

SCHEDULE 1

CONDITIONS OF USE RELATING TO PENZANCE BUS STATION (THE “BUS STATION”)

These Conditions of Use set out the terms on which all operators (including First) (“**Operator(s)**”) who use, or wish to use the Bus Station for the provision of local bus services (as defined in the Local Bus Services Market Investigation (Access to Bus Stations) Order 2012) (“**Local Bus**”) may access and use the Bus Station which is owned by Cornwall Council and managed by First Devon & Cornwall Limited (“**First**”)

1. USE

- 1.1 First will permit Operators to use the Bus Station, on a basis which is fair, reasonable and non-discriminatory, for purposes related to the taking up and setting down of passengers, provided that such Operators have entered into a written agreement with First which incorporates these Conditions of Use.

2. OPERATING HOURS

- 2.1 Operators will be permitted access to the Bus Station during its normal operating hours.
- 2.2 The Bus Station’s normal daily operating hours are: 6.00am to 1.00am from Mondays to Fridays (19 hours a day); 6.00am to 1.00am on Saturdays (19 hours a day); and 8.30am to 12.30am on Sundays (16 hours a day). There may be certain days of the year when operating hours are longer or shorter than the normal operating hours – First shall inform all Operators of such extended or reduced opening hours in advance.

3. LAYOUT OF THE BUS STATION

- 3.1 A plan of the Bus Station, including the bus stands, designated parking slots where PSVs may park when not in service (“**Layover Parking Bays**”), and the locations of [publicity facilities within the Bus Station, including timetable displays and real-time displays of arrival and departure information which are owned or otherwise under the control of First (“**Publicity Facilities**”)] [and any amenities or facilities available for the use of or by Local Bus drivers within the Bus Station open to all Operators (“**Driver Facilities**”)] is attached at Annex 1.

4. CAPACITY

- 4.1 The total number of stands at the Bus Station is 7 stands (coach and local bus). There are 6 Local Bus stands and 4 Layover Parking Bays.
- 4.2 On the basis of the methodology set out at Part A, Annex 2, this equates to a notional maximum Local Bus capacity of 7800 departures per week from the Bus Station.
- 4.3 On the basis of the methodology set out at Part B, Annex 2, this equates to a notional maximum Layover Parking Bay capacity of 1560 per week at the Bus Station.

5. PASSENGER FACILITIES

- 5.1 Passenger facilities comprise covered waiting area and timetable information.

6. OPERATOR FACILITIES

- 6.1 Operators may, at their own cost and in a form approved by First (such approval not to be unreasonably withheld), display such notices or signs on allocated Publicity Facilities as may be necessary to draw the relevant Local Bus services to the attention of the travelling public.

7. APPOINTMENT OF BUS STATION MANAGER

- 7.1 First will appoint a manager for the Bus Station (the “**Bus Station Manager**” or “**BSM**”), who will be responsible for considering and answering all requests and queries from Operators.
- 7.2 First shall make the Bus Station Manager’s contact details available to Operators, updating them from time to time as necessary. First shall have the right to change the Bus Station Manager at any time for any reason, provided that First shall notify all Operators of updated contact details forthwith.

8. OPERATOR ACCESS REQUESTS

- 8.1 Any request for access to the Bus Station, including requests for new access and/or bus stand allocations and requests for additional or amended access and/or bus stand allocations (“**Operator Access Requests**” or “**OARs**”) should be made in writing to the Bus Station Manager and should include the frequency of operation (including the number of PSVs per hour if operating a frequent service), arrival and departure timings, service number, final destination, and (where applicable) a full timetable.
- 8.2 Operator Access Requests shall be made at the time at which the Operator is informed that its service registration, modification or cancellation application has been accepted for consideration by the relevant Traffic Commissioner, or when the frequency per hour of a frequent service changes, but not before such time. OARs shall be deemed to have been made on the day on which they are received by the BSM.
- 8.3 If First or other FirstGroup companies wish to make an Operator Access Request relating to Local Bus services, they must do so using the same protocol as that required of other Operators.
- 8.4 The Bus Station Manager shall consider all Operator Access Requests in a fair reasonable and non-discriminatory manner. Safety of passengers and Operators’ staff and vehicles (including those of First) shall be of paramount importance in determining Operator Access Requests. Operator Access Requests for First services will be considered on the same basis as that applied to other Operators. All OARs shall be considered on a “first come, first served” basis, save as otherwise set out herein (including, without limitation, in accordance with paragraph 10 of these Conditions of Use (*Amendments to Access*)).
- 8.5 The Bus Station Manager shall not consider any Operator Access Request that is accompanied, preceded or followed by any inducement, financial or otherwise.

9. ALLOCATION OF BUS STANDS

- 9.1 The Bus Station Manager shall allocate stands for the loading and unloading of passengers on the Bus Station on a fair, reasonable and non-discriminatory manner. Provided that the Bus Station has sufficient spare capacity, the Operator Access Request shall be met in full.
- 9.2 As far as practically possible, the Bus Station Manager shall allocate stands to provide all departures on the same service from the same stand, or should that not be possible, adjacent stands. Similarly, where two or more services share a destination, the Bus Station Manager shall endeavour to allocate such services to the same stand, or should that not be possible, adjacent stands.
- 9.3 In the event that there is only sufficient spare capacity at the Bus Station to meet an Operator Access Request in part, the Bus Station Manager shall notify the Operator within 10 business days of receiving the Operator Access Request, informing the Operator of how much spare capacity exists. The Operator shall have 10 business days from the date of notification in which to notify the Bus Station Manager that it wishes to take up a ‘part’ allocation, in which case the Bus Station Manager shall allocate stands on the basis set out above at a frequency of service no greater than that which the remaining spare capacity can accommodate. In the event that the Operator does not respond within 10 business days, the Bus Station Manager shall be free to allocate the spare capacity to other Operators

- 9.4 In the event that there is no spare capacity at the Bus Station to meet an Operator Access Request, the Bus Station Manager will notify the Operator within 10 business days of receiving the Operator Access Request that it will not be possible to allocate any stands for the loading and unloading of passengers on the Bus Station.
- 9.5 The Bus Station Manager reserves the right to continually review and vary stand allocation, provided that such variations will always be implemented on a fair, reasonable and non-discriminatory basis.

10. AMENDMENT TO ACCESS

- 10.1 In the event that an Operator:
- (a) proposes to amend the timetable or route of an existing service or wishes to cease operating an existing service or reduce its frequency (in each case, where the Operator has previously been granted access to the Bus Station for the relevant service); or
 - (b) takes over a tendered service from a different Operator which has previously been using the Bus Station in operating that service,

the Operator shall advise the Bus Station Manager in writing as soon as reasonably practicable, and in any event at the time at which the Operator is informed that its service registration, modification or cancellation application has been accepted for consideration by the relevant Traffic Commissioner (if such consideration is necessary), or (in the case of tendered services) where it is informed by the relevant transport authority that it has been awarded the right to operate the service in question.

- 10.2 If, as a result of the actions listed at sub-paragraphs 10.1(a) or 10.1(b) above, the Operator wishes to concurrently amend its existing access/use of the station, an Operator Access Request should be made in the same written application. In certain circumstances, notwithstanding the provisions of paragraph 8.4, these requests will be given priority above any other Operator Access Request which is awaiting consideration or has previously been refused, provided that such requests can be accommodated without any material changes to stand allocation within the Bus Station. The following table sets out which requests will be subject to such priority:

<u>Proposed Amendment:</u>
Change to departure time of existing service
Change to frequency of existing service
Alteration to route of existing service
Change from tendered service to commercial service (where tendered service ceases to operate)
Operator of a tendered service changes

11. PERMITTED DWELL TIME

- 11.1 Stands shall be used for the purposes of allowing passengers to board and alight from vehicles. Recovery and/or driver changeover time taken on stands shall not exceed six minutes from the scheduled time of vehicle arrival until the scheduled time of vehicle departure, unless agreed otherwise with the Bus Station Manager. Allocation of stand time in excess of this figure shall be at the sole discretion of the Bus Station Manager and decisions

on this matter shall be taken on a fair, reasonable and non-discriminatory basis subject to Bus Station capacity and these Conditions of Use.

- 11.2 Any Operator repeatedly exceeding the agreed dwell time duration shall be issued with a warning by the Bus Station Manager. In the event that such behaviour continues, the parties shall meet to discuss the reasons for this behaviour and shall use all reasonable endeavours to resolve the issue between them.

12. LOADING AND UNLOADING

- 12.1 All buses must enter the Bus Station via the designated entrances and proceed directly to the allocated stand. Drivers must adhere to all written and oral instructions from First or First's allocated representative relating to vehicle movements (including banksmen and other vehicle movement supervisors).
- 12.2 If the allocated stand is occupied upon arrival, the Operator must instruct the driver to set down their passengers at any other vacant stand or at an alternative safe place. Under no circumstances should drivers set down or pick up passengers in the roadway or alongside another standing vehicle.
- 12.3 Operators must instruct their drivers not to position their buses so as to obstruct other bus movements or pedestrian crossings or to force pedestrians to use the bus access lanes.
- 12.4 After unloading their passengers, buses must go directly to the departure stand (if they are the next departure) or, where agreed in advance, to a Layover Parking Bay. If the appropriate departure stand and Layover Parking Bay are not available, the bus must leave the Bus Station.
- 12.5 The Operator is solely responsible for ensuring that drivers observe their scheduled arrival and departure times.

13. ALLOCATION AND USE OF LAYOVER PARKING BAYS

- 13.1 No bus may be on the Bus Station unless on stand as per 11.1 or First has given the Operator permission to layover.
- 13.2 If Operators require permission to layover, they should make a written application to the Bus Station Manager. All such applications will be considered in a fair, reasonable and non-discriminatory manner and layover space will be allocated on a "first come, first served" basis subject to the available capacity of Layover Parking Bays. In the event that any Layover Parking Bays become available by their current user giving written notice of cessation of their use, the Bus Station Manager shall contact all Operators using the Bus Station offering them the opportunity to apply for use of the space(s).
- 13.3 Use of Layover Parking Bays within the Bus Station shall be subject to a maximum duration of stay of 20 minutes and buses on layover must park within the marked Layover Parking Bays. All Operators are required to take longer periods of layover at appropriate off-site locations.
- 13.4 Any Operator repeatedly exceeding the dwell time duration for Layover Parking Bays shall be issued with a warning by the Bus Station Manager. In the event that such behaviour continues, the parties shall meet to discuss the reasons for this behaviour and shall use all reasonable endeavours to resolve the issue between them.

14. EXCEPTIONAL CIRCUMSTANCES

Temporary Changes

- 14.1 In exceptional circumstances, First may be obliged to temporarily amend the terms on which access to the Bus Station may be granted, including restricting access to all or part of the Bus Station. Such circumstances may include road traffic accidents, roadworks, public events

and/or any other event beyond the reasonable control of First, which occur in or around, or otherwise or affect, the Bus Station.

- 14.2 In the event of such circumstances, First shall as soon as reasonably possible notify all affected Operators of the circumstances and the way in which they will affect the Bus Station, including details of any amendments to the Conditions of Use. Any amendments to the Conditions of Use shall, so far as reasonably possible, be designed so as to affect all Operators in a fair, reasonable and non-discriminatory manner.

Permanent Changes

- 14.3 Should the Bus Station or any part thereof become permanently inaccessible or unavailable for use, the BSM shall notify all Operators as soon as is reasonably practicable of the circumstances and the way in which they will affect the Bus Station, including details of any amendments to the Conditions of Use. Any amendments to the Conditions of Use shall, so far as reasonably possible, be designed so as to affect all Operators in a fair, reasonable and non-discriminatory manner.

15. UNATTENDED VEHICLES

- 15.1 Vehicles on the Bus Station must not be left unattended, unless in a Layover Parking Bay or designated bus stand.
- 15.2 Where drivers are changing over within the Bus Station, the driver being relieved must stay with the vehicle until the relief driver has arrived.
- 15.3 First reserves the right to remove any unattended vehicle and recharge the costs of doing so to the controlling Operator.

16. LIABILITY FOR DAMAGE

- 16.1 Operators will be held responsible for damage caused to Bus Station infrastructure caused by Operator's vehicles, staff or agents, and shall indemnify First for the full cost of repair, replacement, cleaning and/or emergency remedial measures.
- 16.2 Operators and their staff owe a duty of care towards passengers and Bus Station users. Operators, their employees, representatives and agents also have a duty of care under the Health and Safety at Work Act 1974 (as amended). Operators shall indemnify First against all reasonable costs, claims and losses to persons and property arising as a result of any negligence of the Operator or its drivers.
- 16.3 Operators shall have in force at all times when using the Bus Station public liability insurance and shall evidence such insurance to First upon request from First.

17. HEALTH AND SAFETY

- 17.1 Operators shall ensure that their drivers observe the 10MPH speed limit within the Bus Station, and all other restrictions in place from time to time.
- 17.2 Operators and their drivers, employees or agents must observe First's Health and Safety policy which is available on request.
- 17.3 First will provide a reporting facility at the Bus Station to allow Operator's staff to report safety concerns or suggested improvements.

18. DEPARTURE CHARGES

- 18.1 A departure charge will be payable by the Operator to First for each departure made from the Bus Station. The departure charge (and any variations thereof) will be determined on a fair, reasonable and non-discriminatory basis, and in accordance with the method of calculation set out at Annex 3.

18.2 Departure charges shall be payable for any Local Bus departure from the Bus Station (including setting down and/or picking up passengers).

18.3 Such charges will be reviewed annually on or before 1 April in each calendar year.

19. LAYOVER CHARGES

19.1 No layover charge will be payable by the Operator to First for each Layover Parking Bay (or proportion thereof) utilised in accordance with this Agreement. First reserves the right to charge an Excess Usage fee for layover in excess of that permitted under this Agreement.

20. BREACH OF CONDITIONS OF USE

20.1 If an Operator materially or persistently breaches these Conditions of Use (for example, failure to pay any charges due to First, repeated failure to obey instructions relating to health and safety), and fails to remedy the breach within 14 calendar days of receipt of written notice from the Bus Station Manager (if the breach is capable of remedy) First may suspend the Operator's access to the Bus Station pending remedy of the breach.

21. DISPUTE RESOLUTION PROCEDURE

21.1 Any comments about these Conditions of Use or the manner in which they have been or are being followed should be addressed in writing in the first instance to the Bus Station Manager who will endeavour to respond within 14 calendar days of receipt. First and the Operator shall attempt in good faith to negotiate the settlement to any claim or dispute arising between them out of or in connection with these Conditions of Use, or any written agreement between them which incorporates these Conditions of Use.

21.2 If the Operator wishes to raise a formal dispute relating to the Bus Station, these Conditions of Use, or their compliance with the Local Bus Services Market Investigation (Access to Bus Stations) Order 2012 (the "**Order**"), the Operator shall send a written notice to the Bus Station Manager stating that it wishes to initiate the dispute resolution procedure set out in these Conditions of Use. The dispute will be deemed to arise on the date that such notice is sent.

21.3 Where the dispute relates to any provision of the Conditions of Use, the procedure for initiating a dispute as specified in paragraph 21.2 above must be complied with by no later than 8 weeks of the date, whichever is later, on which either:

- (a) the Conditions of Use or the disputed amendment comes into effect; or
- (b) the Conditions of Use or the disputed amendment first applies to the Operator,

provided that the 8-week limit shall not apply where the Operator reasonably believes there is a material change in circumstances necessitating a review of any provision of the Conditions of Use.

21.4 Once a dispute has arisen, senior executives of the parties must meet to seek to resolve the dispute by negotiation in good faith. If the dispute is not resolved within ten calendar days following the date on which it arises, either party may refer the dispute to an independent expert at any time thereafter.

21.5 The parties shall agree on the appointment of an independent expert and shall agree with the expert the terms of his appointment. The independent expert must have the appropriate skill, knowledge and expertise to determine the relevant dispute. If the parties are unable to agree on an expert or the terms of his appointment within seven calendar days of either party serving details of a suggested expert on the other, either party shall then be entitled to request the relevant Local Transport Authority within the meaning of the Transport Act 2000 and the Transport (Scotland) Act 2001 ("**LTA**") to appoint an appropriate expert of repute with suitable experience in passenger transport issues and for the relevant LTA to agree with the expert the terms of his appointment.

- 21.6 The cost of such independent expert will be shared equally amongst the Operator (or group of Operators, as appropriate) and First.
- 21.7 The parties will provide the expert with such assistance and documents as the expert reasonably requires for the purpose of reaching a decision. The expert is required to prepare a written decision and give notice (including a copy) of the decision to the parties within a maximum of 50 calendar days of the dispute arising. The expert's written decision on the matters referred to him shall be final and binding on the parties (and, to the extent appropriate, all other Operators using the Bus Station) in the absence of manifest error or fraud.
- 21.8 Until a dispute is determined the Operator shall continue to pay all applicable charges to First and shall continue to have access to the Bus Station.
- 21.9 Where a dispute relates to any charge payable to First by the Operator, the independent expert may substitute his own assessment of a fair charge where First cannot demonstrate to the independent expert's satisfaction that a disputed charge has been calculated on a fair and reasonable basis, without undue discrimination between the Operator and other operators including First. If the independent expert substitutes a charge, First shall repay any overpayment or the Operator shall make good any underpayment, in both cases including any interest determined by the independent expert, since the date on which the charge was last reviewed and the date of determination of the dispute.
- 21.10 If a future Operator is refused access to the Bus Station, the Manager and the future Operator may enter into an interim agreement for access which incorporates these Conditions of Use.
- 21.11 A future Operator who has been refused access to the Bus Station may give notice of a dispute. Upon final determination of the dispute by an independent expert the interim agreement shall be varied (if appropriate) and finalized, or a new written agreement shall be entered into, or the future Operator may terminate the interim agreement. If, and to the extent, appropriate First shall amend the Conditions of Use in accordance with the final determination of the independent expert.
- 21.12 First shall keep and maintain a written record of:
- (a) all disputes with Operators, including disputes not pursued under the formal dispute process set out above;
 - (b) any action taken to resolve the dispute; and
 - (c) the outcome.
- 21.13 The written record shall cover the preceding two calendar years, save that in the first year, the written record shall cover the period starting with the date on which the Conditions of Use are first implemented to the end of that calendar year.
- 21.14 First shall submit such written records to the LTA within whose boundaries the Bus Station is located by no later than 1 April for each preceding calendar year. Upon written request by the Office of Fair Trading ("OFT"), First shall submit such written records to the OFT as soon as is practicable. In each case, and notwithstanding any provisions of the Conditions of Use or any other agreement between them and First, all Operators agree to such disclosure by First without any further notification or consent being required.

22. REVIEW AND DISPLAY OF CONDITIONS OF USE

- 22.1 These Conditions of Use will be reviewed at least every two years.
- 22.2 These Conditions of Use are displayed at the Bus Station and on First's website (www.firstgroup.com/devon_cornwall).

Annex 1

Plan of Bus Station



Annex 2

Capacity Calculation

Part A: Local Bus stands

In calculating the total capacity for Local Bus services, we have taken the following factors into account:

- (a) the typical operating hours and days of the Bus Station;
- (b) the time taken for one Local Bus departure; and
- (c) the total number of available Bus Stands.

The Bus Station's normal daily operating hours are: 6.00am to 1.00am from Mondays to Fridays (19 hours a day); and 6.00am to 1.00am on Saturdays (19 hours a day); and Sundays 8.30am to 12.30 am (16 hours a day). Whilst there are certain days of the year when operating hours are longer or shorter than the normal operating hours, in accordance with the Order, these variations from normal usage are not taken into account.

Based on the maximum dwell time set out at paragraph 11 of the Conditions of Use, ten Local Bus departures per hour can be made from a bus stand. During a full operating day, each stand can accommodate 190 Local Bus departures on a weekday and a Saturday (i.e. ten possible departures per hour x 19 operating hours on a weekday) and 160 Local Bus departures on a Sunday (i.e. ten possible departures per hour x 16 operating hours on a weekend).

Over a seven-day week, the total number of Local Bus departures possible from a single bus stand is 1,300 departures. Since there are 5 bus stands, the Bus Station's total capacity for Local Bus services is 7800 departures per week. The total annual capacity for Local Bus services is 405600 Local Bus departures.

Part B: Layover Parking Bays

In calculating the total capacity for Layover Parking Bays, we have taken the following factors into account:

- (a) the typical operating hours and days of the Bus Station;
- (b) the maximum dwell time permitted at Layover Parking Bays; and
- (c) the total number of available Layover Parking Bays.

The Bus Station's normal daily operating hours are: 6.00am to 1.00am from Mondays to Fridays (19 hours a day); and 6.00am to 1.00am on Saturdays (19 hours a day); and Sundays 8.30am to 12.30 am (16 hours a day).. Whilst there are certain days of the year when operating hours are longer or shorter than the normal operating hours, in accordance with the Order, these variations from normal usage are not taken into account.

Based on the maximum dwell time set out at paragraph 13 of the Conditions of Use, each Layover Parking Bay can accommodate up to three layovers per hour. During a full operating day, each Layover Parking Bay can accommodate 57 layovers on a weekday or Saturday (i.e. three possible

layovers per hour x 19 operating hours on a weekday or Saturday) and 48 layovers on a Sunday (i.e. three possible layovers per hour x 16 operating hours on a weekend).

Over a seven-day week, the total number of layovers possible from a single Layover Parking Bay is 390. Since there are 4 Layover Parking Bays, the Bus Station's total capacity for Layover Parking Bays is 1560 layovers per week. The total annual capacity is 81120 layovers.

Annex 3

Charges Calculation

Departure charges for Local Bus services have been calculated in accordance with the methodology set out in the Competition Commission's "note on calculation of departure charges". In summary, we have adopted the following 5 steps:

- (a) Step 1: determining which facilities are available to Local Bus Operators at the Bus Station;
- (b) Step 2: calculating the total capacity of the Bus Station;
- (c) Step 3: determining the 'Reference Peak Period' and 'Used Capacity Percentage' (each as defined in the Order);
- (d) Step 4: calculating the 'Relevant Operating Costs' and the 'Adjusted Relevant Operating Costs' (each as defined in the Order); and
- (e) Step 5: determining departure charges based on scheduled utilization of the Bus Station.

Each of these steps is set out in more detail below.

Step 1: Determining which facilities are available to Local Bus Operators at the Bus Station

In determining Relevant Operating Costs (i.e. the costs of the facilities at the Bus Station which are available to Local Bus Operators), we have included the costs of any facilities which are available to all Local Bus Operators or their passengers; and we have excluded any facilities (a) which are only available to First, or (b) where First is already charging for the use of the facility.

Therefore, the costs associated with the following facilities have been taken into account in the calculation of Relevant Operating Costs:

- the Local Bus stands;
- the passenger waiting area;
- the Publicity Facilities; and

Step 2: What is the total capacity of the Bus Station?

The basis for calculating total capacity is set out in more detail in Part A of Annex 2.

Step 3: Determining the Reference Peak Period and Used Capacity Percentage

The Used Capacity Percentage is the number of scheduled Local Bus departures calculated as a percentage of the total number of possible departures that can be made during the Reference Peak Period.

The Reference Peak Period is a single period of at least 2 consecutive hours on any day during which scheduled utilization of the available capacity is at its highest.

The Reference Peak Period for the Bus Station is the 2-hour period from 3.00am to 5.00pm on a weekday.

Based on this Reference Peak Period, the Used Capacity Percentage is 30.8 per cent.

Step 4: Calculating the Relevant Operating Costs

To calculate Relevant Operating Costs from total costs, we have made the following adjustments:

- a) excluded all costs relating to facilities which are only available to First, or for which First is already recovering costs;
- b) excluded all costs which are attributable to coach service operators; and
- c) included a return of 10 per cent on the relevant investment (calculated as the proportion of the depreciated historic cost of First's or its associate company's investment into the Bus Station).

Relevant Operating Costs were then adjusted by applying the Used Capacity Percentage (calculated in Step 3 above).

The resulting costs (i.e. the Adjusted Relevant Operating Costs) form the basis on which Departure Charges are set (see Step 5 below).

Step 5: Determining departure charges based on scheduled utilization

The Local Bus departure charge has been calculated by dividing the Adjusted Relevant Operating Costs (which only includes the proportion which relates to the Used Capacity Percentage) by the total number of scheduled Local Bus departures. For the avoidance of doubt, this figure includes both the Local Bus departures of First and any other Operator.

The resulting departure charge is to be paid by each Operator for every scheduled Local Bus departure made by the Operator from the Bus Station.

SCHEDULE 2

CHARGES

For the current year, the departure charge to be paid by each Operator for every scheduled Local Bus departure made by the Operator from the Bus Station is £0.21