

BNES & TPPL Supply of Buses Framework Agreement

Between

Bath and North East Somerset Council & The Procurement
Partnership Ltd

And

[Supplier]

Framework Commencement: []

Framework Reference: BNESJB/0617

1. “Parties” to this agreement:

1.1. Bath and North East Somerset Council (“BNES”), Guildhall, High Street, Bath, BA1 5AW

1.2. The managing agent of this Agreement (“Agent”) on behalf of BNES:

The Procurement Partnership Limited, Ebenezer House, 4 Rooks Street, Cottenham, Cambridge, CB24 8QZ, Company Registration Number 05098402

And;

1.3. The Supplier appointed to this Agreement (“Supplier”)

[Full supplier address and company number]

2. Definitions:

<p>“Agreement”</p>	<p>Means this agreement, its Schedules and the tender documentation used to award the Framework.</p>
<p>“Agreement Fees”</p>	<p>Means the fees charged by BNES and the Agent for the creation, management and ongoing administration of this Agreement including delivery of any Mini-Competitions.</p>
<p>“Award Criteria”</p>	<p>Means the original criteria used to evaluate tender submissions to create the Framework.</p>
<p>“Call-Off Award Criteria”</p>	<p>Is the award criteria applied to evaluate tender submissions for Mini-Competition(s) and shall derive from the original Award Criteria, reflecting the Member’s particular requirements accordingly.</p>
<p>“Call-Off Contract”</p>	<p>Means a contract for the Supply of Vehicles awarded by a Member to the Supplier by either Direct Award or Mini-Competition. A standard set of terms governing a Call-Off Contract are provided in Schedule 4 of this Agreement.</p>
<p>“Capital Cost”</p>	<p>Means the total cost of the chassis, converted Vehicle delivered to the Member, but excluding VAT and on-the-road costs. Where the Supplier is nominated to complete conversion works on a chassis supplied by a Member Capital Cost</p>

	represents the total cost of the conversion work completed excluding VAT.
“Central Purchasing Body”	Means as defined by Regulation 2 of the Public Contracts Regulations 2015/102: “a contracting authority which provides centralised purchasing activities and which may also provide ancillary purchasing activities”
“Confidential Information”	Means information that ought to be considered as confidential (however it is conveyed or on whatever media it is stored), including trade secrets, Intellectual Property Rights and know-how of either Party, information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, and all personal data and sensitive personal data within the meaning of the Data Protection Act 1998;
“Commencement Date”	Means the commencement or start of the Framework for the Supply of Vehicles the Supplier has been appointed to. The commencement date is [REDACTED]
“Direct Award”	Means the award of a Call-Off Contract under a framework agreement without the reopening of competition.
“EIR”	Means the Environment Information Regulations 2004
“FOIA”	Means the Freedom of Information Act 2000.
“Framework”	Means the BNES and TPPL Framework for Purchase of Vehicles that this Agreement governs.
“Franchise Dealership”	Means a vehicle sales network specifically for OEM Manufacturers, operating as a separate legal entity but under a franchise from the OEM Manufacturer.

<p style="text-align: center;">“Insolvency”</p>	<p style="text-align: center;">Means the following in relation to the Supplier</p> <ul style="list-style-type: none"> a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or b) a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or c) a petition is presented for its winding up (which is not dismissed within fourteen (14) Working Days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986; or d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or e) an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or f) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or g) being a "small company" within the meaning of section 382(3) of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or h) where the Supplier is an individual or partnership, any event analogous to those listed in (a) to (g) (inclusive) occurs in relation to that individual or partnership; or <p>any event analogous to those listed in (a) to (h) (inclusive) occurs under the law of any other jurisdiction;</p>
<p style="text-align: center;">“Intellectual Property Rights”</p>	<p style="text-align: center;">Means</p> <ul style="list-style-type: none"> a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in Internet domain names and website addresses and other rights in trade names,

	<p>designs, Know-How, trade secrets and other rights in Confidential Information;</p> <p>b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and</p> <p>c) all other rights having equivalent or similar effect in any country or jurisdiction;</p>
“Legislation or Law”	<p>Means but is not limited to any applicable Act of Parliament, statutory legislation, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, exercise of the Royal Prerogative, enforceable community right within the meaning of section 2 of the European Communities Act 1972, bylaw, regulatory policy, guidance or industry code, judgment of a UK court or the European Court of Justice, or directives or requirements of any Regulatory Body of which the Supplier is bound to comply. Any reference to “Legislation” shall be construed accordingly</p>
“Lots”	<p>Means the different lots within the framework that forms the basis of this Agreement. The list of Lots applicable is shown in Schedule 2.</p>
“Management Information”	<p>Means the information and data required by BNES and the Agent from the Supplier to manage and operate the Framework. The information required is defined under clause 10.5.</p>
“Members”	<p>Means, any organisation who is a member of the TPPL buying club and who awards Call-Off Contracts under this Agreement.</p>
“Mini-Competition”	<p>Means the process of reopening competition for the purpose of placing a Call-Off Contract pursuant to this Agreement.</p>
“OEM Manufacturer”	<p>Means the original manufacturer of the unconverted Vehicle.</p>

<p>“Party”</p>	<p>Means any party to this Agreement as listed in clause 1.</p>
<p>“PCR 2015”</p>	<p>Means Public Contracts Regulations 2015</p>
<p>“Price”</p>	<p>Means the cost of Purchase for Vehicles from the Supplier. The Price may be varied in accordance with Clause 11.1.</p>
<p>“Price List”</p>	<p>Means the range of Vehicles, complete with Prices, available for Purchase from the Supplier pursuant to this Agreement, the original list is shown at Schedule 5. This is not an exhaustive list and Vehicles not included on the list may be specified and Purchased following the award of a Call-Off Contract.</p>
<p>“Prohibited Act(s)”</p>	<p>The following constitute a Prohibited Act:</p> <ul style="list-style-type: none"> (a) directly or indirectly to offer, promise or give any person; <ul style="list-style-type: none"> (i) working for or engaged by BNES a financial or other advantage; (ii) induce that person to perform improperly a relevant function or activity; or (iii) reward that person for improper performance of a relevant function or activity; (b) directly or indirectly to request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Contract; (c) committing any offence: <ul style="list-style-type: none"> (i) under the Bribery Act; (ii) under legislation creating offences concerning fraudulent acts; (iii) at common law concerning fraudulent acts relating to this Contract or any other contract with BNES; or (iv) defrauding, attempting to defraud or conspiring to defraud BNES.

“Purchase”	means the purchase of Vehicles by a Member.
“Service Levels”	Means the service level template provided in Schedule 3 of this Agreement. Members have flexibility to amend and add service levels as appropriate to their requirements.
“Suspended”	Means the Supplier has been temporarily removed having opportunity to be awarded Call-Off Contracts via Direct Award or Mini-Competition.
“Vehicles”	Means vehicles and chassis to be used for the purposes of carrying passengers, it includes mini-buses, coaches, double-decked and articulated buses with 5 – 75 seats. It also means other associated vehicles, extra products, activities and services that are likely and reasonable to be required by Members or Contracting Authorities under a Call-off Contract pursuant to the nature of this Agreement
“Working Day”	Means any day of the week except Saturday, Sunday and public holidays on which banks are open for general business in the City of London.

3. Interpretation

- 3.1. A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person’s personal representatives, successors or permitted assigns.
- 3.2. A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 3.3. A reference to a party shall be to a party to this Agreement and the expression parties shall be construed accordingly.
- 3.4. Words in the singular shall include the plural and vice versa.
- 3.5. A reference to one gender shall include a reference to the other genders.
- 3.6. A reference to any statute, statutory provision, subordinate legislation, code or guideline ("legislation") shall, unless the context otherwise requires, be construed as a reference to such legislation as the same may from time to time be amended, consolidated, modified, extended, re-enacted, replaced, superseded or substituted.

- 3.7. A reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.
- 3.8. A reference to writing or written includes faxes and e-mail.
- 3.9. A reference to a clause in any Part shall, unless otherwise expressly provided, be to a clause within that Part.
- 3.10. Any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

4. Structure

- 4.1. The Agreement contains the following additional parts:-
 - 4.1.1. Schedule 1: The Award Criteria used at tender;
 - 4.1.2. Schedule 2: The list of Lots that the Supplier is appointed to;
 - 4.1.3. Schedule 3: Service Level Template;
 - 4.1.4. Schedule 4: Standard Call off Contract (Lots 1 – 7);
 - 4.1.5. Schedule 5: Supplier's Price List

5. Duration

- 5.1. This Agreement begins on the Commencement Date and will continue for a period of forty-eight (48) months unless otherwise terminated in accordance with the terms of this Agreement, specifically Clause 12.

6. Scope of Agreement

- 6.1. This Agreement governs a Framework accessible by Members consisting of seven (7) Lots for the Supply of Vehicles.
- 6.2. This Agreement is to document the relationship between BNES, the Agent and the Supplier. Its purpose is to ensure roles and any obligations as part of involvement in the Agreement are clear and understood.
- 6.3. The Agreement provides an outline process that should be followed by Members wishing to place Call-Off Contracts under this Agreement. Provided that actions taken by BNES, the Agent or any Member are fair, reasonable, transparent and in compliance with the Public Contracts Regulations 2015, particularly regulation 33 then the processes for the award of Call-Off Contracts may be more precisely formulated to suit the needs of the Member.
- 6.4. Members may issue Call-Off Contracts under this Agreement following a Mini-Competition or on a Direct Award basis using the participating Supplier(s) Price List and the Specification to identify which Vehicle(s) it wishes to Purchase.
- 6.5. This Agreement includes a template form of Call-Off Contract (Schedule 4) for awards made under Lots (1 – 7), it is expected, unless varied during Direct Award or Mini-Competition, that:-
 - 6.5.1. The Call-Off Contract terms and conditions will be the Framework's standard Call-Off Contract as provided at Schedule 4 of this Agreement;

- 6.5.2. Any relevant terms and conditions and Specification agreed to by the Supplier as part of this Agreement or the original tender process to create the Framework may be varied under a Call-Off Contract, provided that it is reasonable and does not breach clause 7.1 of this agreement.
- 6.6. For Call-Off Contracts awarded under Lot 1, where the Supplier is an OEM Manufacturer, the Supplier can nominate a Franchise Dealership of the OEM Manufacturer to enter into the Call-Off Contract on their behalf with the Member for the supply and delivery of Vehicles.
- 6.7. For the avoidance of doubt, further references to Supplier within this Agreement will be considered to also reference Franchise Dealerships as appropriate to the context of the clause(s).
- 6.8. This Agreement does not grant exclusivity for the Supplier. The Supplier agrees that at all times BNES and Members are entitled to enter into other contracts and agreements with other providers for the Purchase of any or all Vehicles.
- 6.9. The Supplier acknowledges and agrees that there is no obligation for BNES and Members to Purchase any Vehicles from the Supplier throughout the duration of this Agreement.
- 6.10. No undertaking or any form of statement, promise, representation or obligation shall be deemed to have been made to the Supplier in respect of the total quantities or values of the Vehicles to be Purchased from them through this Agreement and the Supplier acknowledges and agrees that it has not entered into this Agreement on the basis of any such undertaking, statement, promise or representation.
- 6.11. The Supplier and Members accessing the Framework acknowledge that BNES and the Agent accept no responsibility for the chosen Call-Off Contract award process of any Member who chooses to use the Framework. It is for the Supplier and Members to ensure that the Call-Off Award Criteria and the Call-Off Contract will not breach PCR 2015 or any other legislative obligations, and should it do so neither BNES nor the Agent shall be held accountable, responsible or liable in any way.

7. Call-Off Contracts - Conditions

- 7.1. A standard set of terms and conditions for a Call-Off Contract are provided within Schedule 4 of this Agreement. Members can supplement, vary or replace these standard terms and conditions as appropriate and necessary to meet the needs of their organisations and any legislative requirements. This is provided that any changes, variations or replacements do not represent a significant material deviation from the nature and intent of this Agreement.
- 7.2. Schedule 3 provides a Service Level template to be associated with the Purchase of Vehicles for this Agreement. Service Levels may be varied dependent on the needs of the Member through a Mini-Competition process.
- 7.3. Members and Suppliers are advised that Mini-Competitions with significant material deviation from the nature and intent of this Agreement are not permissible. However, in accordance with regulation 72 of SI 2015/102 the Agreement may be modified provided that the modification cannot be considered substantial as defined by 72 (8).

- 7.4. Call-Off Contracts awarded under this Agreement may be extended on the basis of continuity and cost in accordance with the provisions of regulation 72 of SI 2015/102.
- 7.5. Call-off contracts will be awarded by Members in accordance with the rules as defined by Regulation 33 of the Public Contracts Regulations UKSI 2015/102.
- 7.6. Members are advised that Call-Off Contracts awarded which do not use Schedule 4 should contain the terms and conditions that their organisation requires but as a minimum should include provisions allowing termination of the contract where:
 - 7.6.1. The Call-Off Contract awarded has been subject to a substantial modification from the nature and intent of this Agreement which would have required a new procurement procedure;
 - 7.6.2. The Supplier has, at the time of Call-Off Contract award, been in one of the situations referred to in regulation 57 of PCR 2015 and should therefore have been excluded from the call-off, unless suitable evidence is provided in accordance with 'self-cleaning' (regulation 57 paragraphs 13 – 17 of PCR 2015);
 - 7.6.3. The Call-Off Contract should not have been awarded to the Supplier in view of a serious infringement of the obligations under the PCR 2015.
- 7.7. Standard payment terms for Members are set at 30 days from date of undisputed invoice:
 - 7.7.1. These payment terms can be varied by Members under Mini-Competition as appropriate to the needs of their organisation but cannot exceed 30 days from date of undisputed invoice;
 - 7.7.2. Members are advised that Call-Off Contracts placed are to include conditions ensuring any subcontractors are to be paid by the lead/main Supplier within 30 days from date of undisputed invoice;
 - 7.7.3. Members are advised to review Crown Commercial Services' guidance with regards to prompt payment and if appropriate use the suggested model terms provided in any Call-Off Contract placed. For reference these model terms are (These can be amended as appropriate for use within any Call-Off Contract):
 - 7.7.3.1. Where the Supplier submits an invoice to the Member [in accordance with Call-Off Contract conditions set by the Member], the Member will consider and verify that invoice in a timely fashion.
 - 7.7.3.2. The Member shall pay the Supplier any sums due under such an invoice no later than a period of 30 days from the date on which the Member has determined that the invoice is valid and undisputed.
 - 7.7.3.3. Where the Member fails to comply with paragraph 7.7.3.1 and there is an undue delay in considering and verifying the invoice, the invoice shall be regarded as valid and undisputed for the purposes of paragraph 7.7.3.2 after a reasonable time has passed.
 - 7.7.3.4. Where the Supplier enters into a Sub-Contract, the Supplier shall include in that Sub-Contract:

- a) Provisions having the same effect as clauses 7.7.3.1 - 7.7.3.3 of this Agreement; and
 - b) A provision requiring the counterparty to that Sub-Contract to include in any Sub-Contract which it awards provisions having the same effect as clauses 7.7.3.1 - 7.7.3.4 of this Agreement.
 - c) In clause 7.7.3.4, "Sub-Contract" means a contract between two or more suppliers, at any stage of remoteness from the Member in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Agreement.
- 7.8. All vehicles that require conversion/modification Purchased under the Agreement are to be fully VCA compliant as appropriate. It is a condition of this Agreement that all Vehicles are to be type approved prior to Delivery.
- 7.9. Unless indicated otherwise by Members during Mini-Competition all Vehicles supplied shall be assumed to be right-hand drive.
- 7.10. It is the Supplier's responsibility to complete whatever forms or other such registration process that may required by an individual Member to allow them to place an order and/or pay invoices promptly.
- 7.10.1. The Supplier is advised to ensure that any such requirements are completed prior to the acceptance of any order placed by a Member pursuant to a Call-Off Contract.
- 7.11. It is the Supplier's responsibility to inform the relevant sites, outlets and/or supply-chain partners of a Call-Off Contract award. This is a particularly relevant when the individual Member's Call-Off Contract requirements covers a variety of geographical locations.

8. Call-Off Contracts – Award Criteria

- 8.1. Award Criteria and weightings used as part of the tender process to create the Framework may be adjusted and/or supplemented with additional reasonable, relevant and proportionate Award Criteria during Mini-Competition. This is provided changes to weightings and any supplemental Award Criteria used do not represent a material deviation as identified within Clause 7.1.
- 8.2. The original Award Criteria used within the Framework tender process are:
- 8.2.1. Cost 40%, for all Lots;
 - 8.2.2. Quality 60%, for all Lots,
consisting of varied sub-criteria as shown in Schedule 2. The Award Criteria and any sub-criteria can be adjusted and/or supplemented in accordance Clause 8.1.
 - 8.2.3. Award Criteria used in any Mini-Competition should be clearly communicated to all Supplier(s) participating in that Mini-Competition within the procurement documentation used.

9. Call-Off Contracts – Award Processes

- 9.1. Call-Off Contracts can be awarded by Members on the following basis:

- 9.1.1. Direct Award, without reopening competition in accordance with regulation 33 of the Public Contracts Regulations and Clause 9.2.
- 9.1.2. Mini-Competition, whereby the terms and specification elements of this Agreement are insufficient to meet the operational needs of the Member to award a Call-Off Contract without reopening competition and in accordance with Clauses 9.4 - 9.7.

Direct Award

- 9.2. Following review of this Agreement, and its Schedules if a Member determines that they can Purchase the range/selection of Vehicles with the service(s) they require from this Agreement then the Member may award a Call-Off Contract without reopening competition, provided that:
 - 9.2.1. Direct Awards are made based upon which Supplier(s) offer the range of Vehicles required by the Member at the best Price and quality. For the avoidance of doubt a Member can therefore if necessary factor in a Direct Award information available from the Supplier(s) party to this Agreement, including (but not limited to) the following elements:
 - 9.2.1.1. The Price of the Vehicle(s) to be Purchased identified from the Price List and any ancillary services required by the Member;
 - 9.2.1.2. Service Levels required using the template provided in Schedule 3;
 - 9.2.1.3. The capacity of the Supplier(s) to meet the requirements of the Member;
 - 9.2.1.4. The network/location of the Supplier(s) depots/branches (if relevant and proportionate to do so);
 - 9.2.1.5. The account management provided;
 - 9.2.1.6. Any Delivery requirements, including potential lead-times.
 - 9.2.2. Therefore on the basis of 9.2.1 Direct Awards may be made to lower ranked Suppliers within a Lot, where the highest ranked Supplier in accordance with the original Award Criteria cannot Purchase the Vehicle(s) required to the Member at the best price and quality.
 - 9.2.3. A Direct Award may also be made to a lower ranked Supplier within a Lot where the highest rank Supplier declines the Call-Off Contract to be awarded.
 - 9.2.4. The decision regarding whether a Direct Award from this Agreement is appropriate rests solely with the Member seeking to award the Call-Off Contract on a Direct Award basis.

Mini-Competition

- 9.3. Where a Member requires the Supplier to develop proposals or a solution in respect of such Member's operational service requirements then the Member shall award a Call-Off Contract in accordance with the Mini-Competition process set out in Clauses 9.4 - 9.7.
- 9.4. Any Member awarding a Call-Off Contract under this Agreement through a Mini-Competition shall:

- 9.4.1. Ensure compliance with the requirements of Regulation 33 of the PCR 2015;
- 9.4.2. Identify which Lot(s) the Call-Off Contract should be awarded under;
- 9.4.3. Identify which Suppliers within the Lot(s) are capable of supplying the required Vehicles;
- 9.4.4. Develop a Mini-Competition tender setting out its requirements for the Vehicles;
- 9.4.5. Clearly state the Call-Off Award Criteria to be used and any appropriate guidance as to the evaluation process/methodology being applied;
- 9.4.6. Make the Mini-Competition tender available to Suppliers identified as suitable to participate via an online electronic 'eTender' portal;
 - 9.4.6.1. Submissions from Suppliers for all Mini-Competitions awarded must also be made online only via an electronic 'eTender' portal.
- 9.4.7. Allow Suppliers a reasonable and proportionate amount of time to prepare and submit their responses;
- 9.4.8. Evaluate submissions in accordance with the Call-Off Award Criteria detailed within the Mini-Competition. With the results of the application of the Call-Off Award Criteria forming the basis of its decision to award a Call-Off Contract for provision of Vehicles;
- 9.4.9. Award its Call-Off Contract to the successful Supplier(s) as per the Call-Off Award Criteria stated within the Mini-Competition;
- 9.4.10. Provide unsuccessful Suppliers with written feedback in relation to the reasons why their tenders were unsuccessful.
- 9.5. Any Supplier invited to participate in a Mini-Competition shall notify the Member in writing if it declines to submit a response to the Mini-Competition.
- 9.6. The Member conducting the Mini-Competition shall be entitled at all times to decline to make an award. Nothing in this Agreement shall oblige any Member to award any Call-Off Contract.
- 9.7. The Supplier recognises that each Member seeking to award a Call-Off Contract pursuant to this Agreement is responsible for its conduct and compliance of the process used. The Supplier agrees that BNES and the Agent shall have no liability in relation to:-
 - 9.7.1. The conduct and behaviour of Members conducting Mini-Competitions
 - 9.7.2. The performance or non-performance of any Call-Off Contracts between Members and Suppliers.

10. Agreement fees & Provision of data

- 10.1. The Supplier when awarded a Call-Off Contract to supply Vehicles will pay a fee to the Agent on the following basis, unless specified differently under the Mini-Competition process used to award the Call-Off Contract:
 - 10.1.1. Lot 1, the Supplier will pay a fee of 1% of the total Capital Cost of the chassis. When the Supplier is supplying a converted chassis, the fee is 1% of the total Capital Cost of the completed converted Vehicle.

- 10.1.2. Lots 2 – 7, where the Supplier is nominated to complete conversion works on a chassis supplied to them the fee payable is 1% of the total Capital Cost of the conversion works. Where the Supplier provides the chassis and completes the conversion works the fee is 1% of the total Capital Cost of the completed converted Vehicle.
- 10.2. Fees will become payable by the Supplier immediately (within 5 Working Days) following Delivery and acceptance of the Vehicle(s) by the Member. Payment of framework fees must be received by the Agent within 5 Working Days from the Supplier receiving payment from the Member.
- 10.3. If the Supplier fails to make any payment when due, in accordance with Clause 10.2 above, the Agent may charge the Supplier daily interest on the overdue amount at the rate of 3% per annum above the base rate from time to time of the Bank of England.
- 10.4. The Supplier shall not pass on, recharge to and/or recover by whatever means from any Member the cost of the Agreement fees. Agreement fees shall be exclusive of VAT. The Supplier shall pay the VAT on the Agreement fees at the prevailing rate on the date of invoice.
- 10.5. Management Information covering the number of Vehicles Delivered to Members will be required from the Supplier on a monthly basis by the Agent. Management Information requested is to be provided within 5 working days.
- 10.6. Any IT development costs incurred by the Supplier in the provision of Management Information as described in clause 10.5 are the sole responsibility of the Supplier.
- 10.7. The Agent reserves the right to review the position of the Supplier on the Framework for regular and unreasonable failure to provide the required Management Information and/or non-payment of invoices.
 - 10.7.1. Failure to provide Management Information or to pay invoices on time on more than three (3) occasions in any rolling twelve (12) month period may result in the Supplier being Suspended.
 - 10.7.2. Two (2) occurrences of the Supplier being Suspended, may at the discretion of the Agent and BNES be considered a material breach of this Agreement for the purposes of clause 12.1.

11. Price

- 11.1. The Agent will review the Price List as a minimum annually, providing opportunity for the Supplier to review their range of offered Vehicles and the corresponding Price. New Vehicles and a new Price List may be submitted by the Supplier.
 - 11.1.1. The Agent reserves the right to refuse and decline requests for Price changes or the introduction of new Vehicles on a revised Price List by the Supplier that are unreasonable and not supported with suitable evidence providing justification for the change.
 - 11.1.2. Any changes to the Vehicles, the Price and the overall Price List will be revaluated using the original Award Criteria, this may result in changes to the Supplier's ranking position on the Framework.

- 11.1.3. The Agent reserves the right to review the Price List for the purposes of ensuring the Price List suitably meets the requirements of Members. This may be for the purpose of introducing new Vehicles to the Price List, or ensuring the Price of Vehicles is appropriate to the volume of Purchases being made by Members.
- 11.2. Prices submitted through any Mini-Competition must be exclusive of VAT. Prices quoted in any Mini-Competition shall be deemed to include all taxes (except VAT) duties, insurance premiums, guarantees or other costs and commissions associated with the provision and delivery of the vehicles (where applicable).

12. Termination

- 12.1. BNES and the Agent reserves the right to terminate this Agreement immediately in the following circumstances:
 - 12.1.1. the Supplier commits a material breach and/or persistent repeated breaches of any clause of this Agreement or Call-Off Contract with a Member and, if such breach is or are remediable, fails to provide remedy within a period of ten (10) Working Days after being notified in writing to do so; or
 - 12.1.2. BNES and/or the Agent becomes aware of a serious infringement of the obligations under PCR 2015; or
 - 12.1.3. the Supplier makes any voluntary arrangement with its creditors (within the meaning of the Insolvency Act 1986) or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction); or
 - 12.1.4. an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Supplier; or
 - 12.1.5. the Supplier ceases, or threatens to cease, to carry on business; or
 - 12.1.6. BNES and/or Agent reasonably apprehends that any of the events in Clauses 21.1.3 to 21.1.5 inclusive is about to occur in relation to the Supplier and notifies the Supplier accordingly; or
 - 12.1.7. the Supplier or any of its employees shall have offered, or given, or agreed to give to any person or have solicited or accepted from any person any gift, consideration, inducement or reward of any kind, for doing or not doing any action in relation to this Framework Agreement or to any other contract with BNES and/or Agent; or
 - 12.1.8. the Supplier or any of its employees shall have committed any offence under the Bribery Act 2010.
- 12.2. Either BNES, its Agent or the Supplier may terminate this Agreement without reason at any time provided at least twenty (20) Working Days notice is given.

13. Consequences Of Termination

- 13.1. Termination shall be without prejudice to the rights and remedies of the Supplier and BNES and/or Agent accrued before such termination and nothing in this Framework Agreement shall prejudice the right of either Party to recover any amount outstanding as at the date of such termination.

- 13.2. All provisions of this Framework Agreement which are expressed to survive termination or expiry of this Framework Agreement shall continue in force and effect in accordance with their terms.
- 13.3. Subject as otherwise provided in the Framework Agreement neither Party shall have any further obligation to the other under the Contract.
- 13.4. Notwithstanding the service of a notice to terminate the Framework Agreement, the Supplier shall continue to fulfil its obligations under the Framework Agreement and any Call-Off Contract until the date of termination or expiry of the Framework Agreement or such other date as required.
- 13.5. Termination or expiry of the Framework Agreement shall not cause any Call-Off Contract entered into prior to the termination of the Framework Agreement to terminate unless BNES and/or Agent and/or Member requires this and sets it out in the notice of termination.

14. Marketing

- 14.1. The Supplier shall not, without written approval of BNES, the Agent or other relevant Party:
 - 14.1.1. make any statements to the press or publicise this Agreement in any way; or
 - 14.1.2. use BNES's, the Agent's or any of the Party's name or brand in any promotion or marketing.
- 14.2. The decision to approve any request for use of name, brand or other marketing information shall not be unreasonably withheld or delayed by any Party.
- 14.3. The Supplier will ensure that any marketing information relating to this Agreement published via any media, particularly online, is kept up to date and accurate where it is practically possible to do so. In the event that the Supplier fails to keep any information up to date, BNES or the Agent may give the Supplier notice of the failure.
 - 14.3.1. Where notice is given of a failure the Supplier has 20 Working Days to resolve the issue to the satisfaction of BNES or the Agent. Where a failure is not resolved within the timescale stated BNES or the Agent reserve the right to for such information to be removed immediately by any means. The cost of such removal to be the sole responsibility of the Supplier.

15. Force Majeure

- 15.1. If either Party is unable to perform any obligation under this Framework Agreement because of an event of Force Majeure which is both beyond that Party's control and is such that the Party with the application of all due diligence and foresight could not prevent which causes the cessation of or a substantial interference with the performance of the Framework Agreement, the duty of the Party to perform the relevant obligation shall be suspended until such circumstances have ceased.
- 15.2. For the purposes of this Clause 15 the circumstances below are events of Force Majeure:
 - 15.2.1. explosion;

- 15.2.2. war;
- 15.2.3. civil disorder;
- 15.2.4. fire or flood;
- 15.2.5. actual or threatened terrorist attack; or
- 15.2.6. acts of local or central Government or other competent authorities (other than BNES in its capacity as a party to this Agreement);

16. Notices

- 16.1. Except as otherwise expressly provided within this Agreement, no notice from one Party to the other shall have any validity under this Agreement unless made in writing by or on behalf of the Party concerned.
- 16.2. Any notice which is to be given by either Party to the other shall be given by letter (sent by hand, registered post, by recorded delivery service and/or by email) such letters shall be addressed to the other Party at the addresses stated below. Provided the notice is not returned as undelivered, the notice shall be deemed to have been given two (2) working days after the day on which the letter was hand delivered or posted or sooner where the Party acknowledges receipt of such letters. No notice will be accepted if sent by fax.
- 16.3. For the purposes of notices the address of each Party shall be as stated in Clause 1;
 - 16.3.1. Any Party may change its address by serving a notice in accordance with clause 16.2.

17. Intellectual Property Rights

- 17.1. No Party to this Agreement shall acquire any right, title or interest in or to the Intellectual Property Rights of the other Party.
- 17.2. The Agent and/or Supplier shall not cause or permit anything which may damage or endanger the Intellectual Property Rights of BNES or BNES's title to it, nor assist or allow others to do so.
- 17.3. The Agent and/or Supplier shall not in connection with the performance of the Framework use, manufacture, supply or deliver any process, article, matter or thing, the use, manufacture, supply or delivery of which would be an infringement of any Intellectual Property Rights.
- 17.4. No Party to this Agreement shall have any right to use any of the other Party's names, logos or trademarks on any of its products or services without the other Party's prior written consent.

18. Confidentiality

- 18.1. Each Party to this Agreement will:
 - 18.1.1. treat the other Party's Confidential Information as confidential and keep it in secure custody (which is appropriate depending upon the form in which such materials are stored and the nature of the Confidential Information contained in those materials); and

BNES & TPPL Supply of Buses Framework Agreement

- 18.1.2. not disclose the other Party's Confidential Information to any other person except as expressly set out in this Agreement or without obtaining the other Party's prior written consent;
 - 18.1.3. not use or exploit the Confidential Information disclosed in any way except for the purposes anticipated under this Agreement; and
 - 18.1.4. immediately notify the other Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the other Party's Confidential Information.
- 18.2. Parties shall be entitled to disclose the Confidential Information of the other Party where:
- 18.2.1. there is a requirement to disclose the Confidential Information by Law, including, but not limited to, requirements in connection with the FOIA or the EIRs;
 - 18.2.2. the need for such disclosure arises out of or in connection with any legal challenge or potential legal challenge against BNES, the Agent or Member arising out of or in connection with this Agreement;
 - 18.2.3. a Party has reasonable grounds to believe that the other Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010 and the disclosure is being made to the Serious Fraud Office.
- 18.3. This whole Clause 18 shall survive beyond any expiry or termination of this Agreement.

19. Data Protection

- 19.1. The Supplier shall itself comply with and assist all other Parties to comply with the obligations of the Data Protection Act 1998. The Supplier shall not in any way act in such a manner as to breach their or any of the other Parties obligations under the Data Protection Act 1998.

20. The Supplier's Obligations And The Framework Agreement Standard

- 20.1. The Supplier shall act:
 - 20.1.1. with all the due skill care and diligence to be expected of a competent Supplier experienced in providing services of a similar kind scope and complexity as that under this Agreement;
 - 20.1.2. in accordance with the provisions of the Agreement and Call Off Contract(s) awarded;
 - 20.1.3. in accordance with all applicable Legislation or other legal requirements concerning the obligations under the Agreement and Call-Off Contract including without limitation those relating to the health and safety of staff and users;
 - 20.1.4. in a manner that does not damage the reputation of BNES.

21. Warranties And Representations

- 21.1. The Supplier warrants and represents to BNES that:-

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- 21.1.1. it has full capacity and authority and all necessary consents to enter into and to perform its obligations under this Agreement and any Call-Off Contract;
- 21.1.2. this Agreement is executed by a duly authorised representative of the Supplier;
- 21.1.3. in entering into this Agreement it has not committed any Prohibited Act;
- 21.1.4. as at the Commencement Date, all information, statements and representations contained in the Supplier's Tender are true, accurate and not misleading save as may have been specifically disclosed in writing to BNES and/or Agent prior to the execution of this Agreement and it will promptly advise BNES and/or Agent of any fact, matter or circumstance of which it may become aware which would render any such information, statement or representation to be false or misleading;
- 21.1.5. it has not entered into any agreement with any other person with the aim of preventing tenders being made or as to the fixing or adjusting of the amount of any tender or the conditions on which any tender is made in respect of the Agreement;
- 21.1.6. it has not caused or induced any person to enter such agreement referred to in Clause 21.1.5 above;
- 21.1.7. no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might affect its ability to perform its obligations under this Agreement;
- 21.1.8. it is not subject to any contractual obligation, compliance with which is likely to have an effect on its ability to perform its obligations under this Agreement;
- 21.1.9. in the three (3) years prior to the Commencement Date:-
 - 21.1.9.1. 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;
 - 21.1.9.2. it has been in full compliance with all applicable securities laws and regulations in the jurisdiction in which it is established; and
 - 21.1.9.3. it has not performed any act or omission with respect to its financial accounting or reporting which could have an adverse effect on the Supplier's position as an on-going business concern or its ability to fulfil its obligations under this Agreement.

22. Prohibited Acts

- 22.1. The Supplier shall not commit any Prohibited Acts.
- 22.2. In the event the Supplier breaches Clause 22.1, the Supplier shall indemnify BNES and Agent in full from and against any other loss sustained by BNES and Agent in consequence of such breach, whether or not the Agreement has been terminated.

23. Conflicts Of Interest

- 23.1. The Supplier shall take appropriate steps to ensure that neither the Supplier nor any staff are placed in a position where (in the reasonable opinion of BNES and/or Agent) there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier or staff and the duties owed to BNES and/or Agent under the provisions of this Agreement. The Supplier shall notify BNES and Agent if such a conflict arises.

24. Insurance And Indemnity

- 24.1. Subject to Clause 24.2 the Supplier shall indemnify BNES and Agent, and keep BNES and Agent indemnified, from and against any and all losses, costs, expenses, damages, claims demands or proceedings whatsoever and howsoever to the extent arising directly (but not indirectly or consequentially) whether in contract tort including negligence under statute in common law or otherwise out of the act default negligence breach of contract breach of statute or statutory duty by the Supplier or any of its employees or agents acting within the course of their employment or any of its sub-Suppliers and their employees or agents.
- 24.2. The Supplier's liability under Clause 24.1 shall be limited as follows:
- 24.2.1. in accordance with Clause 24.5 it shall be unlimited; and
 - 24.2.2. in respect of all other liability falling outside of Clause 24.5 arising out of or in connection with its obligations under this Agreement and all actions claims demands proceedings costs and expenses arising in respect of it to £5,000,000 (five million pounds) per claim or series of claims arising out of any one incident.
- 24.3. The Supplier shall at its own cost take out and maintain throughout the Agreement with a reputable insurance company or companies the following policies of insurance:
- 24.3.1. Employers liability insurance in accordance with the Employer's Liability (Compulsory Insurance Act) 1969 with a limit of indemnity of not less than ten million pounds (£10,000,000) per claim or series of claims arising out of any one incident;
 - 24.3.2. Public liability with a limit of indemnity of not less than five million pounds (£5,000,000) per claim or series of claims arising from one event;
 - 24.3.3. Product liability with a limit of indemnity of not less than five million pounds (£5,000,000) per claim or series of claims arising from one event.
- 24.4. Notwithstanding anything to the contrary contained in this Agreement, BNES's liability whether arising from breach of contract tort including negligence breach of statutory duty or otherwise shall be limited as follows:
- 24.4.1. accordance with Clause 24.5 it shall be unlimited;
 - 24.4.2. in respect of all other liability falling outside of Clause 24.5 arising out of or in connection with its obligations under this Agreement and all actions claims demands proceedings costs and expenses arising in respect of it to £500,000 (five hundred thousand pounds).
- 24.5. No Party to this Agreement limits its liability for death or personal injury caused by the negligence of itself or any of its employees or agents acting in the course

of their employment, in respect of a misrepresentation made fraudulently or elsewhere where this is not permitted under Legislation.

25. Dispute Resolution

- 25.1. If there is a dispute between the Parties concerning the interpretation or operation of this Agreement it shall be referred to a senior officer of the Agent and a senior representative of the Supplier for resolution.
- 25.2. If any dispute is not resolved within 20 Working Days of the referral under Clause 25.1 (or such longer period as the Agent and the Supplier may agree), then the Parties may attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution (“CEDR”) Model Mediation Procedure 2001 (the “model Procedure”) or such later edition as may be in force from time to time.
- 25.3. To initiate mediation a Party must give notice in writing (the “ADR notice”) to the other Party requesting a mediation in accordance with this Clause 25. The mediation is to take place not later than 20 Working Days after the date of the ADR notice. If there is any issue concerning the conduct of the mediation upon which the Parties cannot agree within 10 Working Days after the date of the ADR notice, then CEDR will, at the request of any Party, decide the issue for the Parties having consulted with them.
- 25.4. If the dispute is not resolved within 10 Working Days of the mediation then the Parties may litigate the matter.

26. Audit And Information

- 26.1. The Supplier shall keep full and proper records in relation to the performance of its obligations under this Agreement and provide BNES and/or Agent with any information regarding such records as may be reasonably requested in writing by BNES and/or Agent and/or its internal or external auditors having regard to BNES’s duties and responsibilities as a public authority.
- 26.2. Any information requested in writing under Clause 26.1 shall be provided by the Supplier within a reasonable time being no longer than ten (10) Working Days from the date of such written request and shall be provided in hard copy and, where available, also electronically. BNES and/or Agent shall be entitled to have the originals of any document so requested.
- 26.3. Without prejudice to the Supplier’s obligations under Clauses 26.1 and 26.2, BNES and/or Agent shall be entitled to request, and the Supplier shall provide within a reasonable time, employment and relevant personal information in relation to the Supplier’s personnel engaged upon or in connection with the Agreement and/or Call-Off Contract for the purposes of anti-fraud measures such as data matching. The Supplier shall ensure that it takes any measures necessary pursuant to the Data Protection Act 1998 and any other relevant legislation to facilitate such disclosure lawfully and fairly.
- 26.4. The Supplier shall keep and maintain until seven (7) years after the date of termination or expiry (whichever is the earlier) of this Agreement (or a longer period as may be agreed between the Parties), full and accurate records and accounts of the operation of this Agreement.

- 26.5. The Supplier shall keep the records and accounts referred to in Clause 26.1 above in accordance with good accountancy practice.
- 26.6. The Supplier shall afford BNES and/or Agent, and/or the auditor such access to such records and accounts as may be required by BNES and/or Agent, and/or the auditor from time to time.
- 26.7. The Supplier shall provide such records and accounts (together with copies of the Supplier's published accounts) to BNES and/or Agent and the Auditor upon request and without delay at any time during the Agreement and for a period of six (6) years after expiry or termination of the Agreement.
- 26.8. BNES and/or Agent shall use reasonable endeavours to ensure that the conduct of any audit does not unreasonably disrupt the Supplier or delay the provision of the Agreement, save insofar as control over the conduct of audits carried out by the auditor is outside of the control of BNES and/or Agent.
- 26.9. The Supplier shall on demand provide the auditor with all reasonable co-operation and assistance in relation to each audit, including:-
 - 26.9.1. all information requested by the auditor within the scope of the audit;
 - 26.9.2. reasonable access to sites controlled by the Supplier and to equipment; and
 - 26.9.3. access to the staff.
- 26.10. The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 26 unless the audit reveals a material default by the Supplier in which case the Supplier shall reimburse BNES and/or Agent for BNES's and/or Agent's reasonable costs incurred in relation to the audit.

27. Novation, Delegation Or Sub-Contracting

- 27.1. The Supplier shall not be entitled to assign, novate or otherwise transfer this Agreement or its rights or obligations thereunder without the prior written consent of BNES, and/or Agent and such consent shall be at the entire discretion of BNES, but shall not unreasonably be withheld.
- 27.2. In the event BNES and/or Agent consents to any assignment, novation or other transfer pursuant to Clause 27.1 it shall be entitled to require and the Supplier shall pay the reasonable administrative and legal costs to BNES of formalising the assignment, novation or transfer.
- 27.3. BNES shall be entitled to assign, novate or otherwise transfer this Agreement to any other party at any time.
- 27.4. The Supplier shall be entitled to delegate or sub-contract any of its duties or obligations under this Agreement provided that it has first obtained the express written consent of BNES and Agent to do so (the giving of which consent shall be entirely at BNES's discretion). The Supplier is not required to obtain written consent from BNES or Agent to provide sub-contracted services necessary for the Purchase of Vehicle(s), including delivery, breakdown recovery, taxation, glass replacement and Vehicle collection. However, BNES and the Agent reserve the right to provide written notice for the Supplier to immediately cease (and on receipt of such notice the Supplier shall immediately cease) delegating, sub-contracting or otherwise engaging an agent or other third party where any

such services or sub-contractors, agents or other, are found for any reason to not be acting or operating in accordance with Legislation or in any way which might cause reputational damage or harm to BNES or the Agent.

- 27.5. The giving of any consent by BNES in accordance with Clause 27.4 shall not relieve the Supplier of any liability or obligation under this Agreement so that the Supplier shall remain responsible for the acts, omissions and defaults of any sub-supplier or any employees or agents of any sub-supplier in all respects as though they were the acts, omissions and default of the Supplier or any of its agents or employees.

28. Variations

- 28.1. No Variation shall be effective unless it is recorded in writing and signed by all Parties to this Agreement.

29. Waiver

- 29.1. The failure of any Party to insist upon strict performance of any provision of this Agreement, or the failure of any Party 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 obligation established by this Agreement.
- 29.2. A waiver of any performance default shall not constitute a waiver of any subsequent performance default.
- 29.3. No waiver of any of the provisions of this Agreement shall be effective unless it is expressly stated to be a waiver and communicated by the waiving party to the other parties in writing.

30. Complaints Handling

- 30.1. The Supplier shall notify BNES and Agent of any complaint made in relation to the provision of this Agreement within two (2) Working Days (or sooner if appropriate to the subject matter of the complaint) of becoming aware of that complaint and such notice shall contain full details of the Supplier's plans to resolve such complaint.
- 30.2. Without prejudice to any rights and remedies that a complainant may have under the Agreement, and without prejudice to any obligation of the Supplier to take remedial action under the provisions of the Agreement, the Supplier shall use its best endeavours to resolve the complaint within ten (10) Working Days and in so doing, shall deal with the complaint fully, expeditiously and fairly.
- 30.3. Within two (2) Working Days of a request by BNES and/or Agent, the Supplier shall provide full details of a complaint to BNES and/or Agent, including details of steps taken to resolve the complaint.

31. Contracts Rights Of Third Parties Act 1999

- 31.1. The Parties do not intend that any term of this Agreement be enforceable by any third party whether pursuant to the Contracts (Rights of Third Parties) Act 1999 or otherwise.

32. Whistleblowing

32.1. The Supplier confirms that the Supplier has an authorised person to whom the Supplier’s staff may make a qualifying disclosure under the Public Interest Disclosure Act 1998 (“PID Act”) and declares that any of its staff making a protected disclosure (as defined by PID Act) shall not be subjected to any detriment and the staff will be made aware of this provision. The Supplier further declares that any provision in any contract purporting to preclude a member of its staff from making a protected disclosure is void.

33. Law and Jurisdiction

33.1. This Agreement shall be governed by and construed in accordance with the laws of England and Wales.

33.2. The Parties irrevocably agree that the courts of England shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Agreement or its subject matter.

IN WITNESS of which this Agreement has been duly executed by the Parties

Authorised Signatory (BNES)	Print Name
Authorised Signatory (Agent)	Print Name
Authorised Signatory (Supplier)	Print Name
Supplier Name (Print)	Date

Schedule 1
The Award Criteria used at tender.

Award Criteria Weightings		
Award Criteria	Lot 1	Lots 2 - 7
9. Tender Questions (ALL LOTS)	5%	5%
10. Tender Questions (LOT 1 ONLY)	55%	-
11. Tender Questions (LOTS 2 – 7 ONLY)	-	55%
12. Framework Agreement	Pass/Fail	Pass/Fail
13. Cost Submission	40%	40%
14. Submission Statements	Pass/Fail	Pass/Fail

Schedule 2

The Lots of the Framework the Supplier is appointed to:

Lot 1: Vehicle chassis, both converted and unconverted operating on Petrol, Diesel, Hybrid, Electric, LPG (liquid petroleum gas), Hydrogen and Bio fuels. This lot is for the purchase of either unconverted chassis or converted chassis from the Original Equipment Manufacturer (OEM). If a converted vehicle is required under this lot, the convertor may either be nominated by the Member or the OEM will use their preferred convertor. For clarity, purchases from this lot will be made from OEMs or suppliers of chassis (unconverted/converted) that have been appointed to the framework in this lot.

Lot 2: 5 Seat minibus/people mover conversions, including accessible conversions of vehicles operating on Diesel, Petrol, Hybrid, Electric, LPG, Hydrogen, and Bio fuels. This lot is for the purchase of converted chassis from the convertors appointed to the framework. Members can if they choose to, nominate and/or provide the necessary chassis' for conversion and pay for the conversion only. Convertors can make available for sale ex-demonstration vehicles to Members within this lot.

Lot 3: 12 Seat minibus conversions, including accessible conversions of vehicles operating on Diesel, Petrol, Hybrid, Electric, LPG, Hydrogen, and Bio fuels. This lot is for the purchase of converted chassis from the convertors appointed to the framework. Members can if they choose to, nominate and/or provide the necessary chassis' for conversion and pay for the conversion only. Convertors can make available for sale ex-demonstration vehicles to Members within this lot.

Lot 4: 13-17 Seat coach built conversions, including accessible conversions of vehicles operating on Petrol, Diesel, Hybrid, Electric, LPG (liquid petroleum gas), Hydrogen and Bio fuel. This lot is for the purchase of converted chassis from the convertors appointed to the framework. Members can if they choose to, nominate and/or provide the necessary chassis' for conversion and pay for the conversion only. Convertors can make available for sale ex-demonstration vehicles to Members within this lot.

Lot 5: 13-17 Seat van conversions, including accessible conversions of vehicles operating on Petrol, Diesel, Hybrid, Electric, LPG (liquid petroleum gas), Hydrogen and Bio fuels. This lot is for the purchase of converted chassis from the convertors appointed to the framework. Members can if they choose to, nominate and/or provide the necessary chassis' for conversion and pay for the conversion only. Convertors can make available for sale ex-demonstration vehicles to Members within this lot.

Lot 6: 18-36 seat coach built accessible and non-accessible conversions of vehicles operating on Petrol, Diesel, Hybrid, Electric, LPG (liquid petroleum gas) Hydrogen and Bio fuel. This lot is for the purchase of converted chassis from the convertors appointed to the framework. Members can if they choose to, nominate and/or provide the necessary chassis' for conversion and pay for the conversion only. Convertors can make available for sale ex-demonstration vehicles to Members within this lot.

Lot 7: 8.9m – 18.7m coach/bus to include double-decked, articulated and tri-axle 36-75 seat vehicles, operating on Petrol, Diesel, Hybrid, Electric, LPG (liquid petroleum gas), Hydrogen and Bio fuels. This lot is for the purchase of converted chassis from the convertors appointed to the framework. Members can, if they choose to, nominate and/or provide the necessary chassis' for conversion and pay for the conversion only. Convertors can make available for sale ex-demonstration vehicles to Members within this lot.

Within Lot 1, Members can nominate their preferred convertor(s) for use by the successful OEM manufacturers/chassis suppliers when supplying converted vehicle chassis. In these circumstances, the OEM manufacturer or chassis supplier is liable for the vehicle(s) ordered until delivered and signed for by the Member. For clarity, for all purchases made within Lot 1 the invoice relationship remains between the Member and the successful OEM manufacturer.

Schedule 4
Terms and Conditions of Contract for Purchase
(Call-Off Contract – Purchase: Lots 1 - 7)

[Guidance:

These Terms and Conditions represent the standard contract to be used for Call-Off Contracts for Lots 1 - 7 under the Framework. However, individual Customers can amend and/or supplement these as appropriate for their requirement.]

1 “Parties” to this agreement:

1.1 [Full Customer address and company number] (“Customer”)

And;

1.2 [Full supplier address and company number] (“Supplier”)

2 Definitions

In these terms and conditions:

“Agreement”	means this call-off contract under the Framework between the Customer and the Supplier constituted by the Supplier’s acceptance of any Purchase Order issued by the Customer and includes the Purchase Order in its entirety;
“Commencement Date”	Means the commencement or start of this Agreement for the supply of Vehicles by the Supplier to the Customer. The commencement date is [];
“Confidential Information”	means all information, whether written or oral (however recorded), provided by the disclosing Party to the receiving Party and which (i) is known by the receiving Party to be confidential; (ii) is marked as or stated to be confidential; or (iii) ought reasonably to be considered by the receiving Party to be confidential;
“Customer”	means the organisation identified as the Customer in 1.1. A Customer must be a member of The Procurement Partnership Limited’s buying club;
“Date of Delivery”	means the date and time by which the Vehicles must be Delivered to the Customer, as specified in the Purchase Order;
“Deliver”	means the handover of Vehicle(s) to the Customer at the location and on the date and time specified in the Purchase Order. This may

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	also be used in the context of the Customer collecting from the Supplier's location (if applicable). This shall include unloading and any other specific handover arrangements agreed in accordance within a Purchase Order. Delivered and Delivery shall be construed accordingly;
"DPA"	means the Data Protection Act 1998;
"FOIA"	means the Freedom of Information Act 2000;
"Framework"	means the overarching Bath and North East Somerset Council and The Procurement Partnership framework agreement for Supply of Buses under which this Agreement is awarded;
"Information"	has the meaning given under section 84 of the FOIA;
"Intellectual Property Rights"	<p>means</p> <ul style="list-style-type: none"> a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in Internet domain names and website addresses and other rights in trade names, designs, know-how, trade secrets and other rights in Confidential Information; b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and c) all other rights having equivalent or similar effect in any country or jurisdiction;
"Mini-Competition"	means the process of reopening competition under the Framework for the purpose of identifying a Supplier with whom a Purchase Order is to be placed;
"Party"	means the Supplier or the Customer (as appropriate) and "Parties" shall mean both of them;
"PCR 2015"	means the Public Contracts Regulations 2015 (as amended);

<p>“Price”</p>	<p>Means the cost of Purchase for a Vehicle or Vehicles from the Supplier, identifiable from the Price List or through Mini-Competition;</p>
<p>“Price List”</p>	<p>means the complete range of Vehicles, complete with Prices, available for Purchase from the Supplier pursuant to Schedule 5 of the Framework or otherwise agreed with the Supplier through Mini-Competition;</p>
<p>“Purchase”</p>	<p>means the Purchase of Vehicle(s) and any ancillary service from the Supplier;</p>
<p>“Purchase Order”</p>	<p>means a Customer’s notification to the Supplier of an order for the Purchase of Vehicle(s). This may be issued by phone, email, facsimile or electronically via a system(s) based interface, this may be a bespoke web-based solution. For the purposes of this Agreement a Purchase Order shall include:</p> <ul style="list-style-type: none"> a) Customer details, including name, registered address and full contact details b) The required Delivery location; c) The date and time required for Delivery; d) The agreed invoicing schedule; e) The Vehicles(s) required and the volume. <p>The Purchase Order may include:</p> <ul style="list-style-type: none"> f) A Purchase Order Number or other unique customer reference; g) Any additional specification(s) or requirement(s) that the Customer may reasonably require from the Supplier pursuant to this Agreement; h) A long-term commitment to purchase Vehicles, e.g. for 12 months or longer; <p>Any other necessary information, including additional terms and conditions supplementary to this Agreement;</p>
<p>“Purchase Order Number”</p>	<p>means the Customer’s unique number relating to an order for Vehicles to be supplied by the Supplier to the Customer in accordance with the terms of this Agreement;</p>

<p>“Request for Information”</p>	<p>i) has the meaning set out in the FOIA or the Environmental Information Regulations 2004 as relevant (where the meaning set out for the term “request” shall apply);</p>
<p>“Service Level”</p>	<p>means the minimum expected Service Levels associated with the supply of Vehicles by the Supplier to the Customer. Typically it is expected that the minimum Service Levels shall be populated by the Customer in the template provided in Schedule 3 from the Framework;</p>
<p>“Staff”</p>	<p>means all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any sub-contractor of the Supplier engaged in the performance of the Supplier’s obligations under the Agreement;</p>
<p>“Staff Vetting Procedures”</p>	<p>means vetting procedures that accord with good industry practice or, where applicable, the Customer’s procedures for the vetting of personnel as provided by the Supplier from time to time;</p>
<p>“Supplier”</p>	<p>means the person named as Supplier in the Purchase Order;</p>
<p>“VAT”</p>	<p>means value added tax in accordance with the provisions of the Value Added Tax Act 1994;</p>
<p>“Vehicle”</p>	<p>means the buses or chassis’ to be supplied by the Supplier to the Customer or a third-party as stated on the Purchase Order. It also means other associated activities and services that are likely and reasonable to be required by the Customer;</p>
<p>“Working Day”</p>	<p>means a day (other than a Saturday or Sunday) on which banks are open for business in the City of London.</p>

3 Interpretation

3.1 In these terms and conditions, unless the context otherwise requires:

- 3.1.1 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person’s personal representatives, successors or permitted assigns.
- 3.1.2 A reference to a company shall include any company, corporation or other body

corporate, wherever and however incorporated or established.

- 3.1.3 A reference to a party shall be to a party to this Agreement and the expression parties shall be construed accordingly.
- 3.1.4 Words in the singular shall include the plural and vice versa.
- 3.1.5 A reference to one gender shall include a reference to the other genders.
- 3.1.6 A reference to any statute, statutory provision, subordinate legislation, code or guideline ("legislation") shall, unless the context otherwise requires, be construed as a reference to such legislation as the same may from time to time be amended, consolidated, modified, extended, re-enacted, replaced, superseded or substituted.
- 3.1.7 A reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.
- 3.1.8 A reference to writing or written includes e-mail.
- 3.1.9 A reference to a clause in any Part shall, unless otherwise expressly provided, be to a clause within that Part.
- 3.1.10 Any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

4 Duration

- 4.1 This Agreement begins on the Commencement Date and will continue for a period of [] months, or until all Vehicles are Delivered, unless otherwise terminated in accordance with the terms of this Agreement, specifically Clause 21.

5 Basis of Agreement

- 5.1 The Purchase Order constitutes an offer by the Customer to Purchase the Vehicles subject to and in accordance with the terms and conditions of this Agreement, the Purchase Order and the Framework.
- 5.2 The Customer in accessing the Framework to place a Purchase Order acknowledges their responsibility to ensure no breach of PCR 2015 or any other relevant statutory obligations.
- 5.3 The Customer by issuing a Purchase Order pursuant to this Agreement agrees that should the Customer breach PCR 2015 or any other statutory obligations, whether by intent or otherwise, the Framework and any parties associated with it shall not be held accountable, responsible or liable in any way.
- 5.4 The offer comprised in the Purchase Order shall be deemed to be accepted by the Supplier on receipt by the Customer from the Supplier written notification of acceptance within two (2) working days of the date of the Purchase Order.

6 Purchase of Vehicles

- 6.1 In consideration of the Customer's agreement to pay the Price, the Supplier shall Deliver the Vehicles to the Customer subject to and in accordance with the terms and conditions of the Agreement.
- 6.2 In Delivering the Vehicles, the Supplier shall co-operate with the Customer in all matters relating to the supply of the Vehicles and comply with all reasonable Customer instructions.
- 6.3 The Supplier shall provide the Vehicles in accordance with the Purchase Order. The Supplier warrants, represents, undertakes and guarantees that the Vehicles supplied under the Agreement shall:
- 6.3.1 be free from defects (manifest or latent), in materials and workmanship and remain so for a reasonable duration of use;
 - 6.3.2 be fit for any purpose held out by the Supplier or made known to the Supplier by the Customer expressly or by implication, and in this respect the Customer relies on the Supplier's skill and judgement; and
 - 6.3.3 and the Supplier itself shall, comply with all applicable laws.
- 6.4 All vehicles that require conversion/modification Purchased under the Agreement are to be fully VCA compliant as appropriate. It is a condition of this Agreement that all Vehicles are to be type approved prior to Delivery.

7 Customer Responsibilities

- 7.1 The Customer must inspect upon Delivery the Vehicles and any accessories provided before accepting the Vehicles. If the condition of the Vehicles do not meet agreed standards the Supplier must be immediately notified.
- 7.2 If the Supplier has agreed to Deliver the Vehicles at an address provided by the Customer, the Customer will be responsible for the Vehicles from the time the Supplier Delivers the Vehicles, following any agreed inspections.

8 Price, Payment and Recovery of Sums Due

- 8.1 The Price for Vehicles shall be as set out in the Purchase Order and shall be the full and exclusive remuneration of the Supplier in respect of the Purchase of Vehicles. Unless otherwise agreed in writing by the Customer, the Price shall be calculated in accordance with the Framework or the result of a Mini-Competition conducted under the Framework.
- 8.2 Pricing for Vehicles under this Agreement may only vary in accordance with the terms covering price variation stated within the Framework (Clause 11.1), or if varied by, the terms stated on the Purchase Order or Mini-Competition documentation.
- 8.2.1 For the avoidance of doubt if the Purchase Order, and/or any Mini-Competition documents are silent on the matters of price variation then the terms laid out in

the Framework shall take precedence and shall not be amended by any terms issued by the Supplier unless agreed by the Customer in writing.

- 8.3 All amounts stated are exclusive of VAT which shall be charged at the prevailing rate. The Customer shall, following the receipt of a valid VAT invoice, pay to the Supplier a sum equal to the VAT chargeable in respect of the Vehicles Purchased.
- 8.4 The Supplier shall invoice the Customer on the basis agreed in the Purchase Order. Each invoice shall include such supporting information required by the Customer to verify the accuracy of the invoice, including the relevant Purchase Order Number (if applicable) and a breakdown of the Vehicles Purchased in the invoice period.
- 8.5 The Customer shall pay the Supplier the invoiced amounts no later than 30 days after verifying that the invoice is valid and undisputed and if necessary includes a valid Purchase Order Number.
- 8.6 If the Customer fails to consider and verify an invoice in a timely fashion the invoice shall be regarded as valid and undisputed for the purpose of paragraph 8.5 after a reasonable time has passed.
- 8.7 If there is a dispute between the Parties as to the amount invoiced, the Customer shall pay the undisputed amount. The Supplier shall not suspend the supply of Vehicles unless the Supplier is entitled to terminate the Agreement for a failure to pay undisputed sums in accordance with clause 21. Any disputed amounts shall be resolved through the dispute resolution procedure detailed in clause 25.
- 8.8 If a payment of an undisputed amount is not made by the Customer by the due date, then the Customer shall pay the Supplier interest at the interest rate specified in the Late Payment of Commercial Debts (Interest) Act 1998.
- 8.9 Where the Supplier enters into a sub-contract, the Supplier shall include in that sub-contract:
- 8.9.1 provisions having the same effects as clauses 8.4 to 8.8 of this Agreement; and
 - 8.9.2 a provision requiring the counterparty to that sub-contract to include in any sub-contract which it awards provisions having the same effects as 8.4 to 8.9 of this Agreement.
 - 8.9.3 In this clause 8.9, "sub-contract" means a contract between two or more suppliers, at any stage of remoteness from the Customer in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Agreement.

9 Cancellation

- 9.1 The Customer shall have the right to cancel a Purchase Order for Vehicle(s), or any part of a Purchase Order which have not yet been Delivered to the Customer. The cancellation shall be made in writing. Without prejudice to the generality of the foregoing, the Customer shall pay such Price or that part of the Price for Vehicles which have been Delivered to the Customer or, on the deemed date of service of the

notice of cancellation, are already in transit and the reasonable costs the Supplier has incurred to fulfil the Purchase Order.

9.1.1 For the avoidance of doubt the Customer shall not be liable for any loss of anticipated profits or any consequential loss.

10 Delivery

10.1 The Supplier shall Deliver the Vehicles to the Customer on or by the Date of Delivery. Unless otherwise agreed in writing by the Customer, Delivery shall be on the date and time to the address specified in the Purchase Order. Delivery of the Vehicles shall be completed once the completion of Delivery (including any unloading required) at the stated address has taken place and the Customer has signed for the Delivery following handover and inspection.

10.2 Any access to the Customer's premises and any labour and equipment that may be provided by the Customer in connection with Delivery of the Vehicles shall be provided without acceptance by the Customer of any liability in respect of any actions, claims, costs and expenses incurred by the Supplier or other third parties for any loss or damages to the extent that such loss or damage is not attributable to the negligence or other wrongful act of the Customer or its servant or agent. The Supplier shall indemnify the Customer in respect of any actions, suits, claims, demands, losses, charges, costs and expenses, which the Customer may suffer or incur as a result of or in connection with any damage or injury (whether fatal or otherwise) occurring in the course of Delivery to the extent that any such damage or injury is attributable to any act or omission of the Supplier or any of their sub-contractors.

10.3 Delivery of Vehicles shall be accompanied by a delivery or collection note which shows the Purchase Order Number (if applicable) and the type and quantity of the Vehicles and, in the case of part Delivery, the outstanding balance remaining to be Delivered.

10.4 Unless otherwise stipulated by the Customer in the Purchase Order, Deliveries shall only be accepted by the Customer on Working Days and during normal business hours.

10.5 Where (i) the Supplier fails to Deliver the Vehicles or part of the Vehicles or (ii) the Vehicles or part of the Vehicles do not comply with the requirements of the Purchase Order, then without limiting any of its other rights or remedies implied by statute or common law, the Customer shall be entitled:

10.5.1 request the Supplier, free of charge, to deliver suitable substitute Vehicles within the timescales specified by the Customer;

10.5.2 to require the Supplier, replace the rejected Vehicles, or to provide a full refund of the price of the rejected Vehicles (if paid);

10.5.3 to reject the Vehicles (in whole or part) and return them to the Supplier at the Supplier's own risk and expense and the Customer shall be entitled to a full refund on those Vehicles duly returned;

10.5.4 to Purchase the same or similar Vehicles from another supplier and to recover

any reasonable expenses incurred in respect of Purchasing the Vehicles from another supplier which shall include but not be limited to administration costs, chargeable staff time and extra delivery costs.

11 Ownership and Risk

11.1 The Supplier warrants that at the Date of Delivery of any Vehicles(s) it shall have full and unrestricted right, power and authority to supply and deliver those Vehicle(s) to the Customer.

11.2 Subject to Clause 11.3, risk in the Vehicles shall, without prejudice to any other rights or remedies of the Customer, pass to the Customer at the time of Delivery following inspection and acceptance by the Customer.

11.2.1 Risk in the Vehicles shall remain with the Supplier at all times until Delivery is accepted by the Customer. This includes any occasions where the Vehicles are with an agreed third-party or sub-contractor.

11.3 Ownership in the Vehicles shall, without prejudice to any other rights or remedies of the Customer, pass to the Customer at the time of final payment.

12 Staff

12.1 If the Customer reasonably believes that any of the Staff are unsuitable to undertake work in respect of the Agreement, it may, by giving written notice to the Supplier:

12.1.1 refuse admission to the relevant person(s) to the Customer's premises;

12.1.2 direct the Supplier to end the involvement in the supply of Vehicles of the relevant person(s); and/or

12.1.3 require that the Supplier replace any person removed under this clause with another suitably qualified person and procure that any security pass issued by the Customer to the person removed is surrendered,

and the Supplier shall comply with any such notice.

12.2 The Supplier shall:

12.2.1 ensure, that if requested, it will comply with the Customer's Staff Vetting Procedures as supplied from time to time; and

12.2.2 procure that all Staff comply with any rules, regulations and requirements reasonably specified by the Customer.

13 Assignment and Sub-Contracting

13.1 The Supplier shall not without the written consent, which may not be unreasonably withheld, of the Customer assign, sub-contract, novate or in any way dispose of the benefit and/or the burden of the Agreement or any part of the Agreement. The Customer may, in the granting of such consent, provide for additional terms and conditions relating to such assignment, sub-contract, novation or disposal. The Supplier shall be responsible for the acts and omissions of its sub-contractors as

though those acts and omissions were its own.

13.2 Where the Customer has consented to the placing of sub-contracts, the Supplier shall, at the request of the Customer, send copies of each sub-contract, to the Customer as soon as is reasonably practicable.

13.3 The Customer may nominate preferred sub-contractors for use by the Supplier, the Supplier may not unreasonably refuse to use any such nominated sub-contractor. The Supplier shall be responsible for the acts and omissions of nominated sub-contractors as though those acts and omissions were its own.

13.3.1 Liability for Vehicles remains the responsibility of the Supplier until Delivery, regardless of whether any sub-contractors are nominated by the Customer and Vehicles are transferred to the nominated sub-contractor for works. This is unless agreed otherwise in writing between the Supplier and any sub-contractor, but at no point will the Customer have any liability for Vehicles that have not been Delivered.

13.4 The Customer may assign, novate, or otherwise dispose of its rights and obligations under the Agreement without the consent of the Supplier provided that such assignment, novation or disposal shall not increase the burden of the Supplier's obligations under the Agreement.

14 Intellectual Property Rights and Indemnity

14.1 No Party to this Agreement shall acquire any right, title or interest in or to the Intellectual Property Rights of the other Party.

14.2 The Supplier shall indemnify, and keep indemnified, the Customer in full against all cost, expenses, damages and losses (whether direct or indirect), including any interest, penalties, and reasonable legal and other professional fees awarded against or incurred or paid by the Customer as a result of or in connection with any claim made against the Customer for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the Purchase or use of Vehicles, to the extent that the claim is attributable to the acts or omission of the Supplier or any Staff.

14.3 The Customer shall promptly notify the Supplier of any infringement claim made against it relating to any Vehicles and, subject to any statutory obligation requiring the Customer to respond, shall permit the Supplier to have the right, at its sole discretion to assume, defend, settle or otherwise dispose of such claim. The Customer shall give the Supplier such assistance as it may reasonably require to dispose of the claim and shall not make any statement which might be prejudicial to the settlement or defence of the claim.

15 Governance and Records

15.1 The Supplier shall if required by the Customer:

15.1.1 attend progress meetings with the Customer at the frequency and times specified by the Customer and shall ensure that its representatives are suitably

qualified to attend such meetings; and

15.1.2 submit progress reports to the Customer at the times and in the format specified by the Customer.

15.1.3 The Supplier shall keep and maintain until seven (7) years after the end of the Agreement, or as long a period as may be agreed between the Parties, full and accurate records of the Agreement including the Vehicles Purchased under it, and all payments made by the Customer. The Supplier shall on request afford the Customer or the Customer's representatives such access to those records as may be reasonably requested by the Customer in connection with the Agreement.

16 Confidentiality, Transparency and Publicity

16.1 Subject to clause 16.2, each Party shall:

16.1.1 treat all Confidential Information it receives as confidential, safeguard it accordingly and not disclose it to any other person without the prior written permission of the disclosing Party; and

16.1.2 not use or exploit the disclosing Party's Confidential Information in any way except for the purposes anticipated under the Agreement.

16.2 Notwithstanding clause 16.1, a Party may disclose Confidential Information which it receives from the other Party:

16.2.1 where disclosure is required by applicable law or by a court of competent jurisdiction;

16.2.2 to its auditors or for the purposes of regulatory requirements;

16.2.3 on a confidential basis, to its professional advisers;

16.2.4 to the Serious Fraud Office where the Party has reasonable grounds to believe that the other Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010;

16.2.5 where the receiving Party is the Supplier, to the Staff on a need to know basis to enable performance of the Supplier's obligations under the Agreement provided that the Supplier shall procure that any Staff to whom it discloses Confidential Information pursuant to this clause 16.2.5 shall observe the Supplier's confidentiality obligations under the Agreement; and

16.2.6 where the receiving Party is the Customer:

(a) on a confidential basis to the employees, agents, consultants and contractors of the Customer;

(b) on a confidential basis to any other Central Government Body, any successor body to a Central Government Body or any company to

which the Customer transfers or proposes to transfer all or any part of its business;

- (c) to the extent that the Customer (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions; or
- (d) in accordance with clause 17.

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Customer under this clause 16.

16.3 The Parties acknowledge that, except for any Information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of the Agreement is not Confidential Information and the Supplier hereby gives its consent for the Customer to publish the Agreement in its entirety to the general public (but with any Information that is exempt from disclosure in accordance with the FOIA redacted) including any changes to the Agreement agreed from time to time. The Customer may consult with the Supplier to inform its decision regarding any redactions but shall have the final decision in its absolute discretion whether any of the content of the Agreement is exempt from disclosure in accordance with the provisions of the FOIA.

16.4 The Supplier shall not, and shall take reasonable steps to ensure that the Staff shall not, make any press announcement or publicise the Agreement or any part of the Agreement in any way, except with the prior written consent of the Customer.

17 Freedom of Information

17.1 The Supplier acknowledges that the Customer is subject to the requirements of the FOIA and the Environmental Information Regulations 2004 and shall:

17.1.1 provide all necessary assistance and cooperation as reasonably requested by the Customer to enable the Customer to comply with its obligations under the FOIA and the Environmental Information Regulations 2004;

17.1.2 transfer to the Customer all Requests for Information relating to the Agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;

17.1.3 provide the Customer with a copy of all Information belonging to the Customer requested in the Request for Information which is in its possession or control in the form that the Customer requires within 5 Working Days (or such other period as the Customer may reasonably specify) of the Customer's request for such Information; and

17.1.4 not respond directly to a Request for Information unless authorised in writing to do so by the Customer.

17.2 The Supplier acknowledges that the Customer may be required under the FOIA and

the Environmental Information Regulations 2004 to disclose Information concerning the Supplier or the Vehicles (including commercially sensitive information) without consulting or obtaining consent from the Supplier. In these circumstances the Customer shall, in accordance with any relevant guidance issued under the FOIA, take reasonable steps, where appropriate, to give the Supplier advance notice, or failing that, to draw the disclosure to the Supplier's attention after any such disclosure

17.3 Notwithstanding any other provision in the Agreement, the Customer shall be responsible for determining in its absolute discretion whether any Information relating to the Supplier or the Vehicles is exempt from disclosure in accordance with the FOIA and/or the Environmental Information Regulations 2004.

18 Protection and Security of Data

18.1 The Supplier shall, and shall procure that all Staff shall, comply with any notification requirements under the DPA and both Parties shall duly observe all their obligations under the DPA which arise in connection with the Agreement.

18.2 When handling Customer data, the Supplier shall ensure the security of the data is maintained in line with the security requirements of the Customer as notified to the Supplier from time to time.

19 Liability and Insurance

19.1 The Supplier shall not be responsible for any injury, loss, damage, cost or expense suffered by the Customer if and to the extent that it is caused by the negligence or wilful misconduct of the Customer or by breach by the Customer of its obligations under the Agreement.

19.2 Subject always to clause 19.3

19.2.1 the aggregate liability of the Supplier in respect of all defaults, claims, losses or damages howsoever caused, whether arising from breach of the Agreement, the supply or failure to supply the Vehicles, misrepresentation (whether tortious or statutory), tort (including negligence), breach of statutory duty or otherwise shall in no event exceed a sum equal to £1,000,000; and

19.2.2 except in the case of claims arising under clauses 14.2 and 24.3, in no event shall either Party be liable to the other Party for any:

- (a) loss of profits;
- (b) loss of business;
- (c) loss of revenue;
- (d) loss of or damage to goodwill;
- (e) loss of savings (whether anticipated or otherwise); and/or
- (f) any indirect, special or consequential loss or damage.

19.3 Nothing in the Agreement shall be construed to limit or exclude either Party's liability

for:

19.3.1 death or personal injury caused by its negligence or that of its Staff;

19.3.2 fraud or fraudulent misrepresentation by it or that of its Staff;

19.3.3 breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or

19.3.4 any other matter which, by law, may not be excluded or limited.

19.4 The Supplier's liability under the indemnity in clauses 14.2 and 24.3 shall be unlimited.

19.5 The Supplier shall at its own cost take out and maintain throughout the Agreement with a reputable insurance company or companies the following policies of insurance:

19.5.1 Employers liability insurance in accordance with the Employer's Liability (Compulsory Insurance Act) 1969 with a limit of indemnity of not less than ten million pounds (£10,000,000) per claim or series of claims arising out of any one incident;

19.5.2 Public liability with a limit of indemnity of not less than five million pounds (£5,000,000) per claim or series of claims arising from one event;

19.5.3 [Product liability] with a limit of indemnity of not less than five million pounds (£5,000,000) per claim or series of claims arising from one event.

20 Force Majeure

20.1 If either Party is unable to perform any obligation under this Agreement because of an event of Force Majeure which is both beyond that Party's control and is such that the Party with the application of all due diligence and foresight could not prevent which causes the cessation of or a substantial interference with the performance of the Agreement, the duty of the Party to perform the relevant obligation shall be suspended until such circumstances have ceased.

20.2 For the purposes of this Clause 20 the circumstances below are events of Force Majeure:

20.2.1 explosion;

20.2.2 war;

20.2.3 civil disorder;

20.2.4 fire or flood;

20.2.5 actual or threatened terrorist attack; or

20.2.6 acts of local or central Government or other competent authorities (other than the Customer in its capacity as a party to this Agreement if the Customer is a local or central Government organisation);

21 Termination

21.1 The Customer reserves the right to terminate this Agreement immediately in the following circumstances:

21.1.1 the Supplier commits a material breach and/or persistent repeated breaches of any clause of this Agreement and, if such breach is or are remediable, fails to provide remedy within a period of ten (10) Working Days after being notified in writing to do so; or

21.1.2 The Customer becomes aware of a serious infringement of the obligations under PCR 2015, in particular:

21.1.2.1 This Agreement has been awarded following a substantial modification from the nature and intent of the Framework, to the extent that a new procurement procedure should have been conducted;

21.1.2.2 The Supplier has, at the time of award of this Agreement been in one of the situations referred to in the PCR 2015 regulation 57 and should have therefore been excluded from being awarded this Agreement, unless suitable evidence was provided in accordance with 'self-cleaning' (regulation 57 clauses 13 – 17)

21.1.3 the Supplier makes any voluntary arrangement with its creditors (within the meaning of the Insolvency Act 1986) or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction); or

21.1.4 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Supplier; or

21.1.5 the Supplier ceases, or threatens to cease, to carry on business; or

21.1.6 the Customer reasonably apprehends that any of the events in Clauses 21.1.3 to 21.1.5 inclusive is about to occur in relation to the Supplier and notifies the Supplier accordingly; or

21.1.7 the Supplier or any of its employees shall have offered, or given, or agreed to give to any person or have solicited or accepted from any person any gift, consideration, inducement or reward of any kind, for doing or not doing any action in relation to this Agreement or to any other contract with the Customer; or

21.1.8 the Supplier or any of its employees shall have committed any offence under the Bribery Act 2010.

21.2 Either the Customer or the Supplier may terminate this Agreement without reason at

any time provided at least twenty (20) Working Days notice is given.

22 Consequences Of Termination

- 22.1 Termination shall be without prejudice to the rights and remedies of the Supplier and the Customer accrued before such termination and nothing in this Agreement shall prejudice the right of either Party to recover any amount outstanding as at the date of such termination.
- 22.2 All provisions of this Agreement which are expressed to survive termination or expiry of this Agreement shall continue in force and effect in accordance with their terms.
- 22.3 Subject as otherwise provided in the Agreement neither Party shall have any further obligation to the other under the Agreement.
- 22.4 Notwithstanding the service of a notice to terminate the Agreement, the Supplier shall continue to fulfil its obligations under the Agreement until the date of termination or expiry of the Agreement or such other date as required.

23 Compliance

- 23.1 The Supplier shall promptly notify the Customer of any health and safety hazards which may arise in connection with the performance of its obligations under the Agreement. The Customer shall promptly notify the Supplier of any health and safety hazards which may exist or arise at the Customer's premises and which may affect the Supplier in the performance of its obligations under the Agreement.
- 23.2 The Supplier shall:
- 23.2.1 comply with the reasonable requirements of the Customer's security arrangements;
 - 23.2.2 comply with all the Customer's health and safety measures;
 - 23.2.3 notify the Customer immediately in the event of any incident occurring in the performance of its obligations under the Agreement on the Customer's premises where that incident causes any personal injury or damage to property which could give rise to personal injury;
 - 23.2.4 perform its obligations under the Agreement in accordance with all applicable equality Law and the Customer's equality and diversity policy as provided to the Supplier from time to time;
 - 23.2.5 take all reasonable steps to secure the observance of clause 23.2.4 by all Staff; and
 - 23.2.6 provide Vehicles in accordance with the Customer's environmental policy as provided from time to time.
- 23.3 The Vehicles are to be provided in accordance with any instructions specified in the Purchase Order and in compliance with any and all relevant statutory requirements. The Supplier shall indemnify the Customer against all actions, suits, claims, demands,

losses, charges, costs and expenses which the Customer may suffer or incur as a result of, or in connection with, any breach of this clause 23.

24 Prevention of Fraud and Corruption

24.1 The Supplier shall not offer, give, or agree to give anything, to any person 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.

24.2 The Supplier shall take all reasonable steps, in accordance with good industry practice, to prevent fraud by the Staff and the Supplier (including its shareholders, members and directors) in connection with the Agreement and shall notify the Customer immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.

24.3 If the Supplier or the Staff engages in conduct prohibited by clause 24.1 or commits fraud in relation to the Agreement or any other contract under the Framework (including the Customer) the Customer may:

24.3.1 terminate the Agreement and recover from the Supplier the amount of any loss suffered by the Customer resulting from the termination, including the cost reasonably incurred by the Customer of making other arrangements for the supply of Vehicles and any additional expenditure incurred by the Customer throughout the remainder of the Agreement; or

24.3.2 recover in full from the Supplier any other loss sustained by the Customer in consequence of any breach of this clause.

25 Dispute Resolution

25.1 If there is a dispute between the Parties concerning the interpretation or operation of this Agreement it shall be referred to a senior officer of the Customer and a senior representative of the Supplier for resolution.

25.2 If any dispute is not resolved within 20 Working Days of the referral under Clause 25.1 (or such longer period as the Customer and the Supplier may agree), then the Parties may attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution (“CEDR”) Model Mediation Procedure 2001 (the “model Procedure”) or such later edition as may be in force from time to time.

25.3 To initiate a mediation a Party must give notice in writing (the “ADR notice”) to the other Party requesting a mediation in accordance with this Clause 25 The mediation is to take place not later than 20 Working Days after the date of the ADR notice. If there is any issue concerning the conduct of the mediation upon which the Parties cannot agree within 10 Working Days after the date of the ADR notice, then CEDR will, at the request of any Party, decide the issue for the Parties having consulted with them.

25.4 If the dispute is not resolved within 10 Working Days of the mediation then the Parties may litigate the matter.

26 General

- 26.1 Each of the Parties represents and warrants to the other that it has full capacity and authority, and all necessary consents, licences and permissions to enter into and perform its obligations under the Agreement, and that the Agreement is executed by its duly authorised representative.
- 26.2 A person who is not a party to the Agreement shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties.
- 26.3 The Agreement cannot be varied except in writing signed by a duly authorised representative of both the Parties.
- 26.4 The Agreement contains the whole agreement between the Parties and supersedes and replaces any prior written or oral agreements, representations or understandings between them. The Parties confirm that they have not entered into the Agreement on the basis of any representation that is not expressly incorporated into the Agreement. Nothing in this clause shall exclude liability for fraud or fraudulent misrepresentation.
- 26.5 Any waiver or relaxation either partly, or wholly of any of the terms and conditions of the Agreement shall be valid only if it is communicated to the other Party in writing and expressly stated to be a waiver. A waiver of any right or remedy arising from a breach of contract shall not constitute a waiver of any right or remedy arising from any other breach of the Agreement.
- 26.6 The Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in the Agreement. Neither Party shall have, nor represent that it has, any authority to make any commitments on the other Party's behalf.
- 26.7 Except as otherwise expressly provided by the Agreement, all remedies available to either Party for breach of the Agreement (whether under the Agreement, statute or common law) are cumulative and may be exercised concurrently or separately, and the exercise of one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.
- 26.8 If any provision of the Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from the Agreement and rendered ineffective as far as possible without modifying the remaining provisions of the Agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of the Agreement.

27 Notices

- 27.1 Any notice to be given under the Agreement shall be in writing and may be served by personal delivery, first class recorded or, subject to clause 27.3, e-mail to the address of the relevant Party set out in the Purchase Order, or such other address as that Party may from time to time notify to the other Party in accordance with this clause.

27.2 Notices served as above shall be deemed served on the Working Day of delivery provided delivery is before 5.00pm on a Working Day. Otherwise delivery shall be deemed to occur on the next Working Day. An email shall be deemed delivered when sent unless an error message is received.

27.3 Notices under clauses 20 (Force Majeure) and 21 (Termination) may be served by email only if the original notice is then sent to the recipient by personal delivery or recorded delivery in the manner set out in clause 27.1.

28 Governing Law and Jurisdiction

28.1 The validity, construction and performance of the Agreement, and all contractual and non-contractual matters arising out of it, shall be governed by English law and shall be subject to the exclusive jurisdiction of the English courts to which the Parties submit.

IN WITNESS of which this Agreement has been duly executed by the Parties

Authorised Signatory (Customer)	Print Name	Date
Authorised Signatory (Supplier)	Print Name	Date
Supplier Name (Print)		

Schedule 5

Supplier's Price List

<Based on the Supplier's tendered rates for the lots they are appointed to>