

TO BE RETAINED
BY TENDERER



CONDITIONS OF CONTRACT

**Contract TT0013
Social Work & Housing
Transport Framework**

**Contract TT0018
Social Work Taxi Exemptions
(Direct Awards outwith the TT0013 Framework)**

31 July 2023 to 1 August 2027

CONDITIONS OF CONTRACT

These conditions shall apply to all Contracts awarded under the Framework. These Conditions of Contract may only be varied with the written agreement of the Council. No terms or conditions put forward at any time by the Contractor shall form any part of a Contract unless specifically agreed in writing by the Council.

DEFINITIONS

1. In this Framework the following words and expressions shall have the meaning assigned to them except where the context otherwise requires :

“Booking Staff” shall mean officers of the Council normally involved in booking Service Users’ transport.

“Change in Law” means

- i. the coming into effect of any Law that is not in effect at the Agreement Date;
- ii. the modification, repeal or replacement of any Law after the Agreement Date; and/or
- iii. a change after the Agreement Date in the interpretation or application by any Competent Authority of any Law;

but shall not include changes which were reasonably foreseeable and/or were taken into account by the Parties at the Agreement Date. 'Change in Law' shall include any introduction of new taxes, duties or increased exposure to existing taxes, duties or tariffs or the removal of any benefit, subsidy or relief in each case due to either (a) the change in the membership status of the United Kingdom as a result of its withdrawal (or agreement reached with respect to the United Kingdom's withdrawal) from membership of the European Union, and/or (b) a decision or agreement for Scotland to no longer form part of the United Kingdom.

“Child(ren)” means anyone under the age of 18, as defined in the Protection of Vulnerable Groups (Scotland) Act 2007.

“Conditions of Contract ” means these terms and the terms of the Contract Specification for each Contract.

“Contract” means a contract awarded under the Framework Agreement to follow hereon between the Council and the Contractor for the provision of Services.

“Contract Period” means the period during which the Services are to be provided by the Contractor to the Council as specified in the Contract Specification.

“Contract Price” and “Tender Price” shall mean the sum of money set out by the Contractor or such variation of this sum as may be provided for in these Conditions of Contract.

“Contract Specification” and “Specification of Services” is the document describing details of route, timetable, Vehicle requirements, Contract Period and other Service details for each individual Contract.

"Contractor" means the person, partnership or company whose tender has been accepted by the Council and to whom the Contract is issued.

"Council" means The Fife Council, constituted in terms of the Local Government etc. (Scotland) Act 1994, and having its principal office at Fife House, North Street, Glenrothes, Fife KY7 5LT.

"Data Protection Legislation" means any applicable law relating to the processing, privacy and use of Personal Data applicable to the Council and/or the Contractor including in the UK the Data Protection Act 1998 and the Regulation of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, the General Data Protection Regulation (2016/279) and/or any corresponding or equivalent national laws or regulations, once in force and applicable and includes any judicial or administrative interpretation of them, any guidance, guidelines, codes of practice, approved codes of conduct or approved certification mechanisms issued by any relevant Supervisory Authority including the UK Information Commissioner;

"Invitation to Tender" means the document setting out the Council's requirements for the provision of Services.

"Persistent Breach" means where the Contractor has been in breach of the Conditions of Contract, having had notice served upon it by the Council to that effect, on three separate occasions in a rolling six month period.

"Protected Adult" means a person defined as such in the Protection of Vulnerable Groups (Scotland) Act 2007.

"Service" and "Services" means any journey carried out in the performance of a Contract under this Framework.

"Service User" means an adult or child (excluding carers and escorts) for whom a journey has been booked by the Council using this Framework.

"Sub-contracting" means the Contractor using another sole trader, partnership, company or any other provider of transport services to carry out Services on the Contractor's behalf in connection with any journey carried out in the performance of a Contract under this Framework.

"Taxi Booking Office" means premises requiring to be licensed under the Civic Government (Scotland) Act 1982 (Licensing of Booking Offices) Order 2009.

"Tender" means the tender documents submitted by the Contractor in response to the Invitation to Tender.

"Vehicle" shall mean a Public Service Vehicle licensed under the Public Passenger Vehicles Act 1981 or a Taxi or Private Hire Car licensed under the Civic Government (Scotland) Act 1982 and used by the Contractor in the performance of the contract.

2. Any reference to the singular shall be construed as also including the plural and vice versa and a reference to any gender shall be construed as including the other genders.
3. Any reference to any statute or statutory provision shall include a reference to all re-enactments, amendments and modifications relating to that provision and any subsequent legislation made under it from time to time.
4. Any reference to any agreement or document shall be deemed to include a reference to that agreement or document as amended, supplemented or substituted from time to time.
5. Any reference to a person shall be deemed to include any permitted assignee and any permitted successor of such person.
6. In the event of any conflict between these Conditions of Contract and the Specification of Services then the Specification of Services shall take precedence.
7. The headings to these Conditions shall not be deemed to be part thereof and shall not affect the construction or interpretation of the same.

VEHICLES, DRIVERS & LICENCES

8. The Contractor must be at least one of the following:
 - the holder of a current Public Service Vehicle (PSV) Operator's Licence
 - a Taxi or Private Hire Car (PHC) operator licensed under the Civic Government (Scotland) Act 1982
 - a Taxi Booking Office licensed under the Civic Government (Scotland) Act 1982;and shall produce the licence for inspection by an authorised officer of the Council on request.
9. Any Vehicle used in the performance of a Contract shall be licensed, equipped and maintained as required by statute and shall be in the charge of a competent driver who shall be licensed as required by statute.
10. The Taxi or PHC Operator's Licence, for any vehicles used on Contracts awarded through the Framework or DPS, must be held in the name of the Contractor i.e. individual operators (sole traders) must be licensed in their own name and any partnerships must be licensed in at least one person's name within the partnership. A Limited Company must be licensed in the name of the Limited Company or at least one of its directors.
11. All Vehicles of 8 passenger seats or less shall be licensed as taxi or private hire cars by a Local Authority and shall display the licence.
12. For the avoidance of doubt, Section 22(1)(c) of the Civic Government (Scotland) Act 1982 (exemption from licensing for vehicles operating an exclusive hire for a period of not less than 24 hours) does not apply to Vehicles used on any Contract.

13. All drivers who drive Vehicles licensed as taxi or private hire cars shall possess a current taxi/private hire car driver's licence issued by a Local Authority. The Contractor and/or driver will display the appropriate licence(s) whilst operating Contracts and shall produce the licence on request at any time for inspection by an authorised officer of the Council.
14. All Vehicles of 9 passenger seats or above used on Contracts shall be licensed as Public Service Vehicles. Contractors operating such Vehicles shall hold the relevant PSV Operator's Licence and shall produce such licence(s) on request at any time for inspection by an authorised officer of the Council.
15. The use of 'novelty vehicles' is not permitted on any contracts. These include, but are not limited to, open-top buses; stretch limousines; party buses; vehicles with open passenger platforms e.g. Routemaster buses; and any other vehicle which, in the opinion of the Council, constitutes a vehicle unsuitable for the transport of Service Users on Contracts.
16. Where, in the opinion of the Council, any interior or exterior advertising on a Vehicle is deemed inappropriate for use on a Contract, the Contractor must ensure the removal or covering of the advert, failing which, the Vehicle must be withdrawn from use on the Contract.
17. The Contractor shall ensure that the Vehicle used on a Contract, is in a safe and serviceable condition at all times, including all bodywork, upholstery and fittings. In addition, the Council reserves the right to require the Contractor to make the vehicle available for inspection by the Council at any reasonable time at the Contractor's expense.
18. The Contractor shall keep Vehicle maintenance records and shall make these records and the relevant Vehicles available for inspection at the Vehicles' normal operating base on request by the Council at any reasonable time.
19. Failures in relation to Vehicle maintenance standards, as advised by a Licensing Authority or the Driver & Vehicle Standards Agency (DVSA), will be noted and the Council reserves the right to ask for specific Vehicles to be removed from use on any Contract operated under the Framework.
20. The Council reserves the right to advise Licensing Authorities, the Traffic Commissioner or DVSA if it has any misgivings as to the ability of the Contractor's Vehicles to meet legislative requirements. The Contractor shall provide the Council with copies of DVSA roadworthiness reports on request. Furthermore, the Contractor hereby agrees to the Council obtaining information direct from Licensing Authorities and/or DVSA on the fleet maintenance standards of the Contractor.
21. The Contractor shall ensure that each Vehicle has sufficient seating capacity to provide one seat for each passenger travelling.
22. The Contractor shall ensure that all Vehicles used in the performance of the Contract are kept both internally and, subject to prevailing road conditions, externally in a clean condition. A soiling charge is permitted in line with the Council's published soiling charge for taxis and private hire cars. Any claim for soiling will be checked prior to a payment being made.

23. The maximum age of any Vehicle permitted to operate on Contracts is as follows:
 - 4-6 passenger seats: 10 years
 - 7-8 passenger seats: 12 years
 - Wheelchair accessible vehicle (licensed as Taxi or PHC): 12 years
 - 9+ passenger seats (including wheelchair accessible vehicles licensed as PSV): 15 years
24. Any Vehicle used on a Contract, which requires to enter a Low Emission Zone (LEZ), must comply with the minimum engine emission standard for the LEZ, irrespective of any lesser standard that applies, in general, in these Conditions of Contract.
25. The Contractor shall ensure that all Vehicles are stationary, engines switched off and in position, by the agreed times, at pick-up and drop-off locations. Contractors are reminded of the requirements of Section 98 of The Road Vehicles (Construction and Use) Regulations 1986 with respect to engine idling.
26. The Contractor shall ensure that any side facing seats on any Vehicle used in the performance of the Contract are not used by any passengers.
27. All Vehicles used by the Contractor shall have an appropriate means of direct voice communication with the operating base, such as a mobile phone or radio. Such equipment shall be at the Contractor's expense and contact with the driver possible at all times, including during any dead mileage, before and after any journey.
28. Immediately prior to passengers boarding on each contracted journey, the driver must undertake a visual check of the interior of the Vehicle as a safeguard against any inappropriate or dangerous items that may be present and have any such items removed from all passenger accessible areas prior to passengers boarding. A further check must be carried out at the end of the journey for lost property, vandalism inappropriate or dangerous items.
29. To prevent instances of passengers being left on Vehicles, drivers must check all seating and floor areas of the Vehicle immediately after passengers have disembarked.
30. The Contractor shall ensure that all drivers engaged in the operation of Contracts adhere to an appropriate dress standard e.g. any recognised uniform issued by the Contractor, and be of neat, clean and tidy appearance.
31. The Contractor shall ensure that all drivers carry a means of photographic identification, such as a photocard driving licence, taxi/private hire car licence or Driver Qualification Card, during the performance of the Contract, which shall be shown on request to the passengers, their parents/carers, care/school staff or other authorised Council officials.
32. If, at any time during the Framework period, the Council receives information about a driver that suggests their conduct has been inappropriate, the Council reserves the right to suspend their use on Council Contracts. Any assessment made by the Council on whether to reinstate the driver may take into consideration any information provided by the Licensing Authorities, Education or Social Work Teams and/or Police Scotland.

33. If, at any time, the Contractor receives a complaint or information about a driver that suggests their conduct has been inappropriate, the Contractor must inform the Council immediately. Following any such report to the Council, the Contractor is expected to undertake an investigation into the alleged incident and provide a written report to the Council of its findings within five working days.
34. Drivers must not:
- a) attend work under the influence of, or have in their possession, alcohol and/or illegal substances;
 - b) smoke (see Condition 52 also);
 - c) give or accept gifts of any marked value or perceived value;
 - d) give passengers sweets, snacks or drinks, stop at shops to purchase items or allow them to consume such items during the journey;
 - e) make unauthorised stops during any journey contracted by the Council;
 - f) enter Service Users' homes;
 - g) make any inappropriate physical contact with any passenger;
 - h) engage in any form of conflict with any person in connection with the operation of any Contract;
 - i) swear or use inappropriate language;
 - j) engage passengers in any conversation of a personal, suggestive or intimate nature;
 - k) exchange contact details and/or enter into private discussions by telephone/text, email or on social media, with Service Users;
 - l) discuss any aspect of a Service User's personal life, including their reasons for travelling, where they are going, where they have been or details about other family members. If a Service User voluntarily gives out information about their personal circumstances, the Driver must advise the Service User that they are not permitted to discuss such personal information;
 - m) divulge any journey, personal or family information about a Service User to anyone else, including friends or relatives of the Service User
35. The Contractor is responsible for the conduct of all drivers, including any Sub-contractor's drivers, used on Contracts.

OPERATION OF CONTRACT

36. The Contractor will ensure, at his own expense, the provision of the Contract at all times in accordance with any Act of Parliament General or Local or any Statutory Rules or Orders affecting the whole or part of the subject matter of a Contract or any work to be done in relation thereto.
37. The Contractor shall perform each transport Contract in accordance with a timetable, route, and pick-up/drop-off points and Vehicle provision agreed by e-mail/online confirmation with the Council. Except in an emergency, no changes shall be made without the prior approval of the Council.

38. The Contractor shall ensure that the Contractor and Contractor's staff engaged on Council business conduct themselves as befits someone dealing with the general public on behalf of the Council. Contractors' staff must be issued with, and be familiar with, the *Instructions to Drivers* document, which accompanies and forms part of these Conditions.
39. Bookings must be possible by telephone and email but additional methods may be offered by the Contractor.
40. If a Contract is not awarded via a mini-competition, availability to undertake a journey will be made via telephone, email or MS Forms request. In all cases, the highest ranked operator will be offered the Contract, using the Framework rates. Once accepted, a follow-up e-mail for confirmation (unless an online booking system has been offered by the Contractor) will be made. The follow-up e-mail (or online booking) will act as a formal offer to the Contractor and will detail the journey requirements. To accept the contract, the Contractor must reply by e-mail stating their acceptance of the offer or, alternatively, acceptance of the booking on any online booking system will be deemed as an acceptance of a Contract. In either case, a booking reference number must be issued by the Contractor.
41. In attempting to check availability, if Booking Staff cannot make contact with a Contractor, or Contractors do not respond to a request by the specified deadline, the Booking Staff will select another Contractor to make the booking.
42. In the event that a Contractor is unable to fulfil a journey request, the journey must be declined at the time of booking.
43. The Contractor must convey only those passengers who have been authorised by the Council to travel.
44. The Contractor is responsible for assessing the suitability of the pick-up and set-down places and in so doing should take due regard of road safety and avoid the need for Service Users to cross roads.
45. The Contractor shall ensure that unescorted Service Users are received from/transferred to a responsible adult at the designated pick-up/drop-off points, which may include home addresses, educational or care establishments. Where a parent/carer/establishment staff are not available to meet a Service User at the drop-off point, the Contractor must contact the Booking Staff and request instructions.
Under no circumstances should a Service User be left at a drop-off point unattended or with anyone else other than a parent/carer/establishment staff.
A record should be kept of such occurrences and if the problem occurs repeatedly, this should be reported to the Booking Staff. This Condition does not apply to journeys operated on behalf of Housing (Lots 17-31) or where any Service User is being returned to their home **in which they live independently.**
46. The Contractor shall ensure that their drivers do not pick up or drop off Service Users or allow them to leave the Vehicle anywhere other than the designated pick-up and drop-off points.
47. If a Service User is not ready to board the Vehicle at the scheduled uplift time, the driver is expected to wait unless otherwise instructed by the Council. If the Service

User is not ready after 5 minutes or if they are persistently late, the Contractor must inform the Council booking staff.

48. Requests for a change to the Contract, made by establishment staff, parents/carers, escorts or the Service Users themselves, should not be agreed by Contractors and will not be paid for. All changes to a Contract can only be agreed with the Council booking staff.
49. The Contractor shall ensure that their drivers follow any specific instructions issued by the Council that are included as part of the Contract Specification.
50. The Contractor should report any concerns about any aspect of the Contract to the Council's booking staff without delay.
51. Contractors shall comply with the Data Protection Legislation in respect of the use of CCTV equipment for surveillance. Contractors should, when requested, allow the police and/or approved Council staff to view footage in accordance with the legislation.
52. Smoking by any person in a Contract Vehicle is prohibited at all times during the operation of the Contract, even during dead mileage prior to commencing a contracted journey. Drivers are also not permitted to smoke in the immediate vicinity of their vehicle at pick-up and drop-off locations. For the avoidance of doubt, smoking includes the use of e-cigarettes or similar vaping devices.
53. Some journeys may require the uplift of personal belongings in addition to passengers. This will be advised at the time of booking. Housing journeys (Lots 17-31) may have a significant number of bags/luggage/belongings to be uplifted. In the event that there is insufficient space in the Vehicle for all personal belongings presented at the pick-up point, the driver must contact the Contractor who should contact the Booking Staff for advice.

CONTRACTOR PERFORMANCE

54. The Contractor shall have, and keep updated, a communication plan that explains the actions that the Contractors' driving and, where relevant, other employees will follow to make passengers and the Council aware of any disruptions to normal operation. The communication plan should define the roles and responsibilities of those involved and the process to be followed, including during periods of severe weather and other emergency situations. The Contractor shall provide the Council in writing with details of their communication plan on request.
55. The Contractor shall have in place, and keep updated, a contingency plan to cover the Contract in an emergency and shall provide the Council in writing with details of any such arrangements on request.
56. The Contractor shall notify the Council immediately of a failure to operate, for any reason, the Contract as outlined in Conditions 36-37. The Contractor shall be obliged to cover staff or Vehicle deficiencies by sub-contracting if necessary as provided for in Conditions 139-146.

57. The Council may terminate the Contract or make an appropriate deduction from the Contract payment if the Contract is not performed in accordance with Condition 37, unless the Council is satisfied that this has been caused as a result of circumstances that are wholly beyond the reasonable control of the Contractor. Non-performance resulting from the unavailability of Vehicle or driver (including unavailability as a consequence of industrial action by the Contractor's staff) will not be taken to have been caused by circumstances beyond the reasonable control of the Contractor.
58. The performance of each Contract in accordance with the times specified in the relevant booking is an essential condition. In the event of any delay then the Contractor shall be liable for the damages outlined in Appendix 2.
59. The Contractor shall produce such evidence, as the Council may reasonably require, that demonstrates that all Conditions are being met.

INSURANCE AND LIABILITY

60. The Contractor shall take all reasonable steps to ensure the safety of passengers not only whilst they are aboard the Vehicle but also at such times as they are boarding or alighting. The Contractor shall be responsible for the opening and closing of the Vehicle doors. The Contractor shall ensure that all Service Users are seated and, where relevant, wearing seatbelts and/or appropriate restraints before the Vehicle moves off.
61. The Contractor shall indemnify and keep indemnified the Council against all claims for personal injuries (including death) and all loss or damage of any kind whatsoever which may be attributed directly or indirectly to the execution of the Contract or which arise from or are incurred by reason of the negligence of the Contractor or its employees and against all claims, demands, proceedings, damages, costs, charges and expenses whatsoever in relation thereto.
62. The Contractor shall effect and keep current, and shall ensure any Sub-contractor effects and keeps current, such policy or policies of insurance as shall provide adequate insurance cover against all liability arising out of or in connection with the execution of the Contract. The policy or policies of insurance must cover motor vehicle, public liability and, where appropriate, employer's liability insurance and be held in the name of the Contractor i.e. individual operators (sole traders) must be insured in at least their own name; a partnership's insurance must be in the name of at least one member of the partnership; a Limited Company's insurance must be in the name of the Limited Company and an Unincorporated Association's insurance must be in the name of the Unincorporated Association.
63. Insurance cover for all such claims shall be to a minimum amount of:
 - Employer's Liability - £10 million (where required)
 - Public Liability - £5 million
64. For the avoidance of doubt, where a Contractor is a Taxi Booking Office, the Contractor is responsible for ensuring all insurance requirements are met.
65. If a Contractor cannot provide evidence that the relevant insurance cover is in place following a request by the Council, the Council reserves the right to withdraw the

offer of any Contract or to terminate an individual Contract or all Contracts operated by the Contractor.

PROTECTION OF VULNERABLE GROUPS (PVG) SCHEME

(this section does not apply to Housing journeys (Lots 17-31) of the Framework)

66. Drivers meet the PVG Act definition of regulated work with children and/or protected adults, by having the responsibility of being in sole charge of them, as part of their normal duties, and no exceptions that would take them out of regulated work apply. Contractors must ensure they familiarise themselves with the supplementary PVG Guide issued with these Conditions.
67. The Contractor is responsible for ensuring that drivers used are not barred from doing regulated work under the Protection of Vulnerable Groups (Scotland) Act 2007. This is done by ensuring that all drivers employed to do regulated work are PVG Scheme members in respect of regulated work with **Children AND Protected Adults** for Social Work journeys (Lots 1-16 of the Framework). Drivers may be asked to do either type of regulated work at any time.
68. It is the Contractor's responsibility to make arrangements for any drivers they intend to deploy on Contracts to obtain a PVG Scheme Record or PVG Short Scheme Record that notifies Disclosure Scotland that the Contractor is an Interested Party, to be informed about barring decisions related to the driver.
69. If a Scheme Record reveals conviction or other vetting information about a driver, the Contractor must conduct separate risk assessments to determine whether the person is suitable to work with children and suitable to work with protected adults. Contractors should keep a record of the outcome of any recruitment decision they make and be prepared to share that decision with the Council on request.
70. If a Contractor is informed by Disclosure Scotland or an Umbrella Body that a driver is barred from regulated work, they must not be permitted to do further work of that kind under the Contract. If the Contractor is notified by Disclosure Scotland or an Umbrella Body that a driver is under consideration for listing in respect of regulated work, the Council requires that driver to be suspended from Contracts of that kind, with immediate effect, until the outcome of the listing decision is known.
71. Employers using the PVG Scheme are required to comply with the *Code of Practice in Connection With the Use of Disclosure Information and With the Functions of Registered Persons*, which is published at <https://www.mygov.scot/disclosure-code-of-practice/> . Contractors must inform the Council immediately if their access to PVG information is suspended, for example, as a consequence of a compliance audit by Disclosure Scotland.
72. The Contractor is responsible for making arrangements to pay all the fees for PVG Scheme Records and/or Short Scheme Records to Disclosure Scotland. Contractors are expected to register with Disclosure Scotland to obtain PVG Scheme Records for their drivers or to make an arrangement with an Umbrella Body to countersign PVG Scheme applications on their behalf. Details of how to become an Interested Party and contact information for Umbrella Bodies willing to provide this service are available on the <https://www.mygov.scot/pvg-scheme/> website. See accompanying

PVG Guide for contact details. The Council will not act as an Umbrella Body to obtain PVG Records on a Contractor's behalf.

73. If, at any time during the Framework period, the Council receives information about a Driver that suggests they may not be suitable to do regulated work, it reserves the right to suspend the Driver from journeys in this Framework until a new PVG Scheme Record has been obtained and assessed.
74. It is an offence for an organisation or employer to fail to make a referral to Disclosure Scotland within 3 months when referral criteria have been met. A Contractor must report harmful behaviour that might affect whether the person is allowed to do regulated work even if it takes place outside of work, or the employer only finds out after the employee has left. If a Contractor receives information about a Driver which suggests they may be involved in conduct that harms children or protected adults or places them at risk of harm then, a referral to Disclosure Scotland must be made. The information could be received from any source – not necessarily the Council – and the harmful behaviour could have happened anywhere and at anytime. This duty to refer exists even if there is involvement from the police. Contractors must make a referral to Disclosure Scotland explaining what has happened. This has to be done if the harmful behaviour meant the person involved:
- was dismissed as a result of the behaviour
 - would have been dismissed but left before they could be
 - has been permanently withdrawn from journeys carrying children or protected adults
- Further details about Duty to Refer and information about how to send a referral are available at <https://www.mygov.scot/pvg-referrals/>
75. Contractors must provide driver names, their dates of birth and PVG Scheme Record Numbers, to assist with any necessary checks or enquiries about a driver's right to drive, if requested to do so by the Council.

CARRIAGE OF PASSENGERS WITH ADDITIONAL SUPPORT NEEDS

76. Continuity of drivers and/or vehicles for specific Service Users shall be essential on a small number of Contracts, as advised by the Council at the time of booking, to provide reassurance for those Service Users with specific support needs e.g. autism. If such continuity cannot be guaranteed for the Contract duration, the journey should be declined at the time of booking.
77. If the transportation of oxygen is required, the Contractor shall ensure that the cylinder is secured in the boot of the vehicle, behind the front seats or on the back seat with a secure fastening and there is adequate ventilation within the vehicle. The Contractor must inform their insurance company that oxygen is being carried.
78. Where a Contract indicates the provision of a travel escort, the escort will be provided by the Council. The escort shall be uplifted from and returned to the address(es) defined at the time of booking. Drivers must not make alternative pick-up/drop-off arrangements with escorts.
79. The Contractor may have the absence of a travel escort reported to them by the escort outwith normal Council office hours. In such an event, the escort and/or

Contractor should attempt to contact the parents/carers of affected Service Users to advise them that the journey will not take place. The Contractor should advise the Council as soon as possible if an escort is absent for any reason.

80. Notwithstanding Condition 96 hereof, the Contractor shall ensure that appropriate restraints and/or seatbelts are provided and worn by all passengers in all Vehicles provided for those with additional support needs. All restraints and special seats must be fitted properly in line with manufacturer's instructions. Use of seatbelt buckle guards is not permitted.
81. For any Vehicle that is capable of carrying passengers in wheelchairs the Contractor must ensure that the Vehicle complies with all statutory requirements. The Contractor is also responsible for providing appropriate wheelchair restraints, as recommended by the wheelchair manufacturer, for the type of wheelchair being carried and fully functioning lap and diagonal passenger restraints with vehicle mounted shoulder anchorages to accommodate all passengers approved by the Council to travel in their wheelchairs.
82. The Contractor shall ensure that only those passengers authorised in advance by the Council to travel in their wheelchairs are carried in this way.
83. Contractors and their staff are responsible for, and must be fully trained in, the safe boarding, alighting and transit of passengers in wheelchairs, including the use of restraints, ramps and lifts associated with each vehicle they are asked to operate:
 - a. Such training should be to at least the standards issued by the Medicines and Healthcare Regulatory Agency (MHRA) through their guidance documents
 - Safe Use of Wheelchairs and Vehicle-mounted Passenger Lifts
 - Safe Transportation of WheelchairsBoth documents are available at <https://www.fife.gov.uk/kb/docs/articles/education2/supporting-children-in-school/additional-support-needs/assisted-school-transport>
 - b. Training records must be maintained and available for inspection by a Council Officer upon request. Records must detail the training (at least to the standards outlined in Condition 83a) given to each staff member, the date of the training and a signed statement from the staff member to confirm that the training was given and understood. Training should be refreshed on an annual basis or when a new wheelchair accessible vehicle is brought into the fleet.
84. A Council Officer will make unannounced visits to locations where loading/unloading of wheelchairs takes place during the operation of the Contract. The Council Officer will observe the driver's use of lifts/ramps, wheelchair manoeuvring and fitting of restraints.
 - a. Drivers must co-operate fully with any instruction given by the Council Officer once they have identified themselves. The Council Officer may refuse to allow a Contract to operate if the driver's competency is not of the required standard at the time the observation takes place.
 - b. The Council reserves the right to suspend any driver from the Contract where an adverse report on competency is received from the Council Officer as a

result of an unannounced visit during the operation of the Contract. Reinstatement will only be granted where the Contractor has satisfied the Council that the driver has had suitable training and that the driver can demonstrate meeting the standards of Condition 83a.

85. When in transit each wheelchair user must wear an appropriate passenger restraint with vehicle mounted shoulder anchorage. Passenger restraints should not be attached to the wheelchair. Separate restraints should be provided for the wheelchair and the occupant. Contractors should note that a harness worn by the wheelchair user for posture does not constitute an appropriate restraint. Restraint systems, when not in use, shall be safely stored so that they do not present a hazard to passengers and do not obstruct gangways and exits.
86. The Contractor shall ensure that the Lifting Operations and Lifting Equipment Regulations 1998 are complied with in relation to all passenger lifting equipment on Vehicles used on Contracts. The contractor shall arrange, at his own expense, for all passenger lifting equipment to be thoroughly examined by a competent person at six-monthly intervals and shall undertake to provide evidence in writing to the Council, if requested.
87. It is the responsibility of the Contractor to ensure that any unoccupied wheelchairs and/or other equipment, where necessary, is
 - folded or dismantled for transportation purposes
 - securely restrained during transit
 - reinstated to its original condition on arrival at the destination.Only equipment that has been approved in advance by the Council should be carried.
88. The Contractor is responsible for the loading and unloading of bags and/or any other equipment carried on the vehicle by passengers and that these items are safely stowed during transit.
89. The Council reserves the right to suspend the Contractor from carrying passengers travelling in wheelchairs, with immediate effect, if any of the above Conditions aren't met.

ESTABLISHMENT CLOSURES AND SEVERE WEATHER

90. The Contractor shall, when requested by the Council, provide transport at altered times to those agreed under Condition 37 This may be due to early closure, severe weather conditions or other reasons but, if possible, the Council will endeavour to give reasonable notice of such an event. The Contractor should, on such occasions, attempt to avoid the incurrence of additional costs. See Conditions 105-108 also.
91. In severe weather conditions or other emergency situations, the Contractor shall ensure that the Service Users conveyed are left in the care of a responsible adult and/or sheltered in a safe place and in no circumstances must any Service User be allowed to walk for any unreasonable distance from the point of leaving the Vehicle without being accompanied by a responsible adult.

92. During periods of severe weather the Contractor is responsible for deciding if the Contract can operate, either wholly or partly. The Contractor shall advise establishment staff, parents/carers/escorts and Council booking staff of any changes required due to the weather.
93. Where there is disruption to the normal operation of the Contract e.g. severe weather, breakdowns, heavy traffic, the Contractor shall attempt to contact parents/carers/escorts and establishment staff to make them aware of the situation.

SAFETY

94. If a Contractor is concerned, or is notified that a Driver is concerned, that a Service User being conveyed may be subject to harm, or such information has been disclosed to the Driver, this must be reported immediately and discretely to the appropriate Council staff. Harm includes all harmful conduct and, in particular, includes:
- physical harm
 - sexual harm
 - psychological/emotional harm
 - financial harm
 - neglect
 - self-harm (including self-neglect, self-poisoning and self-injury)
95. Contact information for the parents/carers/escorts of some Service Users may be provided by the Council as part of the Contract. This personal information should only be used for contacting parent/carers/escorts in relation to the operation of Contracts and should be stored securely and not left in Vehicles or anywhere that is open to the general public.
96. The Contractor shall comply with all relevant current legislation in respect of seat belt provision and the wearing of seat belts for the type of Vehicle being used.
97. Each Vehicle used in the performance of the Contract must carry a fully stocked first aid box and the mandatory number of fire extinguishers, which comply with statutory regulations for the type of Vehicle being used. The first aid kit is only for use by qualified persons.
98. The Contractor must notify the Booking Staff immediately on the same day or, if this is impractical, by 1000 on the following working day of :
- a. any accidents involving injury, serious behavioural incidents or police involvement. A written report must be submitted within 24 hours of the incident.
 - b. any breakdowns, delays, accidents or non-operation including non-operation due to severe weather and any immediate or delayed prohibitions issued to Vehicles that affect the performance of the Contract. A written report should be submitted within 3 working days.
 - c. any concerns raised by a driver or disclosed to a driver that a Service User could be subject to harm.

- d. any medical emergencies or incident requiring first aid to be administered to passengers.
- 99. Notwithstanding Condition 98, the Contractor shall ensure that any incidents that occur during the operation of a Contract involving injury, accidents, behavioural problems or medical emergencies are reported to either parents/carers/escorts or establishment staff when the Service User arrives at their destination.
- 100. It is the responsibility of the Contractor to arrange for alternative transport to take passengers to their destination in the event of an accident or breakdown occurring. See Condition 55 also.
- 101. The Contractor shall provide the Council with copies of all written complaints received by the Contractor together with any reply thereto within 14 days of the complaint being received by the Contractor.

PAYMENT OF ACCOUNTS

- 102. The Contractor shall be responsible for meeting all costs, charges and taxes relating to the operation of the Contract.
- 103. Where there are changes to the Contract mileage operated (e.g. due to a change in a Service User's travel requirements), increases and decreases to the Contract Price shall normally be based on the mileage rates submitted on the Pricing Schedule.
- 104. Invoicing and payment procedure is outlined in Appendix 3. Payment will be within 20 days, in arrears, subject to the Council's standard payment terms. All payments will be made by BACS. No payments will be made by cheque.
- 105. Subject to Conditions 122-124, if a journey is not required on any day that the Contract is scheduled to operate, the Contractor shall normally be entitled to 50% of the daily price, if Booking Staff have cancelled the journey by 1700 the previous day.
- 106. Journeys cancelled on the same day by the Council will be paid in full. Similarly, should a Contractor's Vehicle arrive to find that the passenger(s) are not available or if they decline to travel, the journey will be paid in full.
- 107. In severe weather conditions the Contractor shall be paid in full for Contracts attempted, even if subsequently abandoned. Journeys not attempted due to severe weather will be paid at 50% of the daily price subject to agreement by the Council that the relevant weather conditions warranted the action taken by the Contractor.
- 108. No payment must be asked of or accepted from Service Users, carers, establishment staff, parents or escorts under any circumstances.

ADJUSTMENT OF THE CONTRACT PRICE

- 109. Tendered mileage rates must be fixed for the first 20 months of the Framework. Contractors on the Framework are permitted to submit written price amendment

requests during the month of January 2025. If no written price amendment request is received within the January 2025 window then it shall be deemed that the Framework rates are to remain fixed for the remainder of the Framework. Contractors are reminded that there is no guarantee that a price amendment will be granted in full, or at all, and the decision will be based on available budget. Any change agreed will be applied from 1 April 2025. Contractors are also reminded that price amendments may impact their ranking position in the Lot(s) affected by the amendment.

110. Fife Council shall measure and benchmark any requested price amendments by comparing the revised amount offered by the Contractor against an amount related to the following indices published in the Monthly Digest of Statistics by the Office for National Statistics:

- RPI all items (CHAW) weighting 25%.
- RPI - Motoring Expenditure - Petrol and Oil (DOCU) weighting 15%.
- Average Earnings index - Transport and Storage (K5AL) weighting 60%.

Figures from the preceding December, as first published and prior to any subsequent revisions, will be used as the basis for considering any change to rates.

PROVISION OF STATISTICS

111. The Council reserves the right to request the Contractor to provide any relevant statistical information during the period of the Contract to assist in future determination of Best Value Performance Indicators/Audit Commission Performance Indicators.

CONTRACT DURATION AND TERMINATION

112. The Contract Period for individual Contracts and dates for individual journeys shall be as stated at the time of booking by confirmation e-mail or confirmation on online booking system, unless amended thereafter by Council booking staff.

113. A Contract may be terminated without penalty at any time and for any reason during the Contract Period by either party giving to the other 28 days prior written notice of such termination. At the expiry of the said 28-day period the Contract, so far as regards any Services to be supplied under the Contract, shall in all respects cease and terminate. If such notice is not given by a Contractor, the Contractor will be liable to meet any costs incurred by the Council in arranging alternative conveyance for Service Users affected for up to 28 days.

114. The Council reserves the right to resile from the Contract without penalty in whole or in part where proposed increases or decreases in prices are considered, by the Council, to be unreasonable.

115. The Council may terminate an individual Contract or all Contracts operated by the Contractor without notice if:

- a. the Contractor's taxi/private hire car licence, PSV Operator's licence or Taxi Booking Office licence (as the case may be) is suspended, terminated or otherwise no longer held by them;
- b. the Contractor operates the Contract with an unlicensed Vehicle or fails to provide insurance cover against all liability arising out of or in connection with the execution of the Contract;
- c. the Contractor does not have a suitable Vehicle and/or driver to carry out the Contract;
- d. the Contractor uses a driver in the performance of the Contract who does not have the appropriate PVG membership; or uses a driver who is barred or under consideration for listing by Disclosure Scotland; or after receiving written notification that the driver is unacceptable to the Council; or if the Contractor is unable to demonstrate rigorous procedures for ensuring that only drivers with PVG membership are used for PVG regulated work.
- e. the Contractor fails to comply with the emergency Sub-contracting procedure outlined in Condition 143;
- f. the Contractor fails to notify the Council of any sub-contracting arrangement entered into as outlined in Condition 140;
- g. the Contractor fails to comply with the Conditions of Contract or to perform the Contract to the satisfaction of the Council. Declaring that, in the case of a minor breach of Contract which is capable of being remedied by the Contractor, the Contract shall not be terminated unless the Council has first given the Contractor notice in writing of the breach concerned and specified the steps which the Contractor must take to remedy the breach and the Contractor has failed to take those steps.
- h. the Contractor is guilty of a Persistent Breach;

116. The Council may terminate the Contractor's inclusion on the Framework Agreement or in a specific Lot by serving written notice on the Contractor with effect from the date specified in such notice if:

- a. the Contractor commits a material breach of Contract and:
 - i. the Contractor has not remedied the failure to the satisfaction of the Council, after issue of a written notice specifying the material breach and requesting it to be remedied within such period as may be specified by the Council;
 - ii. the material breach is not, in the reasonable opinion of the Council, capable of remedy;
 - iii. the material breach is, in the reasonable opinion of the Council, significant enough to warrant the Contractor's immediate removal from the Framework.

- b. an individual Contract or all Contracts operated by the Contractor are terminated in accordance with Condition 115;
 - c. the Contractor enters into or dissolves a partnership with another company/individual and fails to notify the Council that a change has taken place or is unable to demonstrate, to the Council's satisfaction, that the operation of the business will not be affected by this change;
 - d. the Contractor is regularly declining journeys in a particular Lot to the extent that the Council is not benefitting from the Contractor's inclusion in the Framework.
 - e. the Contractor has, at the time of the contract award, been in one of the situations referred to in Regulation 58(1) (exclusion grounds, The Public Contracts (Scotland) Regulations 2015), including as a result of the application of Regulation 58(2), and should, therefore have been excluded from the procurement procedure. In such a circumstance, the Contractor shall be liable to repay to the Council all sums paid to it in terms of the Contract. This condition shall survive the said termination of the contract.
 - f. the Contractor fails to become a member of the ECO Stars scheme, in accordance with Condition 168.
 - g. the Contractor fails to pay the annual community benefit contribution.
117. Without prejudice to the Council's rights to terminate the Contractor's inclusion on the Framework Agreement in Condition 116 if a right to terminate arises, the Council may suspend the Contractor's appointment to supply services to the Council by giving notice in writing to the Contractor. If the Council provides notice to the Contractor in writing, the Contractor's appointment shall be suspended for the period set out in the notice.
118. For the avoidance of doubt, a suspended Contractor will not be invited to participate in any mini competitions nor be contacted for any direct awards or Framework direct call-offs.
119. Where the Council enters into another Contract for the supply of such services, with some other firm or person or company, all losses, expenses, costs and charges incurred by the Council in this connection shall be a debt due by the Contractor to the Council and may be deducted from any sum due to the Contractor.

DUTY OF CARE

120. The Contractor shall perform any Services under the Contract with all reasonable skill, care and diligence and in accordance with all relevant legislative and statutory requirements and industry best practice.

DISPUTES

121. If any dispute or difference concerning the Contract shall arise between the Council

and the Contractor, then:

- a. negotiations to resolve such dispute or difference shall be entered into between the Council and the Contractor.
- b. if the parties fail to reach agreement within 14 days of such negotiations commencing then either party may refer the dispute or difference to arbitration.
- c. all arbitrations shall be undertaken in accordance with the Scottish Arbitration Code 2010 or any amendment thereto or replacement therefor ("the Code"), subject always to the provisions of clauses d-f.
- d. all arbitrations shall take place in Scotland and shall in all respects be governed by the Law of Scotland.
- e. notwithstanding the provisions of the Code, recourse to the Court of Session under Section 3 of the Administration of Justice (Scotland) Act 1972 shall be permitted.
- f. if any matters arising out of or under this agreement are referred to arbitration, in accordance with clauses a-e, the parties shall continue to perform their obligations under the Contract throughout the period of arbitration.

FORCE MAJEURE

122. Neither party shall be liable to the other for any failure or delay in the performance of its obligations hereunder if such failure or delay occurs as a result of circumstances beyond a party's reasonable control including but not limited to industrial action (with the exception of industrial action by a party's own work force), fire, flood, riot, war, pandemic, Act of God, lightning, aircraft impact, explosion, civil commotion, malicious damage, storm, tempest, earthquake, legal enactment or governmental or other regulation.
123. Where, as a result of the occurrence of any event beyond the reasonable control of a party, as described above, a Contract has not been performed for a period exceeding 14 days or it appears impossible or unlikely that the whole or a substantial part of the Contract will be capable of performance for a period exceeding 14 days, then the non-defaulting party may elect to terminate the Contract upon 14 days written notice without any liability on that party.
124. As an alternative to termination in accordance with Condition 123, the Council may elect to continue to pay in accordance with either:
- (a) the provisions of Condition 105; or
 - (b) any supplier relief policy it introduces in response to the circumstances outlined in Condition 122;

Notwithstanding any such election, the Council shall still be entitled to subsequently terminate the Contract in accordance with Condition 123.

INSOLVENCY

125. If the Contractor (being an individual or firm) becomes apparently insolvent within the meaning of section 7 of the Bankruptcy (Scotland) Act 1985 or is sequestrated or (being a company) enters into liquidation proceedings whether voluntary or compulsory (save for the purpose of amalgamation or reconstruction of the company not involving a realisation of assets) or has a receiver, administrative receiver or administrator appointed to it or (in either case) enters into an arrangement or composition for the benefit of the Contractors creditors or suffers any diligence to be done or execution to be levied on the Contractors goods, then in any of these events the Council shall be entitled to immediately terminate the contract by giving 7 days' notice in writing to that effect to the Contractor and that without prejudice to any accrued rights or remedies available to the Council under the Contract.

EQUALITY

126. The Contractor shall comply with the terms of the Equality Act 2010 as though it were a public body listed in Schedule 19 of the Equality Act 2010.
127. The Contractor shall observe as far as possible the Equality Act 2010 Code of Practice – Employment Statutory Code of Practice produced by the Equality and Human Rights Commission which can be found at:
http://www.equalityhumanrights.com/uploaded_files/EqualityAct/employercode.pdf
128. The Contractor shall notify the Council forthwith in writing as soon as it becomes aware of any investigation or proceedings brought against the Contractor under the Equality Act 2010.

AUDIT

129. The Contractor shall keep and maintain until 2 years after the Contract has been completed records to the satisfaction of the Council of all expenditures which are reimbursable by the Council and of the hours worked and costs incurred in connection with any employees of the Contractor paid for by the Council on a time charge basis. The Contractor/ Contractor shall on request afford the Council or the Council's representatives such access to those records as may be required by the Council in connection with the Contract.
130. The provisions of Condition 129 shall apply during the Contract Period and after its termination howsoever arising.

PUBLICITY

131. The Contractor is prohibited from advertising or publicly announcing that they are supplying or has supplied any goods, articles, materials or provided Services to the Council without the prior written consent of the Council and, in the event of the Council giving such consent, the form of the advertisement or announcement shall also require the prior written consent of the Council.

WAIVER

132. Failure by either party at any time to insist upon strict performance of any term, Condition or provision of the Contract, or to exercise any right or remedy to which it is entitled hereunder, shall not constitute a waiver thereof and shall not cause a diminution of the obligations established by the Contract. A waiver of any default shall not constitute a waiver of any subsequent default. No waiver of any of the terms, Conditions or provisions of the Contract shall be effective unless it is agreed in writing.

SEVERANCE

133. If any provision of the Contract is held invalid, illegal or unenforceable for any reason by any Court of competent jurisdiction, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if the Contract had been executed with the invalid provision eliminated. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Contract, the Council and the Contractor shall immediately commence good faith negotiations to remedy such invalidity.

ESTIMATED QUANTITIES AND ESTIMATED EXPENDITURE

134. The quantities and values given in the Invitation to Tender are estimated and are provided for guidance only. The Council is not bound to the quantities and values given, and the quantities and values may be increased or decreased by the Council without invalidating the Framework.

RECOVERY OF SUMS DUE

135. Wherever under the Contract any sum of money is recoverable from or payable by the Contractor, that sum may be deducted from any sum then due, or which may later become due, to the Contractor under the Contract or under any other agreement or Contract with the Council.

BRIBERY AND CORRUPTION

136. The Council shall be entitled to cancel a Contract, and to recover from the Contractor the amount of any loss resulting from such cancellation, if:
- a. any attempt is made by the Contractor or any person employed by him/her or acting on his/her behalf, with or without the Contractor's knowledge, to influence the award of the Contract, or any other Contract with the Council, in circumstances which are offences under the Prevention of Corruption Acts 1889 to 1916, or Sub-Section 2 of Section 68 of the Local Government (Scotland) Act 1973.

- b. the Contractor shall have offered or given, or agreed to give, any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do, or for having done or forborne to do, any act or practised collusion in relation to the obtaining or execution of the Contract or any other Contract with the Council. This shall include, but not be restricted to, the conviction of the Contractor of any offence under The Bribery Act 2010.

ASSIGNATION AND SUB-CONTRACTING

- 137. Assignment of this Contract or any of the Services provided by the Contractor hereunder is prohibited without the express consent of the Council in writing, which consent if given may be given by the Council subject to such terms and conditions as it thinks fit.
- 138. Where a Contractor seeks to enter into, or dissolve a partnership with another company/individual, the Contractor must advise the Council in writing of the intention to do so. In order to remain on the Framework, the Contractor must be able to demonstrate that the operation of the business will not be affected by this change. The Contractor is prohibited from assigning any Contract in whole or in part without the prior written consent of the Council.
- 139. In the event that the Contractor Sub-contracts any of its Contracts in connection with this agreement, it shall impose obligations on its Sub-contractor in proportionate and relevant terms substantially similar to those imposed on it pursuant to these Conditions. Those obligations shall, at a minimum, include the Contractor's obligations as regards insurance and drivers' conduct and shall provide that the Sub-contractor must use drivers who have appropriate PVG Scheme Membership that names the Contractor or Sub-contractor as an Interested Party. Sub-contractors must produce all relevant insurance documents when requested to do so by the Council.
- 140. The Contractor must provide the Council with, and keep updated, details of any Sub-contractor(s) used, using the Sub-contractor Declaration Form. Failure to do so will be considered a Default in Performance (see Appendix 2) and may lead to Contract termination (Condition 115).
- 141. The Contractor must ensure that any Sub-contractors are made aware of their obligations in terms of Appendix 1, with regard to the Data and require that they enter into similar contractual arrangements with the Contractor in order to maintain the levels of security and protection.
- 142. Where the Contractor Sub-contracts for the purpose of performing the Contract, the Contractor shall cause a term to be included in such Sub-contract:
 - a. which requires payment to be made to the Sub-contractor within a specified period not exceeding 20 days from receipt of a valid invoice as defined by the Sub-contract requirements and provides that, for the purpose of payment alone, where the Council has made payment to the Contractor and the invoice includes Services in relation to which payment has been made by the Contractor then, to the extent that it relates to such Services, the invoice shall

be treated as valid and payment shall be made to the Sub-contractor without deduction;

- b. which notifies the Sub-contractor that the contract forms part of a larger Contract for the Fife Council and that should the Sub-contractor have any difficulty in securing the timely payment of an invoice that matter may be referred by the Sub-contractor to the Fife Council Head of Revenue & Commercial Services and
 - c. in the same terms as that set out in Condition 142 (including, for the avoidance of doubt, this clause c) subject only to modification to refer to the correct designation of the equivalent party as the Contractor and Sub-contractor as the case may be.
143. In emergency situations, the Contractor may Sub-contract to another company or individual - and Condition 140 shall not apply - but the emergency Sub-contracting arrangement may only be made with Contractors who have already been accepted onto the Framework Agreement for the same group of Lots (i.e. Social Work Lots 1-16 for Social Work journeys; Housing Lots 17-31 for Housing journeys) to ensure that the Contract is carried out. In so doing, the Contractor remains responsible for ensuring that all Conditions are met. Contractors must inform Council booking staff of any such emergency Sub-contracting arrangement as soon as possible.
144. For the purposes of executing Condition 143, name and contact details of the Contractor will be issued to all other suppliers on the Framework and/or DPS. The Contractor shall securely store any supplier contact details received and may not use them for any purpose other than for executing Condition 143. At the end of the Framework, the Contractor shall destroy or permanently delete any supplier details in their possession.
145. PSV licence holders may enter into a vehicle hiring-in arrangement with another operator, as permitted by *The Public Service Vehicles (Operators' Licences) Regulations 1995*. This does not constitute Sub-contracting and there is no requirement to inform the Council.
146. A Contractor awarded a contract under this framework shall remain liable for the performance of that contract notwithstanding any subcontracting arrangements it may enter into.

NOTICES

147. Notices served on the Contractor must be sent by recorded delivery or registered post to the Contractor's registered office or principal office. Notices served on the Council must be sent by recorded delivery or registered post to the Procurement Service Manager, Fife Council, Fife House, North Street, Glenrothes KY7 5LT and copied to the Council's Head of Legal & Democratic Services, Fife Council, Fife House, North Street, Glenrothes KY7 5LT. Receipt of such Notice shall be deemed to have occurred 2 days following the date of posting.

TUPE

148. The Supplier recognises that the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) may apply in respect of the Contract, and that for the purposes of those Regulations, the undertaking concerned (or any relevant part of the undertaking) shall transfer:
 - a. to the Supplier on the commencement of the Contract; or
 - b. to another supplier on the expiry of the Contract.
149. Each Tenderer must ensure that they comply in full with their responsibilities under TUPE.
150. Tenderers should note that TUPE may or may not apply to some or all of the personnel currently assigned to undertakings that are currently performing part or all of the duties described in the Specification of Requirements.
151. Tenderers should, prior to submitting their tender, take their own legal advice to ascertain whether TUPE could be held to apply to such undertakings and, if so, take account of it in their tender.
152. The Council does not warrant the accuracy of any information supplied to Tenderers in respect of personnel currently employed by the incumbent contractor, and, therefore, the Council shall have no liability in respect of such information.
153. In the event that Tenderers consider TUPE does apply, Tenderers should contact the incumbent contractor/supplier to obtain the required specific and necessary information about the personnel currently employed in providing the services that are the subject of this tendering exercise.
154. During the period of six months preceding the expiry of the Contract or after the Council has given notice to terminate the Contract or the Supplier stops trading, and within 20 working days of being so requested by the Council, the Supplier shall fully and accurately disclose to the Council or to any person nominated by the Council information relating to employees engaged in providing the Services in relation to the Contract in particular, but not necessarily restricted to, the following:
 - a. The total number of personnel whose employment with the Supplier is liable to be terminated at the expiry of this Contract but for any operation of law; and
 - b. For each person, age and gender, details of their salary, date of commencement of continuous employment and pay settlements covering that person which relate to future dates but which have already been agreed and their redundancy entitlements (the names of individual members of staff do not have to be given); and
 - c. Information about the other terms and conditions on which the affected staff are employed, or about where that information can be found; and
 - d. Details of pensions entitlements, if any.
155. The Supplier shall permit the Council to use the information for the purposes of TUPE and of re-tendering, which shall include such disclosure to potential suppliers

as the Council considers appropriate in connection with any re-tendering. The Supplier will co-operate with the re-tendering of the contract by allowing the transferee to communicate with and meet the affected employees and/or their representatives.

156. The Supplier agrees to indemnify the Council fully and to hold it harmless at all times from and against all actions, proceedings, claims, expenses, awards, costs and all other liabilities whatsoever in any way connected with or arising from or relating to the provision or disclosure of information permitted under Conditions 148-158.
157. In the event that the information provided by the Supplier in accordance with Conditions 148-158 becomes inaccurate, whether due to changes to the employment and personnel details of the affected employees made subsequent to the original provision of such information or by reason of the Supplier becoming aware that the information originally given was inaccurate, the Supplier shall notify the Council of the inaccuracies and provide the amended information. The Supplier shall be liable for any increase in costs the Council may incur as a result of the inaccurate or late production of data.
158. The provisions of Conditions 154-157 shall continue to apply after the termination of the Contract howsoever arising.

HEALTH & SAFETY

159. The Contractor shall perform the Services in such a manner as to be safe and without risk to the health or safety of persons in the vicinity of the place where the Services are being performed (whether such persons are in the vicinity of the said place at the time when the Services are being performed or otherwise) and in such a manner as to comply with any relevant health and safety or other legislation (including Statutory Instrument, Orders, or Regulations made under the said legislation) and any requirements imposed by a local or other regulatory authority in connection with the performance of Services of the type supplied to the Council, whether specifically or generally. The Contractor shall indemnify the Council against all actions, suits, claims, demands, losses, charges, costs and expenses which the Council may suffer or incur as a result of or in connection with any breach of this condition.
160. The Contractor shall ensure that its health and safety policy statement and any other risk assessment, method statement or other written safe system of work necessary for the safe discharge of his contractual and legal obligations, is made available without delay to the Council on request. The following *Prepare a Health and Safety Policy* guide is available on the Health & Safety Executive website: [Prepare a health and safety policy - HSE](#)

BLACKLISTING

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

activities. Breach of this Condition is a material default which shall entitle the Purchaser to terminate the Contract.

CONFIDENTIALITY

162. The Contractor shall keep confidential any information obtained or supplied under the Contract and shall not divulge the same to any third party without the prior written consent of the Council. The Contractor shall only divulge confidential information to those employees who are directly involved in the Contract and shall ensure that such employees are aware of and comply with this obligation as to confidentiality. On fulfilment of the Contract, the Contractor shall return to the Council any specifications, plans, drawings, process information, patterns or designs supplied to the Contractor by the Council.
163. The provisions of Condition 162 shall apply during the Contract Period and after its termination howsoever arising.

FREEDOM OF INFORMATION (SCOTLAND) ACT 2002

164. All information submitted to the Council may need to be disclosed and/or published by the Council. The Council may consult with the Contractor prior to releasing information. However the ultimate decision whether to release the information or not rests with the Council. Without prejudice to the foregoing generality, the Council may disclose information in compliance with the Freedom of Information (Scotland) Act 2002 or the Environmental Information (Scotland) Regulations 2004, (the decisions of the Council in the interpretation thereof shall be final and conclusive in any dispute, difference or question arising in respect of disclosure under its terms), any other law, or, as a consequence of judicial order, or order by any court, tribunal or body with the authority to order disclosure (including the Scottish Information Commissioner).

ENVIRONMENTAL REQUIREMENTS

165. The Contractor shall not supply or use in the supply of Services any product which may endanger the health of any person, shall cause significant damage to the environment during manufacture, disposal or use, which consumes a disproportionate amount of energy during manufacture, use or disposal, which cause unnecessary waste, or which contain materials derived from threatened species or environments.
166. Sustainability is a key policy area for Fife Council and it is important therefore that Contractors with whom the Council engages for the supply of goods, materials and services are equally committed to the environment.
167. The Contractor shall ensure that its environmental policy statement is made available to the Council on request.
168. The Contractor must have membership of the ECO Stars scheme no later than the 31 December following Framework start date. Further details available from: <https://www.ecostars-uk.com> , 01344 770700 or ecostarsTRL@trl.co.uk

DATA MATCHING – TRADE CREDITORS

169. Fife Council has a duty to protect the funds it administers and for this purpose may use the information provided by the Contractor to the Council during the tender process, or during any resulting contract, to assist in the prevention and detection of fraud. Data matching involves comparing computer records held by Fife Council against other computer records held by the Council or other body. This is usually personal information. Fife Council may share the information provided in successful tenders, or during any resulting contract, with other bodies for the prevention and detection of fraud. All collection, use and storage of personal information will be in accordance with the Data Protection Legislation.

APPLICABLE LAW

170. The construction, validity and performance of this Framework and any Contract awarded thereunder shall be governed by the law of Scotland and the Contractor and the Council submit to the exclusive jurisdiction of the Scottish Courts.

CHANGE IN LAW

171. If either Party considers that there has been a Change in Law which:
- a. renders it impossible or unlawful to give effect to this Agreement;
 - b. causes the provisions of this Agreement to become inconsistent with any Law;
 - c. materially and adversely affects the commercial benefit of this Agreement to either or both of the Parties,
- then that Party may serve a notice on the other Party requesting that the Parties shall meet to discuss such circumstances and shall, in good faith, seek to agree the amendments which should be made to this Agreement as are necessary to achieve (in so far as possible) the same balance of benefits, liabilities, risks and rewards between the Parties in respect of the subject matter of this Agreement as applied at the Agreement Date.
172. If the Parties are unable to agree pursuant to Condition 171, then either Party may refer the issue for determination by an Expert to determine the amendments which should be made to this Agreement as are necessary to achieve (in so far as possible) the same balance of benefits, liabilities, risks and rewards between the Parties in respect of the subject matter of this Agreement as applied at the Agreement Date.
173. Without prejudice to the other provisions of this Clause, the Parties agree that:
- a. neither Party shall be liable to the other Party for a failure to perform any obligation under this Agreement which becomes prohibited or impossible to perform by reason of a Change in Law (and such circumstance shall constitute a Force Majeure Event);
 - b. subject to Condition 173a, the occurrence of a Change in Law will not constitute a Force Majeure Event, or otherwise entitle either Party to suspend or terminate its obligations under this Agreement;

- c. each of them shall use its reasonable endeavours to minimise and mitigate the consequences of Changes in Law on the performance of its obligations under this Agreement.

TERMS OF EMPLOYMENT

- 174. The Contractor shall pay rates of wages and observe hours and conditions of employment not less favourable than those established for the trade or industry where the work is carried out.

APPENDIX 1 - DATA PROCESSING SCHEDULE

Statement of Personal Data to be Processed by the Contractor Under This Contract

The data processing activities carried out by the Contractor(s) under this Framework and Contracts awarded under it are as follows:
1. Subject matter
Provision of transport services
2. Duration:
The framework will cover the period 31st July 2023 to 1 August 2027. Contracts awarded under the framework may begin / end at any time during the framework period. Contracts awarded during the framework period may, in some circumstances, run / be extended beyond the end of the framework period.
3. Nature and purpose:
To provide taxi or minibus services for the transport of <ul style="list-style-type: none">• Social Work Service Users, including both children and adults with various support needs• Housing passengers to/from temporary accommodation
4. Types of Personal Data
Personal information will be provided to suppliers operating contracts under the framework for the purpose of identifying passengers and their pick-up and drop-off locations. This may include names, addresses, phone numbers, information about personal circumstances, health conditions and aids used.
5. Data subjects
Members of the public using services provided by Fife Council. Escorts accompanying service users.
6. Outputs:
To ensure that the right people are taken to the right places at the required times in appropriate vehicles.

Processing Conditions

The following Conditions shall apply to the said data processing:

1. DATA PROTECTION

1. The parties acknowledge that the Council is the Data Controller and the Contractor is the Data Processor in respect of any Personal Data which is either provided to the Contractor by the Council, is accessed by the Contractor on the authority of the Council or is otherwise received by the Contractor on the Council's behalf, in connection with the performance of the Services.
2. In construing this Clause (as defined below) the following expressions shall have the meaning set out opposite:

“Data Protection Legislation” means any applicable law relating to the processing, privacy and use of Personal Data applicable to the Council and/or the Contractor including in the UK the Data Protection Act 1998, and when it comes into force on 25 May 2018, the Regulation of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, the General Data Protection Regulation (2016/279) and/or any corresponding or equivalent national laws or regulations, once in force and applicable and includes any judicial or administrative interpretation of them, any guidance, guidelines, codes of practice, approved codes of conduct or approved certification mechanisms issued by any relevant Supervisory Authority including the UK Information Commissioner;

“Personal Data”, “Data Controller”, “Data Processor”, “processing”, “Data Subject”, and “Supervisory Authority” shall have the meanings ascribed to them by the Data Protection Legislation as in force (and related terms such as “process” shall have corresponding meanings).

2. In respect of any Personal Data which the Contractor processes on behalf of the Council, the Contractor hereby warrants –
 - 2.1 That the processing will be subject to reasonable and appropriate technical and organisational measures in relation to the Council’s Personal Data i) such that the processing will meet the requirements of the Data Protection Legislation and ensure the protection of the rights of Data Subjects and ii) so as to ensure a level of security in respect of the Personal Data processed by it appropriate to the harm which might result from any processing (and having regard to the nature of the Personal Data which is to be protected), in particular from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to the Personal Data transmitted, stored or otherwise processed;
 - 2.2 That it will only process such Personal Data solely for the purposes of carrying out the Contract and in accordance with documented instructions from the Council and for no other purpose or manner except with the express written consent of the Council;
 - 2.3 To obtain the prior written consent of the Council in order to transfer the Personal Data to any sub-contractors for processing and, if written consent is granted, ensure that the sub-contractors are made aware of its obligations in terms of this Clause and require that they enter into a similar written contract with the Contractor;
 - 2.4 To notify the Council immediately and within 48 hours of becoming aware of any breach of the Data Protection Legislation including, but not limited to, an actual, potential or attempted breach and to provide all reasonable assistance to the Council in relation to this matter;
 - 2.5 To ensure that:
 - 2.5.1 all staff who are involved in processing Personal Data on behalf of the Council receive the appropriate training in Data Protection Legislation

and procedures relating thereto and the Contractor keeps appropriate records of such training received by staff and contents of all courses;

- 2.5.2 no other agents or employees of the Contractor are given access to the Council's Personal Data;
- 2.5.3 all staff who fall within clause 2.5.1 are informed of the confidential nature of the Council's Personal Data and comply with the obligations set out in this clause and are bound by appropriate obligations of confidentiality;
- 2.5.4 none of their personnel publish, disclose or divulge whether directly or indirectly any of the Council's Personal Data to any third party unless directed to do so in writing by the Council;
- 2.6 To provide a written description of the technical and organisation methods employed by them for processing Personal Data (within the reasonable timescales required by the Council);
- 2.7 To provide reasonable assistance, information and co-operation to the Council in complying with its obligations relating to data security, breach notifications, data protection impact assessments and related prior consultation procedures taking into account the nature of processing and the information available to the Contractor;
- 2.8 To not transfer or disclose any of the Council's Personal Data outside the European Economic Area or to an international organisation without the express prior written consent of the Council, unless required to do so by Union or Member State law to which the Contractor is subject; in such a case, the Contractor shall inform the Council of that legal requirement before processing, unless that law prohibits such information on important grounds of public interest;
- 2.9 To notify the Council within five business days (and assist the Council in relation to these matters) if it receives a request from a Data Subject to have access to that person's Personal Data or a complaint or other request relating to the Council's obligations under the Data Protection Legislation;
- 2.10 Immediately inform the Council if, in the Contractor's opinion, a documented instruction from the Council infringes the Data Protection Legislation.
- 3. Personal Data which the Contractor processes on behalf of the Council will at all times remain the property of the Council.
- 4. The Contractor shall securely delete or return to the Council, at the Council's written request, all the Council's Personal Data in its possession or under its control upon termination of the Contract within such reasonable timescales as may be prescribed by the Council and securely delete existing copies unless the Contractor is required by law to retain it (and to only retain it for that specific timeframe and for that purpose). All processing by the Contractor will end except for any processing required by law or which is necessary to bring the contract to an end.

5. The Council may, subject to giving reasonable prior notice and ensuring the minimal disruption to the Contractor's business, undertake an audit of the Contractor's data processing facilities, procedures and policies in order to ascertain compliance with the terms of this Clause.
6. In the event of receiving a request for any information pursuant to the Freedom of Information (Scotland) Act 2002; the Freedom of Information Act 2000 or the Environmental Information (Scotland) Regulations 2004, not to respond to the person making such request but to inform the Council within two (2) working days, and assist the Council with all such requests for information which may be received from any person within such timescales as may be prescribed by the Council.
7. The Contractor shall indemnify the Council against all losses, liabilities, damages costs, expenses, claims and others actions arising directly or indirectly out of a breach of this clause by the Contractor.

APPENDIX 2: DEFAULT IN PERFORMANCE

Failure by the Contractor to perform a Contract in accordance with the relevant Specification of Services or the Conditions of Contract is likely to result in the Council suffering the following losses:

- additional administrative costs;
- damage to the Council's reputation;
- in the event of total non-performance by the Contractor, the cost of procuring an alternative service. This may include the payment of a premium for arranging such alternative service at short notice.

1. In the event that the Contractor
 - a. is more than 10 minutes, but less than 30 minutes late, then Council shall be entitled to deduct 50% from the daily price otherwise payable for that Contract;
 - b. is more than 30 minutes late, or fails entirely to operate a journey, then the Council shall be entitled to deduct 100% of the daily price which would otherwise be payable for that Contract;
 - c. fails to perform any other aspect of the Contract, or fails to follow the Contract Conditions, then Council shall be entitled to deduct 50-100% from the daily price otherwise payable for that Contract.
2. In the event of such failures, the Council will issue the Contractor with a Formal Warning Letter, which will count towards any contract termination for Persistent Breach. The Council reserves the right to send copies of Warning Letters to the Traffic Commissioner, DVSA, Licensing Authorities and Police Scotland.
3. Should repeated failures go unremedied by the Contractor, the Contractor will be required to meet Council staff to discuss the performance of their service and their future operation of any Contract and/or retention on the Framework.
4. These provisions shall not apply in respect of any delays or failures to operate that are a result of circumstances that are wholly beyond the reasonable control of the Contractor. However, the Contractor must report any such delays and the circumstances that caused them to the Council's booking staff the same day or, if this is impractical, by 1000 on the following working day. Non-performance resulting from the unavailability of Vehicle or driver (including unavailability as a consequence of industrial action by the Contractor's staff) will not be taken to have been caused by circumstances beyond the reasonable control of the Contractor.

APPENDIX 3: INVOICE & ADVICE NOTE

The following information must be submitted each month otherwise payment will be delayed.

Contractors will receive a Purchase Order at the beginning of each Contract. This will be replaced by a new Purchase Order at the start of the financial year in April. Contractors must use the correct Purchase Order Numbers up to 31 March and from 1 April each year otherwise payment will be delayed.

ADVICE NOTES (SOCIAL WORK JOURNEYS ONLY)

Advice Notes contain detailed information about work completed and allow cross-referencing with the original booking information. Correctly formatted Advice Notes ensure invoices are paid quickly.

Advice Notes, detailing all journeys made under the Framework over the previous calendar month, should be submitted on the 1st of each month. Note: return or multiple journeys made in the same booking should be listed as separate outward and return legs for each day of operation.

For Social Work journeys, an Advice Note showing only Social Work journeys should be sent to sw.taxis@fife.gov.uk

Social Work is reviewing the use and format of Advice Notes and so the procedure may change in the future.

For Housing journeys, Advice Notes are no longer required.

Successful Contractors will be sent an Advice Note Excel template to use. Contractors with booking software capable of exporting to MS Excel are permitted to send data in this way as an alternative to using the Excel template.

INVOICES (SOCIAL WORK & HOUSING JOURNEYS)

If a Contractor is not using *iSupplier* (offered by the Council's Oracle ERP accounting system), monthly invoices MUST be submitted as follows:

1. Separate invoices (for Social Work and Housing), covering all journeys made under the Framework over the previous calendar month, should be submitted on the 5th of each month.
2. Invoices should be sent to invoices.accountspayable@fife.gov.uk
3. Invoices should be sent in PDF format. (Word, Excel and other file formats can easily be converted to PDF format by downloading free PDF creator software from the internet).
4. Each invoice must clearly show ALL the following information :
 - i. Name and address of the Contractor
 - ii. Contractor's VAT registration number
 - iii. Invoice number
 - iv. Invoice date

- v. Subtotal, VAT and total cost of invoice
- vi. Brief description of services provided (do not include any Service User personal information)
- vii. All purchase order numbers covered by the invoice.
- viii. For each purchase order number, the Contractor's account reference (if required), subtotal, VAT and total cost billed to that purchase order number, must be shown.

Submission of your tender confirms your agreement to the above.