator shall indemnify Council against any loss, damage, cost (including legal costs on a solicitor and own client or full indemnity basis, whichever is greater), expense, claim, demand, action or proceeding incurred, suffered, made or brought against Council in respect of or arising out of the negligence, misconduct or misfeasance of the Transport Operator (including any permitted subcontractor, employee or agent of the Transport Operator) in relation to the performance of the Transport Operator’s obligations under this Contract or any breach of the Transport Operator’s obligations under this Contract.

## To the extent permitted by law, Council has no liability (whether arising in contract, tort (including negligence) or otherwise) to the Transport Operator or any other person in respect of or in connection with this Contract. Without limiting the foregoing, the maximum liability of Council under or in connection with this Contract (whether arising in contract, tort (including negligence) or otherwise) is the total amount paid by Council to the Transport Operator under this Contract in the six month period preceding the event or incident giving rise to the liability.

## In no event will either party be liable (whether in contract, tort, including negligence, under an indemnity, or otherwise) to the other party for:

1. any loss, damage, liability, cost, or expense caused by any act or omission of the other party,
2. any indirect or consequential loss or damages suffered by the other party.

# Confidentiality, Privacy, Health Information

## The Transport Operator shall not at any time (whether during or after termination of this Contract), either directly or indirectly, disclose to any person any Council Information except:

1. with the prior written consent of Council,
2. in respect of Council Information which has become public knowledge other than as a result of unauthorised disclosure by the Transport Operator or its directors, officers, employees, agents, Transport Operators, or representatives, or
3. to the minimum extent necessary to comply with any applicable law or legally binding order of any court, government, semi-government authority or administrative or judicial body or the applicable rules of any stock exchange, provided it has first consulted with Council.

## The Transport Operator may only use the Council Information in connection with the provision of the Services to Council.

## Where the Council receives a request pursuant to the Local Government Official Information and Meetings Act 1987 (“LGOIMA**”**) for information which is in the hands of the Transport Operator and which the Council believes is subject to LGOIMA as a result of this Contract or the Transport Operator otherwise providing the Services, the Transport Operator shall, upon request, as soon as practicable thereafter provide such information to the Council. That information, which may include information about, or in respect of the Transport Operator, may be released by the Council in whole or part pursuant to the Council’s obligations under LGOIMA.

## Council and the Transport Operator acknowledge that during and after the Term, Council and the Transport Operator may acquire or hold personal information (including any health information) relating to passengers (“Passenger Information”). If Council or the Transport Operator acquire any Passenger Information, Council and the Transport Operator will only be permitted to use the Passenger Information to the extent necessary to perform their obligations under this Contract and will not disclose the Passenger Information except as required by the Health Act 1956, the Privacy Act 1993 and the Health Information Privacy Code 1994.

## The Transport Operator must establish and maintain processes to ensure the confidentiality of Passenger Information in compliance with the Health Act 1956, the Privacy Act 1993 and the Health Information Privacy Code 1994, as applicable. The Transport Operator will ensure that Passenger Information is kept in accordance with any legal requirements. In particular, but without limiting the foregoing, any disclosure of information by the Transport Operator identifying any natural person must comply with the Health Act 1956, the Privacy Act 1993 and the Health Information Privacy Code 1994, as applicable. The Transport Operator warrants (now and as a continuing warranty obligation) that any information including Passenger Information provided to Council whether under this Contract or not, is provided lawfully.

## This obligations under this clause 15 continue after termination of this Contract.

# Customer experience, dignity and safety

## The Transport Operator will ensure that, in providing the Services, it complies will all requirements of the [(Code of Health and Disability Services Consumer Rights) Regulations 1996](http://www.legislation.govt.nz/regulation/public/1996/0078/latest/DLM209080.html?search=ts_act%40bill%40regulation%40deemedreg_Health%2Band%2BDisability%2BCommissioner%2B(Code%2Bof%2BHealth%2Band%2BDisability%2BServices%2BConsumer%2BRights)%2BRegulations%2B1996_resel_25_a&p=1) and all other health and safety requirements set out in this Contract or otherwise required by law.

## The Transport Operator must take account of the particular needs of Clients so that there are no barriers to access or communication. For clarity, this means that all Client touch-points with the Transport Operator’s organisation (including the interaction each Client has with a Driver) must support the dignity and safety of Customers by ensuring that Transport Operator:

1. communicates with Clients in a professional and courteous way,
2. provides accurate and timely information,
3. makes all communication channels (including Apps if supported by the Transport Operator) accessible to Clients, and,
4. supports Clients in accessing and entering and exiting a Vehicle.

# Licensing requirements

## The Transport Operator acknowledges that by providing the Service it is providing a small passenger service and is required to hold and maintain a small passenger service licence and apply with all applicable laws and regulations including but not limited to the Land Transport Rule: Operator Licensing 2017.

# Fares

## No additional service time is to be included in the Fare or the agreed cost for travel, for example helping the Client to the car or accompanying the client shopping. The Total Mobility Scheme does not fund Companion Driving Services. Any Companion Driving Service component of a Trip must be excluded from the fare and is not reimbursed by Council.

## A Fare meter must not operate while Clients who use a wheelchair hoist or ramp are being loaded into and out of that Hoist Vehicle.

## Council does not accept a minimum Fare.

## Fares should be charged at the advantage of the Client not the operator i.e. taking the fastest and cheapest route.

## The Transport Operator must not charge a Fare that exceeds the fare stated in the Fare Schedule.

## The Transport Operator must not charge the Client for the amount of the Subsidy which the Council will pay the Transport Operator with respect to any Trip.

## The Council will have no liability to or obligation to refund the Transport Operator or honour a Services transaction, or any Client, if a Client:

1. fails to present to the Transport Operator or Driver a valid Total Mobility ID Card prior to starting the Trip, or
2. fails to present themselves to a Driver before the time the Service is due to depart or otherwise fails to make the Service.

# Fare schedule

## The Fare Schedule set out in Appendix 2 applies for the duration of the Initial Term.

## Review of Fare Schedule prior to renewal: No less than 25 Working Days prior to the expiry of Initial Term and each Renewal Term, the Transport Operator may submit an updated Fare Schedule to Council, to apply for the following Renewal Term.

## If the Transport Operator does not submit an updated Fare Schedule to Council in accordance with clause 19.2, then the Fare Schedule for the following Renewal Term shall be the same as Fare Schedule that applied on the day before that Renewal Term commenced.

## The Transport Operator acknowledges that Council is not obliged to accept the updated Fare Schedule and may take it into account in determining whether to renew the Contract.

## For the avoidance of doubt, the Fare Schedule, including the Fares, may not be changed other than as set out in this clause 19.

## Council will publicise the Fare Schedule on Council’s website.

# Trip requirements

## Each Trip shall be a single one-way Trip, where the origin and destination are two separate locations. Time spent between the completion of one Trip and commencement of another for the same Customer cannot be considered as waiting time.

## Trips should be started just prior to moving off from the pickup location and trips should be stopped immediately on arrival at the destination, prior to doing anything else.

## Trips should be priced at no more than the Fare Schedule rate, down to the final whole completed minute e.g. 15 mins 30 sec trip gets charged as a 15 min trip. Rounding up of amounts will not be accepted.

## Each Trip must be charged as per the Fare Schedule rate even for regular clients doing the same trip, where times may fluctuate. They must be charged as per the actual trip on the day.

## Trips where a GPS report is submitted should show a fare amount that can be calculated based on the Fare Schedule rate.

## The in-vehicle meter must be on for the entire trip, including waiting time.

## Waiting time:

1. The maximum amount of waiting time permissible in any Trip is five (5) minutes. Any waiting time which exceeds five (5) minutes necessitates the completion of two separate Trips.
2. Waiting time must be charged at waiting time rate as per the Fare Schedule.
3. If the Driver decides to provide extra assistance to Clients beyond the five (5) minute waiting time, then this must be undertaken at the Transport Operator’s or Driver’s own cost.
4. Waiting time means time spent out of traffic waiting for a Client with the meter on e.g. to collect a prescription from the chemist.

# Total Mobility ID Card rules

## No Trip may commence until the Client’s Total Mobility ID Card has been authenticated by the Driver and the identification photograph sighted and accepted.

## Once the card has been accepted by the Driver, it must be swiped at the beginning and end of the Trip to capture start and finish times.

## If a Client forgets to present a card at the beginning of the Trip, it can still be swiped at the end provided the correct start and finish times can be established and verified e.g. by GPS records.

## The Driver must provide the Client with a receipt at the end of the Trip, if requested by the Client.

## Once the Driver has swiped the Total Mobility ID Card, the card must be returned to the Client. The Transport Operator and Drivers are not permitted to be in the possession of a Total Mobility ID Card, for any reason.

## Caregivers of a Client may accompany them on a Trip, but the Client must be in the vehicle for the entire Trip.

## Total Mobility ID Cards and vouchers from other regions will be accepted but Bay of Plenty Regional Council’s Subsidy will apply.

## The Transport Operator shall ensure that its Drivers are aware that all Clients are bound by the Client Terms and Conditions of Use, a copy of which is available on the Council website.

## If a Driver suspects that a Client has breached the Client Terms and Conditions of Use, it must notify the Transport Operator, who in turn must notify Council within 2 Working Days of the suspected breach. Breaches include but are not limited to:

1. Client fails to produce Total Mobility ID Card before the Trip commences.
2. Client uses Total Mobility ID Card for travel partially or wholly subsidised by any other organisation.
3. Client incurs unnecessary waiting time prior to the Trip commencing.
4. Total Mobility ID Card presented to subsidise travel for persons other than the Client.
5. Any misuse or abuse of Total Mobility.

## If a Client does not have their Total Mobility ID Card with them at the time of travel, they cannot receive their discount.

##  If a Driver is carrying a regular customer from a rest home, whom they know to be on the Total Mobility Scheme, and the Client does not have their Total Mobility ID Card with them, the Driver must advise the Client and the management of the rest home that the Client is unable to get the discount they are entitled to, due to travelling without their Total Mobility ID Card.

## Only one one-way journey can be charged in relation to a Total Mobility ID Card as one transaction. For the avoidance of doubt, this means that a return trip requires two separate transactions. The only exception, when a return trip is acceptable on the same transaction, is when the waiting time (charged at the Fare Schedule rate) between the two trips does not exceed five minutes, and the Subsidy for the return trip is less than the Maximum Subsidy.

## Where there is more than one Client travelling on a Trip only one Total Mobility ID Card may be used for that Trip.

## It is not acceptable usage for a Client to repeatedly undertake a series of trips where less than five minutes has elapsed between each trip.

## Council will refuse payment of the Subsidy to the Transport Operator where more than three (3) trips (where less than five minutes has elapsed between each trip) are taken by a Client in any one day unless the Transport Operator can demonstrate that each trip was taken in good faith and in accordance with this clause and all other terms of this Contract.

## Manual Transactions:

1. Transactions shall only be entered manually (“Manual Transactions”) if the Customer has a valid Total Mobility ID Card (or Total Mobility Verification Letter) and the In-Vehicle System hardware is not operating correctly.
2. The Transport Operator shall be responsible for checking the validity of all Manual Transactions before submitting invoices containing claims for Manual Transactions to Council.
3. If the In-Vehicle System is not working (such that it is unable to provide the data required under this Contract for each Trip) the Transport Operator must ensure that it is repaired within five (5) Working Days of the In-Vehicle System ceasing to work. The cost of repairs or replacement shall be borne solely by the Transport Operator. Refer also to Appendix 4: Operation of In-Vehicle System.
4. If a Client is unable to provide a readable Total Mobility ID Card, the Driver must advise the Client to seek a replacement card immediately and charge a full fare (i.e. the Fare without any deduction) to the Client.
5. Where a Client lives outside the Bay of Plenty Region and they have not yet been issued with a Total Mobility ID Card by their home region, proof of membership of the Total Mobility scheme in that region may be used. These “out of town” vouchers shall be processed as per standard recording and invoicing processes.
6. The Transport Operator shall be responsible for checking the validity of all claims for payment of the Subsidy before submitting invoices to Council.
7. Manual Transactions will be approved by Council at Council’s discretion.

# Small passenger services security camera system

## If the Transport Operator is operating in an urban area listed in the Transport Operator Licensing Rules 2017, the Vehicle needs to either have an in-vehicle camera or only provide Services to registered passengers.

## In-vehicle camera requirements:

1. If the Transport Operator chooses the in-vehicle camera system option, the Vehicle cannot be used to accept a hire unless the system has been approved by Waka Kotahi, is operating properly, and the camera is mounted so it has a clear view of the inside of the vehicle.
2. The Transport Operator can also apply to Waka Kotahi for approval of a new system.
3. A sign or notice that an in-vehicle camera is operating must be clearly displayed on the outside of the front passenger door, and inside the vehicle in a prominent position.

# Driver requirements

## The Transport Operator will ensure that the Services are only provided by Drivers who meet the requirements of this Contract.

## The Transport Operator will notify Council through RideWise of any new Driver before he or she commences providing the Services by “creating” the Driver in RideWise. Similarly, the Transport Operator will notify Council if a Driver is no longer providing or is no longer eligible to provide the Services by updating RideWise by selecting the option “Driver Suspended”.

## The Transport Operator must ensure that each Driver:

1. Is provided with Total Mobility induction explaining the essential elements of the Services prior to being fully trained in the courses set out below. The Transport Operator will ensure that each Driver has completed the following NZQA Unit Standards (or the equivalent replacement standard if updated during the Term) prior to providing any Services, unless an exception is agreed in writing by the Council at its discretion:
2. 1734 - Demonstrate knowledge of stress, health and fatigue for driving;
3. 1748 (Passenger service: demonstrate skills required to assist passengers with special needs),
4. 1750 – Foster effective passenger relations;
5. 3462 – Demonstrate knowledge of traffic law for the purpose of safe driving;
6. 17593 – Apply safe work practices in the workplace;
7. [15165](https://www.nzqa.govt.nz/nqfdocs/units/pdf/15165.pdf) – Transport passengers in wheelchairs using total mobility vehicles equipped with hoist or ramp) if the Driver is a driver of a Wheelchair Accessible Vehicle (except where a Driver will not be operating a wheelchair hoist in delivering the Services); and/or
8. a Council-approved training course to an equivalent standard.
9. holds current first aid certificates complying with NZQA Unit Standards Unit 6401 – *Provide First Aid* and Unit 6402 - *Provide Basic Life Support* (or the equivalent replacement standards if updated during the Term).
10. Is aware of, understands and complies with the terms and conditions of this Contract and that they observe and adhere to these terms and conditions and all laws (including the Land Transport Act 1998 and Waka Kotahi Rules) at all times when they are engaged in providing Total Mobility Services.
11. Treats all Clients with respect and courtesy at all times.
12. Is capable of communicating with Clients in the English language and will be a fit and proper person for the purposes of the Land Transport Act 1998 and the Waka Kotahi Rules.
13. Ensures that a reasonable level of assistance is offered to all Clients in order to facilitate their travel.
14. Accepts and carry all Clients who present a valid Total Mobility ID Card, unless otherwise provided for in this Contract, or if carrying such Client requires the Driver to have special equipment (e.g. wheelchair hoists) for which that Driver’s vehicle is not equipped.
15. Have a full, current, New Zealand driver’s licence (class 1) with a valid passenger (P) endorsement.
16. Log themselves in to their In-Vehicle System prior to providing the Service in order to ensure each transaction is linked to them and no other driver.
17. Attend refresher training of one half day per year for disability awareness training and additional refreshers as required in order to maintain qualification e.g. first aid.

## The Transport Operator will ensure that all Drivers of Wheelchair Accessible Vehicles are also trained in NZQA Unit Standard 15165 (Transport passengers in wheelchairs using Total Mobility vehicles equipped with hoist or ramp), or a Council-approved training courses to an equivalent standard.

## The Transport Operator will maintain a record of training undertaken by each Driver which Council may inspect from time to time as it deems necessary.

## Council, at its sole discretion, may exclude a Driver from being able to participate in the Total Mobility Scheme if it has reasonable grounds to believe that the Driver has:

1. failed to treat a Client with dignity and courtesy,
2. failed to operate a Vehicle in a safe manner,
3. charged a Client an incorrect fare,
4. retained a Client’s Total Mobility ID Card or Verification Letter without good reason,
5. does not hold or no longer holds all necessary driving licences and training qualifications, and/or
6. has operated the Vehicle without a valid Certificate of Fitness.

# Vehicle standards

## The Transport Operator will ensure that each Vehicle:

1. Is registered, has a Certificate of Fitness, complies with all requirements of Waka Kotahi (including safety requirements and specifications) and meets all other criteria required by law.
2. Has mileage of no greater than 250,000 kms.
3. Is no older than:
4. 15 years from date of manufacture (i.e., up to 14 years, 364 days) where that Vehicle is being used to provide the Services upon the Commencement Date, or
5. five (5) years as calculated from the date of first registration anywhere in the world as recorded on the Certificate of Registration or, if the date of first registration is unknown, as calculated from date of its manufacture, where that Vehicle is introduced to provide the Services after the Commencement Date.
6. Has an ANCAP (Australasian New Car Assessment programme) 5-star rating, or has an UCSR (Used Car Safety Rating) 5-star Rating.
7. Is maintained, as a whole vehicle and each of its individual components, in accordance with the manufacturers’ specifications, Certificate of Fitness standards, and any specifications or safely regulations issued by Waka Kotahi, at all times,
8. Is fit for the purpose of providing the Services and presented in a clean and tidy condition and complies with any Government public health advice on vehicle cleaning regimes,
9. Complies with all Waka Kotahi requirements (which may be amended from time to time) in relation to branding and signage, and
10. Is fitted with an In-Vehicle System which is capable of operating the most up-to-date version of RideWise (including software updates) and that the In-Vehicle System is installed and maintained such that RideWise are operational to the minimum uptime as specified by the In-Vehicle System provider.
11. Has the P endorsement ID card for the Driver, issued by Waka Kotahi displayed in the Vehicle for passenger viewing at all times.
12. Is fitted with a EFTPOS terminal and SmartPay or equivalent compatible with RideWise.

## In respect of all Wheelchair Accessible Vehicles, the Transport Operator will additionally ensure that:

1. All wheelchair hoists (and/or ramps and winches) are inspected and certified as safe for use by a Waka Kotahi or Council approved engineer of low volume vehicles.
2. All wheelchair hoists (and/or ramps) must be maintained at Certificate of Fitness standard at all times and comply with all applicable specifications or safety regulations issued by Waka Kotahi or Council at all times.
3. All wheelchair hoists (and/or ramps and winches) are serviced in accordance with the equipment manufacturer’s requirements.
4. All Wheelchair Accessible Vehicles have a harness, lap or lap-sash belt (as defined in the Australian/New Zealand Standard AS/NZS 10542:2009 (Part 1 and Part 2) installed and that each such restraint is connected to floor-mounted anchor fittings to fit to the rear of a wheelchair to stop any forward, rearward or lateral motion of the wheelchair.

## The Transport Operator will ensure that Wheelchair Accessible Vehicles shall be no older than seven years from the date of first registration (either in NZ or overseas) when entering the Total Mobility Scheme or remain in service beyond 15 years from date of first registration, unless prior written consent of the Council is obtained.

## If the Transport Operator or its Drivers have received funds from the Council to provide wheelchair accessible vehicles, the Transport Operator shall retain any such Vehicle in Service in the Bay of Plenty Region for a minimum period of five (5) years from the installation of the wheelchair hoist into the Vehicle.

## The Transport Operator must retain at least one Wheelchair Accessible Vehicle in its Service fleet.

## The Transport Operator must notify Council in writing of any changes to its list of Fleet Vehicles.

# RideWise requirements

## The Transport Operator must ensure the following data is provided in the RideWise transaction submitted for each journey (and such other information in relation to the Transport Operator's provision of the Services as may be reasonably requested by Council) to Council at no cost to Council:

1. Vehicle number;
2. Driver identifier;
3. Total Mobility ID Card magnetic journey number (19 digits);
4. process batch number;
5. tariff number;
6. full fare and Total Mobility scheme subsidy;
7. Transport Operator code;
8. date of journey;
9. start and end time of journey;
10. location from/to;
11. total kilometers travelled;
12. whether hoist used;
13. number of passengers; and
14. number of passengers in a wheelchair (travelling with a valid Total Mobility ID Card).

## Data Integrity

1. The Transport Operator will ensure that all Driver and Vehicle data held within Ridewise is complete, correct, current, accurate, verified and restricted at all times during the Term and that all transactional data associated with each Trip is accurate and correctly formatted for entry into RideWise.
2. Data anomalies that arise will lead to red flags being generated in Ridewise which must be cleared by the Transport Operator. All Red Flags to be 100% resolved by Transport Operator prior to invoice submission.
3. The Transport Operator will also ensure that all data held in Ridewise is secured and only used for its intended purpose.
4. The Transport Operator shall ensure that all automated and manual records of transactions under the Total Mobility Scheme are fully auditable and that it will respond to queries from Council regarding any such transactions within three (3) Working Days.

## 100% of data is correct in Ridewise at all times and checked for accuracy each month before that month’s invoice is submitted. The Council is required to validate RideWise transactions prior to payment of the Transport Operator’s invoice.

## The Transport Operator is required to ensure that transaction information is accurately recorded in RideWise by carrying out checks on a daily basis. This includes:

1. checking for and removing duplicate transactions,
2. checking for and removing any other errors,
3. reviewing and providing an explanation to any queries raised by the Council.

## The Transport Operator must upload transaction data on a daily basis to the RideWise.

## The Transport Operator shall only submit a tax invoice to the Council for Cleared Transactions. Council will not approve a payment for a transaction that is not a Cleared Transaction.

## The Transport Operator shall, within 48 hours, respond to any request by the Council for further information for any transaction or trip.

## Each of the Transport Operator’s invoices will be based on the value of transactions in accordance with the Fare Schedule only. Administration or handling charges are not permitted to be added.

# Financial requirements

## In consideration of the Transport Operator providing the Services in accordance with this Contract, Council shall pay to the Transport Operator the Subsidy payments and Hoist Payments, up to the Maximum Contract Price.

## Invoice requirements: Each invoice for Subsidy payments and Hoist Payments for the relevant period (“**Invoice**”) must be:

1. A GST tax invoice quoting a valid Council contract number.
2. Received by Council on or before the 2nd Working Day following the month in which the Services were performed.
3. Include:
4. Bank account details for direct reimbursement.
5. The number of passengers travelling.
6. The Hoist Payments to be claimed (if any) as separate line items to Subsidy payments.

## Payment timing: Subject to clauses 26.2 and 26.6 Council shall pay such Invoice monthly in arrears on or before the 20th day of each month following the issue of the Invoice into the bank account notified in writing by the Transport Operator. Example: For Services performed in January:

1. An invoice dated 31 January and received by the 2nd Working Day in February will be paid on 20th February.
2. An invoice dated 2 February and received by the 2nd Working Day in February will be paid on 20th March.

## All amounts payable under this Contract, unless otherwise stated, are exclusive of GST and other duties or taxes (if any).

## The Transport Operator acknowledges that any payment of an Invoice by Council does not constitute a payment for a wage or salary, and the Transport Operator will not be entitled to any sick leave, annual leave, severance pay, long service leave or any other entitlement which an employee may have in respect of his or her employment.

## If the Council does not approve the amount payable in its entirety, the Council shall approve and pay any uncontested part of the tax invoice and will, within 20 Working Days of receipt of the invoice, provide the Transport Operator an explanation in writing why or part of the tax invoice has not been approved.

## Except as expressly set out in this Contract, the Council shall pay all amounts payable under this Contract:

1. in cleared funds immediately available for disbursement,
2. free of any restriction or condition,
3. free of and (except to the extent required by law) without any deduction or withholding on account on any tax, and
4. without any deduction or withholding on account of any other amount, whether by way of set-off, counterclaim or otherwise.

## Each invoice shall be accompanied by the transaction information set out in ‘Information to be provided’ section of this Contract.

## Council will make payment as long as the information provided by the Transport Operator is consistent with the information showing on RideWise.

## The Transport Operator must ensure that all transactions prepared and submitted are in accordance using the current RideWise Training Manual (Operator).

## Provided the Contract conditions and any other requirements have been met to its satisfaction, Council will pay the Transport Operator.

# Complaint management

## Complaint Process:

1. The Transport Operator shall ensure that all written and oral communication it has with clients or the general public regarding the delivery of Services is helpful, timely and professional.
2. The Transport Operator will maintain a complaints register in an electronic format agreed by Council and record details of any complaints received relating to the performance of the Services.

## For each complaint the following information must be recorded in the complaints register:

1. unique complaint number, and
2. driver details if the complaint is driver related, and
3. date the complaint was received, and
4. complaint details i.e., reason for complaint, and
5. date the complaint was responded to, and the resolution action taken, and
6. complaint’s contact details.

## The Transport Operator must ensure the complaints register is up to date at all times and Council has access to the complaints register at its request.

## ln addition, the Transport Operator will:

1. Acknowledge any Client complaint within 24 hours of that complaint.
2. Where the subject of the complaint relates to allegations of non-compliance with the requirements of this Contract, then the Transport Operator will advise the details of the complaint to Council within 48 hours.
3. Resolve complaints within three (3) Working Days, unless the Council agrees that there is justification for any extension to this period.
4. Provide the Council with a weekly report identifying all complaints, including those received by the Transport Operator and the Council, and actions taken by the Transport Operator to address these complaints. This report will include details verifying that complaints have been dealt with to the satisfaction of complainants.
5. Comply with any Council directions in relation to any revised complaints procedure received from the Council from time to time.

## If more than three complaints are received in one calendar year for an individual Driver, the Transport Operator must retrain the Driver within twenty Working Days of the third complaint and confirm to Council that this training has been completed.

## Any costs generated by this training will be met by the Transport Operator. If the Driver fails to undertake this training the Transport Operator shall not permit this individual to be a Driver under this Contract.

## Council Complaints Investigations

1. Council takes any allegation of misuse of the Total Mobility Scheme seriously, and investigative action will be initiated, when considered appropriate.
2. Where there is evidence of Total Mobility Scheme misuse, the evidence may be referred to Waka Kotahi and/or the Police for action.
3. Any information provided to Council alleging misuse of the Total Mobility Scheme will be treated in confidence, subject to the requirements of the Local Government Official Information and Meetings Act 1987 and any other applicable laws of New Zealand.

## If the Transport Operator or any of its Drivers have concerns about the misuse of the Total Mobility Scheme, those concerns should be directed to Council.

## The Transport Operator will (and will ensure its Drivers will) assist and co-operate with Council or its personnel in the investigation of any complaints or reports of abuse or misuse or poor service and if directed by Council, the Transport Operator will conduct its own internal investigation.

## The Council reserves the right at any time to inspect the register of complaints, audit the Transport Operator's procedures regarding complaints and to pursue independent enquiries should it deem it necessary. The complaints register will be retained for inspection for at least two years following the date of the most recent entry, and in accordance with relevant legislation in force at the time.

# Disputes

## If a dispute arises out of or in relation to this Contract (“**Dispute**”) a party claiming the Dispute may give notice to the other party specifying the nature of the Dispute (“**Dispute Notice**”).

## Any Dispute shall, in the first instance, be referred for discussion and determination by a person nominated by each party (and with full authority to bind that party for the purposes of resolving the dispute) (each an “**Escalation Manager**”) who will meet in good faith and seek to resolve the Dispute.

## If the dispute is not resolved under clause 28.2 within 10 Working Days after the Dispute is referred to them, either party may (by written notice to the other party) require that the dispute be submitted for mediation by a single mediator nominated by the president for the time being of the New Zealand Law Society. In the event of mediation:

1. the mediator shall be deemed to be not acting as an expert or an arbitrator,
2. the mediator shall determine the procedure and timetable for the mediation, and
3. the cost of the mediation shall be shared equally between the parties.

## Neither party may issue any legal proceedings (other than for urgent interlocutory relief) in respect of any such Dispute, unless that party has first taken all reasonable steps to comply with clauses 28.2 to 28.3.

## Nothing in this clause will preclude or prevent either party from taking immediate steps to seek urgent interlocutory relief before an appropriate court.

# Relationship of parties

## The relationship between Council and the Transport Operator is and shall be for all purposes an independent contractor relationship and neither this Contract nor anything contained expressly with it or implied by it shall constitute any other relationship.

## The Transport Operator agrees that at no stage either during or subsequent to the termination of this Contract will the Transport Operator or any of its staff (including but not limited to its Drivers) claim that the Transport Operator or any of its staff is or was an employee of Council. The Transport Operator further agrees that the fact the Transport Operator and/or its staff are required and agree to complete any compliance training does not give rise to a claim that the Transport Operator or any of its staff is or was an employee of Council.

## The Transport Operator will be responsible for the payment of all taxes, insurance, medical, withholdings or contributions which may be payable by an independent Transport Operator, as a result of the receipt of any fees or other moneys paid or payable in respect of the Services. To the extent permitted at law the Transport Operator indemnifies Council against all costs, claims, expenses (including legal expenses) and/or proceedings arising out of or in connection with payments payable under this clause.

## For the avoidance of doubt, Council and the Transport Operator acknowledge and agree that this Contract shall not operate as, or constitute, an offer or contract of employment between Council and the Transport Operator, its drivers, employees, agents, contractors, assigns or any other person, either during its currency or on termination for whatever reason.

## The Transport Operator shall not, other than in accordance with this Contract, purport to be an agent of Council for any purpose whatsoever, or incur any obligation in the name of Council whatsoever, or do any other act or thing which could or would lead to any claim being made against Council.

# Intellectual Property

## All Intellectual Property which is owned by, or is proprietary to, a party at the date of this Contract shall remain owned exclusively by that party.

## Nothing in this Contract confers on a party any right or interest in, or licence to use, or permit to use, any of the other party's Intellectual Property, except that:

1. the Transport Operator shall have a non-exclusive licence to use Council ’s Intellectual Property to the extent required to give effect to this Contract. That licence will expire immediately on termination or expiry of this Contract; and
2. The Council shall have an unrestricted, royalty-free licence to use the Transport Operator’s Intellectual Property to the extent required to make use of the Services or use, update or amend any deliverables or products of the Services.

## The Transport Operator must ensure that all inventions, improvements, designs, processes, patents, trademarks, copyright works, source code, object code, know-how, systems, research, findings or Intellectual Property rights whatsoever created or discovered:

1. by (or on behalf of) the Transport Operator or any of the Transport Operator’s directors, officers, employees, agents, Transport Operators or representatives (together “Transport Operator’s Representatives”) in connection with this Contract, the Services (or both) during the Term, whether capable of being patented, or registered, or not; or
2. jointly by Council and the Transport Operator in connection with the provision of any of the Services, are immediately disclosed to Council.

## (“**New IP**”),

## All New IP shall vest in and be owned absolutely by Council from the time of the creation of the New IP and (to the extent not owned by Council) the New IP is hereby irrevocably assigned by the Transport Operator (acting in this regard in its own capacity and, where applicable, acting as the authorised agent of the Transport Operator’s Representatives) to Council with effect from the time of creation, development or production of the relevant New IP. The Transport Operator acknowledges and agrees that it shall have no right, title or interest in or to New IP and Council will remain the sole and exclusive owner of the New IP.

## The Transport Operator (at the Transport Operator’s cost) must itself, and must procure that each of the relevant Transport Operator’s Representatives, execute all documents and do all things that Council may require to obtain full and unencumbered legal and beneficial ownership of, and rights to, the New IP.

## The Transport Operator must make sure that, unless otherwise agreed in writing with Council , in relation to a particular case, every person who is an author for the purposes of Part 4 of the Copyright Act 1994 or analogous foreign law (“**Copyright Act**”) of any item that is part of the New IP (“**Author**”) gives his or her written consent to Council doing any act which, but for that consent, would infringe that Author's “Moral Rights” (as that term is defined in the Copyright Act) in that item and (without limiting the above), the Transport Operator must ensure that each Author consents in writing to Council:

1. not attributing that Author's authorship of the relevant item,
2. attributing the authorship of that item or an adaptation of it to another person, and
3. making any change whatsoever to the item including adding to, or removing elements from the item, combining the item with anything else, and adapting the item in any manner.

(or doing any combination of these things).

## At the request of Council, the Transport Operator must immediately deliver the original and all copies of the New IP to Council.

## Where and to the extent that the provision of any Services involves the supply or use of any material (including any software or confidential information) owned by a third party (“**Licensed Material**”):

1. In the case of Licensed Material in which Intellectual Property rights are owned or controlled by the Transport Operator, the Transport Operator irrevocably grants to Council all rights, in that Licensed Material necessary to enable or facilitate the receipt and full enjoyment of the Services (including the full enjoyment, operation, modification, redesign and maintenance of any deliverables or products of the Services) by Council.
2. In the case of Licensed Material in which Intellectual Property rights are owned by a third party, the Transport Operator must procure a grant in favour of Council of all rights necessary to enable or facilitate the receipt and full enjoyment of the Services (including the full enjoyment, operation, modification, redesign and maintenance of any deliverables or products of the Services) by Council.

## The Transport Operator warrants that none of the:

1. provision, performance or use of any of the Services, and
2. use of any Licensed Material by or on behalf of the Transport Operator,

infringes or will infringe any rights, including any Intellectual Property rights or Moral Rights, of any third party.

# Severability

## If any term or provision of this Contract or the application of any such term or provision to any personal circumstances shall to any extent be invalid or unenforceable, the remaining terms and provisions of this Contract or the application of such terms or provisions to any personal circumstance, other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Contract shall be valid and be enforced to the fullest extent permitted by law.

# Further assurances

## Each of the parties to this Contract shall, at the request of the other party, execute and deliver any further documents or assurances and do all acts and things that the other party may reasonably require to give full force and effect to this Contract.

# Entire contract

## This Contract constitutes the entire agreement between the parties pertaining to the subject matter and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions, whether oral or written, of the parties, and there are no warranties, representations or other agreements among the parties in connection with the subject matter hereof except as expressly set out in this Contract. No supplement, variation or modification of this Contract shall be binding unless recorded in writing and signed by both parties.

# Waiver

## No failure to exercise and no delay in exercising any right, power or remedy under this Contract will operate as a waiver. Nor will any single or partial exercise of any right, power or remedy preclude any other or further exercise of that or any other right, power or remedy.

## The parties shall not be taken to have waived any of their rights under this Contract unless such a waiver is contained in a notice given to the other party. Any such waiver shall only operate to the extent specified in the notice.

# Counterparts

## This Contract may be executed in any number of counterparts (including email copies) and provided that each party has executed a counterpart, the counterparts together shall constitute a binding and enforceable agreement between the parties.

# Time of essence

## Time will be of essence in the performance by either party of its obligations under this Contract.

# Governing Law

## This Contract is governed by the laws of New Zealand. Each of the parties submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in New Zealand.

# Notices

## Any notice given under this Contract must be in writing addressed to the intended recipient at the address shown in Schedule 1 or at the last address notified in writing by the intended recipient to the sender and shall be deemed to have been given and received:

1. In the case of delivery in person, when delivered to or left at the address of the recipient shown in this Contract (as the case may be) or at any other address which the recipient may have notified to the sender.
2. In the case of mail, on the fifth day after the date on which the notice is accepted for posting by the relevant postal authority.
3. In the case of email, on the day on which it was dispatched.
4. but if service is on a day which is not a Working Day or is later than 4:00 pm (local time) on a Working Day, the notice will be taken to have been served on the next Working Day.

# Sharing of information between Council and Waka Kotahi

## The Transport Operator agrees to Council and Waka Kotahi accessing and sharing of information in relation to the Services covered by this Contract, in particular:

1. Motor Vehicle Register (MVR) to confirm the current ownership and ownership history of the Vehicles.
2. Land Automotive Transport Inspection System (LATIS) to retrieve and provide details of the Certificate of Fitness (COF) inspections, including details of faults and re-inspections to the vehicles carried out during the Term.
3. Other Waka Kotahi information systems to retrieve and provide details of events including roadside inspections of Vehicles, and traffic offences related to the operation of vehicles.
4. Seeking advice from Waka Kotahi Vehicle Standards Advisors and Transport Regulatory Advisors.
5. The Transport Operator’s reporting requirements under this Contract.

# Sub-contracting and assignment

## The Transport Operator shall not directly or indirectly assign, transfer or otherwise dispose of any of its rights or interests in, or any of its obligations or liabilities under, or in connection with, this Contract except with the prior written consent of Council. A change (or proposed change) in the effective control or ownership of the Transport Operator will be deemed to be an assignment requiring the prior written consent of the Council. Council may assign or novate any of its rights and/or obligations under this Contract to any person.

## Except for the third party invoicing described in clause 40.4, The Transport Operator shall not subcontract the performance of all or any part of its obligations under this Contract without the prior written consent of Council. The Transport Operator shall ensure that:

1. Each permitted subcontractor is fully aware of the Transport Operator’s obligations under this Contract to the extent necessary for the subcontractor to properly perform its obligations.
2. Any subcontract it enters into with a subcontractor is consistent with this Contract, to the extent relevant and material for the performance of the subcontractor’s obligations.

## The Transport Operator acknowledges that irrespective of any subcontracting or assignment arrangements it enters into in relation to any of its obligations under this Contract, its obligations to Council under this Contract will not be discharged, lessened or otherwise affected.

## Use of a third party to issue invoices and receive payment

1. The Transport Operator has chosen to use [insert full legal entity name of 3rd party provider e.g. StringTM Limited] (the “Third Party Provider”) to issue invoices in the name of the Third Party Provider for the Services undertaken by the Transport Operator and receive the payment for such services.
2. The Transport Operator acknowledges that payment of an invoice by the Council to the Third Party Provider discharges all the Council’s payment obligations under this Contract, in relation to that invoice. The Council bears no responsibility for any non-payment by the Third Party Provider to the Transport Operator.
3. The Transport Operator shall indemnify Council against any loss, damage, cost (including legal costs on a solicitor and own client or full indemnity basis, whichever is greater), expense, claim, demand, action or proceeding incurred, suffered, made or brought against the Council in respect of or arising out of the negligence, misconduct or misfeasance of the Third Party Provider in relation to the performance of the Transport Operator’s obligations under this Contract or any breach of the Transport Operator’s obligations under this Contract.

# Events beyond control

## Should any event occur which:

1. is beyond the control of either Party, and
2. is neither directly nor indirectly caused by either Party, and
3. prevents the performance of the Services (in whole or in part) required under this Contract,
4. then those Services will be suspended until such time that it becomes practicable to recommence the Services. This does not include events personal to either Party, such as ill-health or lack of funding or resources.

Appendix 1
TM flat rate hoist payments

1. For each Trip which the Transport Operator completes in accordance with this Contract, the Council will pay to the Transport Operator the Subsidy on the Fare.

In addition, Council will pay to the Transport Operator an amount of $10.00 excluding GST ($11.50 GST inclusive) (the “Hoist Payment”) for each Trip taken by a Client requiring a wheelchair hoist.

This payment will be made in accordance with the following conditions:

1. The fare meter must not be activated while Clients are being loaded into or out of the Wheelchair Accessible Vehicle.
2. Where Vehicles with wheelchair hoists are used to transport Clients, the Fare must be equivalent to the non-hoist fare.
3. The Hoist Payment is per Client carried per Trip. For example, when two or more wheelchairs are loaded into a van at the same time, one Hoist Payment may be claimed for each Client using the wheelchair hoist at the flat rate of $10.00, GST exclusive ($11.50 GST inclusive) per Client.
4. The Transport Operator can claim a Hoist Payment for transporting Clients who cannot transfer in and out of a Wheelchair Accessible Vehicle independently and cannot get into a Wheelchair Accessible Vehicle without the use of a hoist or ramp.
5. Mobility devices must be within the weight ratio of the Vehicle.
6. The Transport Operator must pass the payment on to the owner of the Wheelchair Accessible Vehicle if the Vehicle is not owned by the Transport Operator.
7. No additional service time is to be included in the Fare or the agreed cost for travel, for example helping the client to the car or accompanying the client shopping.
8. Mobility Scooters are considered an independent means of transport by Waka Kotahi and Drivers transporting scooters on a hoist may not claim the Hoist Payment.

Appendix 2
Operator Fare Schedule

[Agreed Transport Operators fare schedule to be included here]

Appendix 3
Fleet Vehicles

[Information to be added from Transport Operator’s RFQ response]

Appendix 4
Operation of In-Vehicle System

Operation of In-Vehicle System

All In-Vehicle System equipment required is to be provided and installed by the Transport Operator including upgrades.

The Transport Operator must ensure that Drivers process electronic transactions in accordance with procedures detailed in the RideWise Guidelines and Procedures manual.

The Transport Operator is responsible for the input of all data necessary for the operation of RideWise, including: individual Driver details, Vehicle details, and transaction information.

RideWise is to be reviewed and maintained daily.

The Driver must log off the In-Vehicle System equipment daily and log on at the start of each new shift in order to recognise new and updated Total Mobility ID Cards and software updates.

Below shows the standard electronic transaction process overview that applies to all transactions using In-Vehicle System equipment.

Figure 1 Driver tags/swipes Total Mobility ID Card on In-Vehicle System equipment

Client enters Vehicle

END

Driver tags or swipes card on In-Vehicle System

Driver takes Customer to destination

Driver stops Meter and calculates Fare

Customer pays balance and Driver issues receipt

In-Vehicle System automatically sends transaction information to service provider (eg Smartpay)

Service provider exports transaction data directly to RideWise

Transaction recorded in RideWise

In-Vehicle System Failure

The cost of repair or reinstatement to any In-Vehicle System equipment shall be met by The Transport Operator.

Bay of Plenty Regional Council will not be held liable for any cost of repair or reinstatement to the In-Vehicle System.

In the event of known failure of In-Vehicle System, no Services shall be undertaken and the in-Vehicle System repaired as soon as possible but no later than 5 Working Days from the system failing to work.

When the In-Vehicle System has failed on entry to the Vehicle by a Customer the manual transaction process detailed in clause 21.16 must be followed.

Out of the Region paper vouchers

Regional Authorities that have not yet adopted an electronic Total Mobility system instead issue their Clients with paper vouchers. Whenever a Client presents a paper based “out of town” Total Mobility voucher, issued by another regional council or regional authority (other than Bay of Plenty Regional Council) the Transport Operator and the Driver must follow the procedures as illustrated in Figure 2.

Figure 2 Customer paper voucher process overview

Client enters Vehicle and advises using Total Mobility voucher

Driver checks Photo ID Card (if applicable\*) and takes Customer to destination

Driver stops Meter, calculates Fare and fills in Voucher provided by Customer

END

Customer pays balance and Driver issues receipt

Transport Operator enters transaction information directly in RideWise as a ‘manual transaction’.

Transaction recorded in RideWise

Driver advises Transport Operator’s administrator or support staff of Customer and Fare details

Appendix 5
Contract management and compliance

Council and the Transport Operator will arrange and attend a Contract Management and Compliance Meeting at least once every six (6) months or more frequently if agreed between the parties. The Agenda of such meetings will include:

1. Review of the Transport Operator’s performance against the KPIs and discuss any areas of improvement required.

Vehicles:

1. Certificates of Fitness
2. Ages, and replacement programme.

Insurance

Any Other Business

Attendees:

1. Transport Operator’s operational manager
2. Transport Operator’s Owner / Escalation Manager (at least once per year if meeting is held more frequently)
3. BOPRC representatives

Appendix 6
Key Performance Indicators

|  |  |
| --- | --- |
| **KPI** | **Standard** |
| *Health & Safety*  | * *Report Notifiable Events to BOPRC and any other organisation to which Notifiable Events must be reported (including WorkSafe) immediately where practicable otherwise within one hour of the Notifiable Event occurring or the Transport Operator becoming aware of the Notifiable Event – 100%.*
* *Investigate all Notifiable Events and report the findings of the investigation back to BOPRC within five (5) Working Days – 100%.*
 |
| *Relationship Management – Resolution of Council issues* | * *90% of issues communicated by Council to the Transport Operator’s Address for Notices are addressed within 24 hours.*
 |
| *Client Satisfaction* | * *Client complaints: reported to BOPRC within 48 hours of receipt, – 100%..*
* *Client complaint resolved within three Working Days of receipt – 100%.*
 |
| *Data & Invoicing* | * *100% of data is correct in RideWise at all times and checked for accuracy each month before that month’s invoice is submitted.*
* *Red flag - All Red Flags should be checked on a daily basis and be 100% resolved by Transport Operator within five (5) days.*
* *Transaction/invoicing accuracy – 100% submitted and correct.*
* *The Transport Operator is responsible for keeping their details up to date in RideWise, this includes Drivers and Vehicles. For example, Driver unit standards/training, drivers who are no longer working for the Transport Operator and need to be removed, vehicle COF’s etc.*
 |
| *Certification* | * *Evidence of current Driver licence and relevant NZQA standards and refresher training 100%*
* *Evidence of current insurance certificates 100%*
* *Evidence of current small passenger service licence held by Transport Operator - 100%*
* *Evidence of Vehicles fleet meeting Vehicle Requirements, including current vehicle maintenance schedules 100%*
 |

Appendix 8
Map

The map below shows the Bay of Plenty Regional Council boundaries that this contract operates within.

