



## **CONDITIONS OF CONTRACT FOR**

***Contract 12215  
Education Taxi & Minibus Framework  
(5 May 2020 to 31 July 2024)***

***Contract TT0019  
Education Taxi & Minibus Framework  
(1 August 2024 to 31 July 2028)***

***Contract 12331  
Education Taxi & Minibus Dynamic Purchasing System (DPS)  
(1 May 2020 to 31 July 2028)***

***Version 7 (February 2024)***

## **CONDITIONS OF CONTRACT**

**These conditions shall apply to all Contracts awarded under the Framework and DPS. 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 the Framework or DPS, the following words and expressions shall have the meaning assigned to them except where the context otherwise requires:

“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 or DPS 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 named in the (E)SPD, whose tender has been accepted by the Council.

"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.

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

"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 of 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 operator licensed under the Civic Government (Scotland) Act 1982and shall produce the licence for inspection by an authorised officer of the Council on request.
9. 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.
10. 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.
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.
- 11A. 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.
12. 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 must display the appropriate licence whilst operating Contracts and shall produce the licence on request at any time for inspection by an authorised officer of the Council.
13. 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.

14. The use of 'novelty vehicles' is not permitted on any Contract. 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 passengers on Contracts.
- 14A. 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.
15. Vehicles of 9 passenger seats or above used on Contracts carrying pupils shall display school bus signs of the type and in the manner prescribed by the Road Vehicles Lighting (Amendment) Regulations 1994. These retro-reflective yellow school bus signs should be fitted to the front and rear of the Vehicle and must be plainly visible to road users. These signs should only be displayed when school children are being carried and should be removed at other times.
16. The Contractor shall ensure that any Vehicle used on a Contract is in a safe and serviceable condition at all times, including all bodywork, upholstery and fittings. The Council reserves the right to require the Contractor to make the Vehicle and/or its V5C certificate available for inspection by the Council at any reasonable time at the Contractor's expense.
17. 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.
18. 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 or DPS.
19. The Council reserves the right to advise Licensing Authorities, 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.
20. 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. The Contractor is responsible for any cleaning costs arising from the soiling of the Vehicle occurring during the operation of the Contract. Any incidents of this type should be reported to the Council without delay.
21. 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 Private Hire Car): 12 years
- 9+ passenger seats (including wheelchair accessible vehicles licensed as PSV): 15 years

- 21A. 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.
22. 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.
23. The Contractor shall ensure that each Vehicle has sufficient seating capacity to provide one seat for each passenger travelling.
24. 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.
25. The Contractor shall only use Vehicles in the performance of the Contracts that have been registered with the Council for use on Contracts let through the Framework or Contracts let through the DPS.
26. The Contractor shall keep the Council advised of any changes to their Vehicle fleet, including all additions, substitutions and removals. Failure to keep Vehicle details up to date or to provide a list, when requested to do so by the Council, may lead to a Contractor being suspended from the Framework or DPS.
- 26A. 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.
27. 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.
28. 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 any passengers, their parents/carers, care/school staff or other authorised Council officials.
29. 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. Contractor's staff must be issued with, and be familiar

with, the *Instructions to Drivers* document, which accompanies and forms part of these Conditions.

30. Driving staff must not:
- a) attend work under the influence of alcohol and/or illegal substances
  - b) have in their possession alcohol and/or illegal substances
  - c) engage passengers in any conversation of a personal, suggestive or intimate nature
  - d) swear or use inappropriate language
  - e) make unauthorised stops during any journey contracted by the Council
  - f) give or accept gifts of any marked value or perceived value
  - g) give passengers sweets, snacks or drinks, stop at shops to purchase items or allow them to consume these items during the journey
  - h) engage in any form of conflict with any person in connection with the operation of any Contract
  - i) make any inappropriate physical contact with any passenger
  - j) enter passengers' homes
  - k) exchange contact details and/or enter into private discussions by telephone/text, email or on social media, with pupils
  - l) divulge any journey, personal or family information about passengers to anyone else
  - m) smoke (see Condition 61 also)
31. If, at any time during the Framework or DPS, the Council receives information about a driver that suggests their conduct has been inappropriate, the Council reserves the right to withdraw their approval to drive with immediate effect. Any assessment made by the Council on whether to reinstate the driver will take into consideration information provided by Licensing Authorities, Education or Social Work Teams and/or Police Scotland.
- 31A. 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.

## **PROTECTION OF VULNERABLE GROUPS (PVG) SCHEME**

***(this section does not apply to School Meals or Roadworks Replacement Contracts)***

32. Individuals, employed by Contractors to drive on Contracts carrying pupils awarded through the Framework or DPS, meet the PVG Act definition of regulated work with children, by having the responsibility of being in sole charge of children 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.
33. The Contractor is responsible for ensuring that drivers used on Contracts carrying children to schools and other educational establishments are not barred from doing

regulated work with children under the Protection of Vulnerable Groups (Scotland) Act 2007. This is done by ensuring that all drivers employed to do regulated work with children are PVG Scheme members in respect of regulated work with children. It is the Contractor's responsibility to arrange for any drivers they intend to deploy on school 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. 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. 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.

34. The Contractor is responsible for obtaining the written consent of each driver they intend to use on Contracts carrying pupils, for the Council to have access to their PVG Scheme Record or PVG Short Scheme Record. Drivers who are not willing to have their suitability assessed by the Council are not permitted to drive on Contracts for the Council. PVG Scheme Records and PVG Short Scheme Records passed to the Council to assess must have been issued by Disclosure Scotland in the 3-month period prior to the date of receipt by the Council. The Council reserves the right to ask for access to the PVG record of any driver doing regulated work for the Council at any time.
35. Condition deleted (May 2022).
36. Condition deleted (May 2022).
37. If a Contractor is informed by Disclosure Scotland or an Umbrella Body that a driver is barred from regulated work with children, 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 with children, 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.
38. 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.
39. 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 arrange 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 the accompanying PVG Guide for contact details.



40. If, at any time during the Contract, the Council receives information about a driver that suggests they may not be suitable to do regulated work with children, it reserves the right to suspend the driver from use on Contracts of that kind until a new PVG Scheme Record has been obtained by the Contractor and a risk assessment conducted by the Council.
41. 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 any time. 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/>
42. The Contractor shall provide, as the Council may reasonably require, a list of driving staff that are doing or seeking to do regulated work with children on Contracts carrying pupils. The Contractor is responsible for obtaining the consent of each individual for their personal data to be shared with the Council.

## **OPERATION OF CONTRACT**

43. The Contractor will ensure, at their 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.
44. The Contractor shall perform each Contract in accordance with a timetable, route, and pick up and set down places 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.
45. Contractors should expect to receive changes to Contracts, as a result of pupil changes/requirements in the vicinity of the route and deemed necessary by the Council to deliver an efficient and effective service. If such a Contract change is not possible for the Contractor, the Contractor may give 28 days' notice, in writing, if they wish to terminate any such Contract. The Council may agree a lesser period of notice

where a Contractor can demonstrate that that the operation of their business or the Contract would be adversely affected by the change.

46. The Contractor is not normally required to provide a return journey or other journeys on the same day, for any child that does not travel on the outward journey of a Contract, but only with the approval of the appropriate Council staff. The Contractor must advise the Council on the same day of any outward journey that is not used and must be able to operate the contract as specified if advised to do so.
47. The Contractor must convey only those passengers who have been authorised by the Council to travel. Parents/carers are not permitted to travel with their children, on a regular or occasional basis, unless this has been arranged by the Council in advance.
48. On home-to-school transport Contracts, the Contractor must convey other children selected by the Council without charge, where there are spare seats in a Vehicle and no additional cost is incurred. These concessionary places are allocated by the Council on a discretionary basis and can be withdrawn at any time.
49. 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 passengers to cross roads or to board or alight the Vehicle directly from/to a road.
50. The Contractor shall ensure that, on Contracts carrying pupils, children are received/handed over from/to a responsible adult at the designated pick up/set down places. Similarly, the Contractor shall ensure that children are handed over to staff at the school or other educational establishment or left in a place of safety as instructed by the Headteacher.
51. The Contractor shall ensure that their drivers do not pick up passengers or allow them to leave the Vehicle anywhere other than the designated pick up and set down places/addresses.
52. The Contractor shall report to the Council on the same day without delay any passenger that leaves the vehicle or attempts to leave the vehicle anywhere other than their designated set down place/address.
53. If a child is not ready to board the transport when the Vehicle arrives at the usual uplift time, the driver is expected to wait for up to 5 minutes unless otherwise instructed by the Council. The Contractor must keep a record of such occurrences and if this situation occurs on a regular basis this should be reported to the Council.
54. On home-to-school Contracts, the Contractor shall make arrangements that, in the event there isn't a responsible adult at home to meet a child, that the driver continues with the Contract and, if feasible, returns to the address of the child whose parent/carer was not home after the other children have been dropped off. If, on return, there is still no one at home the driver should be advised to contact the Council. The Contractor must ensure under no circumstances should a child be left unattended, dropped at a different address or left with anyone other than the parent/carer without the approval of the appropriate Council staff.

55. Requests for a change to the Contract, e.g. different address, made by school staff, social workers, parents/carers or the children themselves, should not be agreed by Contractors and will not be paid by the Council. All changes to a Contract should only be agreed with the appropriate Council staff.
56. The Contractor is responsible for reporting to the Council on the same day, or if this is not impractical by 1000 the following day, any passenger whose behaviour gives cause for concern. The Contractor may refuse to convey a passenger if the driver of the Vehicle considers that a passenger's conduct could be threatening to other passengers or may cause an unacceptable risk during the journey. The Contractor must provide the Council with written details any incident or pattern of behaviour that resulted in the action taken.
57. The Contractor shall ensure that their drivers follow any specific instructions issued by the Council that are included as part of the Contract Specification.
58. The Contractor shall ensure that all Vehicles are stationary, engines switched off and in position, at the school, prior to the school bell ringing at the end of the school day, unless otherwise agreed in writing with the Council. Contractors are reminded of the requirements of Section 98 of *The Road Vehicles (Construction and Use) Regulations 1986* with respect to engine idling.
- 58A. To prevent instances of pupils being left on Vehicles, drivers must check all seating and floor areas of the Vehicle after pupils have disembarked at the school in the morning. This check must take place at the school drop-off point. A similar check should take place at the terminus of the afternoon school journey.
59. The Contractor, providing a transport service where roadworks prevent a local bus service from serving its normal route, shall permit the Council to advertise their phone number in any roadworks publicity and have in place arrangements for passengers to book journeys direct during the Contract period.
60. 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.
61. 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 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.
62. The Contractor should report any concerns about any aspect of the Contract to the Council without delay.

## **SCHOOL MEALS DELIVERIES**

***(this section only applies to Contracts involving the delivery of school meals)***

63. The Contractor must not convey other goods or passengers when the vehicle is used to transport cooked meals. This is to prevent cross contamination.
64. The Contractor is responsible for collecting and delivering the meals at the times as specified in the Contract Specification, unless otherwise agreed by the Council in writing. The meaning of 'collect and deliver' includes the carriage of meals in the Contractor's vehicle and taking the meals to/from the vehicle to/from the school kitchens.
65. Access times for the collection from and deliveries to school kitchens are as detailed on the Specification and must be adhered to for the safety of the pupils. The Contractor must not enter school premises when pupils are in the playground. At such times, a delivery must be carried into the school grounds or, alternatively, the driver must wait until the pupils have left the playground.
66. The meals shall be transported in thermally insulated transfer boxes (supplied by the Council) and individual box dimensions are approximately 68 x 41 x 27 cm (length/width/height) and the box weights are 1.38 kg when empty and will vary in weight up to a maximum of 10kg when filled. These boxes shall be kept warm, dry and remain sealed at all times.
67. The Contractor shall ensure that the meals are transferred directly between sites detailed on the Specification without detour or delay, excluding those caused by external factors such as roadworks and road conditions.
68. All meals must be delivered direct into each kitchen and received by a member of the kitchen staff, where it shall undergo a Goods Inward Inspection, which shall include a temperature check. A food temperature chart, to be provided by Fife Council, shall be transferred with each container and shall be returned to the despatching kitchen when the run is completed.
69. A separate delivery or transfer note should accompany each delivery to the kitchen concerned stating the number of items supplied and recording the time and date of uplift and the time and date of delivery. This should be signed by a member of the kitchen staff on satisfactory delivery. These delivery/transfer notes should be retained by the Contractor for a period of not less than 3 months and should be made available to Fife Council upon request, at no additional charge, during that period.

## **CONTRACTOR PERFORMANCE**

70. 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.

71. **In emergency situations only**, the Contractor may utilise a suitably licensed sub-contractor, who has been accepted onto the Education Taxi & Minibus Framework or Education Taxi & Minibus DPS, to ensure that a Contract is carried out but shall advise both the Council and, where relevant, the school immediately of such arrangements. In so doing, the Contractor remains responsible for ensuring that all Conditions are met. Other than in emergency situations, the Contractor may not assign or sub-let the Contract without the written authority of the Council.
- 71A. For the purposes of executing Condition 71, 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 71. At the end of the Framework or DPS, the Contractor shall destroy or permanently delete any supplier details in their possession.
72. The Contractor shall notify the Council immediately or, if this is not practical, by 1000 the following day, of a failure to operate, for any reason, the Contract as outlined in Conditions 43-44. The Contractor shall be obliged to cover staff or Vehicle deficiencies by sub-contracting if necessary, as provided for in Condition 71, above.
73. 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.
74. The Council may terminate the Contract or make an appropriate deduction from the Contract payment if the Contract is not performed in accordance with Conditions 43-44, 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.
75. The performance of each Contract in accordance with the times specified in the relevant Contract Specification is an essential condition. In the event of any delay then the Contractor shall be liable for the damages outlined in Conditions 180-182.
76. The Contractor shall have in place a complaints procedure and 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.
77. The Contractor shall produce such evidence, as the Council may reasonably require, that demonstrates that all Conditions are being met.

## **INSURANCE AND LIABILITY**

78. 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 children are seated and, where relevant, wearing seatbelts and/or appropriate restraints before the Vehicle moves off.
79. 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.
80. The Contractor shall effect and keep 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.
81. The Contractor's insurance cover for all such claims shall be to a minimum amount of:
  - Employer's Liability - £10 million (where required)
  - Public Liability - £5 million
82. If a Contractor cannot provide evidence that the relevant insurance 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.

## **SCHOOL CLOSURES AND SEVERE WEATHER**

83. The Contractor shall, when requested by the Council, provide transport at altered times to those agreed under Condition 44. 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.
84. In severe weather conditions or other emergency situations, the Contractor shall ensure that the children conveyed are left in the care of a responsible adult and/or sheltered in a safe place and in no circumstances must any child be allowed to walk for any unreasonable distance from the point of leaving the Vehicle without being accompanied by a responsible adult.

85. During periods of severe weather the Contractor is responsible for deciding if the Contract can operate, either wholly or partly. The Contractor may also operate at times other than those agreed under Condition 44 where the weather conditions warrant an earlier departure time. The Contractor shall advise school staff and parents/carers direct of any changes required due to the weather.
86. 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 school staff to make them aware of the situation.

## **SAFETY**

87. If a Contractor is concerned or is notified by a driver that they are concerned that a child or children 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)
88. Contact information for the parents/carers of some children may be provided by the Council as part of a Contract. Where this information is not provided, the Contractor is responsible for gathering contact information for the parents/carers of the children travelling, subject to the parents/carers agreeing to share this information. This personal information should only be used for contacting parent/carers in relation to the operation of school Contracts and should be stored securely and not left in Vehicles or anywhere that is open to the general public.
89. 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. In addition:
- a) on all Vehicles of up to 16 passenger seats the Contractor shall be responsible for ensuring all children are wearing an appropriate child restraint or seat belt.
  - b) on all larger minibuses and minicoaches the Contractor shall be responsible for ensuring that all children under the age of 14 are wearing an appropriate child restraint or seat belt.
  - c) on larger minibuses and minicoaches the Contractor shall be responsible for informing passengers 14 years or over at each stop to fasten seatbelts and a pictorial sign encouraging the wearing of seatbelts should be displayed in the Vehicle.
  - d) all Vehicles, regardless of size, used to provide nursery transport must be fitted with an appropriate child restraint or adult seat belt for all children and the

Contractor shall be responsible for ensuring all children are using the child restraint or seat belt.

90. 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.
91. The Contractor must notify the Council immediately on the same day or, if this is impractical, by 1000 on the following working day of:
  - a) any breakdowns, delays, accidents, non-operation including non-operation due to severe weather, behavioural incidents or police involvement. A written report must be submitted within 24 hours of the incident.
  - b) any immediate or delayed prohibitions issued to Vehicles used in 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 child or children could be subject to harm.
  - d) any medical emergencies or incident requiring first aid to be administered to passengers.
92. Notwithstanding Condition 91 the Contractor shall ensure that any incidents that occur during the operation of a school Contract involving injury, accidents, behavioural problems or medical emergencies are reported by the driver to either parents/carers or school staff when the child arrives at their destination.
93. 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 Conditions 70-71 also.
94. Contractors should have an emergency evacuation procedure in place, in the event of an accident or incident occurring during the journey. The Council recognises that the most appropriate way to evacuate the vehicle will depend on the type of accident or incident, where it takes place, the passengers travelling and the type of vehicle being used. Drivers must be familiar with the procedure to follow and be trained to make decisions that minimise the risk to passengers and other road users. Training for each driver should be undertaken at least annually and a training record kept.

## **CARRIAGE OF PASSENGERS WITH ADDITIONAL SUPPORT NEEDS**

95. Notwithstanding Condition 89 hereof the Contractor shall ensure that appropriate restraints and/or seatbelts are provided and worn by all passengers in all Vehicles provided for children with additional support needs. All restraints including child safety seats and special seats must be fitted properly in line with manufacturer's instructions by the driver of the Vehicle. Seatbelt buckle guards are not permitted.



96. Continuity of drivers and/or Vehicles used to transport children with additional support needs shall be essential on certain Contracts, as advised by the Council, to provide reassurance for the children being carried.
97. All equipment supplied to the Contractor shall remain the property of the Council and shall be returned or replaced by the Contractor at the end of the Contract Period. The Contractor shall keep all equipment maintained in good condition and clean at all times.
98. 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.
99. 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.
100. The Contractor shall ensure that only those passengers authorised in advance by the Council to travel in their wheelchairs are carried in this way.
101. 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 101a) 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 sooner if a new type of wheelchair accessible vehicle is brought into the fleet.
102. 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 101a.
103. 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.
104. 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 its 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.
105. 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.
106. The Contractor is responsible for the loading and unloading of bags and/or any other equipment carried on the vehicle by passengers and must ensure that these items are safely stowed during transit.
107. 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.
108. 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 escort's home address unless otherwise stated. Contractors must ensure that their drivers not make alternative pick up and set down arrangements with escorts.

109. The Contractor may have the absence of a travel escort reported to them by the escort outwith normal Council office hours. In this event, and on any occasion where it is not possible for the Council to arrange a relief escort, the Contractor should carry out the Contract without an escort but only carry those children whose parents/carers give permission for their child to travel unescorted. The Contractor should advise the Council immediately if an escort is absent for any reason.

## **PAYMENT OF ACCOUNTS**

110. The Contractor shall be responsible for meeting all costs, charges and taxes relating to the operation of the Contract.
111. All tender prices submitted should be exclusive of VAT, although the Council will pay VAT at the appropriate rate where relevant.
112. Where there are changes to the Contract mileage operated (e.g. due to a change in the number of passengers to be conveyed), increases and decreases to the Contract Price shall
- normally be based on the mileage rates submitted on the Pricing Schedule for Contracts awarded under the Framework
  - be subject to negotiation between the Council and the Contractor for Contracts awarded under the DPS
- and where, failing a satisfactory outcome, the Council reserves the right to invoke Condition 132(g).
113. Framework mileage rates may only be revised in line with the procedure outlined in the Form of Tender – Part One (TN1).
114. No payment, to cover any aspect of the Contract or any variation to the Contract, should be asked of or accepted from parents/carers or any passengers travelling under any circumstances.
115. The Contractor shall submit invoices (in PDF format), at the end of each calendar month, to Accounts Payable at [invoices.accountspayable@fife.gov.uk](mailto:invoices.accountspayable@fife.gov.uk)
116. Contractors will receive a Purchase Order at the beginning of each Contract period. A revised Purchase Order will be issued by the Council every time a change to a Contract is made that affects the order. Purchase Order numbers have 11 digits. Any Purchase Order received with the same 11-digit number and -1, -2, -3, etc. on the end, will be a revision to the original order and should not be treated as a new order.
117. The Contractor must ensure that all invoices submitted quote the relevant Purchase Order number. Separate Purchase Orders will be issued for School Contracts, Roadworks Contracts, School Meals Contracts etc. Payments will normally be made 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.

118. Where an invoice cannot be paid due to, for example, an overcharge on the part of the Contractor or a wrongly used Purchase Order number, a credit note to correct the invoiced amount will be required before any payment is made by the Council. Payments that are in dispute are not subject to the same 20-day payment terms.
119. All invoices submitted by the Contractor must show all the following information:
- Name and address of the Contractor
  - Contractor's VAT registration number, if applicable
  - Unique invoice number
  - Invoice date
  - Invoice period and number of operating days
  - Purchase Order number
  - For each invoice line, the Contract number and a brief description of the service provided (but no personal information that could identify passengers)
  - Subtotal, VAT and total value of invoice
120. The Contractor shall complete a Taxi Fare Record Logsheets to verify journeys completed as part of any Roadworks Replacement Contract. The Logsheets should be submitted to the appropriate Council staff for approval prior to any invoice being sent to Accounts Payable.
121. The Council has arrangements in place whereby Contractors can, in certain circumstances, receive payments for Contracts by instalment without the need to submit invoices. Contractors will be advised if a Contract is eligible for these recurring payments when the Contract is awarded.
122. In the event of a child(ren) not using the transport provided for a period of 5 consecutive school days or more, which results in the mileage covered each day being reduced, the charge to the Council will be reduced by the Contractor accordingly from the 6th day.
123. Subject to Conditions 124 and 158-159A, the Contractor shall normally be entitled to 50% of the daily price if a Contract is not required on any day that the Contract is scheduled to operate. The Contractor shall notify the Council on the same day or, if this is impractical, by 1000 on the following working day of any Contract that is not used.
124. Journeys cancelled by the Council no later than 1700 on the preceding day, shall be paid as follows:
- Daily Home-to-School/School Meals/Apprenticeship/After-school Club/regular Contracts - 50%
  - Swimming Pool/Sports/Ad Hoc Contracts etc - no payment
125. Contracts or individual journeys cancelled on the same day by the Council will be paid in full. Should a Contractor arrive to find that the passenger(s) decline to travel, the journey will be paid in full.
126. In severe weather conditions or other emergency situations 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.

127. Publication of school closures on <https://www.fife.gov.uk/closures>, Fife Council's Facebook page or Twitter feed (or such other method of publication as may be intimated by the Council to Contractors from time to time) shall be deemed sufficient notice of cancellation by the Council. Contractors can also contact individual schools to join their Groupcall alert system.

127A. Condition deleted (May 2022).

## **CONTRACT DURATION AND TERMINATION**

128. The Contract Period for individual Contracts shall be as stated in the Contract Specification unless terminated in accordance with Conditions 128-136.
129. Contracts shall operate on days designated as Fife schooldays, as published from time to time on <https://www.fife.gov.uk/kb/docs/articles/education2/schools-in-fife/school-holidays,-term,-and-closure-dates>, which are correct at the time of the tender but may be subject to variation. For the avoidance of doubt, an 'in-service' or 'inset' day is a school holiday.
130. The Council shall be entitled to invite Contractors to extend any Contract for a further period.
131. The Council or the Contractor may terminate a Contract by giving 28 days' notice in writing, or such lesser period as may be agreed. 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 the passengers or meal deliveries affected for up to 28 days.
132. The Council may terminate an individual Contract or all Contracts operated by the Contractor without notice if:
- a) The Contractor no longer holds its taxi/private hire car licence or its PSV Operator's licence.
  - 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.
  - e) The Contractor sub-contracts the Contract, other than in an emergency, without the written authority of the Council, or uses an operator who is not on

the Education Taxi & Minibus Framework or Education Taxi & Minibus DPS to cover a Contract.

- f) The Contract requires significant alteration due to changes in the number of passengers to be conveyed, the route to be followed or the times of operation, or any other change being found necessary or desirable in the general organisation of transport.
- g) No agreement can be reached between the Council and the Contractor as a consequence of changes to the Contract deemed necessary to deliver an efficient and effective service.
- h) 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.
- i) The Contractor is guilty of a Persistent Breach.

133. The Council may terminate the Contractor's inclusion on the Framework or DPS 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 or DPS.
- b) An individual Contract or all Contracts operated by the Contractor are terminated in accordance with Condition 132.
- 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.

134. Without prejudice to the Council's rights to terminate the Contractor's inclusion on the Framework or DPS in Condition 133, 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.

134A. For the avoidance of doubt, a suspended Contractor will not be invited to participate in any mini competitions nor be contacted for any Framework direct awards.

135. 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.
136. On termination of this Agreement, the Contractor shall forthwith deliver to the Council or securely destroy, at the Council's sole option, all the Council's Data in its possession or under its control within such timescales as may be prescribed by the Council.

## **ASSIGNATION AND SUB-CONTRACTING**

137. Subject to the immediately following provisions, assignment of this Contract or sub-contracting of any of the Services provided by the Contractor hereunder is prohibited without the express consent of the Council, which consent if given may be given by the Council subject to such terms and conditions as it thinks fit.
138. Sub-contracting is only permitted **in emergency situations**, after notification to appropriate Council staff and, where relevant, the school, and only to other Contractors on the Education Taxi & Minibus Framework Agreement or Education Taxi & Minibus DPS. In so doing, the Contractor remains responsible for ensuring that all Conditions of Contract are met.
139. 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.
140. 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. To continue to participate in the DPS, the Contractor must withdraw under their original company name and submit a fresh SPD document under the new company name.
141. Where the Contractor enters into a sub-contract 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 Purchaser has made payment to the Contractor and the invoice includes Goods in relation to which payment has been made by the Purchaser then, to the extent that it relates to such Goods, 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 Procurement Service Manager and
- c. in the same terms as that set out in this clause 115.1 (including for the avoidance of doubt this clause 115.1.3) 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.

## **HEALTH & SAFETY**

142. 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.
143. The Contractor shall ensure that its health and policy statement and any other risk assessment, method statement or other written safe system of work necessary for the safe discharge of its 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](#)

## **DUTY OF CARE**

144. 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.

## **RECOVERY OF SUMS DUE**

145. Wherever under a 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 that Contract or under any other agreement or Contract with the Council.



## **AUDIT**

146. 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 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.
147. The provisions of Condition 146 shall apply during the Contract Period and after its termination howsoever arising.

## **BRIBERY AND CORRUPTION**

148. 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 it or acting on its 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.

## **EQUALITY**

149. 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.
150. 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](http://www.equalityhumanrights.com/uploaded_files/EqualityAct/employercode.pdf)
151. 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.

152. In the event that the Contractor enters into any sub-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 this clause.

## **CONFIDENTIALITY**

153. 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.
154. The provisions of Condition 153 shall apply during the Contract Period and after its termination howsoever arising.

## **FREEDOM OF INFORMATION (SCOTLAND) ACT 2002**

155. 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).

## **PUBLICITY**

156. The Contractor is prohibited from advertising or publicly announcing that it is 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.

## **INSOLVENCY**

157. 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.

## **FORCE MAJEURE**

158. 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.
159. 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.
- 159A. As an alternative to termination in accordance with Condition 159, the Council may elect to continue to pay in accordance with either:
- (a) the provisions of Condition 124; or
  - (b) any supplier relief policy it introduces in response to the circumstances outlined in Condition 158;
- Notwithstanding any such election, the Council shall still be entitled to subsequently terminate the Contract in accordance with Condition 159.

## **NOTICES**

160. 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.

## **DISPUTES**

161. 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 Arbitration (Scotland) Act 2010 and be subject to the provisions of the said Act relating to arbitration.
  - 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 the parties shall continue to perform their obligations under the Contract throughout the period of arbitration.

## **WAIVER**

162. Failure by either party at any time to insist upon strict performance of any term, condition or provision of a 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**

163. If any provision of a 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 a Contract, the Council and the Contractor shall immediately commence good faith negotiations to remedy such invalidity.

## **TERMS OF EMPLOYMENT**

164. 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.

## **APPLICABLE LAW**

165. The Contract shall be governed by the law of Scotland and the Contractor and the Council submit to the exclusive jurisdiction of the Scottish Courts.

## **TUPE**

166. The Contractor 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 Contractor on the commencement of the Contract; or
- b) to another supplier on the expiry of the Contract.

167. Each Tenderer must ensure that they comply in full with their responsibilities under TUPE.

168. 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.

- a) 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.
- b) 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.

169. In the event that Tenderers consider TUPE does apply, Tenderers should contact the incumbent Contractor 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.

170. 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 Contractor stops trading, and within 20 working days of being so requested by the Council, the Contractor 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 Contractor 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.

171. The Contractor 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 Contractor 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.
172. The Contractor 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 this Clause.
173. In the event that the information provided by the Contractor in accordance with this Clause 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 Contractor becoming aware that the information originally given was inaccurate, the Contractor shall notify the Council of the inaccuracies and provide the amended information. The Contractor shall be liable for any increase in costs the Council may incur as a result of the inaccurate or late production of data.
174. The provisions of Conditions 166 to 173 shall continue to apply after the termination of the Contract howsoever arising.

## **ENVIRONMENTAL REQUIREMENTS**

175. 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.

176. The Contractor shall ensure that its environmental policy statement is made available to the Council on request.
177. The Contractor shall be a member of the ECO Stars scheme at the commencement of Contracts under the Framework or DPS. Further details available from: <https://www.ecostars-uk.com> , 01344 770700 or [ecostarsTRL@trl.co.uk](mailto:ecostarsTRL@trl.co.uk)

## **BLACKLISTING**

178. The Contractor 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 clause is a material default which shall entitle the Purchaser to terminate the Contract.

## **DATA MATCHING – TRADE CREDITORS**

179. 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.

## **DEFAULT IN PERFORMANCE**

180. Failure by the Contractor to perform a Contract in accordance with the times specified in the relevant Contract Specification 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.
181. In the event of any delay then the Contractor shall be liable for the following damages:
- a) In the event that the Contractor is less than 10 minutes late, the Council shall be entitled to deduct 50% from the daily price otherwise payable for that Contract;
  - b) In the event that the Contractor is more than 10 minutes, but less than 30 minutes late, then Council shall be entitled to deduct 100% from the daily price otherwise payable for that Contract;

- c) In the event that the Contractor is more than 30 minutes late, or fails entirely to operate the Contract, then the Council shall be entitled to:
  - i. Deduct 100% of the daily price which would otherwise be payable for that Contract; and
  - ii. The Contractor shall also be liable to pay damages equivalent to 150% of the daily price which would otherwise be payable for that Contract;

181A. In the event of other 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.

182. 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 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 1 - DATA PROCESSING SCHEDULE**  
**(ALL CONTRACTS EXCEPT SCHOOL MEALS DELIVERIES AND ROADWORKS**  
**REPLACEMENT SERVICES)**

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

|  |
|--|
| The data processing activities carried out by the Contractor under this Contract are as follows:   |
| <b>1. Subject matter</b>   |
| To provide a transport service for children and young people attending schools and other educational establishments.   |
| <b>2. Duration:</b>  |
| The four years of the Framework or eight years of the DPS, or until such time as contracts awarded under them come to an end.  |
| <b>3. Nature and purpose:</b>  |
| To enable taxi and minibus drivers to take children and young people, identified by the Council as requiring transport, to schools and other educational establishments. To ensure that the vehicles used meet the needs of the children and young people travelling.  |
| <b>4. Types of Personal Data</b>   |
| Name, address, date of birth and contact telephone number. Where relevant, the type of wheelchair or other equipment used by the child or young person on transport. In some cases, details of a disability or medical condition if a particular type of vehicle is required. Where relevant, the name and address of the travel escort that accompanies the children and young people in the vehicle. |
| <b>5. Data subjects</b>  |
| Children and young people entitled to transport to schools or other educational establishments by taxi or minibus. Contact details for parents/carers. Travel escorts employed by the Council to travel with children and young people with additional support needs.  |
| <b>6. Outputs</b>  |
| Children and young people are able to attend school or other educational establishment in a way that is appropriate to their needs.  |

## **Processing Conditions**

The following Conditions shall apply to the said data processing:

### **1. DATA PROTECTION**

1.1 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.

1.2 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.

**Submission of your tender confirms your agreement to the requirements contained within this document.**