

TO BE RETAINED  
BY TENDERER



**CONDITIONS OF CONTRACT**

**BUS & COACH DYNAMIC PURCHASING SYSTEM (DPS)**  
**Ref: 11688**

**DPS OPERATIONAL PERIOD:**  
**1 November 2019 – 4 November 2029**

**VERSION 2 (November 2019)**

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**These conditions shall apply to all Contracts awarded under the 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.**

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

**The accompanying 'PVG Guide For Passenger Transport Contracts' (separate document) forms part of these Conditions of Contract.**

## **GENERAL CONDITIONS APPLYING TO ALL CONTRACTS**

### **DEFINITIONS**

1. In this DPS, the following words and expressions shall have the meaning assigned to them except where the context otherwise requires:
  - 1.1 "Conditions of Contract" means these conditions.
  - 1.2 "Contract" means a contract awarded under the DPS to follow hereon between the Council and the Contractor for the provision of Services.
  - 1.3 "Contract Period" means the period during which the Services are to be provided by the Contractor to the Council as specified in the Specification of Services.
  - 1.4 "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.
  - 1.5 "Contract Specification" is the document describing details of route, timetable, Vehicle requirements, Contract Period and other Services details for each individual Contract.
  - 1.6 "Contractor" means the person, firm or company named in the ESPD document, whose tender(s) have been accepted by the Council.
  - 1.7 "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.
  - 1.8 "Head of Education & Children's Services" shall mean the Head of Education & Children's Services of the Council or their duly authorised Representative.
  - 1.9 "Head of Assets, Transportation and Environment" shall mean the Head of Assets, Transportation and Environment of the Council or their duly authorised Representative.
  - 1.10 "Invitation to Tender" means the document setting out the Council's requirements for the provision of Services.
  - 1.11 "Persistent Breach" means where the Contractor has been in breach of the Conditions of Contract in relation to any of the Contracts awarded to it, having had notice served upon it by the Council to that effect, on three separate occasions in a rolling six month period.

- 1.12 "Services" shall mean the service or services as detailed within the Specification of Services relating to each Contract.
- 1.13 "Specification of Services" is the document describing details of route, timetable, vehicle requirements, Contract period, fares and other Services details for each individual Contract.
- 1.14 "Tender" means the tender submitted by the Contractor in response to the Invitation to Tender.
- 1.15 "Tenderer" means the person, firm or company named in the ESPD document who has subsequently submitted a tender to the Council.
- 1.16 "Vehicle" shall mean any vehicle to be used by the Contractor in the performance of the contract.
- 1.17 "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;
- 1.18 "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.
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.

#### EFFECTIVE DATE OF CONTRACT

8. A Contract shall be effective from the date specified and shall remain in force for the period therein or until otherwise determined in accordance with the Specification of Services or these Conditions of Contract.

#### REVISION OF CONTRACT SPECIFICATION

9. The timetable and/or route within the Specification of Services for a Contract may be revised by the Council by giving the Contractor 28 days' notice, or such lesser period as may be mutually agreed, of revisions proposed. Where such revisions have a significant effect on the costs or revenues accruing to the Contractor, these effects shall be grounds for the Contractor or the Council seeking a revision of the Contract Price.

#### LICENSING

10. Any Vehicle used in the performance of a Contract shall be licensed, equipped and maintained as required by statute and in the charge of a competent driver who shall be licensed as required by statute.
11. The Contractor shall have and keep in force a Public Service Vehicle Operator's Licence (Standard International (SI), Standard National (SN), Restricted (R) or Special Restricted (SR) or equivalent) as required by Statute, which permits the operation of the Services in the manner prescribed and shall produce the licence at any time for inspection by the Council.

## CAPACITY AND SUITABILITY OF VEHICLES

12. The Contractor shall ensure that the Vehicle used on a Contract, is in a safe and serviceable condition at all times, including all bodywork, upholstery and fittings. In addition, the Council reserves the right to require the Contractor to make the vehicle available for inspection by the Council at any reasonable time at the Contractor's expense and to ask for specific Vehicles to be removed from use on any Contract.
13. The Contractor shall ensure Vehicle suitability for the Services taking account of any factors such as weight/height/width restrictions, low bridges, overhanging trees, telephone wires etc. on the line of the route.
14. If a specific vehicle type is specified for a contract (e.g. low floor/wheelchair accessible) then, in the event of the unavailability of the said vehicle, a vehicle of at least the same specification **must be** used as replacement.
15. If a maximum vehicle capacity is stipulated on the Specification of Services, the vehicle provided must under no circumstances exceed this limit.
16. 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 operation of the Services.
17. The Contractor shall ensure that all vehicles used in the performance of the Contract are kept clean and are regularly swept and are washed both internally and externally.
18. The Contractor shall provide a fleet list of all vehicles in the company fleet when requested to do so by the Council. This must indicate fleet number, vehicle registration number, year of manufacture and seating capacity.
19. Any special authorisation granted to an operator for exemption from the Public Service Vehicles Accessibility Regulations 2000, by Section 43 of the Disability Discrimination Act 1995, shall not apply to Vehicles used on any Contract.
20. The Contractor must at all times provide vehicles of at least the specified capacity denoted in the Specification of Service, unless subsequently agreed otherwise, in writing, with the Council. The Contractor must advise the Council, without delay, of any situations arising whereby more passengers are travelling on a regular basis than there are seats available.
21. Subject to Condition 22, all vehicles used on a Contract must not be older than 20 years and either
  - have a minimum engine type of EURO III fitted or
  - have a Low Emission Certificate or a Reduced Pollution Certificate that demonstrates that a retrofitted filter or conversion meets at least the EURO III emission standards for particulate matter.

22. Where the vehicle is a licensed Taxi or Private Hire Car (PHC), operating under a Restricted or Special Restricted Operators Licence, the maximum age of any Vehicle permitted to operate on Contracts is as published by the Council's Taxi Licensing Team on the Council's website at <http://www.fife.gov.uk/> . As at September 2019, the age limits are:
- 4-6 passenger seats: 10 years
  - 7-8 passenger seats: 12 years
  - Wheelchair accessible vehicle: 12 years

### COMMUNICATION WITH VEHICLE

23. 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 when passengers are aboard the Vehicle and also during any dead mileage before and after a contracted journey.

### SMOKING

24. No Driver, Escort or other Contractor's staff shall smoke during the operation of the Contract, even during 'dead mileage' prior to commencing a contracted journey.
25. Drivers, Escorts or other Contractor's staff shall not smoke within or in the vicinity of school grounds.
26. Drivers, Escorts or other Contractor's staff shall not smoke within the vicinity of the vehicle on journeys carrying school pupils
- whilst waiting for school to discharge in the afternoon or
  - whilst waiting for pupils to board/alight the vehicle
27. Conditions 24-26 also apply to the use of e-cigarettes or similar devices e.g. vaping devices.

### MAINTENANCE

28. 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.
29. The Council reserves the right to advise the Council's Taxi Licensing Team, Traffic Commissioner or Driver & Vehicle Standards Agency (DVSA) if it has any misgivings as to the ability of the Contractor's Vehicles to meet legislative or contractual requirements.

30. 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 the Council's Taxi Licensing Team or DVSA on the fleet maintenance standards of the Contractor.

## SURVEYS

31. Contractors will ensure that free access is granted to the Council to conduct surveys on board the vehicles at any time during the operation of the contracted journeys.
32. The Council will, from time to time, require Contractors to provide time stamped location records from any GPS systems associated with real time systems or systems where data is downloaded post Service to aid analysis of Service delivery issues.

## OPERATION OF THE CONTRACT

33. The Contractor will ensure at his own expense the provision of the Services 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.

## CCTV

34. Contractors shall comply with the Data Protection Act 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.

## REPORTING OF INCIDENTS AND PROHIBITIONS

35. During working hours (Monday to Friday, 0830-1700), the Contractor must notify the Passenger Transport Services Team immediately - by phone on (01592 583219) - of any of the following incidents. Outwith these hours, an e-mail should be sent to [FifeCouncil.Busstation@fife.gov.uk](mailto:FifeCouncil.Busstation@fife.gov.uk) :
- 35.1 any incidents relating to loss of life, injury to passengers, serious damage to vehicles or emergency services' involvement;
- 35.2 any breakdowns, delays, accidents or non-operation of the Services;
- 35.3 any immediate or delayed prohibitions issued to vehicles whilst engaged on a Contract.
- 35.4 any concerns raised by a driver or disclosed to a driver that a passenger



could be subject to harm. 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)

## USE OF BUS STATIONS AND PARK & RIDE SITES

36. All operators of Contracts which specify a stopping or terminal point as being at a Fife Council owned Bus Station will operate within the Bus Stations in strict accordance with the rules and regulations applicable at any time to the operation of these Bus Stations. Further information on the operation and use of Fife Council owned Bus Stations is available on request from the Head of Assets, Transportation and Environment, Fife House, North Street, Glenrothes, Fife, KY7 5LT. Email: [transportation.services@fife.gov.uk](mailto:transportation.services@fife.gov.uk)
37. A departure charge is payable for each departure from
- 37.1 Dunfermline, Leven, Kirkcaldy and Glenrothes Bus Stations and will be as published elsewhere by the Council.
- 37.2 St Andrews Bus Station, Ferrytoll Park & Ride and Halbeath Park & Ride and will be as published elsewhere by Stagecoach East Scotland.
38. The Contractor may charge no additional sum for departure charges (or for parking fees, etc.) as such charges are deemed to have been included in the tender price.

## TIMETABLE, ROUTE AND STOPPING PLACES

39. Except in an emergency, the Contractor shall perform the Contract in accordance with the times, route and stopping places in the Specification of Services (or such modifications thereof as may have been agreed in writing with the Council). A copy of the drivers' duty boards should be supplied to the Council if requested.
40. Unless otherwise stated, the Services must stop
- 40.1 when operating registered local services, registered school services or closed contract (non-registered) school journeys,
- on demand at all designated bus stops/stances
  - at any safe stopping place within a Hail & Ride section of route
  - at any safe stopping place outwith 30mph zones
  - at any safe stopping place in rural areas

40.2 when operating a hire or trip, at all pre-agreed pick-up and set-down points

41. Any vehicle which requires to be stationary at any bus stop, stance or other stopping point shall comply with Section 98 of The Road Vehicles (Construction and Use) Regulations 1986 on engine idling.

#### FAILURE TO OPERATE

42. The Contractor must notify the Council in the event of failure to operate, for any reason, a Contract as outlined in the Specification of Services.
43. The Contractor will, in the event of vehicle breakdown, staff shortage or other circumstances preventing the use of the Contractor's own vehicle, staff or other resources, make alternative arrangements at his/her own cost to ensure the transport of passengers in accordance with the Contract.
44. The Contractor shall indemnify the Council against losses it incurs as a result of having to compensate passengers for alternative travel costs and, in extreme cases, subsistence and/or accommodation costs, incurred as a result of the Contractor's failure to operate a Contract in accordance with the Specification of Services.

#### DRIVER APPEARANCE & CONDUCT

45. All drivers engaged in the operation of Contracts shall adhere to an appropriate dress standard e.g. any recognised uniform issued by the Contractor and be of neat, clean and tidy appearance as befits someone dealing with the general public on behalf of the Council.
46. The Contractor shall ensure that all drivers carry a means of photographic identification, such as a photocard driving licence, taxi/PHC licence or Driver Qualification Card, during the performance of the Contract, which shall be shown on request to the passengers, parents/carers, school staff or other authorised Council officials.
47. The Contractor shall ensure that any of the Contractor's staff engaged on a Contract do not:
- 47.1 engage in any form of conflict with any person in connection with the operation of any Contract;
  - 47.2 attend work under the influence of alcohol and/or illegal substances;
  - 47.3 have in their possession alcohol and/or illegal substances;
  - 47.4 engage passengers in any conversation of a personal, suggestive or intimate nature, swear or use inappropriate language;

- 47.5 make unauthorised stops during any journey contracted by the Council (except in an emergency);
  - 47.6 give or accept gifts of any marked value;
  - 47.7 give sweets or snacks to passengers;
  - 47.8. make any inappropriate physical contact with any passenger;
  - 47.9 leave the vehicle (except in an emergency) whilst passengers are aboard;
  - 47.10 enter passengers' homes;
  - 47.11 exchange personal information with passengers, carers or parents.
48. The Contractor must ensure that appropriate policies and procedures are in place to assess whether a driver is medically fit to drive and that health condition and medication reporting forms part of these procedures. Copies of such procedures must be made available to the Council when requested.
49. If, at any time during the DPS period, the Council receives information about a driver that suggests their conduct has been inappropriate, the Council reserves the right to suspend the driver from Council Contracts with immediate effect. Any assessment made by the Council on whether to reinstate the driver will take into consideration information provided by the Council's Taxi Licensing, Education or Social Work Teams and/or Police Scotland.

## CARRIAGE OF WHEELCHAIRS

50. For any Vehicle that is capable of carrying passengers in wheelchairs, the Contractor must ensure that the Vehicle complies with all statutory requirements.
51. 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:
- 51.1 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 Wheelchairs
 Both documents are available at  
<https://www.fife.gov.uk/kb/docs/articles/education2/supporting-children-in-school/additional-support-needs/assisted-school-transport>
  - 51.2 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 51.1 given to each staff member, the date of

the training and a signed statement from the staff member to confirm that the training was given and understood. Training should be refreshed on an annual basis or when a new type of wheelchair accessible vehicle is brought into the fleet.

52. 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.
  - 52.1 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.
  - 52.2 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 51.1.
53. The Contractor shall ensure that the Lifting Operations and Lifting Equipment Regulations 1998 are complied with in relation to all passenger lifting equipment on Vehicles used on Contracts. The contractor shall arrange, at his or her 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.
54. If requested by a wheelchair user, the Contractor must load/unload the user's bags and/or any other equipment carried by them on the vehicle and ensure these items are safely stowed during transit.
55. The Council reserves the right to suspend the Contractor from the Contract, with immediate effect, if any of the above Conditions aren't met.

#### INSURANCE & LIABILITY

56. 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.
57. 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.

58. 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. The Contractor's insurance cover for all such claims shall be to a minimum amount of:
- Employer's Liability - £10 million
  - Public Liability - £5 million
59. The Contractor shall produce such evidence as the Council may reasonably require that the relevant insurance cover is in place for the duration of the Contract.

### COMPLAINTS

60. The Contractor shall provide the Council with copies of all written complaints received by the Contractor together with any reply thereto within 14 days of the complaint being received by the Contractor.

### DEFAULT IN PERFORMANCE

61. Failure by the Contractor to perform a Contract in accordance with the relevant Specification of Services or the Conditions of Contract is likely to result in the Council suffering the following losses:
- Additional administrative costs;
  - Damage to the Council's reputation;
  - In the event of total non-performance by the Contractor, the cost of procuring an alternative service. This may include the payment of a premium for arranging such alternative service at short notice.
62. In the event of such a failure, 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 and Police Scotland.
63. In the event that a Contractor fails entirely to operate a journey,
- 63.1 for local bus or home-to-school contracts, the Council shall be entitled to deduct the cost of the journey from the daily Contract price which would otherwise be payable for that Contract;
- 63.2 for bus/coach hires, the Contractor is expected to arrange immediate replacement transport - subject to Condition 74.2 - or, failing that, the Council will arrange replacement transport with an alternative operator and the

Contractor shall be liable to pay the alternative operator for all costs incurred in providing the replacement journey.

64. In the event that the Council incurs costs for replacing journeys that the Contractor has failed to operate, the Contractor shall be liable for meeting that cost.
65. Conditions 63-64 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, subject to agreement by the Council. 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.

#### GROUND FOR TERMINATION OF CONTRACT

66. For Local and Home-to-School Contracts, a Contract may be terminated without penalty at any time and for any reason during the Contract Period by either party giving to the other 56 days prior written notice of such termination. At the expiry of the 56 day period, the Contract, so far as regards any Services to be supplied under the Contract, shall in all respects cease and terminate.
67. A Contract may also be terminated by mutual agreement in accordance with Conditions 156-162, 201, 228-234 and 256.
68. The Council reserves the right to resile from the Contract without penalty in whole or in part where proposed increases or decreases in prices are considered, by the Council, to be unreasonable.
69. The Council may terminate an individual Contract or all Contracts operated by a Contractor without notice if:
  - 69.1 At any time the Contractor does not have a Public Services Operator's Licence (Standard National, International, Restricted or Special Restricted) which permits the operation of the Services;
  - 69.2 At any time 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;
  - 69.3 The Contractor does not have a suitable Vehicle and/or driver(s) to carry out the Contract.
  - 69.4 On Home-to-School Contracts, the Contractor uses a driver in the performance of the Contract who does not have the appropriate PVG Scheme Membership; or uses a driver who is barred or under consideration for listing by Disclosure Scotland; or uses a driver without a letter from the Council confirming the driver is deemed suitable to do regulated work with children; or

uses a driver after receiving written notification that the driver is unacceptable to the Council.

- 69.5 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.
- 69.6 The Contractor is guilty of a Persistent Breach.
- 69.7 The Contract has been subject to substantial modification as defined by Section 73(1)(a) of the *Public Contracts (Scotland) Regulations 2015*.
- 69.8 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 Contractor's creditors or suffers any diligence to be done or execution to be levied on the Contractor's 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;
- 69.9 The Contractor has, at the time of the contract award, been in one of the situations referred to in Regulation 58(1) (exclusion grounds), including as a result of the application of Regulation 58(2), and should, therefore have been excluded from the procurement procedure. In such a circumstance, the Contractor shall be liable to repay to the Council all sums paid to it in terms of the Contract. This condition shall survive the said termination of the contract.
70. The Council may terminate the Contractor's inclusion on the DPS by serving written notice on the Contractor with effect from the date specified in such notice if:
- 70.1 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 DPS.

70.2 An individual Contract or all Contracts operated by the Contractor are terminated in accordance with Condition 69.

70.3 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.

71. Without prejudice to the Council's rights to terminate the Contractor's inclusion on the DPS in Condition 70, 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.

72. 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.

#### ASSIGNATION AND SUB-CONTRACTING

73. Subject to the immediately following provisions, assignation 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 in writing, which consent if given may be given by the Council subject to such terms and conditions as it thinks fit.

74. In emergency situations only, the Contractor may utilise a suitably licensed sub-contractor,

74.1 for local and home-to-school journeys, **who has been accepted onto the DPS,**

74.2 for bus/coach hires, **who has been accepted onto the DPS - where time and distances feasibly permit use of such a sub-contractor - otherwise the requirement to use a DPS sub-contractor is suspended**

to ensure that the Contract is carried out but shall advise the Council 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.

75. For the avoidance of doubt, in this context, sub-contracting means the use of a suitably licenced vehicle operated by another company or individual and the use of a driver employed by that company or individual to carry out Services on the Contractor's behalf. Contractors are reminded that any such sub-contracting



arrangement must use drivers with appropriate PVG Scheme Membership (where required) that names the sub-contractor as an Interested Party.

76. PSV licence holders may enter into a vehicle hiring-in arrangement with another operator, as permitted by *The Public Service Vehicles (Operators' Licences) Regulations 1995*. This does not constitute sub-contracting and there is no requirement to inform the Council.

## BRIBERY AND CORRUPTION

77. 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:
- 77.1 any attempt is made by the Contractor or any person employed by him/her or acting on his/her behalf, with or without the Contractor's knowledge, to influence the award of the Contract, or any other Contract with the Council, in circumstances which are offences under the Prevention of Corruption Acts 1889 to 1916, or Sub-Section 2 of Section 68 of the Local Government (Scotland) Act 1973.
- 77.2 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.

## DISPUTES

78. If any dispute or difference concerning the Contract shall arise between the Council and the Contractor, then:
- 78.1 negotiations to resolve such dispute or difference shall be entered into between the Council and the Contractor.
- 78.2 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.
- 78.3 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.
- 78.4 All arbitrations shall take place in Scotland and shall in all respects be governed by the Law of Scotland.
- 78.5 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.

- 78.6 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.

### FORCE MAJEURE

79. 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, Act of God, lightning, aircraft impact, explosion, civil commotion, malicious damage, storm, tempest, earthquake, legal enactment or governmental or other regulation.
80. 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 two months 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 two months, then the non-defaulting party may elect to terminate the Contract upon 14 days written notice without any liability on that party.

### EQUALITY

81. 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.
82. 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)
83. 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.
84. 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

85. 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.

86. The provisions of the Condition 85 shall apply during the Contract Period and after its termination howsoever arising.

#### PUBLICITY

87. The Contractor is prohibited from advertising or publicly announcing that he 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.

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

88. 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).

#### WAIVER

89. 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

90. 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.

## RECOVERY OF SUMS DUE

91. 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.

## NOTICES

92. 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, Bankhead Central, Bankhead Park, Glenrothes, Fife, KY7 6GH and copied to the Council's Head of Legal & Democratic Services, Fife Council, Fife House, North Street, Glenrothes KY7 5LT. Receipt of such Notice shall be deemed to have occurred 2 days following the date of posting.

## TUPE

93. 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:
- 93.1 to the Contractor on the commencement of the Contract; or
- 93.2 to another supplier on the expiry of the Contract.
94. Each Tenderer must ensure that they comply in full with their responsibilities under TUPE.
95. 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.

- 95.1 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.
- 95.2 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.
96. 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.
97. 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:
- 97.1 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
- 97.2 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
- 97.3 Information about the other terms and conditions on which the affected staff are employed, or about where that information can be found; and
- 97.4 Details of pensions entitlements, if any.
98. 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.
99. 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.
100. 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.

101. The provisions of Conditions 97 to 99 shall continue to apply after the termination of the Contract howsoever arising.

### BLACKLISTING

102. 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.

### HEALTH & SAFETY

103. 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.
104. The Contractor shall ensure that his health and policy statement and any other risk assessment, method statement or other written safe system of work necessary for the safe discharge of his contractual and legal obligations, is made available without delay to the Council on request.

### ENVIRONMENTAL REQUIREMENTS

105. 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.

106. The Contractor shall ensure that his or her environmental policy statement is made available to the Council on request.
107. The Contractor shall be a member of the ECO Stars scheme at the commencement of the Contract. Further details available from: <https://www.ecostars-uk.com>, 01344 770700 or [ecostars@trl.co.uk](mailto:ecostars@trl.co.uk)

#### DATA MATCHING – TRADE CREDITORS

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

#### APPLICABLE LAW

109. Contracts shall be governed by the law of Scotland and subject to the exclusive jurisdiction of the Scottish Courts.

#### CHANGE IN LAW

110. If either Party considers that there has been a Change in Law which:
  - a. renders it impossible or unlawful to give effect to this Agreement;
  - b. causes the provisions of this Agreement to become inconsistent with any Law;
  - c. materially and adversely affects the commercial benefit of this Agreement to either or both of the Parties,then that Party may serve a notice on the other Party requesting that the Parties shall meet to discuss such circumstances and shall, in good faith, seek to agree the amendments which should be made to this Agreement as are necessary to achieve (in so far as possible) the same balance of benefits, liabilities, risks and rewards between the Parties in respect of the subject matter of this Agreement as applied at the Agreement Date.
111. If the Parties are unable to agree pursuant to Condition 110, then either Party may refer the issue for determination by an Expert to determine the amendments which should be made to this Agreement as are necessary to achieve (in so far as

possible) the same balance of benefits, liabilities, risks and rewards between the Parties in respect of the subject matter of this Agreement as applied at the Agreement Date.

112. Without prejudice to the other provisions of this Clause, the Parties agree that:
- a. neither Party shall be liable to the other Party for a failure to perform any obligation under this Agreement which becomes prohibited or impossible to perform by reason of a Change in Law (and such circumstance shall constitute a Force Majeure Event);
  - b. subject to Condition 112a, the occurrence of a Change in Law will not constitute a Force Majeure Event, or otherwise entitle either Party to suspend or terminate its obligations under this Agreement;
  - c. each of them shall use its reasonable endeavours to minimise and mitigate the consequences of Changes in Law on the performance of its obligations under this Agreement.



## ADDITIONAL CONDITIONS SPECIFIC TO LOCAL BUS CONTRACTS

### ANNUAL ADJUSTMENT OF THE CONTRACT PRICE

113. For Contracts exceeding one year, the Contract Price will be adjusted annually by an amount related to the following indices published in the Monthly Digest of Statistics by the Office for National Statistics:
- a) RPI all items (CHAW) weighting 25%;
  - b) RPI - Motoring Expenditure - Petrol and Oil (DOCU) weighting 15%;
  - c) Average Earnings index - Transport and Storage (K5AL) weighting 60%.
114. The first review will use the figures as first published (prior to any subsequent revisions) pertaining to the December after Contract commencement. Contract Price changes so decided would apply from the Monday of the week during which the new school session commences in August of the following year. Similarly, for subsequent years, figures from December, as first published and prior to any subsequent revisions, will be used as the basis for the change applicable in the following August.

### PAYMENT OF ACCOUNTS

115. The Contractor shall be responsible for meeting all costs, charges and taxes relating to the operation of a Contract.
116. Prior to the start of each Contract, the Passenger Transport Services Team in Assets, Transportation and Environment will set up each Contractor on a recurring payment schedule as agreed with the Contractor. Payments will be monthly, in arrears, for work completed to the satisfaction of the Council. All payments will be made by BACS. In exceptional circumstances, the Council may, instead, issue a Purchase Order Number and require the Contractor to submit an invoice.
117. The Council reserves the right to withhold Contract payments for any failure to provide the information listed in Conditions 153-154.

### CAPACITY AND SUITABILITY OF VEHICLES

118. All vehicles used on a local service Contract must be wheelchair accessible. Contractors are reminded that the *Public Service Vehicles Accessibility Regulations 2000* apply to the Contracts (unless the Vehicle used conforms with Conditions 22, 119 or 120).
119. Where any Specification of Service states a minimum seating capacity of 17 to 22 seats, these must be in addition to any wheelchairs carried.

120. Where any Specification of Service states a minimum seating capacity of 17 to 22 seats, the Vehicle must comply with the *Revised Accessibility Specification for Small Buses Designed to Carry 9 to 22 Passengers* (published by DiPTAC).
121. Contractors must provide Fife Council with copies of Declarations of Conformity or Conformity Certificates (as per Schedules 5 & 6 of the Public Service Vehicles Accessibility Regulations 2000) if the Council requests them.

## REGISTRATION OF SERVICES

122. The Contractor shall be responsible for the registration of the Services(s) with the Traffic Commissioner. The Contractor shall be liable for all registration, cancellation and amendment fees except where subsequent amendments to a registration result from a change requested by the Council. However, where a change is requested by the Council in response to changes on the Contractor's commercial network, the Council will not fund such a registration change if the request is made during the statutory 70 day application period defined by *The Public Service Vehicles (Registration of Local Services) (Scotland) Regulations 2001* (as amended).
123. Where Contractors have not yet adopted Electronic Bus Service Registration (EBSR), Contractors must provide the Council with timing information down to individual bus stop level in addition to any timing point information provided on a registration document.
124. For the first registration of services immediately after Contract award, registration documents must be submitted to the Council by 30 April (prior to Contract start date) unless Contractors have adopted EBSR as the means of registration submission.

## TICKET ISSUE

125. Contractors are required to have electronic ticketing equipment, which is
  - 125.1 GPS enabled
  - 125.2 capable of being enabled for, and to provide, a direct realtime data feed to Traveline Scotland and other agencies or companies
  - 125.3 of a type conforming with the requirements of The National Bus Travel Concession Scheme for Older and Disabled Persons (Scotland) Order 2006 (as amended).
126. The Contractor must record each passenger with a prepaid pass, free concessionary travel or who has purchased a ticket. This includes any season tickets used by members of the public.
127. Tickets must be issued to farepaying passengers. Tickets issued to each fare paying passenger must detail at least a serial number, the fare paid and stage of issue.

128. For each ticket issued, change must be given to the purchaser at the time of purchase. 'Exact fare only' operation or 'reimbursement receipts' (for later reimbursement at Contractor premises) are not permitted on Contracted journeys.
129. The Contractor shall make single, return, weekly and 4-weekly tickets available to passengers.
130. A daily ticket for unlimited evening travel after 1830 on the Contractor's services within Fife – commercial and contracted - must be made available to passengers. This ticket is not expected to be transferable to other operators' services.

### CONCESSIONARY & INTEGRATED TRAVEL

131. All journeys specified in a Contract shall participate in the Scottish Government's National Concessionary Fares Scheme and the Contractor should take full account of the reimbursement which will be made by the Scottish Government for revenue foregone in accordance with Conditions of the Scheme. Information passed to the Scottish Government with respect to their scheme must also be passed to Fife Council in so far as it applies to Services. Information on actual reimbursement received from the Scottish Government should be passed to the Council.
132. Children under 5 years of age shall travel free if accompanied by a fare paying passenger but no more than 2 children will be allowed to travel free with any one fare paying passenger. Children of 5 years and under 16 years shall be charged half the adult fare.
133. The Contractor must accept tickets from, and is encouraged to fully participate in, the "One-Ticket" integrated ticketing scheme for the duration of the contract period. Full details are available from One Ticket Limited, Area 3D Bridge, Victoria Quay, Edinburgh EH6 6QQ. Email: [info@one-ticket.co.uk](mailto:info@one-ticket.co.uk)
134. The Contractor of any Service calling at Leuchars Railway Station, which also serves St Andrews town centre, must accept tickets from, and is encouraged to fully participate in, the "St Andrews Railbus" integrated ticketing scheme, which allows holders of such a ticket to travel between the station and St Andrews. Full details are available from the Transport Integration Manager, ScotRail, Atrium Court, 50 Waterloo Street, Glasgow G2 6HQ. Email: [customer.relations@scotrail.co.uk](mailto:customer.relations@scotrail.co.uk)
135. Contractors of any Services operating in North-east Fife (the former North-east Fife District Council area plus Glenrothes and Leven) must accept tickets from, and are encouraged to fully participate in, the "ABC Ticket" integrated ticketing scheme for the duration of the contract period. Full details are available from ABC Card Scheme Administrator c/o John Berry, City Development, Dundee City Council, Dundee House, 50 North Lindsay Street, Dundee, DD1 1LS. Email: [john.berry@dundeecity.gov.uk](mailto:john.berry@dundeecity.gov.uk) . Contractors should note that the boundaries of the scheme could be extended westwards to cover the whole of Fife and, potentially, some terminus points across the Fife boundary, during the contract period. This

Condition applies to any Service operating within such a revised scheme operating area.

136. For any Services serving Kirkcaldy or Dunfermline, the Contractor must accept tickets from, and is encouraged to fully participate in, the "PLUSBUS" integrated ticketing scheme for the duration of the contract period. Full details are available from Jonathan Radley, Commercial Director, Journey Solutions Partnership & Plusbus Ticketing, c/o CPT, 5<sup>th</sup> Floor, Chancery House, 53-64 Chancery Lane, London, WC2A 1QS.  
Email: [jonathanr@cpt-uk.org](mailto:jonathanr@cpt-uk.org)
137. In situations where school pupils cannot travel on their normal school bus or where travel to/from a college is required during the school day, the school can issue a Single Use Travel Voucher for travel on local bus services. The Contractor must accept all vouchers issued by the Council as payment in lieu of fares or travel passes. The Council will redeem all vouchers at their face value. Vouchers should be submitted to the School Transport Team, Asset, Transportation & Environment Services, Fife Council, Bankhead Central, Bankhead Park, Glenrothes, KY7 6GH.
138. Where a Contract is awarded on the basis of accepting other operators' tickets, Contractors are required to accept, without any further charge, return, day, period and season tickets issued on journeys valid over the same section of the route, irrespective of whether those journeys are contracted or commercial (i.e. non-contracted) or whether those tickets were issued by the Contractor or by another operator.

#### OPERATION OF CONTRACT ON HOLIDAYS

139. Services do not require to operate on 25 & 26 December and 1 & 2 January unless otherwise stated. These dates are fixed. They will not be moved as 'days in lieu' even if Christmas Day/New Year's Day falls on a Friday, Saturday or Sunday.
140. A Saturday timetable will operate 27-31 December unless any of these dates fall on a Sunday, in which case a Sunday timetable will operate.
141. Services may finish earlier than normal on 24 & 31 December subject to agreement by Fife Council.
142. A Saturday timetable will operate on the May Holiday Monday (usually the first Monday in May).
143. Normal timetables must operate on all other dates.

## SERVICE DISRUPTION

144. In the event of anticipated or actual disruption to Contract Services, the Contractor must advise the Council at the earliest possible opportunity of the services and journeys affected or likely to be affected.
145. The following Conditions will apply with respect to payment:
  - 145.1 if no journeys in a Contract operate in whole or in part on a particular day, then no payment will be made for that day for that Contract;
  - 145.2 if some, but less than 50% of all, journeys in a Contract operate in whole or in part on a particular day, then payment for that Contract will be made at 50% of the normal daily rate;
  - 145.3 if at least 50% of all journeys in a Contract in whole or in part operate on a particular day, then full payment for that Contract will be made at the normal daily rate.
146. Contractors are expected to notify their Traffic Area Office of any unexpected/short notice disruptions to services in line with ['Practice Direction: Standards For Local Bus Services'](#) guidance.

## BUS PASSENGER INFORMATION

147. Contractors must fulfil the requirements of Fife Council's Bus Passenger Information Strategy. Copies of the strategy are available from the Passenger Transport Services Team, Assets, Transportation and Environment, Bankhead Central, Bankhead Park, Glenrothes, Fife, KY7 6GH. Email: [transportation.services@fife.gov.uk](mailto:transportation.services@fife.gov.uk)
148. Contractors must be members of Traveline Scotland for the duration of the contract period. Full details are available from, Chief Executive, Traveline Scotland, 2 Walker Street, Edinburgh, EH3 7LA.
149. All vehicles used on Local Services contracts must display contact details for Traveline.
150. When a Service is being discontinued, amended and/or taken over by another contractor, the Contractor must clearly publicise the details on all relevant vehicles over the final 21 days of operation and advise passengers of the contractor taking over the Services or journey.
151. Timetables (paper and online versions), in which all or some of the journeys contained therein are financially supported by Fife Council, must include the Fife Council logo and,
  - 151.1 where an entire Service is subsidised by Fife Council, the following statement must be included in the leaflet: "This Service is subsidised by Fife Council. If

you have any queries or comments regarding this Service, please contact Fife Council on (01592) 583223 or [FifeCouncil.Busstation@fife.gov.uk](mailto:FifeCouncil.Busstation@fife.gov.uk)"

151.2 where only some journeys on a Service are subsidised by Fife Council, these journeys must be individually highlighted in the timetable and the following statement must be included in the leaflet: "Some journeys on this Service are subsidised by Fife Council and are highlighted in the timetable. If you have any queries or comments regarding these journeys, please contact Fife Council on (01592) 583223 or [FifeCouncil.Busstation@fife.gov.uk](mailto:FifeCouncil.Busstation@fife.gov.uk)"

152. The Contractor must make timetable leaflets available 3 weeks prior to a service change. Failure to do so will result in Fife Council printing replacement timetables and charging the Contractor for the cost.

### PROVISION OF STATISTICS

153. The Council uses journey analysis software provided by EP Morris. In order to provide the following journey data for the Services, the Contractor shall permit installation (and any necessary updates) of the EP Morris *Data Capture Module* on the Contractor's IT system. Data must be provided to the Council every four weeks, using the Data Capture Module and shall include, for each Service:

- Contract number
- Dates (including identification of public holiday and school holiday journeys)
- Bus Service number
- Cash fares per passenger
- Journey/trip numbers
- Day/season/concession tickets (both purchase and use) per passenger
- Fife Council School Travel Pass use per passenger
- Passenger boarding and alighting farestages (or actual boarding/alighting points if available)
- Mileage operated
- Lost mileage

154. This data must be in a format that can be analysed by contract, by journey, by date, by Services, by farestage (or actual boarding/alighting points if available) and by ticket type (including concessions).

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

**ADDITIONAL CONDITIONS SPECIFIC TO HOME-TO-SCHOOL JOURNEYS  
WHICH ARE REGISTERED LOCAL SERVICES**

**REVISION OF CONTRACT SPECIFICATION**

156. It may be necessary for the Council to change the Specification of Service of individual routes in order to accommodate changes arising from the on-going development of the Curriculum for Excellence and Council policies. If such a change is required, the parties shall follow the following Change Control Procedure to agree any necessary changes to, or the termination of, the contract in question.
- 156.1 The Authority and the Service Provider agree that the following principles shall apply to the conduct between them in connection with the proposed changes considered through this Change Control Procedure:
- 156.2 the end result of the Change Control Procedure may be:
- 156.2.1 a change to any one or more of the Specification of Service for the route in question and/or the Contract Price; or
- 156.2.2 the termination of the contract.
- 156.3 all discussions shall be carried out in a timely fashion, constructively and in the utmost good faith by appropriate representatives for each Party;
- 156.4 all discussions, negotiations or other communications which may take place prior to the signing by both Parties of an agreement in writing, shall be without prejudice to the rights of either Party and do not create any legal rights and obligations;
- 156.5 the Parties shall use all reasonable endeavours to adhere to the timescales set out in this Change Control Procedure or such other periods as may be agreed between the Parties, acting reasonably, taking into account the complexity, financial impact and urgency of the change; and
- 156.6 each Party shall use all reasonable endeavours to cooperate fully with the other party throughout the Change Control Procedure and provide all reasonable assistance requested, including but not limited to, complying with any reasonable request for information from the other Party.
157. The Council shall initiate the Change Control procedure by intimating any required change to the Contractor in writing, confirming:
- 157.1 the details of the proposed change;
- 157.2 the reason for the proposed change; and
- 157.3 the anticipated impact of the change (including but not limited to the financial impact); and

158. The Contractor shall respond in writing within ten Working Days to confirm their view of the impact of the change (including, but not limited to, any financial impact).
159. Appropriate representatives of each party shall meet within ten Working Days from the date on which the Contractor's response is received by the Council to review and discuss the parties' respective positions and to agree:
- 159.1 the scope of the change;
  - 159.2 the adjustments which require to be made to the Specification of Service and/or the alteration which requires to be made to the Contract Price and
  - 159.3 the time period for implementing the change.
160. Where agreement is reached in accordance with Condition 159, the agreed change shall be documented by the Council in an agreement to be signed by authorised signatories of each of the Parties.
161. The Parties shall do all things reasonably required for the purposes of implementing the change in accordance with the agreed timescales.
162. If the parties fail to reach agreement as to the terms of the proposed change within ten Working Days of the meeting held in terms of Condition 159, the Contract in question shall be deemed to have been terminated by mutual agreement.

#### ANNUAL ADJUSTMENT OF THE CONTRACT PRICE

163. For Contracts exceeding one year, the Contract Price will be adjusted annually by an amount related to the following indices published in the Monthly Digest of Statistics by the Office for National Statistics:
- a) RPI all items (CHAW) weighting 25%;
  - b) RPI - Motoring Expenditure - Petrol and Oil (DOCU) weighting 15%;
  - c) Average Earnings index - Transport and Storage (K5AL) weighting 60%.
164. The first review will use the figures as first published (prior to any subsequent revisions) pertaining to the December after Contract commencement. Contract Price changes so decided would apply from the Monday of the week during which the new school session commences in August of the following year. Similarly, for subsequent years, figures from December, as first published and prior to any subsequent revisions, will be used as the basis for the change applicable in the following August.
165. This clause will be applied to Contract prices and the indicative fare scale (rounded to the nearest 5p).



## PAYMENT OF ACCOUNTS

166. The Contractor shall be responsible for meeting all costs, charges and taxes relating to the operation of a Contract.
167. Prior to the start of each Contract, the Passenger Transport Services Team in Assets, Transportation and Environment will set up each Contractor on a recurring payment schedule as agreed with the Contractor. Payments will be monthly, in arrears, for work completed to the satisfaction of the Council. All payments will be made by BACS. In exceptional circumstances, the Council may, instead, issue a Purchase Order Number and require the Contractor to submit an invoice.
168. The Council reserves the right to withhold Contract payments for any failure to provide the information listed in Conditions 225-226.

## CAPACITY AND SUITABILITY OF VEHICLES

169. To assist in identifying any overcrowding on schools services, operators are expected to carry out passenger surveys during the initial weeks of the autumn term every year and submit this information to the Council.
170. Immediately prior to the first pupil boarding on a contracted school 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 pupils boarding. A further check must be carried out at the end of the journey for lost property, vandalism inappropriate or dangerous items.
171. Contractors must provide Fife Council with copies of Declarations of Conformity or Conformity Certificates (as per Schedules 5 & 6 of the Public Service Vehicles Accessibility Regulations 2000) if the Council requests them.

## YELLOW SCHOOL BUS SIGNS

172. Yellow school bus signs, of the type and manner described by the Road Vehicles Lighting (Amendment) Regulations 1994, must be displayed when operating Services under this Contract.

## SEATBELTS

173. 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 seatbelt.

## DESTINATION INFORMATION AND SERVICE NUMBER

174. Where electronic destination screens are fitted to the front of vehicles used on school journeys, school travel pass colour and service number must be displayed on the screen for the duration of the journey. Where no such electronic screens are in use, a suitable sign indicating travel pass colour and service number should be displayed prominently at the front of the vehicle.

## AFTERNOON JOURNEY ARRANGEMENTS

175. The Contractor shall ensure that all vehicles used on school services are stationary, with engines switched off, and in position at the school pick-up point by the arrival time stated in the Specification of Service.
176. Where a driver realises that a pupil is on the wrong bus, has missed their bus stop or expresses any fear or concern at the point of alighting (whether on the correct bus or not), the driver must contact their depot immediately. The depot staff must contact Fife Council on 01592 583219 with the pupil name and bus location and await instruction from Council staff. On no account should the pupil be let off the bus unless given instruction to do so by Council staff.

## REGISTRATION OF SERVICES

177. All school buses **must** be registered local services as defined in Section 2 of the Transport Act 1985. All journeys must be made available to fare paying and concessionary passengers at all times. Contractors are reminded that the PSV (Accessibility) Regulations 2000 apply to registered local services.
178. The Contractor shall be responsible for the registration of the Services(s) with the Traffic Commissioner. The Contractor shall be liable for all registration, cancellation and amendment fees except where subsequent amendments to a registration result from a change requested by the Council. However, where a change is requested by the Council in response to changes on the Contractor's commercial network, the Council will not fund such a registration change if the request is made during the statutory 70 day application period defined by The Public Service Vehicles (Registration of Local Services) (Scotland) Regulations 2001 (as amended).
179. Where Contractors have not yet adopted Electronic Bus Service Registration (EBSR), Contractors must provide the Council with timing information down to individual bus stop level in addition to any timing point information provided on a registration document.
180. For the first registration of services immediately after Contract award, registration documents must be submitted to the Council by 30 April (prior to Contract start date) unless Contractors have adopted EBSR as the means of registration submission.

## TICKET ISSUE

181. Contractors are required to have electronic ticketing equipment, which is
  - 181.1 GPS enabled
  - 181.2 capable of being enabled for, and to provide, a direct realtime data feed to Traveline Scotland and other agencies or companies
  - 181.3 of a type conforming with the requirements of The National Bus Travel Concession Scheme for Older and Disabled Persons (Scotland) Order 2006 (as amended).
182. The Contractor must record each passenger with a prepaid pass, free concessionary travel or who has purchased a ticket. This includes entitled school pupils issued with a Council travel pass and any season tickets used by members of the public.
183. Tickets must be issued to farepaying passengers. Tickets issued to each fare paying passenger must detail at least a serial number, the fare paid and stage of issue.
184. For each ticket issued, change must be given to the purchaser at the time of purchase. 'Exact fare only' operation or 'reimbursement receipts' (for later reimbursement at Contractor premises) are not permitted on Contracted journeys.
185. The Contractor shall make single, return, weekly tickets, school 4-weekly and term season tickets available.

## SCHOOL TRAVEL PASSES

186. The Council shall issue school travel passes of a standard design to those pupils entitled to free travel under Council policy. The contractor shall honour any such passes issued by the Council to pupils and must adhere to the conditions as laid down by the Council, together with any local school operating procedures applicable.
187. Drivers must check all passes when the pupils are boarding but under no circumstances should pupils be refused travel to school. Pupils who do not have a travel pass to board the vehicle to school **MUST** be allowed to travel. It is then the pupil's responsibility to obtain an appropriate Temporary Travel Pass or Single Use Travel Voucher to travel home. A pupil who has forgotten or mislaid their travel pass when boarding at the school in the afternoon should be referred to the school's representative on bus duty. Drivers should report repeat offenders to their supervisor.

## FARES

188. The Contractor shall charge passenger fares not exceeding the adult rates set out by the Council's Indicative Farescale (included with the Invitation to Tender document)

and shall have available the relevant faretables/farestages in each vehicle used on the service. Copies of these faretables must be lodged with the Council within 28 days of the start of the Contract. Fares are based on the Council's indicative fare bands, which will alter annually in relation to revisions to Contract prices outlined in Conditions 163-165. See Condition 193 for child fares information and Specifications for estimated fares income.

### SCHOOL BUS SEASON TICKETS

189. Where pupils are not entitled to free travel and therefore not issued with a travel pass by the Council, Contractors must make weekly, school 4-weekly and term season tickets available to non-entitled pupils who wish to travel on school buses. Estimated fares income from non-entitled pupils is show on Specifications of Service. Season tickets must be issued at the following rates :

Under 16 years of age :	45% of the adult fare
16 years of age and above :	70% of the adult fare

### SCHOLARS DISCOUNT SCHEME

190. Some secondary school pupils, who are not entitled to free transport, qualify for the Council's *Scholars Discount Scheme* if they live between one and two miles from their catchment area school and are under 14 years of age. Discount letters are sent by Asset, Transportation & Environment Services to qualifying pupils every summer until qualification expires.
191. On presentation of the letter along with proof of pupil's age, Contractors must issue a four weekly or term time ticket at 30% of the adult fare. The letter should be returned to the purchaser. The Council will redeem the 15% foregone by the Contractor on submission of the purchaser's name (pupil), address and ticket value. Claims should be submitted to the School Transport Team, Asset, Transportation & Environment Services, Fife Council, Bankhead Central, Bankhead Park, Glenrothes, KY7 6GH.

### CONCESSIONARY & INTEGRATED TRAVEL

192. All journeys specified in a Contract shall participate in the Scottish Government's National Concessionary Fares Scheme and the Contractor should take full account of the reimbursement which will be made by the Scottish Government for revenue foregone in accordance with Conditions of the Scheme. Information passed to the Scottish Government with respect to their scheme must also be passed to Fife Council in so far as it applies to Services. Information on actual reimbursement received from the Scottish Government should be passed to the Council.
193. Children under 5 years of age shall travel free if accompanied by a fare paying passenger but no more than 2 children will be allowed to travel free with any one fare

paying passenger. Children of 5 years and under 16 years shall be charged half the adult fare.

194. The Contractor must accept tickets from, and is encouraged to fully participate in, the “One-Ticket” integrated ticketing scheme for the duration of the contract period. Full details are available from One Ticket Limited, Area 3D Bridge, Victoria Quay, Edinburgh EH6 6QQ. Email: [info@one-ticket.co.uk](mailto:info@one-ticket.co.uk)
195. The Contractor of any Service calling at Leuchars Railway Station, which also serves St Andrews town centre, must accept tickets from, and is encouraged to fully participate in, the “St Andrews Railbus” integrated ticketing scheme, which allows holders of such a ticket to travel between the station and St Andrews. Full details are available from the Transport Integration Manager, ScotRail, Atrium Court, 50 Waterloo Street, Glasgow G2 6HQ. Email: [customer.relations@scotrail.co.uk](mailto:customer.relations@scotrail.co.uk)
196. Contractors of any Services operating in North-east Fife (the former North-east Fife District Council area plus Glenrothes and Leven) must accept tickets from, and are encouraged to fully participate in, the “ABC Ticket” integrated ticketing scheme for the duration of the contract period. Full details are available from ABC Card Scheme Administrator c/o John Berry, City Development, Dundee City Council, Dundee House, 50 North Lindsay Street, Dundee, DD1 1LS. Email: [john.berry@dundeecity.gov.uk](mailto:john.berry@dundeecity.gov.uk) . Contractors should note that the boundaries of the scheme could be extended westwards to cover the whole of Fife and, potentially, some terminus points across the Fife boundary, during the contract period. This Condition applies to any Service operating within such a revised scheme operating area.
197. For any Services serving Kirkcaldy or Dunfermline, the Contractor must accept tickets from, and is encouraged to fully participate in, the “PLUSBUS” integrated ticketing scheme for the duration of the contract period. Full details are available from Jonathan Radley, Commercial Director, Journey Solutions Partnership & Plusbus Ticketing, c/o CPT, 5<sup>th</sup> Floor, Chancery House, 53-64 Chancery Lane, London, WC2A 1QS.  
Email: [jonathanr@cpt-uk.org](mailto:jonathanr@cpt-uk.org)

## OPERATIONAL DAYS

198. Contracts shall operate on days designated as Fife schooldays as published on <https://www.fife.gov.uk/kb/docs/articles/education2/schools-in-fife/school-holidays,-term,-and-closure-dates> For the avoidance of doubt, an ‘in-service’ day is a school holiday.

## SERVICE DISRUPTION

199. In the event of anticipated or actual disruption to Contract Services, the Contractor must advise the school at the earliest possible opportunity of the services and journeys affected or likely to be affected.

200. Where the Council announces that a school is closed to pupils and
- 200.1 the Contractor does not operate journeys then, if notified by the Council
- i. no later than 1700 on the preceding day, payment shall be at 50% of the daily price up to and including 10 consecutive school days;
  - ii. after 1700 on the preceding day or cancelled on the same day, payment will be made in full;
- 200.2 the Contractor continues to operate journeys then payment will be made in full.
201. Where a school is closed to pupils beyond 10 consecutive school days, the Contract may be
- a. suspended by mutual agreement, with no further payments made, until the school reopens and the Contract is restarted with the same Contractor, or
  - b. revised, in line with Conditions 9 or 156-162 (Revision of Contract Specification) or
  - c. terminated, in line with Conditions 79-80 (Force Majeure).
202. Where a school is open to pupils,
- 202.1 in severe weather conditions or other emergency situations, the Contractor shall be paid in full for Contracts attempted, even if subsequently abandoned.
- 202.2 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 or other emergency situations warranted the action taken by the Contractor.
203. Contractors are expected to notify their Traffic Area Office of any unexpected/short notice disruptions to services in line with ['Practice Direction: Standards For Local Bus Services'](#) guidance.

### EARLY SCHOOL CLOSURE

204. A contractor shall, when requested by the Council, provide school journeys at altered times to those detailed in the Specification of Service. This may be due to an emergency school closure, adverse weather conditions or other reasons. The Contractor should, on such occasions, as far as possible attempt to avoid the incurrence of additional costs.
205. Contractors are required to register with the Council's "School Closure Alerts" system (at <https://www.fifedirect.org.uk/doitonline/index.cfm?fuseaction=online.alert> ) which advises on unplanned school closures. The message and timestamp of such alerts shall be deemed the official notification by Fife Council even if other media are also used to broadcast closure information.

206. In adverse weather conditions or other emergency situations, the operator shall ensure that the pupils conveyed are left in safe care and/or sheltered in a safe place and in no circumstances must any pupil be allowed to walk for any unreasonable distance from the point of leaving the vehicle without being accompanied by a responsible adult.

#### BUS PASSENGER INFORMATION

207. Contractors must fulfil the requirements of Fife Council's Bus Passenger Information Strategy. Copies of the strategy are available from the Passenger Transport Services Team, Assets, Transportation and Environment, Bankhead Central, Bankhead Park, Glenrothes, Fife, KY7 6GH. Email: [transportation.services@fife.gov.uk](mailto:transportation.services@fife.gov.uk)
208. Contractors must be members of Traveline Scotland for the duration of the contract period. Full details are available from, Chief Executive, Traveline Scotland, 2 Walker Street, Edinburgh, EH3 7LA.
209. All vehicles used on school Services contracts must display contact details for Traveline.
210. When a Service is being discontinued, amended and/or taken over by another contractor, the Contractor must clearly publicise the details on all relevant vehicles over the final 21 days of operation and advise passengers of the contractor taking over the Services or journey.
211. Timetables (paper and online versions), in which all or some of the journeys contained therein are financially supported by Fife Council, must include the Fife Council logo and,
- 211.1 where an entire Service is subsidised by Fife Council, the following statement must be included in the leaflet: "This Service is subsidised by Fife Council. If you have any queries or comments regarding this Service, please contact Fife Council on 03451 555 555 ext.444371 or [transportation.services@fife.gov.uk](mailto:transportation.services@fife.gov.uk)"
- 211.2 where only some journeys on a Service are subsidised by Fife Council, these journeys must be individually highlighted in the timetable and the following statement must be included in the leaflet: "Some journeys on this Service are subsidised by Fife Council and are highlighted in the timetable. If you have any queries or comments regarding these journeys, please contact Fife Council on 03451 555 555 ext.444371 or [transportation.services@fife.gov.uk](mailto:transportation.services@fife.gov.uk)"

#### BEHAVIOUR, CODE OF PRACTICE & PROTOCOL

212. Any behaviour related incidents involving school children and vehicles used on schools journeys should immediately be brought to the attention of the school. In the event of serious misbehaviour on the vehicle which makes proceeding further with

the journey unsafe in the driver's judgement, he/she should pull into the side of the road at a safe place and notify the depot by mobile phone/radio. The journey should not continue until the driver is issued with further instructions. The depot manager should notify the school and/or request assistance from the police. The driver **should NOT take the vehicle back to the school unless the disturbance breaks out within two miles of the school or he/she is instructed otherwise**. Drivers should report behavioural problems (if possible with the identities of the pupils involved) to their Depot Managers as soon as practically possible.

213. The Council reserves the right to ask Contractors to provide attendants to travel on specific journeys for specific periods at a cost to be agreed between the Council and the Contractor. Such attendants shall be responsible for ensuring, so far as possible, the orderly conduct and behaviour of all passengers on such journeys.

### PROTECTION OF VULNERABLE GROUPS (PVG) SCHEME

214. Individuals employed by Contractors to drive on Contracts awarded through this 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.
215. 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 make arrangements for any drivers they intend to deploy on Contracts to obtain a PVG Scheme Record or PVG Short Scheme Record that notifies Disclosure Scotland that the Contractor is an Interested Party, to be informed about barring decisions related to the driver. 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.
216. The Contractor is responsible for obtaining the written consent of each driver they intend to use on Contracts, for the Council to have access to their PVG Scheme Record or PVG Short Scheme Record. Drivers who refuse to comply with this request 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.
217. The Contractor shall make arrangements for the Council to have access to the Registered Body Copy of each driver's PVG Scheme Record or PVG Short Scheme Record, to allow senior officers of the Council to conduct a risk assessment of any conviction or other vetting information revealed about that driver.



218. The Contractor shall ensure that before any driver is permitted to drive on Contracts awarded through this DPS that the Contractor has a letter from the Council confirming that the driver is deemed suitable to do regulated work with children.
219. If a Contractor is informed by Disclosure Scotland 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 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.
220. 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 on the <https://www.mygov.scot/pvg-scheme/> website. 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.
221. The Contractor is responsible for making arrangements to pay all the fees for PVG Scheme Records and/or Short Scheme Records to Disclosure Scotland. Contractors are expected to register with Disclosure Scotland to obtain PVG Scheme Records for their drivers or to make an arrangement with an Umbrella Body to countersign PVG Scheme applications on their behalf. Details of how to become a registered body and contact information for Umbrella Bodies willing to provide this service are available on the <https://www.mygov.scot/pvg-scheme/> website. See accompanying PVG Guide for contact details. The Council will not act as an Umbrella Body to obtain PVG Records on a Contractor's behalf.
222. 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 withdraw that driver's approval to be used 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.
223. It is an offence for an organisation or employer to fail to make a referral to Disclosure Scotland within 3 months when referral criteria have been met. A Contractor must report harmful behaviour that might affect whether the person is allowed to do regulated work even if it takes place outside of work, or the employer only finds out after the employee has left. If a Contractor receives information about a Driver which suggests they may be involved in conduct that harms children or protected adults or places them at risk of harm then, a referral to Disclosure Scotland must be made. The information could be received from any source – not necessarily the Council – and the harmful behaviour could have happened anywhere and at anytime. This duty to refer exists even if there is involvement from the police. Contractors must make a referral to Disclosure Scotland explaining what has happened. This has to be done if the harmful behaviour meant the person involved:
- was dismissed as a result of the behaviour

- would have been dismissed but left before they could be
- has been permanently withdrawn from journeys carrying children or protected adults

Further details about Duty to Refer and information about how to send a referral are available at <https://www.mygov.scot/pvg-referrals/>

224. 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 through this DPS. The Contractor is responsible for obtaining the consent of each individual for their personal data to be shared with the Council for the purpose of ensuring that they have the necessary approval to be used on Contracts.

### PROVISION OF STATISTICS

225. The Council uses journey analysis software provided by EP Morris. In order to provide the following journey data for the Services, the Contractor shall permit installation (and any necessary updates) of the EP Morris *Data Capture Module* on the Contractor's IT system. Data must be provided to the Council every four weeks, using the Data Capture Module and shall include, for each Service:
- Contract number
  - Dates (including identification of public holiday and school holiday journeys)
  - Bus Service number
  - Cash fares per passenger
  - Journey/trip numbers
  - Day/season/concession tickets (both purchase and use) per passenger
  - Fife Council School Travel Pass use per passenger
  - Passenger boarding and alighting farestages (or actual boarding/alighting points if available)
  - Mileage operated
  - Lost mileage
226. This data must be in a format that can be analysed by contract, by journey, by date, by Services, by farestage (or actual boarding/alighting points if available) and by ticket type (including concessions).
227. The Council reserves the right to request the Contractor to provide any other relevant statistical information during the period of the Contract to assist in future determination of Best Value Performance Indicators/Audit Commission Performance Indicators.

**ADDITIONAL CONDITIONS SPECIFIC TO HOME-TO-SCHOOL JOURNEYS  
WHICH ARE CLOSED CONTRACTS (NON-REGISTERED)**

**REVISION OF CONTRACT SPECIFICATION**

228. It may be necessary for the Council to change the Specification of Service of individual routes in order to accommodate changes arising from the on-going development of the Curriculum for Excellence and Council policies. If such a change is required, the parties shall follow the following Change Control Procedure to agree any necessary changes to, or the termination of, the contract in question.
- 228.1 The Authority and the Service Provider agree that the following principles shall apply to the conduct between them in connection with the proposed changes considered through this Change Control Procedure:-
- 228.2 the end result of the Change Control Procedure may be:
- 228.2.1 a change to any one or more of the Specification of Service for the route in question and/or the Contract Price; or
- 228.2.2 the termination of the contract.
- 228.3 all discussions shall be carried out in a timely fashion, constructively and in the utmost good faith by appropriate representatives for each Party;
- 228.4 all discussions, negotiations or other communications which may take place prior to the signing by both Parties of an agreement in writing, shall be without prejudice to the rights of either Party and do not create any legal rights and obligations;
- 228.5 the Parties shall use all reasonable endeavours to adhere to the timescales set out in this Change Control Procedure or such other periods as may be agreed between the Parties, acting reasonably, taking into account the complexity, financial impact and urgency of the change; and
- 228.6 each Party shall use all reasonable endeavours to cooperate fully with the other party throughout the Change Control Procedure and provide all reasonable assistance requested, including but not limited to, complying with any reasonable request for information from the other Party.
229. The Council shall initiate the Change Control procedure by intimating any required change to the Contractor in writing, confirming:
- 229.1 the details of the proposed change;
- 229.2 the reason for the proposed change; and

- 229.3 the anticipated impact of the change (including but not limited to the financial impact); and
230. The Contractor shall respond in writing within ten Working Days to confirm their view of the impact of the change (including, but not limited to, any financial impact).
231. Appropriate representatives of each party shall meet within ten Working Days from the date on which the Contractor's response is received by the Council to review and discuss the parties' respective positions and to agree:
- 231.1 the scope of the change;
- 231.2 the adjustments which require to be made to the Specification of Service and/or the alteration which requires to be made to the Contract Price and
- 231.3 the time period for implementing the change.
232. Where agreement is reached in accordance with Condition 231, the agreed change shall be documented by the Council in an agreement to be signed by authorised signatories of each of the Parties.
233. The Parties shall do all things reasonably required for the purposes of implementing the change in accordance with the agreed timescales.
234. If the parties fail to reach agreement as to the terms of the proposed change within ten Working Days of the meeting held in terms of Condition 231, the Contract in question shall be deemed to have been terminated by mutual agreement.

#### ANNUAL ADJUSTMENT OF THE CONTRACT PRICE

235. For Contracts exceeding one year, the Contract Price will be adjusted annually by an amount related to the following indices published in the Monthly Digest of Statistics by the Office for National Statistics:
- a) RPI all items (CHAW) weighting 25%;
  - b) RPI - Motoring Expenditure - Petrol and Oil (DOCU) weighting 15%;
  - c) Average Earnings index - Transport and Storage (K5AL) weighting 60%.
236. The first review will use the figures as first published (prior to any subsequent revisions) pertaining to the December after Contract commencement. Contract Price changes so decided would apply from the Monday of the week during which the new school session commences in August of the following year. Similarly, for subsequent years, figures from December, as first published and prior to any subsequent revisions, will be used as the basis for the change applicable in the following August.
237. This clause will be applied to Contract prices and the flat fare - rounded to the nearest 5p (see Condition 252).

## PAYMENT OF ACCOUNTS

238. The Contractor shall be responsible for meeting all costs, charges and taxes relating to the operation of a Contract.
239. Prior to the start of each Contract, the Passenger Transport Services Team in Assets, Transportation and Environment will set up each Contractor on a recurring payment schedule as agreed with the Contractor. Payments will be monthly, in arrears, for work completed to the satisfaction of the Council. All payments will be made by BACS. In exceptional circumstances, the Council may, instead, issue a Purchase Order Number and require the Contractor to submit an invoice.
240. The Council reserves the right to withhold Contract payments for any failure to provide the information listed in Conditions 275-277.

## CAPACITY AND SUITABILITY OF VEHICLES

241. To assist in identifying any overcrowding on schools services, operators are expected to carry out passenger surveys during the initial weeks of the autumn term every year and submit this information to the Council.
242. Immediately prior to the first pupil boarding on a contracted school 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 pupils boarding. A further check must be carried out at the end of the journey for lost property, vandalism inappropriate or dangerous items.
243. 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.

## YELLOW SCHOOL BUS SIGNS

244. Yellow school bus signs, of the type and manner described by the Road Vehicles Lighting (Amendment) Regulations 1994, must be displayed when operating Services under this Contract.

## SEATBELTS

245. Vehicles must be fitted with seatbelts in line with the *Seat Belts on School Transport (Scotland) Act 2017*.
246. 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.

## DESTINATION INFORMATION AND SERVICE NUMBER

247. Where electronic destination screens are fitted to the front of vehicles used on school journeys, school travel pass colour and service number must be displayed on the screen for the duration of the journey. Where no such electronic screens are in use, a suitable sign indicating travel pass colour and service number should be displayed prominently at the front of the vehicle.

## AFTERNOON JOURNEY ARRANGEMENTS

248. The Contractor shall ensure that all vehicles used on school services are stationary, with engines switched off, and in position at the school pick-up point by the arrival time stated in the specification of service.
249. Where a driver realises that a pupil is on the wrong bus, has missed their bus stop or expresses any fear or concern at the point of alighting (whether on the correct bus or not), the driver must contact their depot immediately. The depot staff must contact Fife Council on 01592 583219 with the pupil name and bus location and await instruction from Council staff. On no account should the pupil be let off the bus unless given instruction to do so by Council staff.

## SCHOOL TRAVEL PASSES

250. The Council shall issue school travel passes of a standard design to those pupils entitled to free travel under Council policy. The contractor shall honour any such passes issued by the Council to pupils and must adhere to the conditions as laid down by the Council, together with any local school operating procedures applicable.
251. Drivers must check all passes when the pupils are boarding but under no circumstances should pupils be refused travel to school. Pupils who do not have a travel pass to board the vehicle to school **MUST** be allowed to travel. It is then the pupil's responsibility to obtain an appropriate Temporary Travel Pass or Single Use Travel Voucher to travel home. A pupil who has forgotten or mislaid their travel pass when boarding at the school in the afternoon should be referred to the school's representative on bus duty. Drivers should report repeat offenders to their supervisor.

## FARES

252. Where pupils are not entitled to free travel and therefore not issued with a travel pass by the Council, the Contractor shall charge the flat fare shown on the Specification of Service and issue a ticket for the journey.

## OPERATIONAL DAYS

253. Contracts shall operate on days designated as Fife schooldays as published on <https://www.fife.gov.uk/kb/docs/articles/education2/schools-in-fife/school-holidays,-term,-and-closure-dates> For the avoidance of doubt, an 'in-service' day is a school holiday.

## SERVICE DISRUPTION

254. In the event of anticipated or actual disruption to Contract Services, the Contractor must advise the Council at the earliest possible opportunity of the services and journeys affected or likely to be affected.

255. Where the Council announces that a school is closed to pupils and

255.1 the Contractor does not operate journeys then, if notified by the Council

- i. no later than 1700 on the preceding day, payment shall be at 50% of the daily price up to and including 10 consecutive school days;
- ii. after 1700 on the preceding day or cancelled on the same day, payment will be made in full;

255.2 the Contractor continues to operate journeys then payment will be made in full.

256. Where a school is closed to pupils beyond 10 consecutive school days, the Contract may be

- a) suspended by mutual agreement, with no further payments made, until the school reopens and the Contract is restarted with the same Contractor, or
- b) revised, in line with Conditions 9 or 228-234 (Revision of Contract Specification) or
- c) terminated, in line with Conditions 79-80 (Force Majeure).

257. Where a school is open to pupils,

257.1 in severe weather conditions or other emergency situations, the Contractor shall be paid in full for Contracts attempted, even if subsequently abandoned.

257.2 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 or other emergency situations warranted the action taken by the Contractor.

## EARLY SCHOOL CLOSURE

258. A contractor shall, when requested by the Council, provide school journeys at altered times to those detailed in the Specification of Service. This may be due to an emergency school closure, adverse weather conditions or other reasons. The Contractor should, on such occasions, as far as possible attempt to avoid the incurrence of additional costs.
259. Contractors are required to register with the Council's "School Closure Alerts" system (at <https://www.fifedirect.org.uk/doitonline/index.cfm?fuseaction=online.alert> ) which advises on unplanned school closures. The message and timestamp of such alerts shall be deemed the official notification by Fife Council even if other media are also used to broadcast closure information.
260. In adverse weather conditions or other emergency situations, the operator shall ensure that the pupils conveyed are left in safe care and/or sheltered in a safe place and in no circumstances must any pupil be allowed to walk for any unreasonable distance from the point of leaving the vehicle without being accompanied by a responsible adult.

## BUS PASSENGER INFORMATION

261. When a Service is being discontinued, amended and/or taken over by another contractor, the Contractor must clearly publicise the details on all relevant vehicles over the final 21 days of operation and advise passengers of the contractor taking over the Services or journey.

## BEHAVIOUR, CODE OF PRACTICE & PROTOCOL

262. Any behaviour related incidents involving school children and vehicles used on schools journeys should immediately be brought to the attention of the school. In the event of serious misbehaviour on the vehicle which makes proceeding further with the journey unsafe in the driver's judgement, he/she should pull into the side of the road at a safe place and notify the depot by mobile phone/radio. The journey should not continue until a company representative has arrived to assess the situation or the driver is issued with further instructions. The depot manager should notify the school and/or request assistance from the police. The driver **should NOT take the vehicle back to the school unless the disturbance breaks out within two miles of the school or he/she is instructed otherwise.** Drivers should report behavioural problems (if possible with the identities of the pupils involved) to their Depot Managers as soon as practically possible.
263. The Council reserves the right to ask Contractors to provide attendants to travel on specific journeys for specific periods at a cost to be agreed between the Council and the Contractor. Such attendants shall be responsible for ensuring, so far as possible, the orderly conduct and behaviour of all passengers on such journeys.



## PROTECTION OF VULNERABLE GROUPS (PVG) SCHEME

264. Individuals employed by Contractors to drive on Contracts awarded through this 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.
265. 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 make arrangements for any drivers they intend to deploy on Contracts to obtain a PVG Scheme Record or PVG Short Scheme Record that notifies Disclosure Scotland that the Contractor is an Interested Party, to be informed about barring decisions related to the driver. 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.
266. The Contractor is responsible for obtaining the written consent of each driver they intend to use on Contracts, for the Council to have access to their PVG Scheme Record or PVG Short Scheme Record. Drivers who refuse to comply with this request 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.
267. The Contractor shall make arrangements for the Council to have access to the Registered Body Copy of each driver's PVG Scheme Record or PVG Short Scheme Record, to allow senior officers of the Council to conduct a risk assessment of any conviction or other vetting information revealed about that driver.
268. The Contractor shall ensure that before any driver is permitted to drive on Contracts awarded through this DPS that the Contractor has a letter from the Council confirming that the driver is deemed suitable to do regulated work with children.
269. If a Contractor is informed by Disclosure Scotland 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 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.

270. 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 on the <https://www.mygov.scot/pvg-scheme/> website. 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.
271. The Contractor is responsible for making arrangements to pay all the fees for PVG Scheme Records and/or Short Scheme Records to Disclosure Scotland. Contractors are expected to register with Disclosure Scotland to obtain PVG Scheme Records for their drivers or to make an arrangement with an Umbrella Body to countersign PVG Scheme applications on their behalf. Details of how to become a registered body and contact information for Umbrella Bodies willing to provide this service are available on the <https://www.mygov.scot/pvg-scheme/> website. See accompanying PVG Guide for contact details. The Council will not act as an Umbrella Body to obtain PVG Records on a Contractor's behalf.
272. 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 withdraw that driver's approval to be used 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.
273. It is an offence for an organisation or employer to fail to make a referral to Disclosure Scotland within 3 months when referral criteria have been met. A Contractor must report harmful behaviour that might affect whether the person is allowed to do regulated work even if it takes place outside of work, or the employer only finds out after the employee has left. If a Contractor receives information about a Driver which suggests they may be involved in conduct that harms children or protected adults or places them at risk of harm then, a referral to Disclosure Scotland must be made. The information could be received from any source – not necessarily the Council – and the harmful behaviour could have happened anywhere and at anytime. This duty to refer exists even if there is involvement from the police. Contractors must make a referral to Disclosure Scotland explaining what has happened. This has to be done if the harmful behaviour meant the person involved:
- was dismissed as a result of the behaviour
  - would have been dismissed but left before they could be
  - has been permanently withdrawn from journeys carrying children or protected adults
- Further details about Duty to Refer and information about how to send a referral are available at <https://www.mygov.scot/pvg-referrals/>
274. 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 through this DPS. The Contractor is responsible for obtaining the consent of each individual for their

personal data to be shared with the Council for the purpose of ensuring that they have the necessary approval to be used on Contracts.

## PROVISION OF STATISTICS

275. The Council uses journey analysis software provided by EP Morris. In order to provide the following journey data for the Services, the Contractor shall permit installation (and any necessary updates) of the EP Morris Data Capture Module on the Contractor's IT system. Data must be provided to the Council every four weeks, using the Data Capture Module and shall include, for each Service:
- Contract number
  - Dates (including identification of public holiday and school holiday journeys)
  - Bus Service number
  - Cash fares per passenger
  - Journey/trip numbers
  - Season tickets (both purchase and use) per passenger
  - Fife Council School Travel Pass use per passenger
  - Passenger boarding and alighting farestages (or actual boarding/alighting points if available)
  - Mileage operated
  - Lost mileage
276. This data must be in a format that can be analysed by contract, by journey, by date, by Services, by farestage (or actual boarding/alighting points if available) and by ticket type.
277. The Council reserves the right to request the Contractor to provide any other relevant statistical information during the period of the Contract to assist in future determination of Best Value Performance Indicators/Audit Commission Performance Indicators.

## **ADDITIONAL CONDITIONS SPECIFIC TO BUS/COACH HIRES**

### **CAPACITY AND SUITABILITY OF VEHICLES**

278. 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.
279. 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.

### **SEATBELTS**

280. Vehicles used on any Contract must be fitted with a seatbelt on every seat used by a passenger.
281. 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.

### **SERVICE DISRUPTION**

282. In the event of anticipated or actual disruption to Contract Services, the Contractor must advise the Council at the earliest possible opportunity of the services and journeys affected or likely to be affected. See Condition 35 also.

### **PAYMENT OF ACCOUNTS**

283. The Contractor shall be responsible for meeting all costs, charges and taxes relating to the operation of the Contract.
284. If a Purchase Order Number has been issued by the Council for a hire, the Contractor must send an invoice to [invoices.accounts@fife.gov.uk](mailto:invoices.accounts@fife.gov.uk) and clearly show ALL the following information :
- i. Name and address of the Contractor
  - ii. Contractor's VAT registration number
  - iii. Invoice number

- iv. Invoice date
- v. Subtotal, VAT and total cost of invoice
- vi. Brief description of services provided
- vii. All purchase order numbers covered by the invoice.
- viii. For each purchase order number, the Contractor's account reference (if required), subtotal, VAT and total cost billed to that purchase order number, must be shown.

285. Where no Purchase Order Number is issued, an alternative invoicing/payment arrangement will be agreed at the time of booking confirmation. This may involve payment by cheque.

## **APPENDIX 1 - DATA PROCESSING SCHEDULE (ALL CONTRACTS)**

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

The data processing activities carried out by the Contractor under this DPS are as follows:
<b>1. Subject matter</b>
Carriage of school pupils who may present travel passes, travel vouchers or discount letters to drivers or ticket office staff.
<b>2. Duration:</b>
1 November 2019 – 4 November 2029
<b>3. Nature and purpose:</b>
To allow the transport contractor to verify that pupils are entitled to travel or to receive a discount. To identify individuals using the service.
<b>4. Types of Personal Data</b>
Name, address and dob
<b>5. Data subjects</b>
Pupils
<b>6. Outputs:</b>
Vouchers/Passes/Letters to reconcile with invoices

### **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.