

DEPARTMENT FOR TRANSPORT

**LOW CARBON VEHICLE PROCUREMENT PROGRAMME:
SUPPLY OF LOWER CARBON AND ALL-ELECTRIC VANS**

Ref: PPRO 4/9/17

FRAMEWORK AGREEMENT

INDEX

BACKGROUND

1 INTERPRETATION

PART ONE: FRAMEWORK ARRANGEMENTS AND ORDER PROCEDURE

2 TERM OF FRAMEWORK AGREEMENT

3 SCOPE OF FRAMEWORK AGREEMENT

4 ENTIRE AGREEMENT

5 CONTRACTOR'S APPOINTMENT

6 NON-EXCLUSIVITY

7 ORDERING PROCEDURES

8 ADDITIONAL SERVICES

9 RESPONSIBILITY FOR AWARDS

PART TWO: CONTRACTOR'S GENERAL FRAMEWORK OBLIGATIONS

10 WARRANTIES AND REPRESENTATIONS

11 CORRUPT GIFTS AND PAYMENTS OF COMMISSION

12 CONFLICTS OF INTEREST

13 PERFORMANCE OF CALL-OFF CONTRACTS AND LEASES

14 PRICES FOR THE VEHICLES AND ASSOCIATED SERVICES

PROVISIONS RELATING TO THE VEHICLES AND ANY ASSOCIATED SERVICES

15 ENVIRONMENTAL REQUIREMENTS

16 NON-DISCRIMINATION

PART THREE: CONTRACTOR'S INTELLECTUAL PROPERTY OBLIGATIONS

17. INTELLECTUAL PROPERTY RIGHTS

PART FOUR: CONTRACTOR'S INFORMATION OBLIGATIONS

18 PROVISION OF MANAGEMENT INFORMATION

19 RECORDS AND AUDIT ACCESS

20 CONFIDENTIALITY

21 OFFICIAL SECRETS ACTS

22 DATA PROTECTION

23 FREEDOM OF INFORMATION

24 PUBLICITY

PART FIVE: FRAMEWORK AGREEMENT TERMINATION AND SUSPENSION

25 TERMINATION

26 **CONSEQUENCES OF TERMINATION AND EXPIRY**

PART SIX: INSURANCE AND LIABILITY

27 **LIABILITY**

28 **INSURANCE**

PART SEVEN: OTHER PROVISIONS

29 **ASSIGNMENT AND SUB-CONTRACTING**

30 **VARIATIONS TO THE FRAMEWORK AGREEMENT**

31 **CHANGE IN LAW**

32 **RIGHTS OF THIRD PARTIES**

33 **STATUTORY INVALIDITY**

34 **SEVERABILITY**

35 **REMEDIES CUMULATIVE**

36 **WAIVER**

37 **NOTICES**

38 **COMPLAINTS HANDLING AND RESOLUTION**

39 **DISPUTE RESOLUTION**

40 **LAW AND JURISDICTION**

SCHEDULE 1 - THE SPECIFICATION

SCHEDULE 2 - TERMS AND CONDITIONS FOR THE CALL OFF [CONTRACT] [LEASE]

SCHEDULE 3 - ORDER FORM

SCHEDULE 4 - PRICING SCHEDULE

SCHEDULE 5 - MANAGEMENT INFORMATION REQUIREMENTS

THIS **AGREEMENT** is made on 11th June 2009

Between

(1) The Secretary of State for Transport (“the Department”); and

(2) Ashwoods Automotive Limited, Company Number: 04804444, whose registered address is at Hybrid House, 80 Summerway, Exeter, EX4 8DS (“the Contractor”)

BACKGROUND

(A) The Department wishes to facilitate by way of the Low Carbon Vehicles Procurement Programme (“the Programme”) the procuring of lower carbon vans and all-electric vehicles to the Contracting Bodies defined in this Framework Agreement for the purpose of trialling and monitoring their use (Phase 1 of the Programme) on and from 11th June 2009. The Department is now considering extending the Term of this Framework Agreement for low carbon vans for Phase 2 of the Programme for the purpose of procuring the use of these vehicles. (“The Objectives”).

(B) This Framework Agreement provides an ordering procedure for the procurement of the lower carbon vans and sets out the obligations of the Contractor during and after the Term of this Framework Agreement.

(C) The acceptance of each Order by the Contractor (for a purchase or lease arrangement) shall give rise to a separate contract or lease with the relevant Contracting Body subject to the Call Off Terms and Conditions. A Contracting Body may agree additional terms with the Contractor in relation to its particular orders but is not otherwise authorised to vary any of the terms of this Framework Agreement without prior approval of the Department.

(D) During the operation of Phase 2 of the Programme, it is the parties’ intention that there will be no obligation for any Contracting Body to place orders under the extended term of the Framework Agreement.

(E) During Phase 2, the Department shall provide a Grant to subsidise the procurement of the Low Carbon Vehicles. The Grant will be paid by the Department to the Contractor and the contractor will discount the Grant amount from the Vehicle Invoice to the Contracting Bodies.

IT IS AGREED as follows:-

1 INTERPRETATION

1.1 Unless the context otherwise requires, the following words and expressions shall have the following meanings:-

“Acknowledgement”	means the acknowledgement of an Order (for a purchase or lease arrangement) sent by the Contractor as provided in Clause 7.5;
“Associated Service”	means any service in respect of the repair and maintenance of the Vehicles described in the Specification and the provision of a Replacement Vehicle which, at the option of the Contracting Body, the Contractor is required to supply under the Call-Off Contract or Lease;
“Department”	means the Secretary of State for Transport;
“Call-Off Contract”	means the purchase agreement (made pursuant to this Framework Agreement) for the provision of the Vehicles and Associated Services made between the Contracting Body and the Contractor incorporating the Call-Off Terms and Conditions and comprising of an Order form, Acknowledgement and Confirmation;
“Call-Off Lease”	means the lease agreement (made pursuant to this Framework Agreement) for the provision of the Vehicles and Associated Services made between the Contracting Body and the Contractor incorporating the Call-Off Terms and Conditions and comprising of an of Order form, Acknowledgement and Confirmation;
“Call-Off Terms and Conditions”	means the terms and conditions for a purchase or a lease agreement that will respectively cover Phases 1 and 2 contained in Schedule 2 ;
“Commencement Date”	means the date shown on the Department’s award of the Framework Agreement letter;
“Complaint”	means any formal complaint raised by any Contracting Body in relation to the performance of the Framework Agreement of any Call-Off Contract or Lease;

“Confidential Information”	means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to the business affairs, properties, assets, trading practices, services, developments, trade secrets, Intellectual Property Rights, know-how, personnel, customers and suppliers of either Party;
“Confirmation”	means confirmation by the Contracting Body of its Order as provided in Clause 7.6 ;
“Contracting Bodies”	means those bodies the Department may notify to the Contractor;
“Default”	means any breach of the obligations of the Contractor (including fundamental breach or breach of a fundamental term) or any default, act, omission, negligence or statement of the Contractor in connection with or in relation to the subject matter of this Framework Agreement, including, but not limited to, Call-Off Contracts and Leases arising hereunder with any Contracting Body, and in respect of which the Contractor is liable to the Department;
“DPA”	means the Data Protection Act 1998 and any subordinate legislation made under such Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation;
“Environmental Information Regulations”	means the Environmental Information Regulations 2004 and any guidance and/or codes of practice issued by the Information Commissioner in relation to such Regulations;
“Framework Agreement”	means this Agreement and all Schedules to this Agreement;
“Framework Manager”	means the person nominated by the Secretary of State to act on his behalf for the purpose of managing the Framework Agreement;
“Framework Representative”	means such competent person as the Contractor shall appoint to be his representative in relation to the performance of the Framework Agreement;
“FOIA”	means the Freedom of Information Act 2000 and any subordinate legislation made under such Act

from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation;

“General Change in Law” means a change in Law which comes into effect after the Commencement Date, where the change is of a general legislative nature (including taxation or duties of any sort affecting the Contractor) or which would affect or relate to a comparable supply of services of the same or a similar nature to the supply of the Vehicles and Associated Services;

“Good Industry Practice” means the exercise of that degree of skill, diligence and foresight which would reasonably and ordinarily be expected from a skilled and experienced operator engaged in the same type of business as the Contractor;

“Initial Term” means the period commencing on the Commencement Date and ending on the date being the third anniversary of the Commencement Date;

“Intellectual Property Rights” means patents, inventions, trade marks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off;

“Know-how” means the application of knowledge, information or techniques in the manufacture or processing of the Vehicles (or any Associated Services);

“Law” means any applicable law, statute, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of court or directives or requirements of any Regulatory Body, delegated or subordinate legislation or notice of any Regulatory Body;

Month” means a calendar month and **“Monthly”** shall be similarly construed;

“Order” means an order for purchasing or leasing of the Vehicles and any Associated Services placed by any Contracting Body on the Contractor in

accordance with the Ordering Procedures, and substantially in the form set out, in **Schedule 3**;

“Order Manager”	means an official of the Contracting Body empowered to place an order under the Framework Agreement;
“Ordering Procedures”	means the ordering and award procedures specified in Clause 7;
“Parties”	means the Contractor and the Department and “Party” shall be construed accordingly as the context requires;
“Phase 1”	means the stage of the Low Carbon Vehicles Procurement Programme where the low carbon vehicles are being trialled and monitored by the Contracting Bodies;
“Phase 2”	means the stage of the Low Carbon Vehicles Procurement Programme where the low carbon vehicles are being used by the Contracting Bodies (and no longer being trialled or monitored);
“Pre-Existing Intellectual Property Rights	means any Intellectual Property rights vested in or licensed to the Department or the Contractor prior to or independently of the performance by the Department or Contractor of their obligations under this Framework Agreement;
“Pricing Schedule”	means the vehicle pricing for Phase 2 contained in Schedule 4 and “Pricing Matrix” shall mean a pricing matrix within that Schedule as the context requires;
“Quality Management System”	means the system which is based on ISO 9000 or equivalent and can demonstrate that the Contractor is providing the Vehicles and Associated Services to the standards set out in the Framework Agreement and the Call-Off Contracts or Leases;
“Regulatory Bodies”	means those Government departments and regulatory, statutory and other entities, committees and bodies, which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Framework Agreement or any other affairs of the Department and “Regulatory Body” shall be construed accordingly as the context requires;

“Requests for Information”	shall have the meaning set out in FOIA or any apparent request for information under the FOIA or the Environmental Information Regulations;
“Service Level”	means the standard of delivery set out in the Specification or such other standard of delivery agreed between a Contracting Body and the Contractor as may be contained in an Order and subsequent Acknowledgement and Confirmation;
“Specific Change in Law”	means a change in Law which comes into effect after the date of this Framework Agreement that specifically relates to the business of the Department and which would not affect a comparable supply of vehicles and associated services or the same or similar nature to the supply of Vehicles and Associated Services;
“Specification”	means the document describing the Vehicles or Associated Services to be performed under this Framework Agreement as set out in Schedule 1 ;
“Tax”	means Value Added Tax;
“Term”	means the Initial Term, subject to: <ul style="list-style-type: none"> (a) any earlier termination of the Framework Agreement in accordance with Clause 25; or (b) any extension of the Framework Agreement in accordance with Clause 2.2;
“Vehicles”	means the Vehicles (including, as required by the Contracting Body, any Associated Services) detailed in the Specification and contained in an Order ;
“Working Days”	means Monday to Friday inclusive, excluding public and bank holidays.
“Year”	means a calendar year.

The interpretation and construction of this Framework Agreement shall all be subject to the following provisions:

1.2 words importing the singular meaning include, where the context so admits, the plural and vice versa;

1.3 words importing the masculine include the feminine and the neuter;

1.4 the words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”;

1.5 references to any person shall include natural persons and partnerships, firms and other incorporate bodies and all other legal persons of whatever kind and however constituted;

1.6 where there is provision for any notification, consent or approval to be given under this Framework Agreement or under a Call-Off Contract or Lease such notification, consent or approval shall only be valid if given in advance and in writing;

1.7 references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent amendment, modification, order, regulation or instrument as subsequently amended or re-enacted;

1.8 headings are included in this Framework Agreement for ease of reference only and shall not affect the interpretation or construction of this Framework Agreement;

1.9 references in this Framework Agreement to any clause or sub-clause or schedule without further designation shall be construed as a reference to that clause or sub-clause or schedule to this Framework Agreement so numbered;

1.10 references in this Framework Agreement to any paragraph or sub-paragraph without further designation shall be construed as a reference to the paragraph or sub-paragraph of the relevant schedule to this Framework Agreement so numbered;

1.11 reference to a clause is a reference to the whole of that clause unless stated otherwise;

1.12 in the event and to the extent only of any conflict between clauses and the remainder of the schedules, the clauses shall prevail over the remainder of the schedules.

PART ONE: FRAMEWORK ARRANGEMENTS AND ORDER PROCEDURE

2 TERM OF FRAMEWORK AGREEMENT

The Framework Agreement shall take effect on the Commencement Date and shall expire on 31st March 2013. The Department and the Contractor acknowledge that only the first 500 vehicles ordered or leased in Phase 2 will be supported by grant funding.

3 SCOPE OF FRAMEWORK AGREEMENT

3.1 This Framework Agreement governs the relationship between the Department and the Contractor in respect of the provision of the Vehicles or Associated Services by the Contractor to the Contracting Bodies.

3.2 During Phase 2, the Contracting Bodies may at their absolute discretion and from time to time order the Vehicles and any Associated Services from the Contractor under the Ordering Procedure.

3.3 Nothing in this Framework Agreement shall be construed as creating a partnership, contract of employment or a relationship of principal and agent between the Department and the Contractor.

4 ENTIRE AGREEMENT

4.1 This Framework Agreement constitutes the entire understanding between the Department and the Contractor relating to its subject matter.

4.2 Neither the Department nor the Contractor has relied upon any representation or promise except as expressly set out in the Framework Agreement.

4.3 **Clauses 4.1 and 4.2** shall not apply to any representations made by the Contractor as part of the tender process.

4.4 Without prejudice to the generality of the foregoing, save as expressly provided in the Framework Agreement and with the exception of statements made fraudulently, the Department gives no promise, warranty, undertaking or representation to the Contractor.

4.5 In the event of and only to the extent of any conflict between the Department and the Contractor concerning an Order Form, the Call-Off Contract or Lease, this Framework Agreement and the Specifications the conflict shall be resolved in accordance with clause 4.6.

4.6 The Framework Agreement shall prevail over the Specification which shall prevail over the Order Form and any agreed additions or variations in a Call-Off Contract or Lease.

5 **CONTRACTOR'S APPOINTMENT**

The Department appoints the Contractor to provide the Vehicles and Associated Services. In consideration of the Department hereby agreeing to pay the Contractor the sum of £1 (if demanded by the Contractor) the Contractor agrees to keep its prices, as set out in the Pricing Schedule, fixed for the first 12 month period from the commencement of the Term and only to claim in accordance with the relevant contract or lease for additional monies in respect of work undertaken.

6 **NON-EXCLUSIVITY**

The Contractor acknowledges that in entering this Framework Agreement no form of exclusivity has been granted by the Department for the provision of the Vehicles and Associated Services from the Contractor and that the Department and the Contracting Bodies are at all times entitled to enter into other contracts or leases, and arrangements with other Contractors for the provision of any or all the Vehicles and Associated services which are the same or similar to the Vehicles and Associated Services.

7 **ORDERING PROCEDURES**

7.1 During Phase 1, the Contracting Bodies will place Orders to the Contractor, that represent the number of Vehicles agreed with the Department and the Framework Manager, by serving an order substantially in the form set out in **Schedule 3** or such similar or analogous form agreed with the Contractor including but not limited to systems of ordering involving facsimile, electronic mail or other on-line solutions.

7.2 During Phase 2, the Contracting Bodies may place an Order to the Contractor at any time during the Term by serving an order substantially the form set out in **Schedule 3** or such similar or analogous form agreed with the Contractor including but not limited to systems of ordering involving facsimile, electronic mail or other on-line solutions.

7.3 On receipt of an Order (whether during Phase 1 or 2) the Contractor shall provide, (within 5 Working Days) or as otherwise agreed with the Order Manager, a written acknowledgement comprising:

7.3.1 its proposed approach to the provision of the Vehicles and Associated Services;

7.3.2 programme for delivery of the Vehicles; and

7.3.3 payment needed to fulfil the Order.

7.4 On receipt of the Acknowledgement, the Contracting Body may send written confirmation of its Order to the Contractor (within 5 Working Days).

7.5 On receipt of the Confirmation, the Contractor shall be a party to a Call-Off Contract or Lease with the relevant Contracting Body for the provision of Vehicles and any Associated Services referred to in that Order, Acknowledgement and Confirmation.

7.6 The provisions of Clause 37.2 (deemed receipt) shall apply to all communications in this Framework Agreement.

7.7 For the avoidance of doubt, the Contractor may not decline a properly completed Order for Vehicles and any Associated Services.

8 ADDITIONAL SERVICES

The Contracting Body may include in an Order services which are not Services (that is, included in the Specification) but in such a case the Contractor may decline an Order for such services or provide a counter offer.

9. RESPONSIBILITY FOR AWARDS

The Contractor acknowledges that each Contracting Body is independently responsible for the conduct of their awards of Call-Off Contracts or Leases under this Framework Agreement and that the Department is not responsible or accountable for the conduct of the Contracting Bodies in relation to this Framework Agreement.

PART TWO: CONTRACTOR'S GENERAL FRAMEWORK OBLIGATIONS

10 WARRANTIES AND REPRESENTATIONS

10.1 The Contractor warrants and represents to the Department that:

10.1.1 it has full capacity and all necessary consents (including, where its procedures so require, the consent of its Parent Company) to enter into and to perform this Framework Agreement and that this Framework Agreement is executed by a duly authorised representative of the Contractor;

10.1.2 as at the date hereof, all information contained in its tender for the Vehicles and Associated Services remains true, accurate, and not misleading save as may have been specifically disclosed in writing to the Department prior to the execution of this Framework Agreement;

10.1.3 it has not committed any offence under the Prevention of Corruption Acts 1889 to 1916;

10.1.4 no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress, or, to the best of its knowledge pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under this Framework Agreement and any Call-Off Contract or Lease which may be entered with the Contracting Bodies;

10.1.5 it is not subject to any contractual obligation, compliance with which will be likely to have a material adverse effect on its ability to perform its obligations under this Framework Agreement and any Call-Off Contract or Lease which may be entered with the Contracting Bodies;

10.1.6 no proceedings or other steps have been taken and not discharged (nor, to the best of their knowledge, are threatened) for the winding up of the Contractor or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, Department or similar officer in relation to any of the Contractor's assets or revenue;

10.1.7 it owns, has obtained or is able to obtain valid licences for all Intellectual Property Rights that are necessary for the performance of this Framework Agreement and the use of the Vehicles by the Contracting Bodies; and

10.1.8 in the **three (3) years** prior to the date of this Framework Agreement:

10.1.8.1 it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;

10.1.8.2 it has been in full compliance with all applicable securities laws and regulations in the jurisdiction in which it is established; and

10.1.8.3 it has not performed any act or omission with respect to its financial accounting or reporting which could have an adverse effect on the Contractor's position as an ongoing business concern or its ability to fulfil its obligations under this Framework Agreement.

10.2 The Contractor warrants and represents to each of the Contracting Bodies the statements in **Clauses 10.1** above.

11 CORRUPT GIFTS AND PAYMENTS OF COMMISSION

11.1 The Contractor shall not offer or give, or agree to give, to any employee, agent, servant or representative of the Department any gift or consideration of any kind as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Framework Agreement or any other contract with the Department, or for showing or refraining from showing favour or disfavour to any person in relation to the Framework Agreement or any such contract. The attention of the Contractor is drawn to the criminal offences under the Prevention of Corruption Acts 1889 to 1916.

11.2 The Contractor warrants that it has not paid commission or has agreed to pay any commission to any employee or representative of the Department by the Contractor or on the Contractor's behalf.

11.3 Where the Contractor or any person acting on the Contractor's behalf, engages in conduct prohibited by **Clauses 11.1 or 11.2** above in relation to this Framework Agreement or any other contract with the Department, the Department has the right to:

11.3.1 terminate the Framework Agreement in accordance with **Clause 25.1** and recover from the Contractor the amount of any loss suffered by the Department resulting from the termination; or

11.3.2 recover in full from the Contractor any other loss sustained by the Department in consequence of any breach of this clause, whether or not the Framework Agreement has been terminated.

11.4 In exercising its rights or remedies under **Clause 11.3** above, the Department shall act in a reasonable and proportionate manner having regard to such matters as the gravity of, and the identity of the person performing, the prohibited act.

12 CONFLICTS OF INTEREST

12.1 The Contractor shall take appropriate steps to ensure that neither the Contractor nor any employee, servant, agent, supplier or sub-contractor is placed in a position where there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor or such persons and the duties owed to the Department under the provisions of the Framework Agreement. The Contractor will disclose to the Department full particulars of any such conflict of interest which may arise.

12.2 The provisions of this Clause shall apply during the continuance of the Framework Agreement and indefinitely after its termination.

13 PERFORMANCE OF CALL-OFF CONTRACTS AND LEASES

13.1 The Contractor shall perform all Call-Off Contracts and Leases entered into with a Contracting Body:

13.1.1 in accordance with the requirements of this Framework Agreement;

13.1.2 in accordance with the Specification;

13.1.3 in accordance with the terms and conditions of the respective Call-Off Contracts or Leases and Service Levels as agreed and incorporated in the relevant Order;

13.1.4 in accordance with Good Industry Practice;

13.1.5 with appropriately experienced, qualified and trained personnel exercising all due skill, care and diligence; and

13.1.6 in compliance with all applicable Laws.

13.2 The Contractor shall operate a Quality Management System so as to be able to demonstrate compliance with these requirements.

14 PRICES FOR THE VEHICLES AND ASSOCIATED SERVICES

14.1 The prices offered by the Contractor for Call-Off Contracts and Leases to Contracting Bodies for the Vehicles and any Associated Services shall be the prices listed in the Pricing Schedule as such prices as may be adjusted in accordance with the provisions of this **Clause 14**.

14.2 The prices in the Pricing Schedule shall be exclusive of Value Added Tax.

14.3 The Department or the Contractor may apply for a review of the Pricing Schedule, by giving **3 months'** written notice prior to the anniversary of the Commencement Date (including any extension of the original Term of the Framework Agreement). The Department and Contractor will conduct the review of the Pricing Schedule.

14.4 During this **3 month period**, the Contractor may, following agreement with the Department and by giving the Department written notice to take effect on the anniversary of the Commencement Date, increase or reduce the charges set out in the Pricing Schedule subject to **Clause 14.5** below.

14.5 Any increase in these charges will not exceed the percentage change in the Office of National Statistics' Consumer Prices Index (CPI) between the Commencement Date and the date of the said notice given under **Clause 14.4**.

PROVISIONS RELATING TO THE VEHICLES AND ANY ASSOCIATED SERVICES

15 ENVIRONMENTAL REQUIREMENTS

15.1 In providing the Vehicles and any Associated Services the Contractor shall comply with the Department's environmental policy, which is to conserve energy, water and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.

15.2 All written work, including reports, delivered in connection with this Framework Agreement and any Call-Off Contracts and Leases shall (unless otherwise specified) be produced on recycled paper containing at least 80% post consumer waste and used on both sides where appropriate. The Contractor shall meet all reasonable requests by the Contracting Bodies for information evidencing compliance with the provisions of this **Clause 15** by the Contractor.

16 NON-DISCRIMINATION

16.1 The Contractor shall not unlawfully discriminate either directly or indirectly or by way of victimisation or harassment against any person on grounds of:

- (a) race (colour, nationality, or ethnic or national origin) contrary to the Race Relations Act 1976; or
- (b) sex or sexual orientation contrary to the Sex Discrimination Act 1975, and the Sexual Orientations Regulations 2003; or
- (c) disability contrary to the Disability Discrimination Act 1995; or
- (d) religion or belief contrary to the Employment Equality (Religion or Belief) Regulations 2003; or
- (e) age contrary to the Employment Equality (Age) Regulations 2006.

16.2 The Contractor shall take all reasonable steps to secure the observance of **Clause 16.1** by all servants, employees or agents of the Contractor and all suppliers and sub-contractors employed in the provision of the Vehicles and any Associated Services. Where any employee or Sub-contractor employed by the Contractor is required to carry out any activity on or alongside the Department's employees on any other premises the Contractor shall ensure that each such employee and Sub-contractor complies with the Department's employment policies and codes of practice relating to discrimination and equal opportunities or any other policies that the relevant Contracting Body other than the Department may notify to the Contractor from time to time.

16.3 The Contractor shall notify the relevant Order Manager and the Framework Manager in writing as soon as he becomes aware of any investigation or proceedings brought against the Contractor under the Discrimination Acts in connection with the Contractor's performance of the Services. Where there is such an investigation or proceedings the Contractor shall free of charge:

- (a) provide any information requested by the investigating body, court or tribunal in the timescale allotted;
- (b) attend, and permit a representative from the Department to attend any associated meetings;
- (c) promptly allow access to any documents and information relevant to the investigation or proceedings;
- (d) allow itself and any staff to appear as witness in any ensuing investigation or proceedings; and
- (e) co-operate fully and promptly with the investigatory body, court or tribunal.

16.4 The Contractor shall indemnify the Department against all costs, charges, expenses (including legal and administrative expenses) and payments made by the Department arising out of or in connection with any such investigation or proceedings and such other financial redress to cover any payment the Department may have been ordered or required to pay to a third party.

16.5 In the event that the Contractor enters into any sub-contract in connection with the Framework Agreement it shall impose obligations on its Sub-contractors in terms substantially similar to those set out in **Conditions 16.1 to 16.4**.

16.6 Where the Contractor is found by any investigatory body, court or tribunal or to have discriminated against a person, in connection with the Contractor's performance under the Framework Agreement, contrary to any provision in the Discrimination Acts the Department shall be entitled to treat such finding as evidence that the Contractor has committed a material breach of this Framework Agreement and may terminate this Framework Agreement in accordance with **Condition 25.4**.

16.7 The Contractor acknowledges that the Contracting Bodies are under a duty in relation to the matters set out in **Clause 16.1** to have due regard to the need to eliminate unlawful discrimination on in respect of those matters and to promote equality of opportunity between the relevant groups of people. When providing the Vehicles and any Associated Services in accordance with the terms of this Framework Agreement and a Call-Off Contract or Lease and at no additional cost the Contractor shall assist and cooperate with the relevant Contracting Body where possible in satisfying this duty.

PART THREE: CONTRACTOR'S INTELLECTUAL PROPERTY OBLIGATIONS

17. INTELLECTUAL PROPERTY RIGHTS

17.1 Save as granted under this Framework Agreement, neither the Department nor the Contractor shall acquire any right, title or interest in the other's Pre-Existing Intellectual Property Rights.

17.2 The Contractor shall ensure that the provision of Vehicles and any Associated Services and the performance of the Contractor's responsibilities hereunder shall not infringe any Intellectual Property Rights of any third party.

17.3 The Contractor shall indemnify the Department against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right by the availability of the Vehicles or Associated Services or the performance of the Contractor's

responsibilities hereunder, except to the extent that such liabilities have resulted directly from the Department's failure properly to observe its obligations under this **Clause 17**.

17.4 The Contractor shall promptly notify the Department if any claim or demand is made or action brought against the Contractor for infringement or alleged infringement of any Intellectual Property Right that may affect the availability of the Vehicles or Associated Services hereunder.

17.5 The Department shall promptly notify the Contractor if any claim or demand is made or action brought against the Department to which **Clause 17.3** or **Clause 17.4** may apply. The Contractor shall at its own expense conduct any litigation arising therefrom and all negotiations in connection therewith and the Department hereby agrees to grant to the Contractor exclusive control of any such litigation and such negotiations.

17.6 The Department shall at the request of the Contractor afford to the Contractor all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the Department to which **Clause 17.3** may apply or any claim or demand made or action brought against the Contractor to which **Clause 17.4** may apply. The Contractor shall reimburse the Department for all costs and expenses (including, legal costs and disbursements on a solicitor and client basis) incurred in so doing.

17.7 If a claim or demand is made or action brought to which **Clause 17.3** may apply, or in the reasonable opinion of the Contractor is likely to be made or brought, the Contractor may at its own expense and within a reasonable time either:

17.7.1 modify any or all of the Vehicles or the Associated Services without reducing the performance and functionality of the same, or substitute alternative vehicles or associated services of equivalent performance and functionality for any or all of the Vehicles or the Associated Services, so as to avoid the infringement or the alleged infringement, provided that the terms herein shall apply mutatis mutandis to such modified or substituted items or services and such substitution shall not increase the burden on a Contracting Body; or

17.7.2 procure a licence to use the Vehicles or provide the Associated Services on terms that are reasonably acceptable to the Department or the Framework Manager.

17.8 In the event that the Contractor has availed itself of its rights to modify the Vehicles and/or Associated Services or to supply a substitute Alternative Vehicle or vehicles; and/or

associated service or services pursuant to **Clause 17.7.1** or to procure a licence under **Clause 17.7.2** and such exercise of the said rights has avoided any claim, demand or action for infringement or alleged infringement, then the Contractor shall have no further liability thereafter under this **Clause 17** in respect of the said claim, demand or action.

17.9 In the event that a modification or substitution in accordance with **Clause 17.7.1** is not possible so as to avoid the infringement, or the Contractor has been unable to procure a licence in accordance with **Clause 17.7.2** the Department or the Framework Manager shall be entitled to delete the relevant Vehicle or Associated Service from being available in relation to the relevant Price Matrices where applicable.

17.10 This **Clause 17** sets out the entire financial liability of the Contractor with regard to the infringement of any Intellectual Property Right by the availability of the Vehicles or Associated Services hereunder. This shall not affect the Contractor's financial liability for other Defaults or causes of action that may arise hereunder.

17.11 The Department warrants that the Contractor's use of any third party item supplied directly or indirectly by the Department or the Framework Manager in accordance with any instructions given by the Department or the Framework Manager in connection with the use of such item shall not cause the Contractor to infringe any third party's Intellectual Property Rights in such item.

PART FOUR: CONTRACTOR'S INFORMATION OBLIGATIONS

18 PROVISION OF MANAGEMENT INFORMATION

18.1 The Contractor shall be required to submit management information to the Department in accordance with the provisions of Part 1 of **Schedule 5** or as the Department may otherwise reasonably require throughout the Term and thereafter in respect of any Call-Off Contract or Lease entered into with any Contracting Body.

18.2 The Contractor shall be required to submit management information to the Framework Manager in accordance with the provisions of Part 2 of **Schedule 5**, or as the Framework Manager may otherwise reasonably require throughout the Term and thereafter, in respect of any Call-Off Contract or Lease entered into with any Contracting Body.

19 RECORDS AND AUDIT ACCESS

19.1 The Contractor shall keep and maintain until **six (6) years** after the termination or expiry (whichever is the earlier) of this Framework Agreement, full and accurate records and accounts of the operation of this Framework Agreement including the Vehicles and Associated Services provided under it, the Call-Off Contracts and Leases entered into with the Contracting Bodies and the amounts paid by each Contracting Body.

19.2 The Contractor shall keep the records and accounts referred to in **Clause 19.1** above in accordance with good accountancy practice and shall be audited by qualified auditors as and when required to support published annual accounts.

19.3 The Contractor shall on reasonable notice afford the Department (or relevant Contracting Body) and its representatives such access to such records and accounts as may be required by the Department (or relevant Contracting Body) from time to time.

19.4 The Contractor shall provide such records and accounts together with copies of the Contractor's published accounts during the Term to the Department (or relevant Contracting Body) and its internal and external auditors on reasonable written notice.

20 CONFIDENTIALITY

20.1 Each Party:

20.1.1 shall treat all Confidential Information belonging to the other Party as confidential and safeguard it accordingly;

20.1.2 any electronic transfer of the Confidential Information shall be encrypted before transfer; and

20.1.3 shall not disclose any Confidential Information belonging to the other Party to any other person without the prior written consent of the other Party, except to such persons and to such extent as may be necessary for the performance of the Framework Agreement or except where disclosure is otherwise expressly permitted by the provisions of the Framework Agreement.

20.2 The Department and the Contractor shall take all necessary precautions to ensure that all Confidential Information obtained from the other Party under or in connection with the Framework Agreement:

20.2.1 is given only to such of its staff and professional advisors or consultants engaged to advise it in connection with the Framework Agreement as is strictly necessary for the performance of the Framework Agreement and only to the extent necessary for the performance of the Framework Agreement;

20.2.2 is treated as confidential and not disclosed (without prior Approval) or used by any staff or such professional advisors or consultants otherwise than for the purposes of the Framework Agreement.

20.3 The Department and the Contractor shall not use any Confidential Information it receives from the other Party otherwise than for the purposes of the Framework Agreement.

20.4 The provisions of **Clauses 20.1 to 20.3** shall not apply to any Confidential Information received by one Party from the other:

20.4.1 which is or becomes public knowledge (otherwise than by breach of this clause);

20.4.2 which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;

20.4.3 where acquired from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;

20.4.4 which must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to **Clause 23**.

20.5 Nothing in this clause shall prevent the Department:

20.5.1 disclosing any Confidential Information for the purpose of:

- (a) the examination and certification of the Department's accounts; or
- (b) any examination pursuant to Sections 44 and 46 of the Audit Commission Act 1998 of the economy, efficiency and effectiveness with which the Department has used its resources; or

20.5.2 disclosing any Confidential Information obtained from the Contractor:

- (a) to any government department or any other Regulatory Body. All government departments or Regulatory Bodies receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other government departments or other Regulatory Bodies on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any government department or any Regulatory Body; or
- (b) to any person engaged in providing any services to the Department for any purpose relating to or ancillary to the Framework Agreement;

provided that in disclosing information under sub-paragraph (b) the Department discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.

20.6 Nothing in this Clause shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Framework Agreement in the course of its normal business, to the extent that this does not result in a disclosure of Confidential Information or an infringement of Intellectual Property Rights.

20.7 In the event that the Contractor fails to comply with this **Clause 20**, the Department reserves the right to terminate the Framework Agreement by notice in writing with immediate effect.

20.8 The provisions under this **Clause 20** are without prejudice to the application of the Official Secrets Acts 1911 to 1989 to any Confidential Information.

21 **OFFICIAL SECRETS ACTS**

The Contractor shall undertake to abide by, and ensure that its Staff abide by the provisions of the Official Secrets Act 1911 to 1989 (where applicable) and shall continue to apply this obligation during the continuation of this Framework Agreement and after the expiry or termination of this Framework Agreement.

22 **DATA PROTECTION**

22.1 The Contractor shall (and shall procure that any of its personnel involved in the operation of the Framework Agreement) comply with any notification requirements under the DPA.

22.2 Notwithstanding the general obligation in **Clause 22.1**, where the Contractor is processing personal data (as defined by the DPA) as a data processor for the Department (as defined by the DPA) the Contractor shall ensure that it has in place appropriate technical and organisational measures to ensure the security of the personal data (and to guard against unauthorised or unlawful processing of the personal data and against accidental loss or destruction of, or damage to, the personal data), as required under the Seventh Data Protection Principle in schedule 1 to the DPA; and

22.2.1 provide the Department with such information as the Department may reasonably require to satisfy itself that the Contractor is complying with its obligations under the DPA;

22.2.2 promptly notify the Department of any breach of the security measures required to be put in place pursuant to **Clause 22.1**; and

22.2.3 ensure it does not knowingly or negligently do or omit to do anything which places the Department in breach of the Department's obligations under the DPA.

22.3 The provisions of this Clause shall apply during the Term and indefinitely after its expiry or termination.

23 FREEDOM OF INFORMATION

23.1 The Contractor acknowledges that the Department is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Department (at the Contractor's expense) to enable the Department to comply with its obligations under these provisions.

23.2 The Contractor shall, and shall procure that its sub-contractors shall:-

23.2.1 transfer the Request for Information to the Department as soon as practicable after receipt and in any event within **two (2) Working Days** of receiving a Request for Information;

23.2.2 provide the Department with a copy of all Information in its possession or power in the form that the Department requires within **five (5) Working Days** (or such other period as the Department may specify) of the Department requesting that Information; and

23.2.3 provide all necessary assistance as reasonably requested by the Department to enable the Department to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.

23.3 The Department shall be responsible for determining at its absolute discretion whether any Information:

23.3.1 is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations;

23.3.2 is to be disclosed in response to a Request for Information, and in no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Department.

23.4 The Contractor acknowledges that the Department may, acting in accordance with:

(a) the Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part 1 of FOIA (issued under section 45 of the FOIA, November 2004); and

(b) the Code of Practice on the discharge of the obligations of public authorities under the Environmental Information Regulations 2004 (issued under regulation 16 of the Regulations, February 2005),

be obliged under the FOIA or the Environmental Information Regulations to disclose Information:

23.4.1 without consulting with the Contractor, or

23.4.2 following consultation with the Contractor and having taken its views into account.

23.5 The Contractor shall ensure that all Information produced in the course of the Framework Agreement or relating to the Framework Agreement is retained for disclosure and shall permit the Department to inspect such records as may be requested from time to time.

23.6 The Contractor acknowledges that any lists or Schedules provided by it outlining Confidential Information are of indicative value only and that the Department may nevertheless be obliged to disclose Confidential Information in accordance with **Clause 23.4**.

24 **PUBLICITY**

24.1 The Contractor shall not make any press announcements or publicise this Framework Agreement in any way without the Department's prior written consent. The Contractor shall ensure the observance of the provisions of this **Clause 24** by its personnel.

24.2 The Department shall be entitled to publicise this Framework Agreement in accordance with any legal obligation upon the Department, including any examination of this Framework Agreement by the National Audit Office pursuant to the National Audit Act 1983; the publication of the performance of the Vehicles in respect of the level of carbon emissions and fuel economy achieved and reliability, or otherwise.

24.3 The Department and the Contractor shall not do anything or cause anything to be done, which may damage the reputation of the other Party or bring the other Party into disrepute.

PART FIVE: FRAMEWORK AGREEMENT TERMINATION AND SUSPENSION

25 TERMINATION

25.1 Termination for Corruption

The Department may terminate the Framework Agreement by serving notice on the Contractor with effect from the date specified in such notice where the conduct prohibited in **Clause 11** has occurred.

25.2 Termination on breach of Confidentiality

The Department may terminate the Framework Agreement by serving notice on the Contractor with effect from the date specified in such notice where the conduct prohibited in **Clause 20** has occurred.

25.3 Termination in relation to Official Secrets Act

The Department may terminate the Framework Agreement by serving notice on the Contractor with effect from the date specified in such notice where the Contractor is in breach of its obligation in **Clause 21**.

25.4 Termination on Default

25.4.1. The Department may terminate the Framework Agreement by serving notice on the Contractor with effect from the date specified in such notice where the Contractor commits a Default and:

25.4.1.1 the Contractor has not remedied the Default to the satisfaction of the Department within **25 Working Days**, or such other period as may be specified by the Department, after issue of a written notice specifying the Default and requesting it to be remedied; or

25.4.1.2 the Default is not, in the reasonable opinion of the Department, capable of remedy; or

25.4.1.3 the Default is a material breach.

25.5 Termination on Insolvency

25.5.1 The Department may terminate the Framework Agreement by serving notice on the Contractor with effect from the date specified in such notice where one of the following insolvency events occurs in relation to the Contractor.

25.5.2 The Contractor is an individual or a firm and a petition is presented for the Contractor's bankruptcy, or a criminal bankruptcy order is made against the Contractor or any partner in the firm, or the Contractor or any partner in the firm makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignment for the benefit of creditors, or if an administrator is appointed to manage the Contractor's or firm's affairs.

25.5.3 The Contractor is a company, if the company passes a resolution for winding up or dissolution (otherwise than for the purposes of and followed by an amalgamation or reconstruction) or an application is made for, or any meeting of its directors or members resolves to make an application for an administration order in relation to it or any party gives or files notice of intention to appoint an administrator of it or such an administrator is appointed, or the court makes a winding-up order, or the company makes a composition or arrangement with its creditors, or an administrative receiver, receiver, manager or supervisor is appointed by a creditor or by the court, or possession is taken of any of its property under the terms of a fixed or floating charge.

25.5.4 Where the Contractor is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986.

25.5.5 Any similar event occurs under the law of any other jurisdiction.

25.6 Termination by the Department

The Department shall have the right to terminate the Framework Agreement, or to terminate the provision of any part of the Framework Agreement at any time by giving **three (3) Months'** notice to the Contractor.

26. CONSEQUENCES OF TERMINATION AND EXPIRY

26.1 Where the Department terminates the Framework Agreement under **Clause 25.6**, the Department shall reimburse the Contractor for any commitments, liabilities or expenditure which would otherwise represent an unavoidable loss by the Contractor by reason of the termination of the Framework Agreement, provided that the Contractor takes all reasonable steps to mitigate such loss. Where the Contractor holds insurance, the Contractor shall reduce its unavoidable costs by any insurance sums available. The Contractor shall submit a fully itemised and costed list of such loss, with supporting evidence, of losses reasonably and actually incurred by the Contractor as a result of termination under **Clause 25.6**.

26.2 The Department shall not be liable under **Clause 26.1** to pay any sum which:

26.2.1 was claimable under insurance held by the Contractor, and the Contractor has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy;

26.2.2 when added to any sums paid or due to the Contractor under the Framework Agreement, exceeds the total sum that would have been payable to the Contractor if the Framework Agreement had not been terminated prior to the expiry of the Term; or

26.2.3 may be claimed by the Contractor under a Call Off Contract and Lease.

26.4 Notwithstanding the service of a notice to terminate the Framework Agreement, the Contractor shall continue to fulfil its obligations under the Framework Agreement until the date of expiry or termination of the Framework Agreement or such other date as required under this **Clause**.

26.5 Termination or expiry of the Framework Agreement shall not cause any Call-Off Contracts or Leases to terminate automatically. For the avoidance of doubt, all Call-Off Contracts or Leases shall remain in force unless and until they are terminated or expire in accordance with their terms.

26.6 Within **ten (10) Working Days** of the date of termination or expiry of the Framework Agreement, the Contractor shall return to the Department any data and Confidential Information belonging to the Department in the Contractor's possession, power or control, either in its then current format or in a format nominated by the Department (in which event the Department will reimburse the Contractor's reasonable data conversion expenses), together with all training

manuals and other related documentation, and any other information and all copies thereof owned by the Department, save that it may keep one copy of any such data or information for a period of up to **twelve (12) Months** to comply with its obligations under the Framework Agreement, or any outstanding Call Off Contracts or Leases or for such period as is necessary for such compliance.

26.7 The Department shall be entitled to require access to data or information arising from the provision of the Vehicles and Associated Services from the Contractor until the latest of:

26.7.1 the expiry of a period of **twelve (12) Months** following termination or expiry of the Framework Agreement; or

26.7.2 the expiry of a period of **three (3) Months** following the date on which the Contractor ceases to provide the Vehicles and Associated Services under any Call-Off Contract or Lease.

26.8 In the event that a different organisation is required to take over the provision of the Vehicles and Associated Services at the expiry or termination of this Framework Agreement, the Contractor shall co-operate in the transfer, under arrangements notified to it by the Department.

26.9 The provisions of:

26.9.1 **Clause 10** (Warranties and Representations)

26.9.2 **Clause 11** (Corrupt Gifts and Payments of Commission)

26.9.3 **Clause 16** (Non-Discrimination)

26.9.4 **Clause 17** (Intellectual Property Rights)

26.9.5 **Clause 18** (Provision of Management Information)

26.9.6 **Clause 19** (Records and Audit Access)

26.9.7 **Clause 20** (Confidentiality)

26.9.8 **Clause 21** (Official Secrets Acts)

- 26.9.9 **Clause 22** (Data Protection)
- 26.9.10 **Clause 23** (Freedom of Information)
- 26.9.11 **Clause 24** (Publicity)
- 26.9.12 **Clause 26** (Consequences of Termination and Expiry)
- 26.9.13 **Clause 27** (Liability)
- 26.9.14 **Clause 28** (Insurance)
- 26.9.15 **Clause 36** (Waiver)
- 26.9.16 **Clause 39** (Dispute Resolution)
- 26.9.17 **Clause 40** (Law and Jurisdiction)

and without limitation to the foregoing, any other provision of the Framework Agreement which by its terms is to be performed or observed notwithstanding termination or expiry or which is expressed to survive termination or expiry) shall survive the termination or expiry of the Framework Agreement, together with any other provision which is either expressed to or by implication is intended to survive termination.

PART SIX: INSURANCE AND LIABILITY

27 LIABILITY

27.1 Neither the Department nor the Contractor excludes nor limits liability to the other for death or personal injury or any breach of any obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982 or for fraud or fraudulent misrepresentation.

27.2 The Contractor shall indemnify and keep indemnified the Department fully against all claims, proceedings, actions, damages, legal costs, expenses and any other liabilities whatsoever arising out of, in respect of or in connection with the Framework Agreement including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Contractor, or any other loss which is caused directly or indirectly by any act or omission of the Contractor. This Clause shall not apply to the extent that the Contractor is able to demonstrate that such death or personal injury, or loss or damage was not caused or contributed to by its negligence or default, or the negligence or default of its staff or sub-Contractors, or by any circumstances within its or their control.

27.3 Subject always to **Clause 27.1**, the aggregate liability of either Party in any 12 month period shall in no event exceed ten million pounds (£10,000,000).

27.4 Subject always to **Clause 27.1**, in no event shall either Party be liable to the other for:

27.4.1 loss of profits, business, revenue, goodwill or anticipated savings; and/ or

27.4.2 indirect or consequential loss or damage.

28 **INSURANCE**

28.1 The Contractor shall effect and maintain policies of insurance to provide a level of cover sufficient for all risks which may be incurred by the Contractor under this Framework Agreement and the Call-Off Contracts and Leases including death or personal injury, or loss of or damage to property.

28.2 The Contractor shall effect and maintain the following insurances for duration of the Contract and Lease in relation to the performance of the Framework Agreement:

28.2.1 public liability insurance adequate to cover all risks in the performance of this Framework Agreement from time to time;

28.2.2 employers' liability insurance with a minimum limit of indemnity as required by law from time to time;

28.3 Any excess or deductibles under such insurance (referred to in **Clause 28.1** and **Clause 28.2**) shall be the sole and exclusive responsibility of the Contractor.

28.4 The terms of any insurance or the amount of cover shall not relieve the Contractor of any liabilities arising under the Framework Agreement or under the Call-Off Contracts and Leases.

28.5 The Contractor shall produce to the Department, on request, copies of all insurance policies referred to in this Clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

28.6 If, for whatever reason, the Contractor fails to give effect to and maintain the insurances required by the Framework Agreement then the Department may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Contractor.

28.7 The Contractor shall maintain the insurances referred to in **Clause 28.1** and **Clause 28.2** for a minimum of **6 (six) years** following the expiration or earlier termination of the Framework Agreement.

PART SEVEN: OTHER PROVISIONS

29 ASSIGNMENT AND SUB-CONTRACTING

29.1 The Framework Agreement is personal to the Contractor and the Contractor shall not assign, novate, or otherwise dispose of or sub-contract the Framework Agreement or any part thereof without the previous consent in writing of the Department.

29.2 The Department shall be entitled to:

29.2.1 assign, novate or otherwise dispose of its rights and obligations under the Framework Agreement or any part thereof to any Contracting Body; or

29.2.2 novate the Framework Agreement to any other body (including any private sector body) which substantially performs any of the functions that previously had been performed by the Department;

29.2.3 provided that such assignment, novation or disposals shall not increase the burden of the Contractor's obligations under the Framework Agreement

29.3 The Contractor shall be responsible for the acts and omissions of any sub-contractors as though they are its own in the performance of the Framework Agreement or any Call-Off Contract or Lease with any Contracting Body.

30 **VARIATIONS TO THE FRAMEWORK AGREEMENT**

The Framework Agreement may not be varied except by written agreement signed by duly authorised officers of the Department and the Contractor but the Parties acknowledge that any such variation will not affect any Call-Off Contract or Lease.

31 **CHANGE IN LAW**

31.1 The Contractor shall neither be relieved of its obligations to provide the Vehicles and Associated Services in accordance with the terms of the Framework Agreement nor be entitled to an increase in prices in the Pricing Schedule and/or any charges payable by the Contractor as the result of:-

31.1.1 a General Change in Law; or

31.1.2 a Specific Change in Law where the effect of that Specific Change in Law on the Vehicles and Associated Services is known at the Commencement Date whether by publication of a Bill, as part of a Government Departmental Consultation paper, a draft Statutory Instrument, a proposal in the Official Journal of the European Union or otherwise.

31.2 If a Specific Change in Law occurs or will occur during the Term (other than those referred to in **Clause 31.1.2**), the Contractor shall notify the Department of the likely effects of that change, including:

31.2.1 whether any change is required to the Vehicles and Associated Services, the prices in the Pricing Schedule or the Framework Agreement; and

31.2.2 whether any relief from compliance with the Contractor's obligations is required, including any obligation to achieve any milestones or to meet any service level requirements at any time.

31.3 As soon as practicable after any notification in accordance with **Clause 31.2** the Parties shall discuss and agree the matters referred to in that clause and any ways in which the Contractor can mitigate the effect of the Specific Change of Law, including:

31.3.1 providing evidence that the Contractor has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its sub-contractors;

31.3.2 demonstrating that a foreseeable Specific Change in Law had been taken into account by the Contractor before it occurred;

31.3.3 giving evidence as to how the Specific Change in Law has affected the cost of providing the Services; and

31.3.4 demonstrating that any expenditure that has been avoided has been taken into account in amending the prices in the Pricing Schedule.

31.4 Any increase in the price in the Pricing Schedule or relief from the Contractor's obligations agreed by the Parties pursuant to this **Clause 31** shall be reflected in a revised Pricing Schedule with effect from an agreed date.

32 RIGHTS OF THIRD PARTIES

The Framework Agreement shall not create any rights, under the Contracts (Rights of Third Parties) Act 1999 or otherwise, that shall be enforceable by anyone other than the Department and/or the Contractor, except that the rights specified in the Framework Agreement for the benefit of the Contracting Bodies may be enforced by those Contracting Bodies.

33 STATUTORY INVALIDITY

The Department and the Contractor expressly agree that should any limitation or provision contained in the Framework Agreement be held to be invalid under any particular statute or law, or any rule, regulation or bye-law having the force of law, it shall to that extent be deemed to be omitted but, if the Department or the Contractor thereby becomes liable for loss or damage

which would have otherwise been excluded, such liability shall be subject to the other limitations and provisions set out herein.

34 SEVERABILITY

34.1 If any provision of the Framework Agreement 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 Framework Agreement had been executed with the invalid provision eliminated.

34.2 In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Framework Agreement, the Department and the Contractor shall immediately commence good faith negotiations to remedy such invalidity.

35 REMEDIES CUMULATIVE

Except as otherwise expressly provided by the Framework Agreement, all remedies available to either Party for breach of the Framework Agreement are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

36 WAIVER

36.1 The failure of the Contractor or the Department or a Contracting Body to insist upon strict performance of any provision of the Framework Agreement 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 Framework Agreement.

36.2 A waiver of any default shall not constitute a waiver of any other default.

37 NOTICES

37.1 Except as otherwise expressly provided, no communication from one party to the other shall have any validity under the Framework Agreement unless given or made in writing by or on behalf of the party sending such communication.

37.2 Any notice or other communication which is to be given or made by either Party to the other shall be given or made by letter (sent by hand, post, registered post or by the recorded delivery service), by facsimile transmission or electronic mail (confirmed in either case by letter). Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given **two (2) working days** after the day on which the letter was posted, or four hours, in the case of electronic mail or facsimile transmission or sooner where the other Party acknowledges receipt of such letters, facsimile transmission or item of electronic mail.

37.3 Notices shall be sent to the addresses set out below or as otherwise notified to the relevant party:

in the case of the Department to

Great Minster House,
76, Marsham Street,
London SW1P 4DR.

marked for the attention of the Framework Manager

in the case of the Contractor to

Ashwoods Automotive Limited,
Hybrid House, 80 Summerway,
Exeter, EX4 8DS

38 COMPLAINTS HANDLING AND RESOLUTION

38.1 The Contractor shall inform the Department (or such other alternative body notified to the Contractor by the Department) of any Complaint made by Other Contracting Bodies within **five (5) Working Days** of becoming aware of that complaint.

38.2 Without prejudice to any rights and remedies that a complainant may have at law, including under the Framework Agreement or a Call-Off Contract or Lease, and without prejudice to any obligation of the Contractor to take remedial action under the provisions of the Framework Agreement or a Call-Off Contract or Lease, the Contractor shall use all reasonable endeavours to resolve the Complaint and in so doing, shall deal with the complaint fully, expeditiously and fairly.

38.3 Within **three (3) Working Days** of a request by the Department, the Contractor shall provide full details of a Complaint to the Department, including details of steps taken to its resolution.

39 **DISPUTE RESOLUTION**

39.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Framework Agreement within **20 Working Days** of either Party notifying the other of the dispute such efforts shall involve the escalation of the dispute to the appropriate director (or equivalent) of each Party.

39.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of the competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.

39.3 If the dispute cannot be resolved by the Parties pursuant to **Clause 39.1** the dispute shall be referred to mediation pursuant to the procedure set out in **Clause 39.5** unless (a) the Department considers that the dispute is not suitable for resolution by mediation; or (b) the Contractor does not agree to mediation.

39.4 The performance of the Framework Agreement shall not be suspended, cease or be delayed by the reference of a dispute to mediation and the Contractor (or employee, agent, supplier or sub-contractor) shall comply fully with the requirements of the Framework Agreement at all times.

39.5 The procedure for mediation and consequential provisions relating to mediation are as follows:

39.5.1 A neutral adviser or mediator ("the Mediator") shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within **14 days** after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within **14 days** from the date of the proposal to appoint a Mediator or within **14 days** of notice to either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution ("CEDR") to appoint a Mediator.

39.5.2 The Parties shall within **14 days** of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from CEDR to provide guidance on a suitable procedure.

39.5.3 Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.

39.5.4 If the Parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the Parties once it is signed by their duly authorised representatives.

39.5.5 Failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both Parties.

39.5.6 If the Parties fail to reach agreement in the structured negotiations within **60 days** of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the Courts unless the dispute is referred to arbitration pursuant to the procedures set out in **Clause 39.7**

39.6 Subject to **Clause 39.2**, the Parties shall not institute court proceedings until the procedures set out in **Clauses 39.1 and 39.3** have been completed save that:

39.6.1 the Department may at any time before court proceedings are commenced, serve a notice on the Contractor requiring the dispute to be referred to and resolved by arbitration in accordance with the provisions of **Clause 39.7**.

39.6.2 if the Contractor intends to commence court proceedings, it shall serve written notice on the Department of its intentions and the Department shall have 21 days following receipt of such notice to serve a reply on the Contractor requiring the dispute to be referred to and resolved by arbitration in accordance with the provisions of **Clause 39.7**.

39.6.3 the Contractor may request by notice in writing to the Department that any dispute be referred and resolved by arbitration in accordance with the provisions of **Clause 39.7**, to which the Department may in its discretion consent as it sees fit.

39.7 In the event that any arbitration proceedings are commenced pursuant to **Clause 39.6**, the following provisions shall apply:

39.7.1 the arbitration shall be governed by the provisions of the Arbitration Act 1996;

39.7.2 the Department shall give a written notice of arbitration to the Contractor ("the Arbitration Notice") stating:

39.7.2.1 that the dispute is referred to arbitration; and

39.7.2.2 the details of the issues to be resolved;

39.7.3 the London Court of International Arbitration ("LCIA") procedural rules in force at the date that the dispute was referred to arbitration in accordance with **Clause 39.7.2** shall be applied and are deemed to be incorporated by reference to this Framework Agreement and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;

39.7.4 the tribunal shall consist of a sole arbitrator to be agreed by the Parties;

39.7.5 if the Parties fail to agree the appointment of the arbitrator within **ten (10) days** of the Arbitration Notice being issued by the Department under **Clause 39.7.2** or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;

39.7.6 the arbitration proceedings shall take place in London and in the English language; and

39.7.7 the arbitration proceedings shall be governed by, and interpretations made in accordance with, English law.

40 LAW AND JURISDICTION

Subject to the provisions of Clause 40, the Department and the Contractor accept the exclusive jurisdiction of the English courts and agree that the Framework Agreement is to be governed by and construed according to English law.

SCHEDULE 1

Low Carbon Vehicle Procurement Programme: Supply of Lower Carbon and Electric Vans

Ref: PPRO 4/9/17

SPECIFICATION AND SUPPORTING NOTES FOR PHASE 2

LOWER CARBON VAN (Lot 1)

Contents

CONTENTS

1.0 BACKGROUND

1.1 Introduction

2.0 LOWER CARBON VAN AND ALL ELECTRIC VAN PROJECT

2.1 project Structure

2.2 Project Phases

3.0 SUPPLY OF VEHICLES

3.1 Vehicle Variants and Options

3.2 Not used

3.3. Pricing for Phase 2

3.4 Leasing Requirements

3.5 Invoicing and Grant Payment Arrangements

5.0 AVAILABILITY RELIABILITY AND RETURN

5.1 Availability and reliability

6.0 WARRANTIES, MAINTENANCE AND BREAKDOWN

6.1 Warranties

6.2 Maintenance

6.3 Breakdown

7.0 MANAGEMENT OF INFORMATION / REPORTING

7.1 Reporting

7.2 Quality Approach

8.0 PRE-DELIVERY / ACCEPTANCE TESTING

9.0 LOWER CARBON FOSSIL FUELLED VAN - LOT 1

9.1 Vehicle Specification

APPENDIX A – PROJECT INFORMATION PUBLISHING LEVELS

The Provision of information by Contractors

APPENDIX B – FLOW DIAGRAMS OF VEHICLE ORDERING, DELIVERY AND TESTING

Flow Diagram for Vehicle Delivery and Payment

1.0 Background

1.1 Introduction

1.1.1 In the May 2007 Energy White Paper the UK government announced that it would set up a new programme to procure innovative, low-carbon vehicles for use in public sector fleets, as part of a package of measures to support new technology development in this area.

1.1.2 The Department for Transport ("the Department") announced its plans for the programme in November 2007, following engagement with a wide range of stakeholders, including vehicle manufacturers, public sector organisations and industry experts.

1.1.3 An initial commitment of £20million has been made to the programme, which aims to use the public sector's purchasing power and willingness to trial new lower carbon models to help accelerate market introduction of lower carbon vehicle technologies.

1.1.4 The programme initially focused on the procurement of lower carbon vans - offering a significant improvement in carbon emissions over similar conventional vehicles and all electric vans - offering a potential lower carbon option for urban and suburban delivery vehicles which do not require extended range capability.

1.1.5 In 2010 and 2011 201 low carbon and electric vehicles began operation in Phase 1. In October 2011, the Department for Transport made a decision to allow only low carbon vehicles to proceed to the next stage of the programme (Phase 2).

1.1.6 This specification relates to Phase 2 of the programme only.

1.1.7 No contractor shall be appointed to manage Phase 2 of the programme on behalf of the Department. The Department will lead the procurement process, and be the contact point for queries. The Department's Office for Low Emission Vehicle's R&D and Procurement team will be responsible for day to day management of the programme relating to monitoring vehicle orders and delivery, grant claims, checks and audits.

2.0 Lower Carbon Van

2.1 Project Structure

2.1.1 The Programme for Phase 2 will be managed by the R&D and Procurement Branch of Office for Low Emission Vehicles in the Department.

2.1.2 The additional costs to Contracting Bodies (relative to the purchase or lease of a comparable conventional vehicle) will be met from the Department's programme funds.

2.2 Project Phases

2.2.1 The Department now wishes to proceed to Phase 2 - the final phase of the programme.

2.2.4 In this Phase 2, the successful Contractor's framework agreements may be extended to supply vehicles to the wider public sector. This will mean making vehicles available on a fully commercial basis, not only to the Contracting Bodies in the Phase 1 trials, but also to other government bodies, local authorities, law enforcement agencies, emergency services, educational establishments and NHS Trusts.

3.0 Supply of Vehicles

3.1 Vehicle Variants and Options

3.1.1 Contractors are required to submit proposals for the supply of vehicles that meet the specification detailed in this document.

3.1.2 A list of vehicle options may also be provided with prices for each option. It should be noted that a number of Contracting Bodies have a strong interest in options which offer air conditioning and clutch-less gear changes.

3.1.3. Variants to be included in the framework: drop-side / chassis cab / tipper vans and van-derived mini-buses.

3.2 Not Used

3.3 Pricing for Phase 2

3.3.1 Firm Prices should be quoted for Phase 2 assuming a volume of 500 vehicles. The Schedule of Prices should include the following firm prices and information for Phase 2:

- a) detailed firm prices for supplies of over 500 vehicles beyond the end of Phase 2 based on the assumption that the Department will not be providing a subsidy beyond the end of the framework contract.
- b) a separate list of consumable and replacement parts (including specialist parts) required for servicing with pricing.
- c) any constraints which suppliers wish to place on the number of vehicles supplied.

3.3.2 Vehicles supplied in Phase 2 shall be supplied at prices that do not exceed the indicative maximum prices in the Contract Schedule of Prices quoted in the Contractor's original tender.

3.4 Leasing Requirements

3.4.1 Contractors are strongly encouraged to provide vehicles by both direct acquisition (call-off) and leasing. Where leasing is to be offered by a third party organisation on behalf of the Contractor the third party must be clearly identified in the tender. Framework agreements will only be concluded with vehicle suppliers that are able to offer vehicles for lease through the supplier's nominated finance company.

3.5 Invoicing and Grant Payment Arrangements

The process set out in the flow diagram at Appendix B shall apply.

5.0 Availability and Reliability and Return

5.1 Availability and Reliability

5.1.1 Overall the vehicle should be available and fit for purpose for a minimum of 90% of available working time within a rolling three month period. For the avoidance of doubt, time spent on scheduled servicing and maintenance will be treated as available working time and will not be excluded from the availability target. Availability will be calculated using an hourly basis, with any part of an hour being rounded up to the next full hour for the purposes of the calculation. The available working time is defined to be 8:30 to 17:00 on any operational day.

5.1.2 Reliability will also be measured as not satisfactory if the vehicle suffers four or more breakdowns in any rolling three month period. A breakdown is defined in the call-off contract and lease agreement.

5.1.3 In the case of vehicle breakdown, vehicles should be repaired within 48 hours of notification (incl. bank holidays and weekends). Where this is not possible a replacement vehicle shall be supplied at a cost to the Contractor within 48 hours of notification. The replacement vehicle should ideally be one that meets the original specification, where this is not possible an equivalent conventional vehicle is acceptable. In neither case will the vehicle need to have the Contracting Bodies livery. Further information is available in section 9.1.18 and the associated note.

5.1.4 Where a vehicle fails to meet the specified measures of availability or reliability [specified above 5.1.1 and 5.1.2] or suffers a material departure from the specification then it shall be judged to fail its fitness for purpose. In such circumstance then the Contracting Body will be entitled to claim a full refund where this occurs within the first nine months, or after this a refund equal to a value calculated against a five year linear depreciation of the original capital price of the vehicle. Where the Contracting Body exercises this right the vehicle lease or ownership would be ended and the vehicle returned to the Contractor.

5.1.5 Vehicles made unavailable as a result of accident, Contracting Bodies negligence or default will not be recorded to have broken down or unavailable against the contract. In these instances, there will be no call on the Contractor to provide a replacement vehicle.

6.1 Warranties

6.1.1 The programme aims to purchase vehicles with acceptable and proven durability and reliability. These need to match those for commercial vehicles.

6.1.2 Contractors shall provide warranties for the vehicles and included technologies. A single product warranty should be provided in respect of the vehicle and technology. Vehicle warranties shall be for a minimum of 3 years or 60,000 miles.

6.1.3 Where sub-assembly / component warranties will be used the details of these warranties and processes used to claim against the warranty should be clearly described.

6.2 Maintenance

6.2.1 All vehicles supplied shall be accompanied by a detailed servicing and maintenance schedule. This documentation shall include servicing periods (time and/or mileage), systems or parts to be checked and a parts list (including details of parts suppliers and pricing) for standard and specialist parts. This is of particular importance where specialised parts are used. Further information is available in section 9.1.17 and the associated note.

6.2.2 In respect of all vehicles supplied, a full vehicle parts list shall be provided or made available - as a minimum a parts list for serviceable parts should be available. Contractors are also required to be able to supply or hold non standard /specialist parts to ensure smooth maintenance operation.

6.2.3 Vehicle servicing arrangements shall be provided, the location or provision of which shall be convenient to the participating Contracting Bodies to minimise operational disruption.

6.2.4 Where Contracting Bodies have opted to use their own internal vehicle servicing facilities to undertake all vehicle servicing and maintenance, then the Contractor shall provide where necessary any specialist training and / or facilities to maintain vehicle and specialist parts serviceability and validity of warranties if required.

6.3 Breakdown

6.3.1 The Contractor shall provide to Contracting Bodies a comprehensive vehicle breakdown service in respect of vehicles provided under this Framework Agreement. This should include vehicle recovery, vehicle repair, and any necessary work or repairs covered by the warranty.

6.3.2 Where breakdown and repairs result in a vehicle being unavailable for use the Contractor will be required to provide a replacement vehicle as described in the Availability and Reliability section above (5.1.1), within 48 hours after notification of breakdown or if repairs make the vehicle unavailable for longer than 48 hours. Further information is available in section 9.1.18.

7.0 Management Information / Reporting

7.1 Reporting

7.1.1 Contractors are required to provide performance details for the proposed vehicles. This should be matched to the specification described in section 9.0 and backed up by independently determined test data where available.

7.2 Quality Approach

7.2.1 All vehicles and components supplied to Public Sector Organisations shall be manufactured in accordance with the agreed vehicle specification and supplier's quality management systems, including where held BS EN ISO 9001:2000 Quality Management Systems (or equivalent). Where required by the Department or the Public Sector Organisation the vehicle supplier shall provide evidence of compliance with their quality management systems in respect of the manufacture of any vehicle or components supplied.

8.0 PRE-DELIVERY / ACCEPTANCE TESTING

8.0.1 Vehicles need to meet legislated UK and EU vehicle type approval standards.

8.0.2 The programme reserves the unconstrained right to reject vehicles that do not meet the specification, where corrective action cannot or will not be undertaken within a reasonable timeframe.

9.0 Lower Carbon Fossil Fuelled Van - Lot 1

9.0.1 Lot 1 of this programme is for the supply of a conventional fossil fuelled large panel van demonstrating a CO₂ improvement of at least 10% on the New European Drive Cycle (NEDC) against a comparable conventional model. Proposals which deliver a greater than 10% improvement on NEDC - as well as the potential for substantially greater improvements in urban and suburban drive cycles, are strongly encouraged. Further details of the vehicle specification are given below.

9.0.2 The low carbon vans procured in Phase 2 will exhibit similar attributes, levels of performance and durability to current conventional production vehicles.

9.0.3. Vehicles supplied should meet minimum criteria of type approval or single vehicle approval.

9.1 Vehicle Specification

The table below demonstrates the required characteristic of the Lower Carbon Van.

		Vehicle Attribute	Specification	Phase 2	Notes
Vehicle attributes	9.1.1	Vehicle type	Large Panel Van	The proposal should include a specification sheet for the proposed low carbon van including details of the vehicle design	The van size required for this procurement is defined as a large panel van. NOT a car-derived van. Data from the SMMT suggests that large panel vans are the most common type of van in use across both the public and private sectors; each one of the partner organisations in the programme has a sizable fleet of large panel vans.
		Vehicle body type	Variants		Details of van body variants that can be provided, such as drop-side/chassis cab/tipper vans and van-derived mini-buses.
	9.1.2	Vehicle Size	Payload Volume > 6m ³ (SAE method)	The proposal should include a specification sheet for the proposed low carbon van including details of the payload volume	The payload volume requirement for this specification has been chosen by examining the range of panel vans currently on the market and those used by the Contracting Bodies.

	9.1.3	Payload	Payload > 1100kg	The proposal should include a specification sheet for the proposed low carbon van including details of the payload weight	The payload requirement for this specification has been chosen by examining the range of panel vans currently on the market and those used by the Contracting Bodies. The chosen lower limit is towards the higher end of what is typical of the smaller vans in the segment.
	9.1.4	Gross Vehicle Weight (GVW)	GVW < 3500kg	The proposal should include a specification sheet for the proposed low carbon van including details of the GVW	The Gross Vehicle Weight (GVW) requirement for this specification has been chosen by examining the range of panel vans currently on the market and those used by the Contracting Bodies. This limitation will keep the low carbon vans within the N1 category of vehicles and avoid additional licensing requirements.
	9.1.5	Bespoke characteristics	Adaptability in the functional components of the design.	The proposal should specify the adaptability of the proposed low carbon van to customer requirements. A list of typical Contracting Body requirements is included in the notes.	<p>A number of the Contracting Bodies have specific requirements for the functionality of their vehicles away from direct performance. Typical requirements are –</p> <p>Clutch-less operation Air conditioning</p> <p>The proposal should specify whether the proposed low carbon van can be adapted to customer requirements and any limitations on the range of adaptations possible and their functionality (e.g. air conditioning with stop-start).</p>

		Vehicle Attribute	Specification	Demonstration	Notes
Performance	9.1.6	Acceleration	0-60mph (for all payloads): Better than 25 seconds.	The proposal should include test results* demonstrating the accelerative performance of the proposed low carbon van.	<p>The low carbon vans procured through this programme shall have sufficient accelerative performance to keep up with traffic, irrespective of payload condition. Whilst the fully laden performance will clearly drive the powertrain requirements, proposals are encouraged to consider restricted performance when empty or with low payload to achieve an improved overall CO₂ benefit.</p> <p>Where test data is not available, the proposal should provide predicted performance figures with supporting evidence, and the timescale against which this estimated data will be validated.</p>
	9.1.7	Maximum speed	At least 60 mph at zero grade (all payloads)	The proposal should include test results* demonstrating the	A “minimum” maximum speed is required of the low carbon vans in this procurement. This lower limit maximum speed is defined as 60mph, which will enable the low carbon van to keep up with the general flow of traffic. This will ensure the acceptability of the low carbon van to the Contracting Bodies.

				maximum speed capability of the proposed low carbon van.	Where test data is not available, the proposal should provide predicted performance figures with supporting evidence, and the timescale against which this estimated data will be validated.
	9.1.8	Maximum Grade	25% maximum (at max payload)	The proposal should include test results* demonstrating the gradeability capability of the proposed low carbon van.	<p>Maximum grade performance is an important part of a vehicle's performance. This specification requires the ability of the vehicle to cope with a maximum gradient of 25% at max. payload. This recognises that the low carbon vans procured by this programme will spend most of their time on suburban/urban roads rather than motorways and that hills may be encountered on a regular basis.</p> <p>Where test data is not available, the proposal should provide predicted performance figures with supporting evidence, and the timescale against which this estimated data will be validated.</p>

		Vehicle Attribute	Specification	Phase 2	Notes
			n/a		
Durability	9.1.10	Volume stage Durability	Same as current conventional production vehicles when at production volumes.	The proposal should include data describing the potential for the durability of the proposed low carbon van when at volume production levels.	The low carbon vans procured by this programme in the second stage volume procurement will exhibit similar levels of durability to current conventional production vehicles.

* Where test data is not available, the proposal should provide predicted performance figures with supporting evidence, and the timescale against which this estimated data will be validated.

		Vehicle Attribute	Specification	Demonstration	Notes
Tailpipe Emissions	9.1.11	CO2 NEDC	Minimum 10% improvement over an equivalent conventional vehicle, larger improvements preferred.	The proposal should include independently validated test results for the CO2 emissions of the proposed low carbon van on the New European Drive Cycle. Should this data not be immediately available the proposal should detail a methodology to attain these results.	<p>The specification calls for a minimum of a 10% improvement in CO₂ emissions on the New European Drive Cycle¹ over an "equivalent conventional vehicle", where an equivalent conventional vehicle is defined as a diesel fuelled vehicle of the same platform with similar volume and payload capacity currently available on the market.</p> <p>The minimum target for the procurement is a 10% improvement on the New European Drive Cycle. However the project expects to receive proposals demonstrating in excess of 10% improvement. Clearly demonstrating improvements of greater than 10% on the New European Drive Cycle will enhance the likelihood of a framework agreement being awarded.</p>
	9.1.12	CO2 Non-NEDC	Demonstration of greater improvements in CO2 emissions over duty cycles appropriate for the target market (e.g. urban delivery)	Should the Contractor have such information available, the tender bid can be augmented by including independent test results for the proposed low carbon van on appropriate non-legislative drive cycles.	<p>It is likely that vehicles capable of a 10% improvement in CO₂ on the New European Drive Cycle over an "equivalent conventional vehicle", may be capable of greater savings in urban environments where a greater stop-start ratio is exhibited.</p> <p>This procurement is keen to encourage tenders with high levels of CO₂ savings and as such should the Contractor have information available indicating the proven performance of the proposed low carbon van on applicable non-legislative cycles and comparative results for an equivalent conventional diesel fuelled vehicle, the proposal can be augmented by including these test results.</p>

¹ For details of the New European Drive Cycle see European Directive 70/220/EEC, Annex III, Appendix 1
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:1970L0220:20070101:EN:PDF>

		Vehicle Attribute	Specification	Demonstration	Notes
Tailpipe Emissions	9.1.13	Regulated Emissions (Euro standard)	The proposed low carbon van must comply with the appropriate emissions legislation in force at the time of the procurement for new vehicles.	<p>The proposal should include independently validated test results for the regulated emissions of the proposed low carbon van on the New European Drive Cycle. Should this data not be immediately available the proposal should detail the methodology to attain these results.</p> <p>Contractors are encouraged to provide vehicles with regulated emission performance exceeding the minimum requirements and showing early attainment of future Euro standards (Euro 5).</p>	<p>The regulated emissions of the proposed low carbon van must comply with the appropriate emissions legislation in force at the time of the procurement for new vehicles.</p> <p>The regulated emissions standard currently in force is Euro 4. Light duty commercial vehicles (N1 class II and III) will be required to meet Euro 5 for new type approval on 1 September 2010 and for all production on 1 September 2012².</p> <p>Whilst the focus of this procurement is on CO₂ emission reduction, all participating Contracting Bodies are keen to take all actions possible to reduce air pollution. Contractors are therefore encouraged to provide vehicles with regulated emission performance exceeding the minimum requirements of the standard in force and showing early attainment of future Euro standards.</p>

² For details of the Euro 5 regulated emission standards for N1 class II and III vehicles see EU regulation 715/2007
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:171:0001:0016:EN:PDF>

		Vehicle Attribute	Specification	Demonstration	Notes
Indirect emissions	9.1.14	On-board Technologies	Vehicles may provide on-board technologies that achieve reductions in the CO ₂ emissions of the vehicle under targeted usage conditions, such as methods that encourage and/or create more efficient driving style.	Should the Contractor have such devices available, the proposal can be augmented by including details of these devices and their operation. However any savings must be over and above the base CO ₂ savings requirement (10%) outlined above.	<p>Whilst meeting the base CO₂ savings of 10% on the New European Drive Cycle is the minimum expected for qualification for the procurement, Contractors are encouraged to augment their proposals by demonstrating additional in use CO₂ savings.</p> <p>On board technologies such as passive (driver-informative) systems that encourage efficient driver behaviour may be beneficial, and with the increased use of on-board GPS tracking systems in some fleets, active (driver-independent) systems that adapt the vehicle performance or behaviour for greatest efficiency for the location, gradient and traffic conditions (for example) may also be of merit.</p> <p>Any savings suggested from such approaches should be over and above the base CO₂ savings of 10% on the New European Drive Cycle.</p>
	9.1.15	Lifecycle CO ₂	A life cycle CO ₂ analysis should show significant life cycle CO ₂ savings over a conventional vehicle.	The proposal should include validated full life cycle analysis of the CO ₂ emissions generated by the proposed low carbon van in production, operation, and disposal.	<p>The full carbon emission impact of the low carbon vans procured through this programme needs to be clear. Life cycle analysis is a methodology developed to quantify the emissions from not only the use phase of the vehicle but also the build and disposal phases (sometimes referred to as 'dust-to-dust').</p> <p>The low carbon vans procured through this programme should have considerable CO₂ savings during their use phase. However, these savings must not be compromised by greatly increased carbon emissions during the build and disposal phases.</p> <p>Proposals for this procurement should therefore include a validated life cycle analysis of the CO₂ emissions generated by the proposed low carbon van in production, use, and disposal.</p>

Noise	9.1.16	Noise	<p>The proposed vehicles should exhibit lower in-use noise characteristics than a conventional equivalent</p>	<p>The proposal should include data detailing the impact of the lower carbon technology employed on the in-use noise emissions of the vehicle.</p> <p>If comparative test data is available between the lower carbon van and a conventional equivalent the Contractor may provide this data.</p>	<p>A large number of the lower carbon vans that will be deployed through this procurement will be used in urban settings. It is therefore important that these vehicles, contribute to the reduced impact of road transport on these locations. The in-use noise of the lower carbon vans should, in the worst case have no greater impact than current conventional technology, and in most cases be significantly quieter.</p> <p>It is likely that a number of the lower carbon technologies available to Contractors will result in reduced noise emissions from their vehicles. Contractors are therefore encouraged to provide vehicles with reduced noise emissions. Tender bid documents should detail the noise impact of their vehicles, and comparative test data can be submitted if available to provide evidential support.</p>
-------	--------	-------	---	--	---

		Vehicle Attribute	Specification	Phase 2	Notes
In use controls	9.1.17	<p>Servicing, maintenance and repair requirements This should be standard Ts and Cs agreed between the 2 parties.</p>	<p>Where required the vehicle shall be serviced, maintained and repaired by the Contractor. The Contractor of the vehicle may be required to undertake routine work, breakdown and issue resolution.</p>	<p>The proposal should include a servicing and maintenance schedule, which should clearly identify all requirements for specialist servicing, maintenance and repair.</p> <p>The bid should detail acceptance of the responsibility for specialist servicing, warranty, breakdown and issue resolution, under the conditions defined in the notes.</p>	<p>The Low carbon vans procured through this programme will require routine service and maintenance. Therefore, the Contractor should include in their proposal a servicing and maintenance schedule, which should clearly identify all requirements for specialist servicing, maintenance and repair.</p> <p>The responsibility for specialist servicing, warranty, breakdown and issue resolution, proposals should include acceptance of this responsibility should be contractually agreed between the contractor and Contracting bodies.</p> <p>The Contracting Bodies may wish to undertake some or all of the routine service and maintenance work themselves. Any such arrangement will be agreed in advance of the vehicle deployment. The Contractor should make provision that servicing facilities and/or specialist training are made available. Consideration for ensuring quality of work should be made.</p>
	9.1.18	<p>Replacement This should be standard Ts and Cs agreed between the 2 parties.</p>	<p>Provision of replacement vehicles</p>	<p>The proposal should include provisions for replacement vehicles where servicing, or maintenance takes place, or repair or breakdown requires a vehicle to be unavailable for use for a period exceeding 48 hours (including weekends and</p>	<p>The low carbon vans procured through this programme are expected to both reduce CO₂ emissions and be a practical, durable fleet vehicle. However, in the event of routine service/maintenance work or when repairs associated with warranty/breakdown result in a vehicle being unavailable for use for a period exceeding 48 hours (including weekends and bank holidays) the all electric van Contractor will be responsible for the provision of a replacement vehicle equivalent to that described in the Specification (that is a lower carbon vehicle) and only where such a vehicle is not available, a conventional vehicle.</p>

				bank holidays).	
--	--	--	--	-----------------	--

		Vehicle Attribute	Specification	Demonstration	Notes
9.1	9.1.19	N/A			
	9.1.20	N/A			

Appendix A – Project Information Publishing Levels

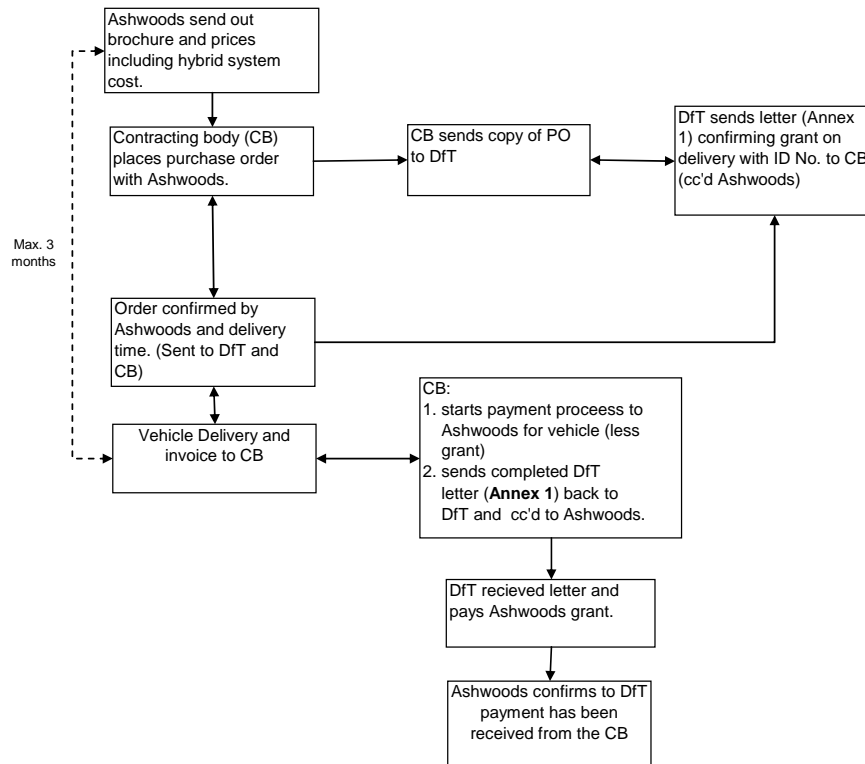
The Provisions of Information by Contractors

The Contractors will provide information detailing the compliance of the vehicle to the specification, as defined in the invitation to tender. This information, in addition to the usual vehicle specification information (engine size, transmission, fuel tank volume, etc.) must be made available to the Department for Transport, and public sector Contracting Bodies.

On award of a Phase 2 contract / lease the same information, (updated to include any modifications from the Phase 1 vehicle specification) must be made available to all potential vehicle purchasers / lessees.

Appendix B – Flow Diagrams of Vehicle Ordering, Delivery and Payment

Vehicle ordering and payment



Notes

This process requires the CB to pay the invoice excluding the grant. The grant is then paid to Ashwoods by DfT. (CB Contracting body)

Annex 1 : Letter from DfT

1. Includes ID no e.g.001
2. Confirms order placed
3. Confirms grant per vehicle
4. Instructs CB to send completed letter to DfT on delivery of vehicle and with proof of payment to Ashwoods.

To the DfT,
I ___(CB)___ have taken delivery of ___X___ vehicles and attach:

1. the invoice from Ashwoods; and
2. confirm payment will be made to Ashwoods within 28 days as per contract.

I therefore confirm the grant offer of £_____ can be released to Ashwoods to cover the full vehicle costs.

Signed _____ Position _____

Date _____

SCHEDULE 2

TERMS AND CONDITIONS FOR THE CALL OFF [CONTRACT][LEASE]

DEPARTMENT FOR TRANSPORT

**LOW CARBON VEHICLE PROCUREMENT PROGRAMME:
SUPPLY OF LOWER CARBON AND ALL-ELECTRIC VANS**

Ref: PPRO 4/9/17

MODEL CALL-OFF TERMS AND CONDITIONS
(PHASE 2)

INDEX

1. **DEFINITIONS AND INTERPRETATIONS**
- 2 **CONTRACT PERIOD**
- 3 **ENTIRE AGREEMENT**
- 4 **SCOPE OF THE CONTRACT**
5. **PERFORMANCE OF THE CONTRACT**
- 6 **CONTRACT PRICE**
- 7 **PAYMENT**
- 8 **RECOVERY OF SUMS DUE**
- 9 **CHANGE OF LAW**
10. **STATUTORY OBLIGATIONS AND REGULATIONS**
11. **PREVENTION OF CORRUPTION**
- 12 **CONFLICTS OF INTEREST**
13. **DISCRIMINATION**
14. **ENVIRONMENTAL REQUIREMENTS**
- 15 **PROTECTION OF INFORMATION**
16. **OFFICIAL SECRETS ACTS**
- 17 **CONFIDENTIALITY**
- 18 **FREEDOM OF INFORMATION**
- 19 **PUBLICITY, MEDIA AND OFFICIAL ENQUIRIES**
- 20 **INTELLECTUAL PROPERTY RIGHTS**
- 21 **RECORDS AND AUDIT ACCESS**
- 22 **CONTROL OF THE CONTRACT**
- 23 **THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**
- 24 **WAIVER**
- 25 **VARIATION OF THE VEHICLES OR ASSOCIATED SERVICES**
- 26 **SEVERABILITY**
- 27 **TERMINATION**
- 28 **REMEDIES IN THE EVENT OF INADEQUATE PERFORMANCE**
- 29 **REMEDIES CUMULATIVE**
- 30 **RECOVERY UPON TERMINATION**

31	NOVATION
32	LIABILITIES
33	WARRANTIES AND REPRESENTATIONS
34	FORCE MAJEURE
35	NOTICES
36	DISPUTES AND LAW
37	DISPUTE RESOLUTION
	SPECIFICATION SCHEDULE

THIS **CONTRACT** is made on []

Between

(1) The Public sector body (“the Contracting Body”); and

(2) [] Company Number []
whose registered address is at [] (“the Contractor”)

BACKGROUND

(A) The Department has facilitated by way of the Low Carbon Vehicles Procurement Programme (“the Programme”) the procuring of lower carbon vans to the Contracting Bodies defined in this Framework Agreement for the purpose of trialling and monitoring their use (Phase 1 of the Programme). The Department now wishes to extend the Term of the Framework Agreement for low carbon vans for Phase 2 of the Programme for the purpose of procuring the use of these vehicles in larger volumes. (“The Objectives”).

(B) The Framework Agreement provides an ordering procedure for the procurement of the lower carbon vans and sets out the obligations of the Contractor during and after the Term of this Framework Agreement.

(C) The acceptance of each Order by the Contractor (for a purchase or lease arrangement) shall give rise to a separate contract or lease with the relevant Contracting Body subject to the Call Off Terms and Conditions (which is the purpose of this document). A Contracting Body may agree additional terms with the Contractor in relation to its particular orders but is not otherwise authorised to vary any of the terms of this Framework Agreement without prior approval of the Department.

(D) During the operation of Phase 2 of the Programme, it is the parties’ intention that there will be no obligation for any Contracting Body to place orders under the extended term of the Framework Agreement.

(E) During Phase 2, the Department shall provide a Grant to subsidise the procurement of the Low Carbon Vehicles. The Grant will be paid by the Department to the Contractor and the contractor will discount the Grant amount from the Vehicle Invoice to the Contracting Bodies.

GENERAL PROVISIONS

1. DEFINITIONS AND INTERPRETATIONS

1.1 In these terms and conditions, the following words and expressions have the meanings as set out below:

“Acknowledgement”	means the acknowledgement which the Contractor must send to the Order Manager (under Clause 7 of the Framework Agreement) in response to an Order;
“Associated Service”	means any service in respect of the repair and maintenance of the Vehicles described in the Order Form and the provision of any Replacement Vehicle which the Contractor is required to provide under the Contract as described in the Specification;
“Breakdown”	means a mechanical, electrical or other failure rendering the Vehicle inoperative, which is not due to an accident or to the neglect, abuse or negligence (whether intentional or not) of the Contracting Body or its employees, agents or any other third party;
“Commencement Date”	means the commencement date notified by the Contracting Body to the Contractor in the Order Form and acknowledged in the Acknowledgement and Confirmation;
“Condition”	means a condition within the Contract (and “Conditions” shall be construed accordingly as the context requires);

“Confidential Information”	means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to the business, affairs, properties, assets, trading practices, Vehicles, developments, trade secrets, Intellectual Property Rights, know-how, personnel, customers and suppliers of either Party, and the Commercially Sensitive Information;
“Confirmation”	means confirmation by the Contracting Body of its Order as provided in Clause 7 of the Framework Agreement;
“Contract”	means the agreement between the Contracting Body and the Contractor made pursuant to the Framework Agreement consisting of the Order Form, an Acknowledgement and these Conditions;
“Contracting Body”	means the body requiring the Vehicles referred to in the Order Form with whom the Contractor enters into this Contract;
“Contractor”	means the supplier of the Vehicles referred to in the Order Form with whom the Contracting Body enters into this Contract and who is a Party to a Framework Agreement in respect of the provision of Vehicles and Associated Services;
“Contract Period”	means the period of duration of the Contract in accordance with Condition 2;
“Contract Price”	means the price, exclusive of any applicable Tax, payable to the Contractor by the Contracting Body for the Vehicles under the Contract, as set out in the Order Form or as otherwise agreed, for the full and proper performance by the Contractor of its part of the Contract as determined under the provisions of the Contract;
“Contractor’s Representative”	means the individual authorised to act on behalf of the Contractor for the purposes of this Contract;
“Default”	means any breach of the obligations of the Contractor (including fundamental breach or breach of a fundamental term) or any default, act, omission, negligence or statement of the Contractor in connection with or in relation to the

subject matter of the Contract and in respect of which the Contractor is liable to the Contracting Body;

“Department”

means the Department for Transport;

“DPA”

means the Data Protection Act 1998 and any subordinate legislation made under such Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation.

“Environmental Information Regulations”

means the Environmental Information Regulations 2004 and any guidance and/or codes of practice issued by the Information Commissioner in relation to such Regulations;

“FOIA”

means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation;

“Framework Agreement”

means the agreement (as amended from time to time) entered into by the Contractor and the Department in relation to the supply of any of the following:

a) lower carbon vehicles;

b) all-electric vehicles; and

c) maintenance, repair or replacement of any vehicle supplied,

and where there is more than one Framework Agreement, reference to a “Framework Agreement” shall be to the Framework Agreement that includes a Specification covering the relevant Vehicle and services identified above;

“General Change in Law”

means a change in Law which comes into effect after the Commencement Date, where the change is of a general legislative nature (including taxation or duties of any sort affecting the Contractor) or which would affect or relate to a comparable supply of services of the same or of a similar nature to the supply of the Vehicles and Associated Services;

“Good Industry Practice”	means the exercise of that degree of skill, diligence and foresight which would reasonably and ordinarily be expected from a skilled and experienced operator engaged in the same type of business as the Contractor under the same or similar circumstances;
“Information”	has the meaning given under section 84 of the FOIA;
“Intellectual Property Rights”	means patents, inventions, trade marks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off;
“Know-how”	means the application of knowledge, information or techniques in the manufacture or processing of the Vehicles (or any Associated Services);
“Law”	means any applicable law, statute, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of court or directives or requirements of any Regulatory Body, delegated or subordinate legislation or notice of any Regulatory Body;
“Month”	means calendar month and “Monthly” shall be similarly construed;
“Normal Working Hours”	means the hours of 8.30 am to 5.00 pm (inclusive) on any Working Day;
“Official Test”	means the test undertaken on a selected sample Vehicle in order to determine Vehicle compliance with the Specification;
“Order Form”	means the order form completed by the Contracting Body to order the Vehicles from the Contractor pursuant to the Framework Agreement in substantially the form set out in Schedule 3 to the Framework Agreement or such similar or analogous form agreed with the Contractor including but not limited to systems of ordering involving facsimile, electronic mail or other on-line solutions;

“Order Manager”	means the person for the time being appointed by the Contracting Body as being authorised to administer the Contract and to place orders for the Vehicles on behalf of the Contracting Body with the Contractor, the Contractor’s Representative or with such person as may be nominated by the Contractor’s Representative to act on its behalf;
“Party”	means a party to this Contract and “Parties” shall be construed accordingly;
“Phase 2”	has the same meaning as given in the Framework Agreement;
"Pre-Existing Intellectual Property Rights"	means any Intellectual Property rights vested in or licensed to the Contracting Body or the Contractor prior to or independently of the performance by the Contracting Body or Contractor of their obligations under the Contract;
“Premises”	means the location where the Vehicles are to be delivered or any Associated Services are to be performed, as set out in the Specification;
“Pricing Schedule”	means the schedule referred to as such in the Framework Agreement;
“Regulations”	means the Public Contracts Regulations 2006;
“Regulatory Bodies”	means those government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Contract or any other affairs of the Contracting Body and “Regulatory Body” shall be construed accordingly;
“Replacement Contractor”	means any third party service Contractor appointed by the Contracting Body from time to time, to provide any Vehicles which are substantially similar to any of the Vehicles provided under the Framework Agreement, and which the Contracting Body receives in substitution for any of the Vehicles following the termination or partial termination of this Contract, whether those Vehicles are provided to the Contracting Body internally and/or by any third party;

“Replacement Vehicle”	means a vehicle which shall be equivalent to that described in the Specification, but where such an equivalent vehicle is not available, shall be a conventional vehicle (that is, not a lower carbon vehicle) of a similar type and capacity to that described in the Specification;
“Requests for Information”	shall have the meaning set out in FOIA or any apparent request for information under the FOIA or the Environmental Information Regulations.
“Routine Service”	means a planned service of the Vehicle carried out and undertaken at such frequencies to be determined by both the Contractor and the Contracting Body;
“Safety Inspection”	means a planned safety inspection carried out and undertaken at such frequencies to be determined by both the Contractor and the Contracting Body;
“Scheduled Repairs”	means work which is required at specified intervals or arises from the routine servicing and which, as a result, are planned arrangements in the Vehicle’s maintenance cycle;
“Service Level”	means the standard of delivery set out in the Specification or such other standard of delivery agreed between a Contracting Body and the Contractor as may be contained in an Order and subsequent Acknowledgement and Confirmation;
“Specification”	means the document describing the Vehicles and Associated Services to be provided under this Contract as set out in the Schedule attached to this Contract;
“Specific Change in Law”	means a change in Law which comes into effect after the Commencement Date that relates specifically to the business of the Contracting Body, and which would not affect a comparable supply of services of the same or a similar nature to the supply of the Services;
“Staff”	means all persons employed by the Contractor to perform the Contract together with its servants, agents and approved sub-contractors used in the performance of this Contract;
“Tax”	means Value Added Tax;

“Unscheduled Repairs”	means any work arising between the planned arrangements of Routine Servicing and Safety Inspections and excludes Breakdown repairs;
“Vehicles”	means the Vehicles within the scope of the Framework Agreement as specified in the Order Form agreed and, where the context requires, includes any Associated Services to be performed by the Contractor;
“Working Days”	means Monday to Friday inclusive, excluding public and bank holidays;
“Year”	means a calendar year.

1.2 The interpretation and construction of this Contract shall be subject to the following provisions:

1.2.1 the terms and expressions set out in Condition 1 shall have the meanings ascribed therein;

1.2.2 words importing the singular meaning include where the context so admits the plural meaning and vice versa;

1.2.3 words importing the masculine include the feminine and the neuter;

1.2.4 the words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”;

1.2.5 references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted;

1.2.6 where there is a provision for any notification, consent or approval to be given under this Contract such notification, consent or approval shall only be valid if given in advance and in writing;

1.2.7 references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;

1.2.8 headings are included in these Conditions for ease of reference only and shall not affect the interpretation or construction of this Contract;

1.2.9 references in these Conditions to any Condition or Schedule without further designation shall be construed as a reference to the condition of, or schedule to, these Conditions so numbered;

1.2.10 references in these Conditions to any Paragraph or sub-paragraph without further designation shall be construed as a reference to the paragraph or sub-paragraph of the relevant Schedule to these Conditions so numbered;

1.2.11 reference to a Condition is a reference to the whole of that Condition unless stated otherwise;

1.2.12 in the event and to the extent only of any conflict between the Conditions and the remainder of the Schedules, the Conditions shall prevail over the remainder of the Schedules.

2 CONTRACT PERIOD

2.1 The Contract shall take effect on the Commencement Date and shall continue until the Contractor has completed the supply of the Vehicles and any Associated Services in accordance with the requirements of the Contract unless it is otherwise terminated in accordance with these Conditions, or otherwise lawfully terminated.

2.2 Not used.

2.3 This Contract is intended to operate during Phase 2 of the Low Carbon Vehicles Procurement Programme.

3 ENTIRE AGREEMENT

3.1 This Contract constitutes the entire agreement between the Parties relating to the subject matter of the Contract. This Contract supersedes all prior negotiations, representations and undertakings, whether written or oral, except that this Condition shall not exclude liability in respect of any fraudulent misrepresentation.

3.2 In the event of and only to the extent of any conflict between the Contracting Body and the Contractor relating to an Order Form, the Conditions and the Specifications, the Conditions shall prevail unless otherwise agreed in writing.

3.3 In the event of and only to the extent of any conflict between the Contractor's offer and the Specification, the Specification shall prevail unless otherwise agreed in writing.

4 SCOPE OF THE CONTRACT

Nothing in this Contract shall be construed as creating a partnership, a contract of employment or a relationship of principal and agent between the Contracting Body and the Contractor.

5. PERFORMANCE OF THE CONTRACT

General provisions

5.1 The Contractor shall manage and perform the Contract and any Associated Services:

5.1.1 in accordance with the Specification;

5.1.2 in accordance with the terms and conditions of the Contract and Service Levels as agreed and incorporated in the relevant Order, Acknowledgement and Confirmation;

5.1.3 in accordance with Good Industry Practice;

5.1.4 with appropriately experienced, qualified and trained personnel exercising all due skill, care and diligence; and

5.1.5 in compliance with all applicable Laws,

and shall inform the Order Manager as soon as reasonably practicable if any of the requirements of this Contract are not being met.

5.2 Where a Contractor is required to undertake Associated Services the Contractor shall give the Contracting Body, if so requested, the names, of any organisations who are or may be at any time employed performing such services.

5.3 Delivery of Vehicles

5.3.1 The delivery of the Vehicles at the Contracting Body's Premises and the provision of any Associated Services shall be within the time agreed or on the date specified (or such other later time or date as may be agreed between the Contracting Body and the Contractor).

5.3.2 The Contractor shall, as appropriate or as requested by the Contracting Body, provide the necessary driver training on the delivery and acceptance of the Vehicles.

5.3.3 Where any of the Vehicles are not delivered within three months of the delivery date under Condition 5.3.1, unless otherwise agreed between the Contracting Body and the Contractor, that Vehicle will be regarded as being unavailable and the Contracting Body will be entitled to claim a full refund.

5.4 Where any Vehicles have not been delivered in accordance with Condition 5.3.1, the Contractor shall (at its own expense) provide a Replacement Vehicle where so requested by the Contracting Body and within such reasonable period as may be specified by the Contracting Body. The Parties may agree that the Contracting Body will make the arrangements for the Replacement Vehicle, but such arrangements shall not affect the cost of that Replacement Vehicle being met by the Contractor. Where arrangements for the Replacement Vehicle were made by the Contractor, the Contractor will be responsible for collecting the Replacement Vehicles on the delivery of the Vehicles set out in the Specification.

5.5 Rejection of non-conforming Vehicles on delivery

Where on the delivery of the Vehicles the Contracting Body observes any material non-conformity with the Specification the Contracting Body may opt to reject any Vehicle which does not conform and shall notify that rejection to the Contractor. The Contractor will arrange for the collection of the rejected Vehicles.

5.6 Correction of non-conforming Vehicles on delivery

5.6.1 Where on the delivery of the Vehicles the Contracting Body observes any non-conformity with the Specification the Contracting Body may require the Contractor (at its own expense) to correct or procure the correction of the non-conforming Vehicles within 48 hours, or such other time as may be specified by the Contracting Body.

- 5.6.2 Where correction of the non-conformity is not possible within the 48 hour period, or the period notified by the Contracting Body, the Contracting Body may request a Replacement Vehicle,
- 5.6.3 Where a Replacement Vehicle is requested, but subject to Condition 5.6.4, the Contractor will arrange (at its own expense) for the delivery of a Replacement Vehicle within 48 hours or other time as may be specified by the Contracting Body; or
- 5.6.4 The Parties may agree that the Contracting body will make the arrangements for the Replacement Vehicle, but such arrangements shall not affect the cost of that Replacement Vehicle being met by the Contractor.
- 5.6.5 Where arrangements for the Replacement Vehicle were made by the Contractor, the Contractor will be responsible for collecting the Replacement Vehicles on the re-delivery of the Vehicles set out in the Specification.

Vehicle Servicing

- 5.7 During the Contract, the Contracting Body, on reasonable notice being given by the Contractor, will allow the Contractor access to the Vehicles for the purpose of servicing and maintenance in respect of the lower carbon requirements of the Vehicles, and where it has been agreed that any Associated Services will be provided:
- 5.7.1 the Contractor will carry out Routine Servicing of the Vehicle (in accordance with the agreed service schedule), which will include the repair of any defect discovered during such servicing; such repair being regarded as a Scheduled Repair; and
- 5.7.2 any Routine Servicing will be carried out by the Contractor or by its suitably qualified and duly authorised

representatives during Normal Working Hours or at such other times (even if outside the Normal Working Hours) that may be agreed in advance between the Parties;

5.7.3 the Contractor will agree with the Contracting Body a time for the collection of the Vehicle from the Contracting Body's Premises and return it to that address, or to any other address as may be agreed, at a time as agreed between the Parties.

5.7.4 the Contracting Body will provide the Vehicle for Routine Servicing in a condition which is empty of all goods and personal possessions and free from risk to the health and safety to the Contractor or its representatives who may undertake the servicing or inspections;

5.7.5 the Contractor will keep such records of servicing and inspections in accordance with Condition 21.

Breakdown and Unscheduled Repairs

5.8 Where the vehicle breaks down or requires Unscheduled Repairs to be carried out:

5.8.1 the Contracting Body will notify the Contractor and the Contractor will arrange with the Contracting Body a time for the collection of the Vehicle from the Contracting Body's Premises or will effect arrangements for the collection of a broken down Vehicle (if the repairing agent instructed by the Contractor can not repair the Vehicle at the place of the Breakdown;

5.8.2 the Contractor will arrange for the return of the Vehicle at an agreed time to the Contracting Body's Premises or such other address as may be agreed;

5.9 Damage caused by neglect, abuse or negligence

5.9.1 The Contracting Body will meet the Contractor's costs of repairing collision or other damage to the Vehicle or Replacement Vehicle arising from, but not limited to, accident, neglect or abuse of the Vehicle by, or the negligence of, the Contracting Body or its employees, agents or any other third party.

5.9.2 Where, as a result of accident, neglect, abuse or negligence of the Contracting Body or its employees, agents or any other third party, the Vehicle or Replacement Vehicle is damaged beyond economic repair; or if lost or stolen; or is destroyed for any reason the Contracting Body will immediately inform the Contractor by telephone and in writing.

Title in the Vehicles

5.10 Title in the Vehicles will pass to the Contracting Body when the invoice has been paid in full.

Vehicle use

5.11.1 The Contracting Body shall use the Vehicle so as to comply with any Act of Parliament, Order or Regulation or other legislation affecting the use of the Vehicle.

5.11.2 Where any Vehicle is sub-let by the Contracting Body, it shall ensure that the sub-letting is made subject to the same terms as are set out in this Agreement, in so far as such terms are applicable. The Contracting Body shall notify the Contractor of the details of the sub-letting agreement.

6 **CONTRACT PRICE**

- 6.1 In consideration of the Vehicles delivered and accepted and any Associated Services provided under the Contract by the Contractor, and on receipt of a valid invoice, the Contracting Body shall pay the Contract Price.
- 6.2 In the event that the cost to the Contractor of performing its obligations under the Contract increases or decreases as a result of a change of law, the provisions of Condition 9 shall apply.
- 6.3 The Contract Price is exclusive of Tax. The Contracting Body shall pay the Contractor a sum equal to the Tax chargeable on the value of the Vehicles or Associated Services provided in accordance with this Contract.

7 PAYMENT

- 7.1 All invoicing for the Vehicles or Associated Services shall be submitted to the Order Manager as specified in the Order, or within 7 days from the date the Vehicles were supplied or from the date any Associated Services were provided.
- 7.2 Unless otherwise agreed with the Order Manager, where a lump sum price has been agreed for an Order, such sum shall remain fixed for the duration of the Order, notwithstanding any later variations that may be agreed to the Pricing Schedule.
- 7.3 The Contracting Body shall pay the undisputed sums due to the Contractor in cleared funds within 28 days of receipt and agreement of invoices, submitted in arrears, provided that the Vehicles or Associated Services to which the invoice relates have been supplied fully in accordance with this Contract. The Contractor shall provide to the Contracting Body the relevant banking details to which payment should be made.

7.4 Each invoice shall contain all appropriate references and a detailed breakdown of the Vehicles or Associated Services and shall be supported by any other documentation required by the Order Manager to substantiate the invoice.

7.5 Where the Contractor enters into an approved sub-contract with a supplier or Contractor for the purpose of performing the Contract, it shall cause a term to be included in such a sub-contract which requires payment to be made of undisputed sums by the Contractor to the sub-Contractor within a specified period not exceeding 30 days from the receipt of a valid invoice, as defined by the sub-contract requirements.

7.6 Tax, where applicable, shall be shown separately on all invoices as a strictly net extra charge.

7.7 Compliance with Value Added Tax and Other Tax Requirements

7.7.1 The Contractor shall at all times comply with the Value Added Tax Act 1994 and all other statutes relating to direct or indirect taxes.

7.7.2 If requested, the Contractor shall furnish to the Contracting Body the name, and if applicable, the Value Added Tax registration number, PAYE collection number and either the Corporation Tax or Self Assessment reference of any agent, supplier or sub-contractor of the Contractor prior to the commencement of any work under this Contract by that agent, supplier or sub-contractor. Upon a written request by the Contracting Body, the Contractor shall not employ or will cease to employ any agent, supplier or sub-contractor.

7.8 Arrears of Value Added Tax

7.8.1 Where an amount, including any assessed amount, is due from the Contractor as Value Added Tax by or under the Value Added Tax Act 1994 as amended, an equivalent amount may be deducted by the Contracting Body (after giving notice in accordance with Condition 7.8.2) from the amount of any sum due to the Contractor under the Contract.

7.8.2 At least 14 days before exercising the right of deduction provided by this Condition the Contracting Body shall give notice in writing to the Contractor that it is intended to exercise the right of deduction and the notice:-

7.8.3 shall specify the amount to be deducted; and

7.8.4 shall contain a description of the Value Added Tax due from the Contractor in respect of which the deduction is made, for example by reference to an assessed amount or by reference to supplies made during an accounting period.

8 RECOVERY OF SUMS DUE

8.1 Wherever under the Contract any sum of money is recoverable from or payable by the Contractor (including any sum which the Contractor is liable to pay to the Contracting Body in respect of any breach of this Contract), the Contracting Body may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Contractor under the Contract or under any other agreement or contract with the Contracting Body.

8.2 Any overpayment by the Contracting Body to the Contractor, whether of the Contract Price or of Tax, shall be a sum of money recoverable by the Contracting Body from the Contractor.

- 8.3 The Contractor shall make any payments due to the Contracting Body without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Contractor has a valid court order requiring an amount equal to such deduction to be paid by the Contracting Body to the Contractor.

9 CHANGE OF LAW

- 9.1 The Contractor shall neither be relieved of its obligations to supply the Vehicles and any Associated Services in accordance with the terms of this Contract nor be entitled to an increase in the charges as the result of:

9.1.1 a General Change in Law; or

9.1.2 a Specific Change in Law where the effect of that Specific Change in Law on the Services is known at the Commencement Date whether by publication of a Bill, as part of a Government Departmental Consultation paper, a draft Statutory Instrument, a proposal in the Official Journal of the European Union or otherwise.

- 9.2 If a Specific Change in Law occurs or will occur during the Contract Period (other than those referred to in Condition 9.1.2), the Contractor shall notify the Contracting Body of the likely effects of that change, including:

9.2.1 whether any Change is required to the Vehicles, any Associated Services, the Contract Price or this Contract; and

9.2.2 whether any relief from compliance with the Contractor's obligations is required, including any obligation to meet any service level requirements at any time.

9.3 As soon as practicable after any notification in accordance with Condition 9.2 the Parties shall discuss and agree the matters referred to in that Condition and any ways in which the Contractor can mitigate the effect of the Specific Change of Law, including:

9.3.1 providing evidence that the Contractor has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its sub-Contractors;

9.3.2 demonstrating that a foreseeable Specific Change in Law had been taken into account by the Contractor before it occurred;

9.3.3 giving evidence as to how the Specific Change in Law has affected the cost of providing the Vehicles or the Associated Services; and

9.3.4 demonstrating that any expenditure, that has been avoided, has been taken into account in amending the Contract Price.

10. **STATUTORY OBLIGATIONS AND REGULATIONS**

Health and Safety

10.1 The Contractor shall notify any Contracting Body upon request of all relevant statutory provisions and approved safety standards applicable to the provision of the Vehicles or performance of any Associated Services.

10.2 The Contractor shall be responsible for obtaining all relevant licences, consents or permits to fulfil all statutory provisions and approved safety standards required for the performance of the Contract.

10.3 The Contractor shall take all measures necessary to comply with the requirements of the Health and Safety at Work Act 1974 and any other

acts, orders, regulations and codes of practice relating to health and safety, which may apply to staff in the performance of any Contract.

- 10.4 The Contractor shall promptly notify the Contracting Body of any health and safety hazards which may arise in connection with the performance of the Contract. The Contracting Body shall promptly notify the Contractor of any health and safety hazards which may exist or arise at the Contracting Body's Premises and which may affect the Contractor in the performance of the Contract.
- 10.5 While on the Contracting Body's Premises, the Contractor shall comply with any health and safety measures implemented by the Contracting Body in respect of Staff and other persons working on those Premises.
- 10.6 The Contractor shall notify the Contracting Body immediately in the event of any incident occurring in the performance of the Contract on the Contracting Body's Premises where that incident causes any personal injury or damage to property which could give rise to personal injury.
- 10.7 The Contractor shall ensure that its health and safety policy statement (as required by the Health and Safety at Work Act 1974) is made available to the Contracting Body on request.

11. PREVENTION OF CORRUPTION

- 11.1 The Contractor shall not offer or give, or agree to give, to any employee, agent, servant or representative of the Contracting Body any gift or consideration of any kind as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Contract, or for showing or refraining from showing favour or disfavour to any person in relation to the Contract. The attention of the Contractor is drawn to the

criminal offences under the Prevention of Corruption Acts 1889 to 1916.

11.2 The Contractor warrants that it has not paid commission or has agreed to pay any commission to any employee or representative of the Contracting Body by the Contractor or on the Contractor's behalf.

11.3 Where the Contractor or any person acting on the Contractor's behalf, engages in conduct prohibited by Conditions 11.1 or 11.2 above in relation to this Contract with the Contracting Body, the Contracting Body has the right to:

11.3.1 terminate the Contract in accordance with Condition 29.1 and recover from the Contractor the amount of any loss suffered by the Contracting Body resulting from the termination; or

11.3.2 recover in full from the Contractor any other loss sustained by the Contracting Body in consequence of any breach of this Condition, whether or not the Contract has been terminated.

11.4 The decision of the Contracting Body in relation to this Condition shall be final and conclusive but in exercising its rights or remedies under Condition 11.3, the Contracting Body shall act in a reasonable and proportionate manner having regard to such matters as the gravity of, and the identity of the person performing, the prohibited act.

12 CONFLICTS OF INTEREST

12.1 The Contractor shall take appropriate steps to ensure that neither the Contractor nor any employee, servant, agent, supplier or sub-contractor is placed in a position where there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor or such persons and the duties owed to the Contracting Body under the provisions of the Contract. The Contractor

will disclose to the Contracting Body full particulars of any such conflict of interest which may arise.

- 12.2 The provisions of this Condition shall apply during the continuance of this Contract and indefinitely after its termination.

13. **DISCRIMINATION**

- 13.1 The Contractor shall not unlawfully discriminate either directly or indirectly or by way of victimisation or harassment against any person on grounds of:

- (a) race (colour, nationality, or ethnic or national origin) contrary to the Race Relations Act 1976; or
- (b) sex or sexual orientation contrary to the Sex Discrimination Act 1975, and the Sexual Orientations Regulation 2003; or
- (c) disability contrary to the Disability Discrimination Act 1995; or
- (d) religion or belief contrary to the Employment Equality (Religion or Belief) Regulations 2003; or
- (e) age contrary to the Employment Equality (Age) Regulations 2006.

- 13.2 The Contractor shall take all reasonable steps to secure the observance of Condition 13.1 by all servants, employees or agents of the Contractor and all suppliers and sub-contractors employed in the provision of the Vehicles and Associated Services. Where any employee or Sub-contractor employed by the Contractor is required to carry out any activity on or alongside the Contracting Body's employees on any premises the Contractor shall ensure that each such employee and Sub-contractor complies with that Contracting

Body's employment policies and codes of practice relating to discrimination and equal opportunities or any other policies that the Contracting Body may notify to the Contractor from time to time.

13.3 The Contractor shall notify the relevant Order Manager in writing as soon as it becomes aware of any investigation or proceedings brought against the Contractor under the Discrimination Acts in connection with the Contractor's performance of the Contract. Where there is such an investigation or proceedings the Contractor shall free of charge:

- (a) provide any information requested by the investigating body, court or tribunal in the timescale allotted;
- (b) attend, and permit a representative from the Contracting Body to attend any associated meetings;
- (c) promptly allow access to any documents and information relevant to the investigation or proceedings;
- (d) allow itself and any staff to appear as witness in any ensuing investigation or proceedings; and
- (e) co-operate fully and promptly with the investigatory body, court or tribunal.

13.4 The Contractor shall indemnify the Contracting Body against all costs, charges, expenses (including legal and administrative expenses) and payments made by the Contracting Body arising out of or in connection with any such investigation or proceedings and such other financial redress to cover any payment the Contracting Body may have been ordered or required to pay to a third party.

13.5 In the event that the Contractor enters into any sub-contract in connection with the Contract, it shall impose obligations on its Sub-

contractors in terms substantially similar to those set out in Conditions 13.1 to 13.4.

13.6 Where the Contractor is found by any investigatory body, court or tribunal or to have discriminated against a person, in connection with the Contractor's performance under the Contract, contrary to any provision in the Discrimination Acts the Contracting Body shall be entitled to treat such finding as evidence that the Contractor has committed a material breach of the Contract and may terminate the Contract in accordance with Condition 27.4.

13.7 The Contractor acknowledges that the Contracting Body is under a duty in relation to the matters set out in Condition 13.1 to have due regard to the need to eliminate unlawful discrimination in respect of those matters and to promote equality of opportunity between the relevant groups of people. When performing the Contract, and at no additional cost, the Contractor shall assist and cooperate with the Contracting Body where possible in satisfying this duty.

14. **ENVIRONMENTAL REQUIREMENTS**

14.1 In performing the Contract the Contractor shall comply with the Contracting Body's environmental policy, which is to conserve energy, water and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.

14.2 All written work, including reports, delivered in connection with the Contract shall (unless otherwise specified) be produced on recycled paper containing at least 80% post consumer waste and used on both sides where appropriate. The Contractor shall meet all reasonable requests by the Contracting Bodies for information

evidencing compliance with the provisions of this Condition 14 by the Contractor.

15. PROTECTION OF INFORMATION

Data Protection Act

15.1 The Contractor shall (and shall procure that any of its Staff involved in the provision of this Contract) be registered under the DPA and both Parties will duly observe all their obligations under the Act which arise in connection with the Contract.

15.2 Notwithstanding the general obligation in Condition 15.1, where the Contractor is processing personal data (as defined by the DPA) as a data processor for the Contracting Body (as defined by the DPA) the Contractor shall ensure that it has in place appropriate technical and organisational measures to ensure the security of the personal data (and to guard against unauthorised or unlawful processing of the personal data and against accidental loss or destruction of, or damage to, the personal data), as required under the Seventh Data Protection Principle in Schedule 1 to the DPA; and

15.2.1 provide the Contracting Body with such information as the Contracting Body may reasonably require to satisfy itself that the Contractor is complying with its obligations under the DPA;

15.2.2 promptly notify the Contracting Body of any breach of the security measures required to be put in place pursuant to Condition 15.1; and

15.2.3 ensure that it does nothing knowingly or negligently which places the Contracting Body in breach of the Contracting Body's obligations under the DPA.

15.3 The provisions of this Condition shall apply during the continuance of this Contract and indefinitely after its expiry or termination.

16. OFFICIAL SECRETS ACTS

16.1 The Contractor shall undertake to abide by, and ensure that its Staff abide by the provisions of the Official Secrets Act 1911 to 1989 (where applicable) and shall continue to apply this obligation during the continuation of the Contract and after the expiry or termination of the Contract.

16.2 The provisions of Condition 16.1 shall apply during the continuance of the Contract and indefinitely after its expiry or termination.

17. CONFIDENTIALITY

17.1 Each Party:-

17.1.1 shall treat all Confidential Information belonging to the other Party as confidential and safeguard it accordingly;

17.1.2 any electronic transfer of the Confidential Information shall be encrypted before transfer; and

17.1.3 shall not disclose any Confidential Information belonging to the other Party to any other person without the prior written consent of the other Party, except to such persons and to such extent as may be necessary for the performance of the Contract or except where disclosure is otherwise expressly permitted by the provisions of this Contract.

17.2 A Party shall take all necessary precautions to ensure that all Confidential Information obtained from the other under or in connection with the Contract:

17.2.1 is given only to such of the Staff and professional advisors or consultants engaged to advise it in connection with the Contract as is strictly necessary for the performance of the Contract and only to the extent necessary for the performance of the Contract;

17.2.2 is treated as confidential and not disclosed (without prior Approval) or used by any Staff or such professional advisors or consultants otherwise than for the purposes of the Contract.

17.3 Where it is considered necessary in the reasonable opinion of a Party, the other shall ensure that Staff or such professional advisors or consultants sign a confidentiality undertaking before commencing work in connection with the Contract. A Party shall ensure that Staff or its professional advisors or consultants are aware of the confidentiality obligations under this Contract.

17.4 No Party shall use any Confidential Information it receives from the other otherwise than for the purposes of the Contract.

17.5 The provisions of Conditions 17.1 to 17.4 shall not apply to any Confidential Information received by one Party from the other:

17.5.1 which is or becomes public knowledge (otherwise than by breach of this Condition);

17.5.2 which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;

17.5.3 which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;

17.5.4 is independently developed without access to the Confidential Information; or

17.5.5 which must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to Condition 18.4;

17.5.6 which is required to be produced under any obligation by either Party to the Department.

17.6 Nothing in this Condition shall prevent the Contracting Body:

17.6.1 disclosing any Confidential Information for the purpose of:

17.6.1.1 the examination and certification of the Contracting Body's accounts; or

17.6.1.2 any examination pursuant to Sections 44 and 46 of the Audit Commission Act 1998 of the economy, efficiency and effectiveness with which the Authority has used its resources; or

17.6.2 disclosing any Confidential Information obtained from the Contractor:

17.6.2.1 to any government department or any other Regulatory Body. All government departments or Regulatory Bodies receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other government departments or other Regulatory Bodies on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any government department or any Regulatory Body; or

17.6.2.2 to any person engaged in providing any services to the Contracting Body for any purpose relating to or ancillary to the Contract;

17.6.2.3 provided that in disclosing information under Condition 17.6.2 the Contracting Body discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.

17.7 Nothing in this Condition shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Contract in the course of its normal business, to the extent that this does not result in a disclosure of Confidential Information or an infringement of Intellectual Property Rights.

17.8 In the event that the Contractor fails to comply with Condition 17, the Contracting Body reserves the right to terminate the Contract by notice in writing with immediate effect.

17.9 The provisions under Condition 17 are without prejudice to the application of the Official Secrets Acts 1911 to 1989 to any Confidential Information.

18. FREEDOM OF INFORMATION

18.1 The Contractor acknowledges that the Contracting Body is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Contracting Body (at the Contractor's expense) to enable the Contracting Body to comply with its obligations under these provisions.

18.2 The Contractor shall and shall procure that its sub-Contractors shall:

18.2.1 transfer the Request for Information to the Contracting Body as soon as practicable after receipt and in any event within two (2) Working Days of receiving a Request for Information;

18.2.2 provide the Contracting Body with a copy of all Information in its possession or power in the form that the Contracting Body requires within five (5) Working Days (or such other period as the Contracting Body may specify) of the Contracting Body requesting that Information; and

18.2.3 provide all necessary assistance as reasonably requested by the Contracting Body to enable the Contracting Body to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.

18.3 The Contracting Body shall be responsible for determining at its absolute discretion whether any Information:

18.3.1 is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations;

18.3.2 is to be disclosed in response to a Request for Information, and in no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Contracting Body.

18.4 The Contractor acknowledges that the Contracting Body may, acting in accordance with the Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part 1 of FOIA (issued under section 45 of the FOIA, November 2004), be obliged under the FOIA or the Environmental Information Regulations to disclose Information:

18.4.1 without consulting with the Contractor, or

18.4.2 following consultation with the Contractor and having taken its views into account.

18.5 The Contractor shall ensure that all Information produced in the course of the Contract or relating to the Contract is retained for disclosure and shall permit the Contracting Body to inspect such records as may be requested from time to time.

18.6 The Contractor acknowledges that any lists or Schedules provided by it outlining Confidential Information are of indicative value only and that the Contracting Body may nevertheless be obliged to disclose Confidential Information in accordance with Condition 18.4.

19 PUBLICITY, MEDIA AND OFFICIAL ENQUIRIES

19.1 The Contractor shall not make any press announcements or publicise this Contract in any way without the Contracting Body's prior written consent. The Contractor shall ensure the observance of the provisions of Condition 19 by the Staff.

19.2 The Contracting Body shall be entitled to publicise this Contract in accordance with any legal obligation upon the Contracting Body, including any examination of this Contract by the National Audit Office pursuant to the National Audit Act 1983 or otherwise.

19.3 Neither Party shall do anything nor cause anything to be done, which may damage the reputation of the other Party or bring the other Party into disrepute.

20. INTELLECTUAL PROPERTY RIGHTS

- 20.1 Save as granted under this Contract, neither the Contracting Body nor the Contractor shall acquire any right, title or interest in the other's Pre-Existing Intellectual Property Rights.
- 20.2 The Contractor shall procure that the performance of the Contractor's responsibilities under this Contract shall not infringe any Intellectual Property Rights of any third party.
- 20.3 The Contractor shall indemnify the Contracting Body against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right by the availability of the Vehicles (or Associated Services) or the performance of the Contractor's responsibilities hereunder, except to the extent that such liabilities have resulted directly from the Contracting Body's failure properly to observe its obligations under Condition 20.
- 20.4 The Contractor shall promptly notify the Contracting Body if any claim or demand is made or action brought against the Contractor for infringement or alleged infringement of any Intellectual Property Right that may affect the availability of the Vehicles or Associated Services hereunder.
- 20.5 The Contracting Body shall promptly notify the Contractor if any claim or demand is made or action brought against the Contracting Body to which Condition 20.3 or Condition 20.4 may apply. The Contractor shall at its own expense conduct any litigation arising therefrom and all negotiations in connection therewith and the Contracting Body hereby agrees to grant to the Contractor exclusive control of any such litigation and such negotiations.

- 20.6 The Contracting Body shall at the request of the Contractor afford to the Contractor all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the Contracting Body to which Condition 20.3 may apply or any claim or demand made or action brought against the Contractor to which Condition 20.4 may apply. The Contractor shall reimburse the Contracting Body for all costs and expenses (including, legal costs and disbursements on a solicitor and client basis) incurred in so doing.
- 20.7 If a claim or demand is made or action brought to which Condition 20.3 may apply, or in the reasonable opinion of the Contractor is likely to be made or brought, the Contractor may at its own expense and within a reasonable time either:
- 20.7.1 modify any or all of Vehicles or Associated Services without reducing the performance and functionality of the same, or substitute alternative Vehicles or Associated Services of equivalent performance and functionality for any or all of the Vehicles or Associated Services, so as to avoid the infringement or the alleged infringement, provided that the terms herein shall apply mutatis mutandis to such modified or substituted items or services and such substitution shall not increase the burden on the Contractor or a Contracting Body; or
- 20.7.2 procure a licence to use the Vehicles (or to perform the Associated Services) on terms that are reasonably acceptable to the Contracting Body.
- 20.8 In the event that the Contractor has availed itself of its rights to modify the Vehicles and/or Associated Services or to supply a substitute alternative vehicle or vehicles and/or associated service or services pursuant to Condition 20.7.1 or to procure a licence under Condition 20.7.2 and such exercise of the said rights has avoided any claim, demand or action for infringement or alleged infringement, then the

Contractor shall have no further liability thereafter under Condition 20 in respect of the said claim, demand or action.

- 20.9 In the event that a modification or substitution in accordance with Condition 20.7.1 is not possible so as to avoid the infringement, or the Contractor has been unable to procure a licence in accordance with Condition 20.7.2 the Contracting Body shall be entitled to delete the relevant Vehicle or Associated Service from being available in relation to the relevant Price Schedules where applicable.
- 20.10 Condition 20 sets out the entire financial liability of the Contractor with regard to the infringement of any Intellectual Property Right by the availability of the Vehicles or Services hereunder. This shall not affect the Contractor's financial liability for other Defaults or causes of action that may arise hereunder.
- 20.11 The Contracting Body warrants that the Contractor's use of any third party item supplied directly or indirectly by the Contracting Body in accordance with any instructions given by the Contracting Body in connection with the use of such item shall not cause the Contractor to infringe any third party's Intellectual Property Rights in such item.
- 20.12 The provisions of this Condition shall apply during the continuance of this Contract and indefinitely after its expiry or termination.

21 RECORDS AND AUDIT ACCESS

- 21.1 The Contractor shall keep and maintain until six (6) years after the termination or expiry (whichever is the earlier) of the Contract, (or for such longer period as may be agreed between the Parties) full and accurate records and accounts of the operation of the Contract including the Vehicles and Associated Services provided under it, and including all expenditure reimbursed by the Contracting Body, and all payments made by the Contracting Body.

- 21.2 The Contractor shall keep the records and accounts referred to in Condition 21.1 above in accordance with good accountancy practice and shall be audited by qualified auditors as and when required to support published annual accounts.
- 21.4 The Contractor shall on reasonable notice afford the Contracting Body and its representatives such access to such records and accounts as may be required by the Contracting Body from time to time.
- 21.5 The Contractor shall provide such records and accounts together with copies of the Contractor's published accounts during the Contract Period to the Contracting Body and its internal and external auditors on reasonable written notice.

22 CONTROL OF THE CONTRACT

- 22.1 The Contractor shall not assign, novate or in any other way dispose of the Contract or any part of it without prior approval of the Contracting Body, not to be unreasonably withheld or delayed. Sub-contracting any part of the Contract shall not relieve the Contractor of any obligation or duty attributable to the Contractor under the Contract.
- 22.2 The Contractor shall be responsible for the acts and omissions of its sub-Contractors as though they are its own.
- 22.3 Where the Contractor has entered into sub-contracts in relation to the performance of this Contract, copies of each sub-contract shall be sent by the Contractor to the Contracting Body within two (2) working days of request.

23 THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

No person who is not a Party to the Contract (including without limitation any employee, officer, agent, representative, or sub-Contractor of either the Contracting Body or the Contractor) shall have any right to enforce any term of the Contract, which expressly or by implication, confers a benefit on him without the prior agreement in writing of both Parties, which agreement should specifically refer to this Condition 23. Any person acting under a sub-letting agreement made with a Contracting Body may enforce such rights under the Agreement as are applicable to that sub-letting agreement. This Condition does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act, and does not apply to the Crown.

24 WAIVER

24.1 The failure of either Party to insist upon strict performance of any provision of the Contract or the failure of either Party to exercise any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the Contract.

24.2 A waiver of any default shall not constitute a waiver of any other default.

25 VARIATION OF THE VEHICLES OR ASSOCIATED SERVICES

25.1 Subject to the Vehicles and Associated Services provided under the Contract remaining within the scope of a Framework Agreement the Contracting Body reserves the right on giving reasonable written notice from time to time to require changes to the Vehicles and Associated Services (whether by way of the removal or addition of Vehicles or Associated Services). Such a change is hereinafter called “a Variation”.

25.2 Any such Variation shall be communicated in writing by the Contract Manager to the Contractor's Representative in accordance with the notice provisions of Condition 35. All Variations shall be in the form of an addendum to the Contract.

25.3 In the event of a Variation the Contract Price may also be varied in accordance with the Pricing Schedule. Such Variation in the Contract Price shall be calculated by the Contracting Body and agreed in writing with the Contractor and shall be such an amount as properly and fairly reflects the nature and extent of the Variation in all the circumstances. Failing agreement the matter shall be determined by negotiation or mediation in accordance with the provisions of Condition 37.

25.4 The Contractor shall provide such information as may be reasonably required to enable such varied price to be calculated.

26 **SEVERABILITY**

26.1 If any provision of the Contract is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of the Contract shall continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated.

26.2 In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Contract, the Parties shall immediately commence negotiations in good faith to remedy the invalidity.

27. **TERMINATION**

27.1 Termination for Corruption

The Contracting Body may terminate the Contract by serving notice on the Contractor with effect from the date specified in such notice where the conduct prohibited in Condition 11.1 has occurred.

27.2 Termination on Breach of Confidentiality

The Contracting Body may terminate the Contract by serving notice on the Contractor with effect from the date specified in such notice where the conduct prohibited in Condition 17 has occurred

27.3 Termination in relation to Official Secrets Act

The Contracting Body may terminate the Contract by serving notice on the Contractor with effect from the date specified in such notice where the Contractor is in breach of its obligation in Condition 16.

27.4 Termination on Default

The Contracting Body may terminate the Contract by serving notice on the Contractor with effect from the date specified in such notice where the Contractor commits a Default and:

27.4.1 the Contractor has not remedied the Default to the satisfaction of the Department within 25 Working Days, or such other period as may be specified by the Contracting Body, after issue of a written notice specifying the Default and requesting it to be remedied; or

27.4.2 the Default is not, in the reasonable opinion of the Contracting Body, capable of remedy; or

27.4.3 the Default is a material breach.

27.5 Termination on Insolvency

27.5.1 The Contracting Body may terminate the Contract by serving notice on the Contractor with effect from the date specified in such notice where one of the following insolvency events occurs in relation to the Contractor.

27.5.2 The Contractor is an individual or a firm and a petition is presented for the Contractor's bankruptcy, or a criminal bankruptcy order is made against the Contractor or any partner in the firm, or the Contractor or any partner in the firm makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignment for the benefit of creditors, or if an administrator is appointed to manage the Contractor's or firm's affairs.

27.5.3 The Contractor is a company, if the company passes a resolution for winding up or dissolution (otherwise than for the purposes of and followed by an amalgamation or reconstruction) or an application is made for, or any meeting of its directors or members resolves to make an application for an administration order in relation to it or any party gives or files notice of intention to appoint an administrator of it or such an administrator is appointed, or the court makes a winding-up order, or the company makes a composition or arrangement with its creditors, or an administrative receiver, receiver, manager or supervisor is appointed by a creditor or by the court, or possession is taken of any of its property under the terms of a fixed or floating charge.

27.5.4 Where the Contractor is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986.

27.5.5 Any similar event occurs under the law of any other jurisdiction.

27.6 Termination by the Contracting Body

The Contracting Body shall have the right to terminate the Contract, or to terminate the provision of any part of it, at any time after the expiry of the minimum period of one year specified in Condition 5.12, by giving three (3) Months' notice to the Contractor.

27.6.1 Where the Contracting Body terminates the Contract under Condition 27.6, the Contracting Body shall reimburse the Contractor for any commitments, liabilities or expenditure which would otherwise represent an unavoidable loss by the Contractor by reason of the termination of the Contract, provided that the Contractor takes all reasonable steps to mitigate such loss. Where the Contractor holds insurance, the Contractor shall reduce its unavoidable costs by any insurance sums available. The Contractor shall submit a fully itemised and costed list of such loss, with supporting evidence, of losses reasonably and actually incurred by the Contractor as a result of termination under Condition 27.6.

27.7 The Contracting Body shall not be liable under Condition 27.6.1 to pay any sum which:

27.7.1 was claimable under insurance held by the Contractor, and the Contractor has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy; or

27.7.2 when added to any sums paid or due to the Contractor under the Contract exceeds the total sum that would have been payable to the Contractor if the Contract had not been terminated prior to the expiry of the Term (and taking into account only Orders the subject of an Acknowledgement and Confirmation).

28. **REMEDIES IN THE EVENT OF INADEQUATE PERFORMANCE**

28.1 In the event that there has been a material breach of this Contract by the Contractor, or the Contractor's performance of its duties under the Contract has failed to meet the requirements, then the Contracting Body may, subject to service of a notice provided under Condition 27.4 of the Contract, do any of the following:

28.1.1 make such deduction from the payment to be made to the Contractor as the Contracting Body shall reasonably determine to reflect sums paid or sums which would otherwise be payable in respect of such of the Vehicles or Associated Services as the Contractor shall have failed to provide;

28.1.2 Not used.

28.1.3 without terminating the Contract itself, provide or procure the provision of part of the Services until such time as the Contractor shall have demonstrated to the reasonable satisfaction of the Contracting Body that the Contractor will once more be able to provide such of the Vehicles or perform such part of the Associated Services in accordance with the Contract;

28.1.4 without terminating the whole of the Contract, terminate the Contract in respect of part of the Services only (whereupon a corresponding reduction in the Contract Price shall be made) and thereafter itself provide or procure a third party to provide such of the Vehicles or such part of the Associated Services.

28.2 Not used.

28.3 The Contracting Body may charge to the Contractor any cost reasonably incurred by the Contracting Body and any reasonable administration costs in respect of the provision of any part of the Services by the Contracting Body or by a third party to the extent that

such costs exceed the payment which would otherwise have been payable to the Contractor for such part of the Services.

28.4 In the event that:

28.4.1 the Contractor fails to comply with Condition 28.1; or

28.4.2 the Contractor persistently fails to comply with Condition 28.2, and such failures, taken as a whole, are materially adverse to the commercial interests of the Contracting Body;

28.4.3 the Contracting Body reserves the right to terminate the Contract by notice in writing with immediate effect.

28.5 In the event that through any Default of the Contractor, data transmitted or processed in connection with the Contract is either lost or sufficiently degraded as to be unusable, the Contractor shall be liable for the cost of reconstitution of that data and shall provide a full credit in respect of any charge levied for its transmission.

28.6 The Contractor may terminate this Contract if the Contracting Body is in material breach of its obligations to pay undisputed charges by giving the Contracting Body 90 days notice specifying the breach and requiring its remedy. The Contractor's right of termination under this Condition 28.6 shall not apply to non payment of the charges where such non payment is due to the Contracting Body exercising its rights under Condition 28.1.1.

28.7 The remedies of the Contracting Body under this Condition may be exercised successively in respect of any one or more failures by the Contractor.

29 **REMEDIES CUMULATIVE**

Except as otherwise expressly provided by the Contract, all remedies available to either Party for breach of this Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

30 RECOVERY UPON TERMINATION

- 30.1 Termination or expiry of the Contract shall be without prejudice to any rights and remedies of the Contractor and the Contracting Body accrued before such termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry.
- 30.2 At the end of the Contract Period (and howsoever arising) the Contractor shall forthwith deliver to the Contracting Body upon request all the property belonging to the Contracting Body (including but not limited to materials, documents, information, access keys) relating to the Contract in its possession or under its control or in the possession or under the control of any permitted suppliers or sub-contractors and in default of compliance with this Condition the Contracting Body may recover possession thereof and the Contractor grants reasonable licence to the Contracting Body or its appointed agents to enter (for the purposes of such recovery) any premises of the Contractor or its permitted suppliers or sub-contractors where any such items may be held.
- 30.3 At the end of the Contract Period (howsoever arising) and/ or after the Contract Period the Contractor shall co-operate free of charge with the Contracting Body and any Replacement Contractor appointed by the Contracting Body to continue or take over the performance of the Contract in order to ensure an effective handover of all work then in progress.

30.4 The provisions of:

30.4.1 Condition 11 (Corrupt Gifts and Payments of Commission)

30.4.2 Condition 13 (Non-Discrimination)

30.4.3 Condition 15 (Data Protection)

30.4.4 Condition 16 (Official Secrets Acts)

30.4.5 Condition 17 (Confidentiality)

30.4.6 Condition 18 (Freedom of Information)

30.4.7 Condition 19 (Publicity)

30.4.8 Conditions 20 (Intellectual Property Rights)

30.4.9 Condition 21. (Records and Audit Access)

30.4.10 Condition 24 (Waiver)

30.4.11 Condition 30 (Consequences of Termination and Expiry)

30.4.12 Condition 32 (Liability and Insurance)

30.4.13 Condition 33 (Warranties and Representations)

30.4.14 Condition 36 and 37 (Dispute Resolution)

30.5 Without limitation to the foregoing, any other Condition which by its terms is to be performed or observed notwithstanding termination or expiry or which is expressed to survive termination or expiry) shall survive the termination or expiry of the Contract, together with any

other provision which is either expressed to or by implication is intended to survive termination.

- 30.6 The provisions of this Condition shall survive the continuance of this Contract and indefinitely after its termination.

31 **NOVATION**

- 31.1 The Contracting Body shall be entitled to:

31.1.1 assign, novate or otherwise dispose of its rights and obligations under this Contract or any part thereof to any body defined as a "Contracting Body" in a Framework Agreement provided that any such assignment, novation or other disposal shall not increase the burden of the Contractor's obligations under this Contract; or

31.1.2 novate this Contract to any other body established by the Crown or under statute in order substantially to perform any of the functions that previously had been performed by the Contracting Body provided that any such novation shall not increase the burden of the Contractor's obligations pursuant to this Contract; or

31.1.3 novate this Contract to any private sector body which substantially performs the function of the Contracting Body provided that any such novation shall not increase the burden of the Contractor's obligations pursuant to this Contract.

- 31.2 Any change in the legal status of the Contracting Body shall not affect the validity of this Contract. In such circumstances, this Contract shall bind and enure to the benefit of any successor body to the Contracting Body.

32 LIABILITIES

Indemnity and Insurance

32.1 Neither Party excludes or limits liability to the other Party for death or personal injury caused by its negligence or for any breach of any obligations implied by Section 2 of the Supply of Goods and Services Act 1982 or for fraud or fraudulent misrepresentation.

32.2 The Contractor shall indemnify and keep indemnified the Contracting Body fully against all claims, proceedings, actions, damages, legal costs, expenses and any other liabilities whatsoever arising out of, in respect of or in connection with the Contract including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Contractor, or any other loss which is caused directly or indirectly by any act or omission of the Contractor. This Condition shall not apply to the extent that the Contractor is able to demonstrate that such death or personal injury, or loss or damage was not caused or contributed to by its negligence or default, or the negligence or default of its staff or sub-Contractors, or by any circumstances within its or their control.

32.3 Subject always to Condition 32.1, the liability of either Party for Defaults shall be subject to the financial limits set out in this Condition 32.3.

32.3.1 The aggregate liability of either Party for all Defaults resulting in direct loss of or damage to the property of the other under or in connection with this Contract shall in no event exceed ten million pounds (£10,000,000).

32.3.2 The annual aggregate liability under the Contract of either Party for all Defaults (other than a Default governed by Condition 11.3

or Condition 32.1 shall in no event exceed ten million pounds (£10,000,000).

32.4 Subject always to Condition 32.1, in no event shall either Party be liable to the other for:

32.4.1 loss of profits, business, revenue, goodwill or anticipated savings; and/ or

32.4.2 indirect or consequential loss or damage.

33 **WARRANTIES AND REPRESENTATIONS**

33.1 The Contractor warrants and represents that:

33.1.1 the Contractor has the full capacity and authority and all necessary consents (including, but not limited to, where its procedures so require, the consent of its parent company) to enter into and perform this Contract and that this Contract is executed by a duly authorised representative of the Contractor;

33.1.2 the Contractor shall discharge its obligations hereunder with all due skill, care and diligence including but not limited to good industry practice and (without limiting the generality of this Condition) in accordance with its own established internal procedures;

33.1.3 all obligations of the Contractor pursuant to the Contract shall be performed and rendered by appropriately experienced, qualified and trained Staff with all due skill, care and diligence;

33.1.4 the Contractor is not in default in the payment of any due and payable taxes or in the filing, registration or recording of any document or under any legal or statutory obligation or requirement which default might have a material adverse effect on its business,

assets or financial condition or its ability to observe or perform its obligations under this Contract.

34 FORCE MAJEURE

34.1 For the purpose of this Condition, "Force Majeure" means any event or occurrence which is outside the reasonable control of the Party concerned, and which is not attributable to any act or failure to take preventative action by the Party concerned, including (but not limited to) governmental regulations, fire, flood, or any disaster. It does not include any industrial action occurring within the Contractor's organisation or within any sub-contractor's organisation.

34.2 Neither Party shall be liable to the other Party for any delay in or failure to perform its obligations under the Contract (other than a payment of money) if such delay or failure results from a Force Majeure event. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations hereunder for the duration of such Force Majeure event. However, if any such event prevents either Party from performing all of its obligations under the Contract for a period in excess of six (6) months, either Party may terminate the Contract by notice in writing with immediate effect.

34.3 Any failure or delay by the Contractor in performing its obligations under the Contract which results from any failure or delay by an agent, sub-contractor or supplier shall be regarded as due to Force Majeure only if that agent, sub-contractor or supplier is itself impeded by Force Majeure from complying with an obligation to the Contractor.

34.4 If either of the Parties becomes aware of circumstances of Force Majeure which give rise to or which are likely to give rise to any such failure or delay on its part as described in Condition 34.1 it shall forthwith notify the other by the most expeditious method then available

and shall inform the other of the period which it is estimated that such failure or delay shall continue.

- 34.5 For the avoidance of doubt it is hereby expressly declared that the only events which shall afford relief from liability for failure or delay of performance of the Contract shall be any event qualifying for Force Majeure hereunder.

35 NOTICES

- 35.1 Except as otherwise expressly provided within the Contract, no notice, approval or other communication from one Party to the other shall have any validity under the Contract unless given or made in writing by or on behalf of the Party concerned.

- 35.2 Any notice or other communication which is to be given or made by either Party to the other shall be given or made by letter (sent by hand, post, registered post or by the recorded delivery service), by facsimile transmission or electronic mail (confirmed in either case by letter). Such letters shall be addressed to the other Party in the manner referred to in Condition 37.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given two (2) working days after the day on which the letter was posted, or four hours, in the case of electronic mail or facsimile transmission or sooner where the other Party acknowledges receipt of such letters, facsimile transmission or item of electronic mail.

- 35.3 For the purposes of Condition 35.2, the address of each Party shall be:

[Insert details]

- 36.4 Either Party may change its address for service by serving a notice in accordance with this Condition.

36 **DISPUTES AND LAW**

36.1 Governing Law

This Contract shall be governed by and interpreted in accordance with English law and the Parties submit to the exclusive jurisdiction of the courts of England and Wales.

37 **DISPUTE RESOLUTION**

37.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within 20 Working Days of either Party notifying the other of the dispute such efforts shall involve the escalation of the dispute to the finance director(or equivalent) of each Party.

37.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of the competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.

37.3 If the dispute cannot be resolved by the Parties pursuant to Condition 37.1 the dispute shall be referred to mediation pursuant to the procedure set out in Condition 37.5 unless (a) the Contracting Body considers that the dispute is not suitable for resolution by mediation; or (b) the Contractor does not agree to mediation.

37.4 The performance of the Contract shall not be suspended, cease or be delayed by the reference of a dispute to mediation and the Contractor (or employee, agent, supplier or sub-contractor) shall comply fully with the requirements of the Contract at all times.

37.5 The procedure for mediation and consequential provisions relating to mediation are as follows:

37.5.1 a neutral adviser or mediator ("the Mediator") shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within 14 days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within 14 days from the date of the proposal to appoint a Mediator or within 14 days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution ("CEDR") to appoint a Mediator.

37.5.2 The Parties shall within 14 days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from CEDR to provide guidance on a suitable procedure.

37.5.3 Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.

37.5.4 If the Parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the Parties once it is signed by their duly authorised representatives.

37.5.5 Failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both Parties.

37.5.6 If the Parties fail to reach agreement in the structured negotiations within 60 days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the Courts unless the dispute is referred to arbitration pursuant to the procedures set out in Condition 37.7

37.6 Subject to Condition 37.2, the Parties shall not institute court proceedings until the procedures set out in Conditions 37.3 and 37.3 have been completed save that:

37.6.1 the Contracting Body may at any time before court proceedings are commenced, serve a notice on the Contractor requiring the dispute to be referred to and resolved by arbitration in accordance with the provisions of Condition 37.7.

37.6.2 if the Contractor intends to commence court proceedings, it shall serve written notice on the Contracting Body of its intentions and the Contracting Body shall have 21 days following receipt of such notice to serve a reply on the Contractor requiring the dispute to be referred to and resolved by arbitration in accordance with the provisions of Condition 37.7.

37.6.3 the Contractor may request by notice in writing to the Contracting Body that any dispute be referred and resolved by arbitration in accordance with the provisions of Condition 37.7, to which the Contracting Body may in its discretion consent as it sees fit.

37.7 In the event that any arbitration proceedings are commenced pursuant to Condition 37.6, the following provisions shall apply:

37.7.1 the arbitration shall be governed by the provisions of the Arbitration Act 1996;

37.7.2 the Contracting Body shall give a written notice of arbitration to the Contractor ("the Arbitration Notice") stating:

37.7.2.1 that the dispute is referred to arbitration; and

37.7.2.2 providing details of the issues to be resolved;

37.7.3 the London Court of International Arbitration ("LCIA") procedural rules in force at the date that the dispute was referred to arbitration in accordance with Condition 37.6 shall be applied and are deemed to be incorporated by reference to this Contract and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;

37.7.4 the tribunal shall consist of a sole arbitrator to be agreed by the Parties;

37.7.5 if the Parties fail to agree the appointment of the arbitrator within 10 (ten) days of the Arbitration Notice being issued by the Contracting Body under Condition 39.6 or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;

37.7.6 the arbitration proceedings shall take place in London and in the English language; and

37.7.7 the arbitration proceedings shall be governed by, and interpretations made in accordance with, English law.

**LOW CARBON VEHICLE PROCUREMENT PROGRAMME:
SUPPLY OF LOWER CARBON AND ALL-ELECTRIC VANS**

Ref: PPRO 4/9/17

MODEL LEASE AGREEMENT

(PHASE 2)

INDEX

1	DEFINITIONS AND INTERPRETATIONS
2	LEASING AND TERM OF LEASING
3	ENTIRE AGREEMENT
4	SCOPE OF THE AGREEMENT
5	PERFORMANCE OF THE AGREEMENT
6	RENT
7	RENT PAYMENT
8	TAXATION
9	VAT AND OTHER TAX REQUIREMENTS
10	RECOVERY OF SUMS DUE
11	VEHICLE SERVICES
12	TITLE
13	VEHICLE USE
14	INSURANCE OR INDEMNITY UNDERTAKINGS
15	CHANGE OF LAW
16	STATUORY OBLIGATIONS AND REGULATIONS
17	PREVENTION OF CORRUPTION
18	CONFLICTS OF INTEREST
19	DISCRIMINATION
20	ENVIRONMENTAL REQUIREMENTS
21	PROTECTION OF INFORMATION
22	OFFICIAL SECRETS ACT
23	CONFIDENTIALITY
24	FREEDOM OF INFORMATION
25	PUBLICITY, MEDIA AND OFFICIAL ENQUIRIES
26	INTELLECTUAL PROPERTY RIGHTS
27	RECORDS AND AUDIT ACCESS
28	CONTROL OF THE AGREEMENT
29	CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999
30	WAIVER
31	EXTENSION OF TERM

32	VARIATION OF THE VEHICLES OR ASSOCIATED SERVICES
33	SEVERABILITY
34	TERMINATION
35	REMEDIES IN THE EVENT OF INADEQUATE PERFORMANCE
36	REMEDIES CUMULATIVE
37	RECOVERY UPON TERMINATION
38	NOVATION
39	LIABILITIES
40	WARRANTIES AND REPRESENTATIONS
41	FORCE MAJEURE
42	NOTICES
43	DISPUTES AND LAW
44	DISPUTE RESOLUTION
45	COUNTERPARTS
	SCHEDULE 1 - FORM OF ACCEPTANCE CERTIFICATE
	SCHEDULE 2 - THE SPECIFICATION

THIS **LEASE AGREEMENT** is made on [.....]

BETWEEN:

(1) **[insert name of participating public sector party]**, [insert address]
("the Contracting Body"); and

(2) **[insert name of manufacturer/supplier of vehicle]**, Company
Number [.....] whose registered address is at
[.....] ("the Contractor);

BACKGROUND

(A) The Department has facilitated by way of the Low Carbon Vehicles Procurement Programme ("the Programme") the procuring of lower carbon vans to the Contracting Bodies defined in this Framework Agreement for the purpose of trialling and monitoring their use (Phase 1 of the Programme). The Department now wishes to extend the Term of the Framework Agreement for low carbon vans for Phase 2 of the Programme for the purpose of procuring the use of these vehicles in larger volumes. ("The Objectives").

(B) The Framework Agreement provides an ordering procedure for the procurement of the lower carbon vans and sets out the obligations of the Contractor during and after the Term of this Framework Agreement.

(C) The acceptance of each Order by the Contractor (for a purchase or lease arrangement) shall give rise to a separate contract or lease with the relevant Contracting Body subject to the Call Off Terms and Conditions (which is the purpose of this document). A Contracting Body may agree additional terms with the Contractor in relation to its particular orders but is not otherwise authorised to vary any of the terms of this Framework Agreement without prior approval of the Department.

(D) During the operation of Phase 2 of the Programme, it is the parties' intention that there will be no obligation for any Contracting Body to place orders under the extended term of the Framework Agreement.

(E) During Phase 2, the Department shall provide a Grant to subsidise the procurement of the Low Carbon Vehicles. The Grant will be paid by the Department to the Contractor and the contractor will discount the Grant amount from the Vehicle Invoice to the Contracting Bodies.

GENERAL PROVISIONS

1 DEFINITIONS AND INTERPRETATIONS

1.1 In this terms and conditions, the following words and expressions have the meanings as set out below:

"Acceptance Certificate"	means an acceptance certificate substantially in the form set out in Part 1 of the Schedule;
"Acceptance"	means, in respect of any Vehicle, that such Vehicle has been Accepted;
"Acceptance Date"	means, in respect of any Vehicle, the date on which an Acceptance Certificate in respect of the vehicle has been executed by the Contracting Body;
"Accepted"	means, in respect of any Vehicle, that an Acceptance Certificate has been executed by the Contracting Body;
"Agreement"	means the agreement between the Contracting Body and the Contractor made pursuant to the Framework Agreement consisting of the Order Form, an Acknowledgment, Acceptance Certificate and these Conditions;
"Acknowledgement"	means the acknowledgement which the Contractor must send to the Order Manager (under Clause 7 of the Framework Agreement) in response to an Order;
"Associated Service"	means any service in respect of the repair and maintenance of the Vehicles described in the Order

Form and the provision of any Replacement Vehicle which the Contractor is required to provide under the Agreement as described in the Specification;

“Breakdown”	means a mechanical, electrical or other failure rendering the Vehicle inoperative, which is not due to an accident or to the neglect, abuse or negligence (whether intentional or not) of the Contracting Body or its employees, agents or any other third party;
“Condition”	means a condition within the Agreement (and “Conditions” shall be construed accordingly as the context requires);
“Confidential Information”	means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to the business, affairs, properties, assets, trading practices, Vehicles, developments, trade secrets, Intellectual Property Rights, know-how, personnel, customers and suppliers of either Party, and the Commercially Sensitive Information.
“Confirmation”	means confirmation by the Contracting Body of its order as provided in Clause 7 of the Framework Agreement;
“Contracting Body”	means the body requiring the Vehicles referred to in the Order Form with whom the Contractor enters into this Agreement;
“Contractor”	means the supplier of the Vehicles referred to in the Order Form with whom the Contracting Body enters into this Agreement and who is a Party to a Framework Agreement in respect of the provision of Vehicles and Associated Services;
“Contractor’s Representative”	means the individual authorised to act on behalf of the Contractor for the purposes of this Agreement;
“Corporation Tax”	means corporation tax within the scheme of taxation contained in the Corporation Tax Acts (as defined in section 831 of the Income and Corporation Taxes Act 1988) or any other tax of a similar nature imposed in addition to, or in substitution for, corporation tax;

“Default”	means any breach of the obligations of the Contractor or any default, act, omission, negligence or statement of the Contractor in connection with or in relation to the subject matter of the Agreement or in respect of which the Contractor is liable to the Contracting Body;
“Department”	means the Department for Transport;
“DPA”	means the Data Protection Act 1998 and any subordinate legislation made under such Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to that legislation;
“Environmental Information Regulations”	means the Environmental Information Regulations 2004 and any guidance and/or codes of practice issued by the Information Commissioner in relation to such Regulations;
“Expiry Date”	means in respect of each Vehicle: <ul style="list-style-type: none"> (a) Schedule Expiry Date; (b) the date of any earlier termination of the leasing pursuant to this Agreement (including under Condition 34); or (c) the date of any agreed extension of the leasing in accordance with Condition 31.
“FOIA”	means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation;
“Framework Agreement”	means the agreement (as amended from time to time) entered into by the Contractor and the Department in relation to the supply of any of the following: <ul style="list-style-type: none"> a) lower carbon vehicles; b) all electric vehicles; and c) maintenance, repair or replacement of the vehicle supplied,

“General Change in Law”	<p>and where there are more than one Framework Agreements, reference to the “Framework Agreement” shall be to that Framework Agreement that includes a Specification covering the relevant Vehicle and services identified as above;</p> <p>means a change in Law which comes into effect after the Acceptance Date, where the change is of a general legislative nature (and includes taxes or duties save those falling within Condition 8) or which would affect or relate to a comparable supply of services of the same or of a similar nature to the supply of Vehicles or Associated Services;</p>
“Good Industry Practice”	<p>means the exercise of that degree of skill, diligence and foresight which would reasonably and ordinarily be expected from a skilled and experienced operator engaged in the same type of business as the Contractor under the same or similar circumstances;</p>
“Information”	<p>has the meaning given under section 84 of the FOIA;</p>
“Intellectual Property Rights”	<p>means patents, inventions, trade marks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off;</p>
“Know-how”	<p>means the application of knowledge, information or techniques in the manufacture or processing of the Vehicles (or any Associated Services);</p>
“Law”	<p>means any applicable law, statute, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of court or directives or requirements of any Regulatory Body, delegated or subordinate legislation or notice of any Regulatory Body;</p>
“Normal Working Hours”	<p>means the hours of 8.30 am to 5.00 pm (inclusive) on any Working Day;</p>
“Official Test”	<p>Means the test undertaken on a selected sample Vehicle in order to determine Vehicle compliance with the Specification;</p>

"Order Form"	means the order form completed by the Contracting Body to order the Vehicles from the Contractor pursuant to the Framework Agreement in substantially the form set out in Schedule 3 to the Framework Agreement or such similar or analogous form agreed with the Contractor including but not limited to systems of ordering involving facsimile, electronic mail or other on-line solutions;
"Order Manager"	means the person for the time being appointed by the Contracting Body as being authorised to administer the Agreement and to place orders for the Vehicles on behalf of the Contracting Body with the Contractor, the Contractor's representative or with such person as may be nominated by the Contractor's representative to act on its behalf;
"Party"	means a party to the Agreement and "Parties" shall be construed accordingly;
"Phase 2"	has the same meaning as in the Framework Agreement;
"Pre-Existing Intellectual Property Rights"	means any Intellectual Property rights vested in or licensed to the Contracting Body or the Contractor prior to or independently of the performance by the Contracting Body or Contractor of their obligations under the Agreement;
"Premises"	means the location where the Vehicles are to be delivered or any Associated Services are to be performed as set out in the Specification;
"Pricing Schedule"	means the schedule referred to as such in the Framework Agreement;
"Regulatory Bodies"	means those government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Agreement or any other affairs of the Contracting Body and "Regulatory Body" shall be construed accordingly;
"Rent"	means any amount payable pursuant to Condition 6.1;
"Rent Payment Date"	means, in relation to each Vehicle, each date ascertained in accordance with Condition 6.2;

“Rent Period”	means, in relation to each Vehicle, each period ascertained in accordance with Condition 6.2;
“Replacement Contractor”	means any third party service Contractor appointed by the Contracting Body from time to time, to provide any Vehicles which are substantially similar to any of the Vehicles provided under the Framework Agreement, and which the Contracting Body receives in substitution for any of the Vehicles following the termination or partial termination of this Agreement, whether those Vehicles are provided to the Contracting Body internally and/or by any third party;
“Replacement Vehicle”	means a vehicle which shall be equivalent to that described in the Specification, but where such an equivalent vehicle is not available, shall be a conventional vehicle (that is, not a lower carbon vehicle) of a similar type and capacity to that described in the Specification, but such Vehicle need not be in the Contracting Body’s livery;
“Requests for Information”	shall have the meaning set out in FOIA or any apparent request for information under the FOIA or the Environmental Information Regulations.
“Routine Service”	means a planned service of the Vehicle carried out and undertaken at such frequencies to be determined by both the Contractor and the Contracting Body;
“Safety Inspection”	means a planned safety inspection carried out and undertaken at such frequencies to be determined by both the Contractor and the Contracting Body;
“Scheduled Expiry Date”	means [insert date];
“Scheduled Repairs”	means work which is required at specified intervals or arises from the routine servicing and which, as a result, are planned arrangements in the Vehicle’s maintenance cycle;
“Security Interests”	means any mortgage, pledge, lien, charge, assignment, hypothecation or security interest or any other agreement or arrangement having the effect of conferring security;

“Service Level”	means the standard of delivery set out in the Specification or such other standard of delivery agreed between a Contracting Body and the Contractor as may be contained in an Order and subsequent Acknowledgement and Confirmation;
“Specification”	means the document describing the Vehicles and Associated Services to be provided under this Agreement as set out in the Part 2 of the Schedule attached to this Agreement;
“Specific Change in Law”	means a change in Law which comes into effect after the Acceptance Date that relates specifically to the business of the Contracting Body, and which would not affect a comparable supply of the same or similar Vehicles or Associated Services;
“Staff”	means all persons employed by the Contractor to perform the Agreement together with its servants, agents and approved sub-contractors used in the performance of the Agreement;
“Taxes”	mean all present and future taxes, charges, imposts, duties or levies of any kind, payable at the instance of or imposed by any governmental or other taxing authority, together with any relating penalties, fines, surcharges or interest; and Tax and Taxation shall be construed accordingly;
“Term”	means, in relation to each vehicle, the lease period commencing on its Acceptance Date and ending on its Expiry Date;
“Unscheduled Repairs”	means any work arising between the planned arrangements of Routine Servicing and Safety Inspections and excludes Breakdown repairs;
“VAT”	means value added tax as provided for in the Value Added Act 1994 and any other tax of a similar nature;
“Vehicles”	means the Vehicles within the scope of the Framework Agreement as specified in the Order Form and where the context requires includes any Associated Services to be performed by the Contractor;
“Working Days”	means Monday to Friday inclusive, excluding public and bank holidays;

“Year”

means a calendar year.

1.2 The interpretation and construction of this Agreement shall be subject to the following provisions:

1.2.1 the terms and expressions set out in Condition 1 shall have the meanings ascribed therein;

1.2.2 words importing the singular meaning include where the context so admits the plural meaning and vice versa;

1.2.3 words importing the masculine include the feminine and the neuter;

1.2.4 the words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”;

1.2.5 references to any person shall include natural persons and partnerships, firms and other incorporate bodies and all other legal persons of whatever kind and however constituted;

1.2.6 where there is a provision for any notification, consent or approval to be given under this Agreement such notification, consent or approval shall only be valid if given in advance and in writing;

1.2.7 references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;

1.2.8 headings are included in these Conditions for ease of reference only and shall not affect the interpretation or construction of this Agreement;

1.2.9 references in these Conditions to any Condition or Schedule without further designation shall be construed as a reference to the condition of, or schedule to, these Conditions so numbered;

1.2.10 references in these Conditions to any Paragraph or sub-paragraph without further designation shall be construed as a reference to the paragraph or sub-paragraph of the Schedule to the Conditions so numbered;

1.2.11 references to a Condition are a reference to the whole of that Condition unless stated otherwise;

1.2.12 in the event and to the extent only of any conflict between the Conditions and the remainder of the Schedules, the Conditions shall prevail over the remainder of the Schedules.

2 LEASING AND TERM OF LEASING

2.1 The Contractor will lease the Vehicles to the Contracting Body, and the Contracting Body will take on lease each Vehicle from the Contractor, from its Acceptance Date for its Term. Each vehicle shall be accepted by an issue of an Acceptance Certificate.

2.2 The Contractor undertakes with the Contracting Body that, subject to the rights of the Contractor under this Agreement or under applicable law, the Contractor shall not interfere with the quiet use, possession, enjoyment and operation of the Vehicles by the Contracting Body.

2.3 This Lease is intended to operate during Phase 2 of the Low Carbon Vehicles Procurement Programme.

3 ENTIRE AGREEMENT

- 3.1 This Leasing Agreement constitutes the entire agreement between the Parties relating to the subject matter of the Leasing Agreement. This Leasing Agreement supersedes all prior negotiations, representations and undertakings, whether written or oral, except that this Condition shall not exclude liability in respect of any fraudulent misrepresentation.
- 3.2 In the event of and only to the extent of any conflict between the Contracting Body and the Contractor relating to an Order Form, the Conditions and the Specifications, the Conditions shall prevail unless otherwise agreed in writing.
- 3.3 In the event of and only to the extent of any conflict between the Contractor's offer and the Specification, the Specification shall prevail unless otherwise agreed in writing.

4 SCOPE OF THE AGREEMENT

Nothing in this Agreement shall be construed as creating a partnership, a contract of employment or a relationship of principal and agent between the Contracting Body and the Contractor

5 PERFORMANCE OF THE AGREEMENT

General provisions

- 5.1 The Contractor shall manage and perform the Agreement and any Associated Services:
- 5.1.1 in accordance with the Specification;

5.1.2 in accordance with the terms and conditions of the Agreement and Service Levels as agreed and incorporated in the relevant Order, Acknowledgement and Confirmation;

5.1.3 in accordance with Good Industry Practice;

5.1.4 with appropriately experienced, qualified and trained personnel exercising all due skill, care and diligence; and

5.1.5 in compliance with all applicable Laws,

and shall inform the Order Manager as soon as reasonably practicable if any of the requirements of this Agreement are not being met.

- 5.2 Where a Contractor is required to undertake Associated Services the Contractor shall give the Contracting Body, if so requested, the name, role and details of relevant work experience of all persons who are or may be at any time employed performing such services.

Risk

- 5.3 As between the Contracting Body and the Contractor, after delivery and acceptance of the Vehicles, the Contracting Body will bear all risk of loss, theft, damage or destruction to the Vehicles unless expressly provided otherwise under this Agreement.

5.4 Delivery of Vehicles

5.4.1 The delivery of the Vehicles at the Contracting Body's premises shall be within the time agreed or on the date specified.

5.4.2 The Contractor shall, as appropriate or as requested by the Contracting Body, provide the necessary driver training on the delivery and acceptance of the Vehicles.

- 5.5 Where any Vehicles have not been delivered in accordance with Condition 5.4.1, the Contractor shall (at its own expense) provide such Replacement Vehicles where so requested by the Contracting Body and within such reasonable period as may be specified by the Contracting Body. The Parties may agree that the Contracting Body will make the arrangements for the Replacement Vehicle, but such arrangements shall not affect the cost of such Replacement Vehicle being met by the Contractor. The Contracting Body will use the Replacement Vehicle in accordance to the terms and conditions of this Agreement. Where arrangements for the Replacement Vehicle were made by the Contractor, the Contractor will be responsible for collecting the Replacement Vehicles on the delivery of the Vehicles set out in the Specification.

Acceptance of Vehicle

- 5.6 The Vehicles will be deemed to have been delivered to and accepted by the Contracting Body on the date on which they are so tendered for delivery unless the Contracting Body has given notification to the Contractor in accordance with Condition 5.10.

Acceptance Certificate

- 5.7 The Contracting Body will confirm acceptance of the delivered Vehicles by executing and delivering a duly completed Acceptance Certificate on the Delivery Date.

Effect of Acceptance Certificate

- 5.8 The delivery by the Contracting Body to the Contractor of the Acceptance Certificate will constitute conclusive evidence of delivery to and acceptance by the Contracting Body of such Vehicle under this agreement.

Inspection on delivery of Vehicles

- 5.9. The Contracting Body will arrange for the inspection of each Vehicle on the day of its delivery and before its acceptance.
- 5.10 If during the course of such inspection the Contracting Body observes any non-conformity with the Specification, the Contracting Body shall promptly notify the Contractor in respect of the Vehicles which do not conform.
- 5.11 Rejection of Vehicles on delivery

Where Condition 5.10 applies, the Contracting Body may opt to reject the Vehicles which do not conform to the Specification and shall notify that rejection to the Contractor. The Contractor will arrange for the collection of the rejected Vehicles.

- 5.12 Correction of non-conforming Vehicles on delivery

5.12.1 Where Condition 5.10 applies, the Contracting Body may require the Contractor (at its own expense) to correct or procure the correction of the non-conforming Vehicles within 48 hours, or such other time as may be specified by the Contracting Body.

5.12.2 Where correction of the non-conformity is not possible within the 48 hour period, or the period notified by the Contracting Body, and if so requested by the Contracting Body, the Contractor will arrange (at its own expense) for the delivery of a Replacement Vehicle within 48 hours or such other time as may be specified by the Contracting Body.

5.12.3 The Parties may agree that the Contracting body will make the arrangements for the Replacement Vehicle, but such arrangements

shall not affect the cost of that Replacement Vehicle being met by the Contractor.

- 5.12.4 Where arrangements for the Replacement Vehicle were made by the Contractor, the Contractor will be responsible for collecting the Replacement Vehicles on the re-delivery of the Vehicles set out in the Specification.

Period of Vehicle use

- 5.13 The Contracting Body shall use the Vehicle for a minimum period of three years commencing from the date of delivery and acceptance of the Vehicle, unless the Vehicle is rejected in accordance with the provisions of this Agreement. The period of Vehicle use may be for a longer period than three year where otherwise agreed in writing.

6 RENT

- 6.1 The Contracting Body shall pay to the Contractor Rent on each Rent Payment Day. The Rent payable will be £.....per month.
- 6.2 The first Rent Period for each Vehicle will commence on its Acceptance Day, and each subsequent Rent Period for that Vehicle will commence on the first day of each subsequent calendar month. Each Rent Period will end on the day immediately preceding the commencement date for the next Rent Period, except that if a Rent Period would otherwise overrun the Expiry Date, it shall end on the Expiry Date.
- 6.3 In respect of the first and last Rent Periods for a Vehicle, being less than a full calendar month, the Rent for such Rent Period shall be reduced pro rata on a daily basis, assuming a 30 day month to take account of the actual number of days comprised in such Rent Period.

- 6.4 On the first Rent Payment Date following the Acceptance Date for the last Vehicle to be delivered under this Agreement, all payments of Rent will be consolidated into one payment.

7 RENT PAYMENT

- 7.1 All payments by the Contracting Body to the Contractor under this Agreement will be made on the due date in cleared funds to the Contractor's Account. If any payment falls due under this Agreement on a day which is not a Working Day, such payment shall be made on the immediately succeeding Working Day but the amount of such payment shall not be adjusted as a consequence. The Contractor shall provide to the Contracting Body the relevant banking details to which payment should be made.
- 7.2 All payments to be made by the Contracting Body under this Agreement shall be made without any deductions or withholdings unless a deduction or withholding is required by law, or Conditions 7.4, 10 or 11.7 apply.
- 7.3 If the Contracting Body is required to make a deduction or withholding, the amount of the payment due from the Contracting Body, other than where Conditions 7.4, 10 or 11.7 apply, shall be increased to an amount which, after making the deduction or withholding, leaves an amount equal to the payment that would have been due if no deduction or withholding had been required.
- 7.4 Where a Rent payment relates to:
- 7.4.1 the Contractor having failed to provide or having provided inadequately in respect of any of the Vehicles or Associated Services to which this Agreement applies;

7.4.2 the Contractor having failed to supply, or to supply within 48 hours a Replacement Vehicle; or

7.4.3 the Contracting Body having rejected the Vehicle (and without prejudice to any other rights or remedies of the Contracting Body), the Rent payment in respect of such Vehicle or Associated Service will be reduced by the number of days in which the vehicle was unavailable.

8 TAXATION

8.1 The Rent referred to in Condition 6.1 is calculated on the assumption that the rate of Corporation Tax and Capital Allowances in force at the time this Agreement is made will remain unchanged during the Term.

8.2 If the assumption referred to in Condition 8.1 ceases to be correct the Contractor may adjust the Rent so that the rate of return to the Contractor is at the same level it would have been if such assumption continued to be correct.

8.3 Where Condition 8.2 applies and there are further payments of Rent to be made, the Contractor shall calculate the Rent payable and an adjustment shall be made to the amount of such Rent.

8.4 Where Condition 8.2 applies and there are no further payments of Rent to be made, the Contractor shall calculate an amount of additional Rent or rebate of Rent.

8.5 In the event of the Rent being adjusted in line with Conditions 8.3 or 8.4, the Contractor shall notify the Contracting Body of such adjustment which shall take effect within 5 working days of the notification or from the next payment of Rent, whichever is the later.

9 VAT AND OTHER TAX REQUIREMENTS

9.1 All payments made by the Contracting Body under this Agreement are calculated without regard to VAT. If VAT is chargeable on any supply made by the Contractor in connecting with this Agreement the Contracting Body shall pay to the Contractor an amount equal to the amount of the VAT.

9.2 The Contractor shall at all times comply with the Value Added Tax Act 1994 and all other statutes relating to direct or indirect taxes.

9.3 If requested, the Contractor shall furnish to the Contracting Body the name, and if applicable, the Value Added Tax registration number, PAYE collection number and either the Corporation Tax or Self Assessment reference of any agent, supplier or sub-contractor of the Contractor prior to the commencement of any work under this Contract by that agent, supplier or sub-contractor. Upon a written request by the Contracting Body, the Contractor shall not employ or will cease to employ any agent, supplier or sub-contractor.

9.4 Arrears of VAT

9.4.1 Where an amount, including any assessed amount, is due from the Contractor as Value Added Tax by or under the Value Added Tax Act 1994 as amended, an equivalent amount may be deducted by the Contracting Body (after giving notice in accordance with Condition 9.4.2) from the amount of any sum due to the Contractor under the Agreement.

9.4.2 At least 14 days before exercising the right of deduction provided by this Condition the Contracting Body shall give notice in writing to the Contractor that it is intended to exercise the right of deduction and the notice:

9.4.3 shall specify the amount to be deducted; and

9.4.4 shall contain a description of the Value Added Tax due from the Contractor in respect of which the deduction is made, for example by reference to an assessed amount or by reference to supplies made during an accounting period.

10 RECOVERY OF SUMS DUE

10.1 Wherever under the Agreement any sum of money is recoverable from or payable by the Contractor (including any sum which the Contractor is liable to pay to the Contracting Body in respect of any breach of this Agreement), the Contracting Body may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Contractor under the Agreement or under any other agreement or contract with the Contracting Body.

10.2 Any overpayment by the Contracting Body to the Contractor, whether of the Rent or of Tax, shall be a sum of money recoverable by the Contracting Body from the Contractor.

10.3 The Contractor shall make any payments due to the Contracting Body without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Contractor has a valid court order requiring an amount equal to such deduction to be paid by the Contracting Body to the Contractor.

11 VEHICLE SERVICES

11.1 Vehicle Servicing

11.1.1 During the Term, the Contracting Body, on reasonable notice being given by the Contractor, will allow the Contractor access to Vehicles for the purpose of servicing and maintenance in respect of the lower carbon requirements of the Vehicles and, where it has been

agreed that Associated Services will be provided, the Contractor will carry out Routine Servicing and Safety Inspections of the Vehicles.

11.1.2 The Routine Servicing will include the repair of any defect discovered during the course of the Routine Servicing; for the purpose of Condition 11.1, any such repair is to be regarded as a Scheduled Repair.

11.1.3 Routine Servicing will be carried out by the Contractor or by its suitably qualified and duly authorised representatives during Normal Working Hours or at such other times (even if outside the Normal Working Hours) that may be agreed in advance between the Parties.

11.1.4 The Contractor will agree with the Contracting Body a time for the collection of the Vehicle from the Contracting Body's Premises and return it to that address, or to any other address as may be agreed, at a time as agreed between the Parties.

11.1.5 The Contracting Body will provide the Vehicle for Routine Servicing in a condition which is empty of all goods and personal possessions and free from risk to the health and safety to the Contractor or its representatives who may undertake the servicing or inspections.

11.1.6 The Contractor will keep such records of servicing and inspections in accordance with Condition 27.

11.2 Breakdown and Unscheduled Repairs

11.2.1 Where the vehicle breaks down or requires Unscheduled Repairs to be carried out the Contracting Body will notify the Contractor and the Contractor will arrange with the Contracting Body a time for the collection of the Vehicle from the Contracting Body's Premises or will

effect arrangements for the collection of a broken down Vehicle (if the repairing agent instructed by the Contractor can not repair the Vehicle at the place of the Breakdown).

11.2.2 Where Condition 11.2.1 applies, the Contractor will arrange for the repair of the Vehicle to be effected within 48 hours from the time of notification.

11.2.3 The Contractor will arrange for the return of the Vehicle at an agreed time to the Contracting Body's Premises or such other address as may be agreed.

11.3 Damage caused by neglect, abuse or negligence

11.3.1 The Contracting Body will pay to the Contractor the cost of repairing collision or other damage to the Vehicle or Replacement Vehicle arising from, but not limited to, accident, neglect or abuse of the Vehicle by, or the negligence of the Contracting Body or its employees, agents or any other third party. The payment for such repairs is in addition to the Rent payment.

11.3.2 Where, as a result of accident, neglect, abuse or negligence of the Contracting Body or its employees, agents or any other third party, the Vehicle or Replacement Vehicle is declared to be damaged beyond economic repair; or if lost or stolen; or is destroyed for any reason the Contracting Body will immediately inform the Contractor by telephone and in writing.

11.3.3 Where the Contractor receives notification in accordance with Condition 11.3.2, the Contractor shall provide a Replacement Vehicle within 48 hours;

11.3.4 Where Condition 11.3.2 applies, the Contracting Body shall pay to the Contractor the greater of the written down value or the

open market value of the Vehicle on the date of settlement and shall pay all Rent due under this Agreement until the Contractor has received the payment for the Vehicle.

11.3.5 Where Condition 11.3.4 applies, the receipt of cleared funds in full settlement of the loss, the Agreement in respect of the Vehicle shall be deemed to be terminated without further liability to the Contracting Body.

11.4 Replacement Vehicle for Unscheduled Repairs and Vehicle Breakdown

11.4.1 Where Unscheduled Repairs are being undertaken the Contractor shall provide a Replacement Vehicle to cover the period of these repairs.

11.4.2 The Contractor will provide a Replacement Vehicle in the case of a Vehicle Breakdown within 48 hours from the time of notification where the repairing agent instructed by the Contractor decides that the Vehicle cannot be repaired within 48 hours from the time of notification.

11.4.3 Where Condition 11.4.1 or 11.4.2 applies, the Parties may agree that the Contracting Body will make the arrangements for the Replacement Vehicle, but such arrangements shall not affect the cost of that Replacement Vehicle being met by the Contractor.

11.4.4 In any circumstances where it appears that the damage to the Vehicle has been caused by accident, neglect, abuse or negligence of the Contracting Body's employees, agents or other third party then the cost of the Replacement Vehicle supplied by the Contractor shall be met by the Contracting Body.

11.4.5 When the repaired Vehicle has been returned to the Contracting Body, the Contracting Body shall arrange with the

Contractor for the Replacement Vehicle to be collected by the Contractor.

11.5 Vehicle Excise Licence

The Contractor will ensure the Vehicle Excise Licence has been obtained for the Vehicle for the commencement of the Term and, where the Term has been extended, will thereafter effect all necessary renewals at the Contractor's cost.

11.6 Annual Test

Where applicable, the Contractor shall (at its own expense) be responsible for preparing any Vehicle for the annual roadworthiness testing and presenting it for the test.

11.7 Refund

11.7.1 Where the Contractor fails to comply with the guarantee times in Condition 11.2.1 and 11.2.2 and Condition 11.4.2 and 11.4.3, the Rent Payment will be reduced by an amount to reflect the time of non-compliance.

11.7.2 Where the time of non-compliance includes a period of time less than one day, that portion of time shall be rounded up to one day for the purpose of calculation the refund or the reduced Rent Payment.

12 **TITLE**

12.1 Title and ownership

12.1.1 The Vehicle provided under this Agreement shall belong to the Contractor and title to, and ownership of, the Vehicle will remain vested in the Contractor.

12.1.2 The Contracting Body shall have no right, title or interest in the Vehicle except the right to lease and use the Vehicle in accordance with this Agreement.

12.2 Restriction on holding out as owner

The Contracting Body shall not attempt or hold itself out as having any power to sell, charge or otherwise encumber or to sell or otherwise dispose of any Vehicle or any interest in any Vehicle.

12.3 Restriction on creation of Security Interest

The Contracting Body shall not create, incur or suffer to exist any Security Interest in respect of any Vehicle.

12.4 Sub-letting

The Contracting Body shall not, without the prior written consent of the Contractor, sub-let or, except for the purposes of maintenance, repair, addition, alteration or modification permitted in accordance with this Agreement, voluntarily part with the possession or operational control of any Vehicle. Where such consent is obtained, the Contracting Body shall ensure that any sub-letting of the Vehicle is made subject to the same terms as are set out in this Agreement, in so far as such terms are applicable.

12.5 Protection of the Contractor

The Contracting Body shall take or procure the taking of all reasonable steps to safeguard the Contractor's rights in respect of any Vehicle and shall not do or permit to be done anything that jeopardises the rights of the Contractor in the Vehicle or deliberately omit to do anything that would prevent those rights being jeopardised.

12.6 Confiscation

12.6.1 The Contracting Body shall take all reasonable steps to prevent any Vehicle being removed from its possession and the confiscation,

distress, execution, impounding, forfeiture, requisition for title or seizure of any Vehicle.

12.6.2 The Contracting Body shall immediately take all reasonable steps necessary to procure the release from confiscation, distress, execution, impounding, forfeiture, requisition for title or seizure of any Vehicle.

12.7 Third parties

The Contracting Body shall make clear to third parties that title to the Vehicle is held by the Contractor in circumstances and on occasions where the ownership of the Vehicle may be relevant.

13 **VEHICLE USE**

13.1 The Contracting Body shall not cause or permit the use of the Vehicle in contravention of any Act of Parliament, Order, Regulation or other Legislation.

13.2 The Contracting Body shall not permit the misuse, abuse or mishandling of the Vehicle.

13.3 The Contracting Body shall not, without the prior written consent of the Contractor, permit the use of the Vehicle other than in the operation of its business.

13.4 The Contracting Body shall take all reasonable precautions to keep the Vehicle safe and secure.

13.5 The Contracting Body shall ensure the Vehicle is only driven by qualified and licensed drivers having a current and appropriate driving licence and having had the necessary training for the particular requirements of the Vehicle. The Contracting Body will ensure its

drivers perform all standard daily drivers' checks prior to the use of the Vehicle and shall comply with all reasonable directions made by the Contractor and communicated to the Contracting Body or its drivers regarding the use and operation of the Vehicle.

13.6 The Contracting Body shall provide the Contractor with all necessary information to allow it to comply with any Act of Parliament, Order, Regulation or other Legislation which may affect the use, operation or condition of the Vehicle or any part of the Vehicle and allow the preparation and presentation for inspection and certification of the Vehicle whenever the Contractor is required to do so by the operation of any Act of Parliament, Order, Regulation or other Legislation.

13.7 The Contracting Body shall be responsible throughout the Term for all fuel consumed by the Vehicle and any Replacement Vehicle that may be provided under this Agreement.

13.8 The Contracting Body shall be responsible throughout the Term for replacing all excessively or defective tyres and inner tubes as appropriate with new tyres of the same type and design.

13.9 Access

13.9.1 The Contracting Body shall allow the Contractor or its authorised representatives access to the Vehicle at any reasonable time provided reasonable notice has been given.

13.9.2 The Contracting Body shall allow the Contractor access to tachograph records pertaining to the Vehicle, on such a request being made.

13.10 Reporting accidents

The Contracting Body shall report to the Contractor any accident or incident involving the Vehicle within 24 hours of the accident or incident and provide such information that the Contractor may require in the circumstances.

13.11 Return of Vehicle

13.11.1 On the expiry of the Term (or earlier Termination) or any agreed extension, the Contractor (at its own expense) will arrange for the inspection and collection of the Vehicle or Replacement Vehicle within 14 days of the date of expiry.

13.11.2 The Contracting Body will return the Vehicle free from livery or other signage.

13.11.3 The Contracting Body shall return the Vehicle in a legal and roadworthy condition (with tyres being the legal minimum tyre tread depth). The Vehicle interior will be in a clean condition with all seats free from cuts, tears or other damage. All original accessories or parts will be in place unless such removal has been expressly agreed with the Contractor.

13.11.4 The Contracting Body shall ensure all accident or body damage is repaired to a professional standard unless it is minor damage considered as fair wear and tear as would be expected from its use in the Contracting Body's business operations.

13.11.5 The costs associated with the return of the Vehicle that fall within Condition 13.11.2 to 13.11.4 shall be borne by the Contracting Body unless otherwise agreed.

13.11.6 Any dispute in relation to interior or exterior damage of the Vehicle shall be subject to the relevant guidelines issued by the British Vehicle Rental and Leasing Association.

13.11.7 For the purpose of the resolution of any dispute arising from the condition of the Vehicle, the Parties shall refer the dispute to the British Vehicle Rental and Leasing Association, the Freight Transport Association or other qualified, independent but mutually agreed third party for the purpose of arbitration and such action shall be taken in a way which is consistent with the operation of Condition 44. All associated costs from the independent assessor will be shared equally between the Parties and the decision reached by the assessor will be conclusive and binding on the Parties.

14 INSURANCE OR INDEMNITY UNDERTAKINGS

14.1 Insurance

14.1.1 The Contracting Body shall insure the Vehicle and any other Replacement Vehicle comprehensively throughout the Term; or

14.1.2 The Contracting Body, being a Crown body, may opt to provide an indemnity to the Contractor in respect of the Vehicle and any other Replacement Vehicle during the Term, to take effect as if that Vehicle had been comprehensively ensured.

14.2 Terms of Insurance or Indemnity

14.2.1 The Contracting Body shall effect the Insurance on terms and through an insurance company or underwriter approved by the Contractor; or

14.2.2 The terms of the Indemnity in respect of the loss of, or damage to, the Vehicle or Replacement Vehicle shall be agreed between the Parties.

14.3 Copy of vehicle insurance policy or vehicle indemnity

The Contracting Body shall, if requested by the Contractor, provide the Contractor with a copy of the appropriate vehicle insurance policy or vehicle indemnity.

14.4 Payment of premiums

Where Condition 14.1.1 applies, the Contracting Body shall punctually pay all premiums or other sums payable in respect of the vehicle insurance and, if required by the Contractor, provide the Contractor with copies of the relevant receipts.

14.5 Compliance with terms of the insurance

Where Condition 14.1.1 applies, the Contracting Body shall not do or omit to do, or permit to be done or not to be done, anything which would or might render any insurance invalid, void, voidable or unenforceable or render any sum payable under any insurance repayable.

14.6 Alteration to terms of the Insurance

Where Condition 14.1.1 applies, the Contracting Body shall not make or agree to any alteration to any insurance or waive any right to any Insurance.

14.7 Settlement of claims

14.7.1 The Contracting Body shall do all things necessary and provide all documents, evidence and information to enable the Contractor to collect or recover any sums that at any time become payable in respect of the Insurance.

14.7.2 The Contracting Body will compensate the Contractor in respect of the loss of, or damage to, the Vehicle or Replacement Vehicle, which are evidenced by such documentation as the Contracting Body may reasonably require to verify the information and the amount of the loss or damage.

14.7.3 Without prejudice to any other exclusion or limitation of liability under this Agreement, the liability of the Contracting Body for any claim or claims under this Indemnity shall be limited to such sums as it would be just and equitable for the Contracting Body to pay having regard to the extent of its responsibility for the loss of, or damage to, the Vehicle or Replacement Vehicle giving rise to such claim or claims.

15 **CHANGE OF LAW**

15.1 Subject to Condition 8, the Contractor shall be neither relieved of its obligations to supply the Vehicles or Associated Services in accordance with the terms of this Agreement nor be entitled to an increase in the charges as the result of:

15.1.1 a General Change in Law

15.1.2 a Specific Change in Law where the effect of that Specific Change in Law is known at the Acceptance Date whether by publication of a Bill, as part of the a Governmental Departmental Consultation paper, a draft Statutory Instrument, a proposal in the Official Journal of the European Union or otherwise.

15.2 If a Specific Change in Law occurs or will occur during this Agreement (other than those referred to in Condition 15.1.2), the Contractor shall notify the Contracting Body of the likely effects of that change, including:

15.2.1 whether any change is required to the Vehicles, the Rent or this Agreement; and

15.2.2 whether any relief from compliance with the Contractor's obligations is required including any obligation to meet any service level requirements at any time.

15.3 As soon as practicable after any notification in accordance with Condition 15.2, the Parties shall discuss and agree the matters referred to in that Condition and any ways in which the Contractor can mitigate the effect of the Specific Change in Law, including:

15.3.1 providing evidence that the Contractor has minimised any increase in costs or maximised any reduction in costs, including in respect of its sub-contactors;

15.3.2 demonstrating that a foreseeable Specific Change in Law had been taken into account by the Contractor before it occurred;

15.3.3 giving evidence as to how the Specific Change in Law has affected the cost of providing the Vehicles and Associated Services; and

15.3.4 demonstrating that any expenditure that has been avoided, has been taken into account in amending the Rent.

15.4 Any increase in the Rent or relief from the Contractor's obligations agreed between the Parties pursuant to Condition 15 shall be implemented in accordance with Condition 32.3.

16 STATUORY OBLIGATIONS AND REGULATIONS

Health and Safety

- 16.1 The Contractor shall notify the Contracting Body upon request of all statutory provisions and approved safety standards applicable to the supply of the Vehicles and the provision of the Associated Services.
- 16.2 The Contractor shall be responsible for obtaining all licences, consents or permits to fulfil all statutory provisions and approved safety standards required in the performance of this Agreement.
- 16.3 The Contractor shall take all measures necessary to comply with the requirements of the Health and Safety at Work Act 1974 and any other Acts, orders, regulations and codes of practice relating to health and safety, which may apply to staff in the performance of this Agreement.
- 16.4 The Contractor shall promptly notify the Contracting Body of any health and safety hazards which may arise in connection with the performance of this Agreement. The Contracting Body shall promptly notify the Contractor of any health and safety hazards which may exist or arise at the Contracting Body's Premises and which might affect the Contractor in the performance of the Agreement.
- 16.5 While on the Contracting Body's Premises, the Contractor shall comply with any health and safety measures implemented by the Contracting Body in respect of Staff and other persons working on those Premises.
- 16.6 The Contractor shall notify the Contracting Body immediately in the event of any incident occurring in the performance of the Agreement on the Contracting Body's premises where that incident causes any personal injury or damage to property which could give rise to personal injury or damage to property which could give rise to personal injury.

- 16.7 The Contractor shall ensure that its health and safety policy statement (as required by the Health and Safety at Work Act 1974) is made available to the Contracting Body on request.

17 PREVENTION OF CORRUPTION

- 17.1 The Contractor shall not offer or give, or agree to give, to any employee, agent, servant or representative of the Contracting Body any gift or consideration of any kind as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Agreement, or for showing or refraining from showing favour or disfavour to any person in relation to the Agreement. The attention of the Contractor is drawn to the criminal offences under the Prevention of Corruption Acts 1889 to 1916.

- 17.2 The Contractor warrants that it has not paid commission or has agreed to pay any commission to any employee or representative of the Contracting Body by the Contractor or on the Contractor's behalf.

- 17.3 Where the Contractor or any person acting on the Contractor's behalf, engages in conduct prohibited by Conditions 17.1 or 17.2 above in relation to the Agreement with the Contracting Body, the Contracting Body has the right to:

17.3.1 terminate the Agreement in accordance with Condition 34.1 and recover from the Contractor the amount of any loss suffered by the Contracting Body resulting from the termination; or

17.3.2 recover in full from the Contractor any other loss sustained by the Contracting Body in consequence of any breach of this Condition, whether or not the Agreement has been terminated.

- 17.4 The decision of the Contracting Body in relation to this Condition shall be final and conclusive but in exercising its rights or remedies under Condition 17.3, the Contracting Body shall act in a reasonable and proportionate manner having regard to such matters as the gravity of, and the identity of the person performing, the prohibited act.

18 **CONFLICTS OF INTEREST**

- 18.1 The Contractor shall take appropriate steps to ensure that neither the Contractor nor any employee, servant, agent, supplier or sub-contractor is placed in a position where there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor or such persons and the duties owed to the Contracting Body under the provisions of the Agreement. The Contractor will disclose to the Contracting Body full particulars of any such conflict of interest which may arise.

- 18.2 The provisions of this Condition shall apply during the continuance of this Agreement and indefinitely after its termination.

19 **DISCRIMINATION**

- 19.1 The Contractor shall not unlawfully discriminate either directly or indirectly or by way of victimisation or harassment against any person on grounds of:

(a) race (colour, nationality, or ethnic or national origin) contrary to the Race Relations Act 1976; or

(b) sex or sexual orientation contrary to the Sex Discrimination Act 1975, and the Sexual Orientations Regulation 2003; or

(c) disability contrary to the Disability Discrimination Act 1995; or

- (d) religion or belief contrary to the Employment Equality (Religion or Belief) Regulations 2003; or
- (e) age contrary to the Employment Equality (Age) Regulations 2006.

19.2 The Contractor shall take all reasonable steps to secure the observance of Condition 19.1 by all servants, employees or agents of the Contractor and all suppliers and sub-contractors employed in the provision of the Vehicles and Associated Services. Where any employee or Sub-contractor employed by the Contractor is required to carry out any activity on or alongside the Contracting Body's employees on any other premises the Contractor shall ensure that each such employee and Sub-contractor complies with that Contracting Body's employment policies and codes of practice relating to discrimination and equal opportunities or any other policies that the Contracting Body may notify to the Contractor from time to time..

19.3 The Contractor shall notify the relevant Order Manager in writing as soon as it becomes aware of any investigation or proceedings brought against the Contractor under the Discrimination Acts in connection with the Contractor's performance of the Agreement. Where there is such an investigation or proceedings the Contractor shall free of charge:

- (a) provide any information requested by the investigating body, court or tribunal in the timescale allotted;
- (b) attend, and permit a representative from the Contracting Body to attend any associated meetings;

- (c) promptly allow access to any documents and information relevant to the investigation or proceedings;
- (d) allow itself and any staff to appear as witness in any ensuing investigation or proceedings; and
- (e) co-operate fully and promptly with the investigatory body, court or tribunal.

19.4 The Contractor shall indemnify the Contracting Body against all costs, charges, expenses (including legal and administrative expenses) and payments made by the Contracting Body arising out of or in connection with any such investigation or proceedings and such other financial redress to cover any payment the Contracting Body may have been ordered or required to pay to a third party.

19.5 In the event that the Contractor enters into any sub-contract in connection with the Agreement, it shall impose obligations on its Sub-contractors in terms substantially similar to those set out in Conditions 19.1 to 19.4.

19.6 Where the Contractor is found by any investigatory body, court or tribunal or to have discriminated against a person in connection with the Contractor's performance under the Lease contrary to any provision in the Discrimination Acts the Contracting Body shall be entitled to treat such finding as evidence that the Contractor has committed a material breach of the Agreement and may terminate the Agreement in accordance with Condition 34.4.

19.7 The Contractor acknowledges that the Contracting Body is under a duty in respect to the matters set out in Condition 19.1 to have due regard to the need to eliminate unlawful discrimination in respect of those matters and to promote equality of opportunity between the relevant groups people. When performing the Agreement, and at no

additional cost, the Contractor shall assist and cooperate with the Contracting Body where possible in satisfying this duty.

20 ENVIRONMENTAL REQUIREMENTS

- 20.1 In performing the Agreement the Contractor shall comply with the Contracting Body's environmental policy, which is to conserve energy, water and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.
- 20.2 All written work, including reports, delivered in connection with the Agreement shall (unless otherwise specified) be produced on recycled paper containing at least 80% post consumer waste and used on both sides where appropriate. The Contractor shall meet all reasonable requests by the Contracting Body for information evidencing compliance with the provisions of Condition 20 by the Contractor.

21 PROTECTION OF INFORMATION

Data Protection

- 21.1 The Contractor shall (and shall procure that any of its Staff involved in this Agreement) be registered under the DPA and both Parties will duly observe all their obligations under the Act which arise in connection with the Agreement.
- 21.2 Notwithstanding the general obligation in Condition 21.1, where the Contractor is processing personal data (as defined by the DPA) as a data processor for the Contracting Body (as defined by the DPA) the Contractor shall ensure that it has in place appropriate technical and organisational measures to ensure the security of the personal data (and to guard against unauthorised or unlawful processing of the

personal data and against accidental loss or destruction of, or damage to, the personal data), as required under the Seventh Data Protection Principle in Schedule 1 to the DPA; and

21.2.1 provide the Contracting Body with such information as the Contracting Body may reasonably require to satisfy itself that the Contractor is complying with its obligations under the DPA;

21.2.2 promptly notify the Contracting Body of any breach of the security measures required to be put in place pursuant to Condition 21.2; and

21.2.3 ensure that it does nothing knowingly or negligently which places the Contracting Body in breach of the Contracting Body's obligations under the DPA.

21.3 The provisions of this Condition shall apply during the continuance of this Agreement and indefinitely after its expiry or termination.

22 OFFICIAL SECRETS ACT

The Contractor shall undertake to abide by, and ensure that its Staff abide by the provisions of the Official Secrets Act 1911 to 1989 (where applicable) and shall continue to apply this obligation during the continuation of the Agreement and after the expiry or termination of the Agreement.

23 CONFIDENTIALITY

23.1 Each Party:-

23.1.1 shall treat all Confidential Information belonging to the other Party as confidential and safeguard it accordingly;

23.1.2 electronic transfer of the Confidential Information shall be encrypted before transfer; and

23.1.2 shall not disclose any Confidential Information belonging to the other Party to any other person without the prior written consent of the other Party, except to such persons and to such extent as may be necessary for the performance of the Agreement or except where disclosure is otherwise expressly permitted by the provisions of this Agreement.

23.2 A Party shall take all necessary precautions to ensure that all Confidential Information obtained from the other under or in connection with the Agreement:

23.2.1 is given only to such of the Staff and professional advisors or consultants engaged to advise it in connection with the Agreement as is strictly necessary for the performance of the Agreement and only to the extent necessary for the performance of the Agreement;

23.2.3 is treated as confidential and not disclosed (without prior Approval) or used by any Staff or such professional advisors or consultants otherwise than for the purposes of the Agreement.

23.3 Where it is considered necessary in the reasonable opinion of a Party, the other shall ensure that Staff or such professional advisors or consultants sign a confidentiality undertaking before commencing work in connection with the Agreement. A Party shall ensure that Staff or its professional advisors or consultants are aware of the confidentiality obligations under this Agreement.

23.4 No Party shall use any Confidential Information it receives from the other otherwise than for the purposes of the Agreement.

23.5 The provisions of Conditions 23.1 to 23.4 shall not apply to any Confidential Information received by one Party from the other:

23.5.1 which is or becomes public knowledge (otherwise than by breach of this Condition);

23.5.2 which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;

23.5.3 which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;

23.5.4 is independently developed without access to the Confidential Information; or

23.5.5 which must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to Condition 24.4;

23.5.6 which is required to be produced under any obligation by either Party to the Department.

23.6 Nothing in this Condition shall prevent the Contracting Body:

23.6.1 disclosing any Confidential Information for the purpose of:

23.6.1.1 the examination and certification of the Contracting Body's accounts; or

23.6.1.2 any examination pursuant to Sections 44 and 46 of the Audit Commission Act 1998 of the economy, efficiency and effectiveness with which the Authority has used its resources; or

23.6.2 disclosing any Confidential Information obtained from the Contractor:

23.6.2.1 to any government department or any other Regulatory Body. All government departments or Regulatory Bodies receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other government departments or other Regulatory Bodies on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any government department or any Regulatory Body; or

23.6.2.2 to any person engaged in providing any services to the Contracting Body for any purpose relating to or ancillary to the Agreement;

23.6.2.3 provided that in disclosing information under Condition 23.6.2 the Contracting Body discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.

23.7 Nothing in this Condition shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Agreement in the course of its normal business, to the extent that this does not result in a disclosure of Confidential Information or an infringement of Intellectual Property Rights.

23.8 In the event that the Contractor fails to comply with Condition 23, the Contracting Body reserves the right to terminate the Agreement by notice in writing with immediate effect.

23.9 The provisions under Condition 23 are without prejudice to the application of the Official Secrets Acts 1911 to 1989 to any Confidential Information.

24 **FREEDOM OF INFORMATION**

24.1 The Contractor acknowledges that the Contracting Body is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Contracting Body (at the Contractor's expense) to enable the Contracting Body to comply with its obligations under these provisions.

24.2 The Contractor shall and shall procure its sub-Contractors shall:

24.2.1 transfer the Request for Information to the Contracting Body as soon as practicable after receipt and in any event within two (2) Working Days of receiving a Request for Information;

24.2.2 provide the Contracting Body with a copy of all Information in its possession or power in the form that the Contracting Body requires within five (5) Working Days (or such other period as the Contracting Body may specify) of the Contracting Body requesting that Information; and

24.2.3 provide all necessary assistance as reasonably requested by the Contracting Body to enable the Contracting Body to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.

24.3 The Contracting Body shall be responsible for determining at its absolute discretion whether any Information:

24.3.1 is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations;

24.3.2 is to be disclosed in response to a Request for Information, and in no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Contracting Body.

- 24.4 The Contractor acknowledges that the Contracting Body may, acting in accordance with the Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part 1 of FOIA (issued under section 45 of the FOIA, November 2004), be obliged under the FOIA or the Environmental Information Regulations to disclose Information:

24.4.1 without consulting with the Contractor, or

24.4.2 following consultation with the Contractor and having taken its views into account.

- 24.5 The Contractor shall ensure that all Information produced in the course of the Agreement or relating to the Agreement is retained for disclosure and shall permit the Contracting Body to inspect such records as may be requested from time to time.

- 24.6 The Contractor acknowledges that any lists or Schedules provided by it outlining Confidential Information are of indicative value only and that the Contracting Body may nevertheless be obliged to disclose Confidential Information in accordance with Condition 24.4.

25 PUBLICITY, MEDIA AND OFFICIAL ENQUIRIES

- 25.1 The Contractor shall not make any press announcements or publicise this Agreement in any way without the Contracting Body's prior written consent. The Contractor shall ensure the observance of the provisions of Condition 25 by its Staff.

25.2 The Contracting Body shall be entitled to publicise this Agreement in accordance with any legal obligation upon the Contracting Body, including any examination of this Agreement by the National Audit Office pursuant to the National Audit Act 1983 or otherwise.

25.3 The Contractor shall not do anything or cause anything to be done, which may damage the reputation of the Contracting Body or bring the Contracting Body into disrepute.

26 INTELLECTUAL PROPERTY RIGHTS

26.1 Save as granted under this Agreement, neither the Contracting Body nor the Contractor shall acquire any right, title or interest in the other's Pre-Existing Intellectual Property Rights.

26.2 The Contractor shall procure that the performance of the Contractor's responsibilities under this Agreement shall not infringe any Intellectual Property Rights of any third party.

26.3 The Contractor shall indemnify the Contracting Body against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right by performance of the Contractor's responsibilities under this Agreement, except to the extent that such liabilities have resulted directly from the Department's failure properly to observe its obligations under this Condition 26.

26.4 The Contractor shall promptly notify the Contracting Body if any claim or demand is made or action brought against the Contractor for infringement or alleged infringement of any Intellectual Property Right

that may affect the provision of the Vehicles or Associated Services under this Agreement.

26.5 The Contracting Body shall promptly notify the Contractor if any claim or demand is made or action brought against the Contracting Body to which Condition 26.3 or Condition 26.4 may apply. The Contractor shall at its own expense conduct any litigation arising therefrom and all negotiations in connection therewith and the Contracting Body hereby agrees to grant to the Contractor exclusive control of any such litigation and such negotiations.

26.6 The Contracting Body shall at the request of the Contractor afford to the Contractor all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the Contracting Body to which Condition 26.3 may apply or any claim or demand made or action brought against the Contractor to which Condition 26.4 may apply. The Contractor shall reimburse the Contracting Body for all costs and expenses (including, legal costs and disbursements on a solicitor and client basis) incurred in so doing.

26.7 If a claim or demand is made or action brought to which Condition 26.3 may apply, or in the reasonable opinion of the Contractor is likely to be made or brought, the Contractor may at its own expense and within a reasonable time either:

26.7.1 modify the provision of any or all of Vehicles without reducing the performance and functionality of the same, or substitute alternative Vehicles or Associated Services of equivalent performance and functionality for any or all of the Vehicles or Associated Services, so as to avoid the infringement or the alleged infringement, provided that the terms herein shall apply mutatis mutandis to such modified or substituted items or services and such substitution shall not increase the burden on the Contractor or a Contracting Body; or

26.7.2 procure a licence to use the Vehicles (or to perform the Associated Services) on terms that are reasonably acceptable to the Contracting Body.

26.8 In the event that the Contractor has availed itself of its rights to modify the Vehicles and/or Associated Services or to supply a substitute alternative vehicle or vehicles and /or associated service or services pursuant to Condition 26.7.1 or to procure a licence under Condition 26.7.2 and such exercise of the said rights has avoided any claim, demand or action for infringement or alleged infringement, then the Contractor shall have no further liability thereafter under this Condition 26 in respect of the said claim, demand or action.

26.9 In the event that a modification or substitution in accordance with Condition 26.7.1 is not possible so as to avoid the infringement, or the Contractor has been unable to procure a licence in accordance with Condition 26.7.2 the Contracting Body shall be entitled to delete the relevant Vehicle or Associated Service from being available in relation to the relevant Price Schedules where applicable.

26.10 This Condition 26 sets out the entire financial liability of the Contractor with regard to the infringement of any Intellectual Property Right by the provision of the Vehicles or Services under this Agreement. This shall not affect the Contractor's financial liability for other Defaults or causes of action that may arise under this Agreement.

26.11 The Contracting Body warrants that the Contractor's use of any third party item supplied directly or indirectly by the Contracting Body in accordance with any instructions given by the Contracting Body in connection with the use of such item shall not cause the Contractor to infringe any third party's Intellectual Property Rights in such item.

26.12 The provisions of this Condition shall apply during this Agreement and indefinitely after its expiry or termination.

27 RECORDS AND AUDIT ACCESS

- 27.1 The Contractor shall keep and maintain until six (6) years after the termination or expiry (whichever is the earlier) of the Agreement, (or for such longer period as may be agreed between the Parties) full and accurate records and accounts of the operation of the Agreement including the Vehicles Associated Services provided under it, and including all expenditure reimbursed by the Contracting Body, and all payments made by the Contracting Body.
- 27.2 The Contractor shall keep the records and accounts referred to in Condition 27.1 above in accordance with good accountancy practice and shall be audited by qualified auditors as and when required to support published annual accounts.
- 27.3 The Contractor shall on reasonable notice afford the Contracting Body and its representatives such access to such records and accounts as may be required by the Contracting Body from time to time.
- 27.4 The Contractor shall provide such records and accounts together with copies of the Contractor's published accounts during the Term to the Contracting Body and its internal and external auditors on reasonable written notice.

28 CONTROL OF THE AGREEMENT

- 28.1 The Contractor shall not assign, novate or in any other way dispose of the Agreement or any part of it without prior approval of the Contracting Body. Sub-contracting any part of the Agreement shall not relieve the Contractor of any obligation or duty attributable to the Contractor under the Agreement.
- 28.2 The Contractor shall be responsible for the acts and omissions of its sub-Contractors as though they are its own.

- 28.3 Where the Contractor has entered into sub-contracts in relation to the performance of this Agreement, copies of each sub-contract shall be sent by the Contractor to the Contracting Body within two (2) working days of request.

29. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

No person who is not a Party to the Agreement (including without limitation any employee, officer, agent, representative, or sub-Contractor of either the Contracting Body or the Contractor), shall have any right to enforce any term of the Agreement, which expressly or by implication, confers a benefit on him without the prior agreement in writing of both Parties, which agreement should specifically refer to this Condition 28. Any person acting under a sub-letting agreement made with a Contracting Body may enforce such rights under the Agreement as are applicable to that sub-letting agreement. This Condition does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act, and does not apply to the Crown.

30 WAIVER

- 30.1 The failure of either Party to insist upon strict performance of any provision of the Agreement or the failure of either Party to exercise any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the Agreement.

- 31.2 A waiver of any default shall not constitute a waiver of any other default.

31 EXTENSION OF TERM

The parties may agree to extend the Term of this Agreement; and any such agreement shall be communicated in writing in accordance with the provisions of Condition 42.

32 VARIATION OF THE VEHICLES OR ASSOCIATED SERVICES

- 32.1 Subject to the Vehicles and Associated Services provided under the Agreement remaining within the scope of a Framework Agreement the Contracting Body reserves the right on giving reasonable written notice from time to time to require changes to the Vehicles and Associated Services (whether by way of the removal or addition of Vehicles or Associated Services). Such a change is hereinafter called “a Variation”.
- 32.2 Any such Variation shall be communicated in writing by the Order Manager to the Contractor’s Representative in accordance with the notice provisions of Condition 42. All Variations shall be in the form of an addendum to the Agreement.
- 32.3 In the event of a Variation the Rent may also be varied in accordance with the Pricing Schedule. Such Variation in the Agreement shall be calculated by the Contracting Body and agreed in writing with the Contractor and shall be such an amount as properly and fairly reflects the nature and extent of the Variation in all the circumstances. Failing agreement the matter shall be determined by negotiation or mediation in accordance with the provisions of Condition 44.
- 32.4 The Contractor shall provide such information as may be reasonably required to enable such varied price to be calculated.

33 SEVERABILITY

33.1 If any provision of the Agreement 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 of the Agreement shall continue in full force and effect as if the Agreement had been executed with the invalid, illegal or unenforceable provision eliminated.

33.2 In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Agreement, the Parties shall immediately commence negotiations in good faith to remedy the invalidity.

34 TERMINATION

34.1 Termination for Corruption

The Contracting Body may terminate the Contract by serving notice on the Contractor with effect from the date specified in such notice where the conduct prohibited in Condition 17.1 has occurred.

34.2 Termination on Breach of Confidentiality

The Contracting Body may terminate the Contract by serving notice on the Contractor with effect from the date specified in such notice where the conduct prohibited in Condition 23 has occurred

34.3 Termination in relation to Official Secrets Act

The Contracting Body may terminate the Agreement by serving notice on the Contractor with effect from the date specified in such notice where the Contractor is in breach of its obligation in Condition 22.

34.4 Termination on Default

The Contracting Body may terminate the Agreement by serving notice on the Contractor with effect from the date specified in such notice where the Contractor commits a Default and:

34.4.1 the Contractor has not remedied the Default to the satisfaction of the Contracting Body within 25 Working Days, or such other period as may be specified by the Contracting Body, after issue of a written notice specifying the Default and requesting it to be remedied; or

34.4.2 the Default is not, in the reasonable opinion of the Contracting Body, capable of remedy; or

34.4.3 the Default is a material breach.

34.5 Termination on Insolvency

34.5.1 The Contracting Body may terminate the Agreement by serving notice on the Contractor with effect from the date specified in such notice where one of the following insolvency events occurs in relation to the Contractor.

34.5.2 The Contractor is an individual or a firm and a petition is presented for the Contractor's bankruptcy, or a criminal bankruptcy order is made against the Contractor or any partner in the firm, or the Contractor or any partner in the firm makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignment for the benefit of creditors, or if an administrator is appointed to manage the Contractor's or firm's affairs.

34.5.3 The Contractor is a company, if the company passes a resolution for winding up or dissolution (otherwise than for the purposes of and followed by an amalgamation or reconstruction) or an application is made for, or any meeting of its directors or members

resolves to make an application for an administration order in relation to it or any party gives or files notice of intention to appoint an administrator of it or such an administrator is appointed, or the court makes a winding-up order, or the company makes a composition or arrangement with its creditors, or an administrative receiver, receiver, manager or supervisor is appointed by a creditor or by the court, or possession is taken of any of its property under the terms of a fixed or floating charge.

34.5.4 Where the Contractor is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986.

34.5.5 Any similar event occurs under the law of any other jurisdiction.

34.6 Termination by the Contracting Body

The Contracting Body shall have the right to terminate the Agreement, or to terminate the provision of any part of it, at any time after the expiry of the minimum period of one year specified in Condition 5.13, by giving three (3) Months' notice to the Contractor.

34.6.1 Where the Contracting Body terminates the Agreement under Condition 34.6, the Contracting Body shall reimburse the Contractor for any commitments, liabilities or expenditure which would otherwise represent an unavoidable loss by the Contractor by reason of the termination of the Agreement, provided that the Contractor takes all reasonable steps to mitigate such loss. Where the Contractor holds insurance, the Contractor shall reduce its unavoidable costs by any insurance sums available. The Contractor shall submit a fully itemised and costed list of such loss, with supporting evidence, of losses reasonably and actually incurred by the Contractor as a result of termination under Cause 34.6.

34.7 The Contracting Body shall not be liable under Condition 34.6.1 to pay any sum which:

34.7.1 was claimable under insurance held by the Contractor, and the Contractor has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy; or

34.7.2 when added to any sums paid or due to the Contractor under the Agreement exceeds the total sum that would have been payable to the Contractor if the Agreement had not been terminated prior to the expiry of the Term.

35 **REMEDIES IN THE EVENT OF INADEQUATE PERFORMANCE**

35.1 In the event that there has been a material breach of this Agreement by the Contractor, or the Contractor's performance of its duties under the Agreement has failed to meet the requirements, then the Contracting Body may, subject to service of a notice provided under Condition 34.4 of the Agreement, do any of the following:

35.1.1 make such deduction from the payment to be made to the Contractor as the Contracting Body shall reasonably determine to reflect sums paid or sums which would otherwise be payable in respect of such of the Vehicles or Associated Services as the Contractor shall have failed to provide;

35.1.2 without terminating the Agreement itself, provide or procure such of the Vehicles or such part of the Associated Services until such time as the Contractor shall have demonstrated to the reasonable satisfaction of the Contracting Body that the Contractor will once more be able to provide such of the Vehicles or perform such part of the Associated Services in accordance with the Performance;

35.1.3 without terminating the whole of the Agreement, terminate the Agreement in respect of part of the Services only (whereupon a corresponding reduction in the Rent shall be made) and thereafter itself provide or procure a third party to provide such of the Vehicles or such part of the Associated Services.

35.2 The Contracting Body may charge to the Contractor any cost reasonably incurred by the Contracting Body and any reasonable administration costs in respect of the provision of any part of the Services by the Contracting Body or by a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Contractor for such part of the Services.

35.3 In the event that:

35.3.1 the Contractor fails to comply with Condition 35.1; or

35.3.2 the Contractor persistently fails to comply with Condition 35.1, and such failures, taken as a whole, are materially adverse to the commercial interests of the Contracting Body;

35.3.3 the Contracting Body reserves the right to terminate the Agreement by notice in writing with immediate effect.

35.4 In the event that through any Default of the Contractor, data transmitted or processed in connection with the Agreement is either lost or sufficiently degraded as to be unusable, the Contractor shall be liable for the cost of reconstitution of that data and shall provide a full credit in respect of any charge levied for its transmission.

35.5 The Contractor may terminate this Agreement if the Contracting Body is in material breach of its obligations to pay undisputed Rent or other charges by giving the Contracting Body 90 days notice specifying the breach and requiring its remedy. The Contractor's right of termination

under Condition 35.5 shall not apply to non payment of the Rent or other charges where such non payment is due to the Contracting Body exercising its rights under Condition 35.3.

- 35.6 The remedies of the Contracting Body under this Condition may be exercised successively in respect of any one or more failures by the Contractor.

36 REMEDIES CUMULATIVE

Except as otherwise expressly provided by the Agreement, all remedies available to either Party for breach of this Agreement are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

37 RECOVERY UPON TERMINATION

- 37.1 Termination or expiry of the Agreement shall be without prejudice to any rights and remedies of the Contractor and the Contracting Body accrued before such termination or expiration and nothing in the Agreement shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry.

- 37.2 At the end of the Term (and howsoever arising) the Contractor shall forthwith deliver to the Contracting Body upon request all the property belonging to the Contracting Body (including but not limited to materials, documents, information, access keys) relating to the Agreement in its possession or under its control or in the possession or under the control of any permitted suppliers or sub-contractors and in default of compliance with this Condition the Contracting Body may recover possession thereof and the Contractor grants reasonable licence to the Contracting Body or its appointed agents to enter (for the

purposes of such recovery) any premises of the Contractor or its permitted suppliers or sub-contractors where any such items may be held.

37.3 At the end of the Term (howsoever arising) and/ or after the Term the Contractor shall co-operate free of charge with the Contracting Body and any Replacement Contractor appointed by the Contracting Body to continue or take over the performance of the Agreement in order to ensure an effective handover of all work then in progress.

37.4 The provisions of:

37.4.1 Condition 17 (Corrupt Gifts and Payments of Commission)

37.4.2 Condition 19 (Non-Discrimination)

37.4.3 Condition 21 (Data Protection)

37.4.4 Condition 22 (Official Secrets Acts)

37.4.5 Conditions 23 (Confidentiality)

37.4.6 Condition 24 (Freedom of Information)

37.4.7 Condition 25 (Publicity)

37.4.8 Condition 26 (Intellectual Property Rights)

37.4.9 Condition 27 (Records and Audit Access)

37.4.10 Condition 30 (Waiver)

37.4.11 Condition 37 (Consequences of Termination and Expiry)

36.4.12 Condition 39 (Liability and Insurance)

37.4.13 Condition 40 (Warranties and Representations)

37.4.14 Conditions 43 and 44 (Dispute Resolution)

37.5 Without limitation to the foregoing, any other Condition which by its terms is to be performed or observed notwithstanding termination or expiry or which is expressed to survive termination or expiry) shall survive the termination or expiry of the Agreement, together with any other provision which is either expressed to or by implication is intended to survive termination.

37.6 The provisions of this Condition shall survive the continuance of this Agreement and indefinitely after its termination.

38 **NOVATION**

38.1 The Contracting Body shall be entitled to:

38.1.1 assign, novate or otherwise dispose of its rights and obligations under this Agreement or any part thereof to any body defined as a "Contracting Body" in a Framework Agreement provided that any such assignment, novation or other disposal shall not increase the burden of the Contractor's obligations under this Agreement; or

38.1.2 novate this Agreement to any other body established by the Crown or under statute in order substantially to perform any of the functions that previously had been performed by the Contracting Body provided that any such novation shall not increase the burden of the Contractor's obligations pursuant to this Agreement; or

38.1.3 novate this Agreement to any private sector body which substantially performs the function of the Contracting Body provided

that any such novation shall not increase the burden of the Contractor's obligations pursuant to this Agreement.

- 38.2 Any change in the legal status of the Leasing shall not affect the validity of this Agreement. In such circumstances, this Agreement shall bind and enure to the benefit of any successor body to the Contracting Body.

39 **LIABILITIES**

Indemnity and Insurance

- 39.1 Neither Party excludes or limits liability to the other Party for death or personal injury caused by its negligence or for any breach of any obligations implied by Section 2 of the Supply of Goods and Services Act 1982 or for fraud or fraudulent misrepresentation.
- 39.2 The Contractor shall indemnify and keep indemnified the Contracting Body fully against all claims, proceedings, actions, damages, legal costs, expenses and any other liabilities whatsoever arising out of, in respect of or in connection with the Agreement including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Contractor, or any other loss which is caused directly or indirectly by any act or omission of the Contractor. This Condition shall not apply to the extent that the Contractor is able to demonstrate that such death or personal injury, or loss or damage was not caused or contributed to by its negligence or default, or the negligence or default of its staff or sub-Contractors, or by any circumstances within its or their control.
- 39.3 Subject always to Condition 39.1, the liability of either Party for Defaults shall be subject to the financial limits set out in this Condition 39.3.

39.3.1 The aggregate liability of either Party for all Defaults resulting in direct loss of or damage to the property of the other under or in connection with this Agreement shall in no event exceed ten million pounds (£10,000,000).

39.3.2 The annual aggregate liability under the Agreement of either Party for all Defaults (other than a Default governed by Condition 17.3 or Condition 39.1 shall in no event exceed ten million pounds (£10,000,000)

39.4 Subject always to Condition 39.1, in no event shall either Party be liable to the other for:

39.4.1 loss of profits, business, revenue, goodwill or anticipated savings; and/ or

39.4.1 indirect or consequential loss or damage.

40 **WARRANTIES AND REPRESENTATIONS**

40.1 The Contractor warrants and represents that:

40.1.1 the Contractor has the full capacity and authority and all necessary consents (including but not limited to, where its procedures so require, the consent of its parent company) to enter into this Agreement and that this Agreement is executed by a duly authorised representative of the Contractor;

40.1.2 the Contractor shall discharge its obligations hereunder with all due skill, care and diligence including but not limited to good industry practice and (without limiting the generality of this Condition) in accordance with its own established internal procedures;

40.1.3 all obligations of the Contractor pursuant to this Agreement shall be performed and rendered by appropriately experienced, qualified and trained Staff with all due skill and diligence;

40.1.4 the Contractor is not in default in the payment of any due and payable taxes or in the filing, registration or recording of any document or under any legal or statutory obligation or requirement which default might have a material adverse effect on its business, assets or financial condition or its ability to observe or perform its obligations under this Agreement.

41 **FORCE MAJEURE**

41.1 For the purpose of this Condition, "Force Majeure" means any event or occurrence which is outside the reasonable control of the Party concerned, and which is not attributable to any act or failure to take preventative action by the Party concerned, including (but not limited to) governmental regulations, fire, flood, or any disaster. It does not include any industrial action occurring within the Contractor's organisation or within any sub-contractor's organisation.

41.2 Neither Party shall be liable to the other Party for any delay in or failure to perform its obligations under the Agreement (other than a payment of money) if such delay or failure results from a Force Majeure event. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations hereunder for the duration of such Force Majeure event. However, if any such event prevents either Party from performing all of its obligations under the Agreement for a period in excess of six (6) months, either Party may terminate the Agreement by notice in writing with immediate effect.

41.3 Any failure or delay by the Contractor in performing its obligations under the Agreement which results from any failure or delay by an agent, sub-contractor or supplier shall be regarded as due to Force

Majeure only if that agent, sub-contractor or supplier is itself impeded by Force Majeure from complying with an obligation to the Agreement.

41.4 If either of the Parties becomes aware of circumstances of Force Majeure which give rise to or which are likely to give rise to any such failure or delay on its part as described in Condition 41.1 it shall forthwith notify the other by the most expeditious method then available and shall inform the other of the period which it is estimated that such failure or delay shall continue.

41.5 For the avoidance of doubt it is hereby expressly declared that the only events which shall afford relief from liability for failure or delay of performance of the Agreement shall be any event qualifying for Force Majeure hereunder.

42 NOTICES

42.1 Except as otherwise expressly provided within the Agreement, no notice, approval or other communication from one Party to the other shall have any validity under the Agreement unless given or made in writing by or on behalf of the Party concerned.

42.2 Any notice or other communication which is to be given or made by either Party to the other shall be given or made by letter (sent by hand, post, registered post or by the recorded delivery service), by facsimile transmission or electronic mail (confirmed in either case by letter). Such letters shall be addressed to the other Party in the manner referred to in Condition 42.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given two (2) working days after the day on which the letter was posted, or four hours, in the case of electronic mail or facsimile transmission or sooner where the other Party acknowledges receipt of such letters, facsimile transmission or item of electronic mail.

42.3 For the purposes of Condition 42.2, the address of each Party shall be:

[Insert details]

42.4 Either Party may change its address for service by serving a notice in accordance with this Condition.

43 **DISPUTES AND LAW**

43.1 Governing Law

43.2 This Agreement shall be governed by and interpreted in accordance with English law and the Parties submit to the exclusive jurisdiction of the courts of England and Wales.

44 **DISPUTE RESOLUTION**

44.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Agreement within 20 Working Days of either Party notifying the other of the dispute such efforts shall involve the escalation of the dispute to the finance director(or equivalent) of each Party.

44.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of the competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.

44.3 If the dispute cannot be resolved by the Parties pursuant to Condition 44.1 the dispute shall be referred to mediation pursuant to the procedure set out in Condition 44.5 unless (a) the Contracting Body considers that the dispute is not suitable for resolution by mediation; or (b) the Contractor does not agree to mediation.

44.4 The performance of the Agreement shall not be suspended, cease or be delayed by the reference of a dispute to mediation and the Contractor (or employee, agent, supplier or sub-contractor) shall comply fully with the requirements of the Agreement at all times.

44.5 The procedure for mediation and consequential provisions relating to mediation are as follows:

44.5.1 a neutral adviser or mediator ("the Mediator") shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within 14 days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within 14 days from the date of the proposal to appoint a Mediator or within 14 days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution ("CEDR") to appoint a Mediator.

44.5.2 The Parties shall within 14 days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from CEDR to provide guidance on a suitable procedure.

44.5.3 Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.

44.5.4 If the Parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the Parties once it is signed by their duly authorised representatives.

44.5.4 Failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both Parties.

44.5.5 If the Parties fail to reach agreement in the structured negotiations within 60 days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the Courts unless the dispute is referred to arbitration pursuant to the procedures set out in Condition 44.7

44.6 Subject to Condition 44.2, the Parties shall not institute court proceedings until the procedures set out in Condition 44.3 and 44.5 have been completed save that:

44.6.1 the Contracting Body may at any time before court proceedings are commenced, serve a notice on the Contractor requiring the dispute to be referred to and resolved by arbitration in accordance with the provisions of Condition 44.7.

44.6.2 if the Contractor intends to commence court proceedings, it shall serve written notice on the Contractor of its intentions and the Contracting Body shall have 21 days following receipt of such notice to serve a reply on the Contractor requiring the dispute to be referred to and resolved by arbitration in accordance with the provisions of Condition 44.7.

44.6.3 the Contractor may request by notice in writing to the Contracting Body that any dispute be referred and resolved by arbitration in accordance with the provisions of Condition 44.7, to which the Contracting Body may in its discretion consent as it sees fit.

44.7 In the event that any arbitration proceedings are commenced pursuant to Condition 44.6, the following provisions shall apply:

44.7.1 the arbitration shall be governed by the provisions of the Arbitration Act 1996;

44.7.2 the Contracting Body shall give a written notice of arbitration to the Contractor ("the Arbitration Notice") stating:

44.7.2.1 that the dispute is referred to arbitration; and

44.7.2.2 providing details of the issues to be resolved;

44.7.3 the London Court of International Arbitration ("LCIA") procedural rules in force at the date that the dispute was referred to arbitration in accordance with Condition 43.6 shall be applied and are deemed to be incorporated by reference to this Agreement and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;

44.7.4 the tribunal shall consist of a sole arbitrator to be agreed by the Parties;

44.7.5 if the Parties fail to agree the appointment of the arbitrator within 10 (ten) days of the Arbitration Notice being issued by the Contracting Body under Condition 44.6 or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;

44.7.6 the arbitration proceedings shall take place in London and in the English language; and

44.7.7 the arbitration proceedings shall be governed by, and interpretations made in accordance with, English law.

45 **COUNTERPARTS**

This Agreement may be executed in counterparts each of which will constitute one and the same document.

SCHEDULE

FORM OF ACCEPTANCE CERTIFICATE

To:

[Date]

ACCEPTANCE CERTIFICATE

We refer to the Lease Agreement dated [] between [] and [] (the Lease). Terms defined in the Lease shall have the same meanings when used in this document.

We confirm that with effect from the Acceptance Date for each Vehicle specified we have accepted those Vehicles for leasing under the Lease in accordance with the Lease.

Vehicles	Acceptance Date
[Specify Vehicle and index number]	[]

[]
Signed for and on behalf of

[]

SCHEDULE 3

ORDER FORM

(From Contractor to the Department)

Order number: Date: Order Address:		
Order Details: Vehicle description Technology description	Number of Vehicles	Price
Total		
Total price less grant		
Total plus VAT		
Delivery date: Delivery address:		

SCHEDULE 4

PRICING STRUCTURE

Direct Procurement – Phase 2

	Price
Base Vehicle Cost (£/Vehicle)	£21,254
Maintenance Cost (£/Vehicle	£350

Leasing – Phase 2

	£/Month
3 Year Lease Full Maintenance	£643.40
4 Year Lease Full Maintenance	£560.24
5 Year lease Full Maintenance	£499.06

Prices exclude VAT

Priced vehicle is the Ashwoods Medium Wheelbase, Medium Roof, 350 rear Wheel Drive Transit

Leasing and maintenance prices are based on 12,000 miles per annum

SCHEDULE 5

MANAGEMENT INFORMATION REQUIREMENTS

Provision of Vehicles

The number of vehicles forecast and actual orders placed will be monitored by the Department.

What is required	Details	Frequency
Forecast of orders	Number of vehicles ordered, by whom, estimated cost and delivery times	Monthly
Actual orders placed	Number and details of vehicles ordered, by whom (contracting body), cost and delivery times. Provide copies of order (including Vehicle Identification Number).	Monthly

