

DEPARTMENT FOR TRANSPORT

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

Ref: PPRO 4/9/17

MODEL CALL-OFF TERMS AND CONDITIONS
(PHASE 2)

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THIS **CONTRACT** is made on []

Between

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

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

BACKGROUND

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

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

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

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

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

GENERAL PROVISIONS

1. DEFINITIONS AND INTERPRETATIONS

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

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

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

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

“Department”	means the Department for Transport;
“DPA”	means the Data Protection Act 1998 and any subordinate legislation made under such Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation.
“Environmental Information Regulations”	means the Environmental Information Regulations 2004 and any guidance and/or codes of practice issued by the Information Commissioner in relation to such Regulations;
“FOIA”	means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation;
“Framework Agreement”	<p>means the agreement (as amended from time to time) entered into by the Contractor and the Department in relation to the supply of any of the following:</p> <ul style="list-style-type: none">a) lower carbon vehicles;b) all-electric vehicles; andc) maintenance, repair or replacement of any vehicle supplied, <p>and where there is more than one Framework Agreement, reference to a “Framework Agreement” shall be to the Framework Agreement that includes a Specification covering the relevant Vehicle and services identified above;</p>
“General Change in Law”	means a change in Law which comes into effect after the Commencement Date, where the change is of a general legislative nature (including taxation or duties of any sort affecting the Contractor) or which would affect or relate to a comparable supply of services of the same or of a similar nature to the supply of the Vehicles and Associated Services;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2 CONTRACT PERIOD

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

2.2 Not used.

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

3 ENTIRE AGREEMENT

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

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

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

4 SCOPE OF THE CONTRACT

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

5. PERFORMANCE OF THE CONTRACT

General provisions

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

5.1.1 in accordance with the Specification;

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

5.1.3 in accordance with Good Industry Practice;

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

5.1.5 in compliance with all applicable Laws,

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

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

5.3 Delivery of Vehicles

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

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

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

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

5.5 Rejection of non-conforming Vehicles on delivery

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

5.6 Correction of non-conforming Vehicles on delivery

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

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

Vehicle Servicing

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

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

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

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

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

Breakdown and Unscheduled Repairs

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

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

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

5.9 Damage caused by neglect, abuse or negligence

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

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

Title in the Vehicles

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

Vehicle use

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

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

6 **CONTRACT PRICE**

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

7 PAYMENT

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

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

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

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

7.7 Compliance with Value Added Tax and Other Tax Requirements

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

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

7.8 Arrears of Value Added Tax

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

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

7.8.3 shall specify the amount to be deducted; and

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

8 RECOVERY OF SUMS DUE

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

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

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

9 CHANGE OF LAW

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

9.1.1 a General Change in Law; or

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

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

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

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

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

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

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

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

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

10. **STATUTORY OBLIGATIONS AND REGULATIONS**

Health and Safety

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

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

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

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

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

11. PREVENTION OF CORRUPTION

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

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

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

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

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

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

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

12 **CONFLICTS OF INTEREST**

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

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

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

13. **DISCRIMINATION**

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

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

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

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

(d) religion or belief contrary to the Employment Equality (Religion or Belief) Regulations 2003; or

(e) age contrary to the Employment Equality (Age) Regulations 2006.

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

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

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

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

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

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

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

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

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

14. **ENVIRONMENTAL REQUIREMENTS**

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

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

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

15. PROTECTION OF INFORMATION

Data Protection Act

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

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

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

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

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

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

16. **OFFICIAL SECRETS ACTS**

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

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

17. **CONFIDENTIALITY**

17.1 Each Party:-

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17.6 Nothing in this Condition shall prevent the Contracting Body:

17.6.1 disclosing any Confidential Information for the purpose of:

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

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

17.6.2 disclosing any Confidential Information obtained from the Contractor:

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

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

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

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

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

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

18. **FREEDOM OF INFORMATION**

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

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

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

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

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

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

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

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

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

18.4.1 without consulting with the Contractor, or

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

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

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

19 **PUBLICITY, MEDIA AND OFFICIAL ENQUIRIES**

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

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

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

20. **INTELLECTUAL PROPERTY RIGHTS**

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

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

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

20.9 In the event that a modification or substitution in accordance with Condition 20.7.1 is not possible so as to avoid the infringement, or the Contractor has been unable to procure a licence in accordance with Condition 20.7.2 the Contracting Body shall be entitled to delete the relevant Vehicle or Associated Service from being available in relation to the relevant Price Schedules where applicable.

20.10 Condition 20 sets out the entire financial liability of the Contractor with regard to the infringement of any Intellectual Property Right by the availability of the Vehicles or Services hereunder. This shall not affect the Contractor's financial liability for other Defaults or causes of action that may arise hereunder.

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

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

21 RECORDS AND AUDIT ACCESS

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

21.2 The Contractor shall keep the records and accounts referred to in Condition 21.1 above in accordance with good accountancy practice and shall be audited by qualified auditors as and when required to support published annual accounts.

21.4 The Contractor shall on reasonable notice afford the Contracting Body and its representatives such access to such records and accounts as may be required by the Contracting Body from time to time.

21.5 The Contractor shall provide such records and accounts together with copies of the Contractor's published accounts during the Contract Period to the Contracting Body and its internal and external auditors on reasonable written notice.

22 CONTROL OF THE CONTRACT

22.1 The Contractor shall not assign, novate or in any other way dispose of the Contract or any part of it without prior approval of the Contracting Body, not to be unreasonably withheld or delayed. Sub-contracting any part of the Contract shall not relieve the Contractor of any obligation or duty attributable to the Contractor under the Contract.

22.2 The Contractor shall be responsible for the acts and omissions of its sub-Contractors as though they are its own.

22.3 Where the Contractor has entered into sub-contracts in relation to the performance of this Contract, copies of each sub-contract shall be sent by the Contractor to the Contracting Body within two (2) working days of request.

23 THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

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

24 WAIVER

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

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

25 VARIATION OF THE VEHICLES OR ASSOCIATED SERVICES

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

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

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

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

26 **SEVERABILITY**

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

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

27. **TERMINATION**

27.1 Termination for Corruption

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

27.2 Termination on Breach of Confidentiality

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

27.3 Termination in relation to Official Secrets Act

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

27.4 Termination on Default

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

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

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

27.4.3 the Default is a material breach.

27.5 Termination on Insolvency

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

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

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

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

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

27.6 Termination by the Contracting Body

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

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

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

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

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

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

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

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

28.1.2 Not used.

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

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

28.2 Not used.

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

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

28.4 In the event that:

28.4.1 the Contractor fails to comply with Condition 28.1; or

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

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

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

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

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

29 **REMEDIES CUMULATIVE**

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

30 RECOVERY UPON TERMINATION

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

30.4 The provisions of:

30.4.1 Condition 11 (Corrupt Gifts and Payments of Commission)

30.4.2 Condition 13 (Non-Discrimination)

30.4.3 Condition 15 (Data Protection)

30.4.4 Condition 16 (Official Secrets Acts)

30.4.5 Condition 17 (Confidentiality)

30.4.6 Condition 18 (Freedom of Information)

30.4.7 Condition 19 (Publicity)

30.4.8 Conditions 20 (Intellectual Property Rights)

30.4.9 Condition 21. (Records and Audit Access)

30.4.10 Condition 24 (Waiver)

30.4.11 Condition 30 (Consequences of Termination and Expiry)

30.4.12 Condition 32 (Liability and Insurance)

30.4.13 Condition 33 (Warranties and Representations)

30.4.14 Condition 36 and 37 (Dispute Resolution)

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

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

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

31 **NOVATION**

31.1 The Contracting Body shall be entitled to:

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

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

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

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

32 LIABILITIES

Indemnity and Insurance

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

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

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

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

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

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

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

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

32.4.2 indirect or consequential loss or damage.

33 **WARRANTIES AND REPRESENTATIONS**

33.1 The Contractor warrants and represents that:

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

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

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

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

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

34 FORCE MAJEURE

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

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

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

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

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

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

35 **NOTICES**

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

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

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

[Insert details]

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

36 **DISPUTES AND LAW**

36.1 Governing Law

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

37 **DISPUTE RESOLUTION**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37.7.2.1 that the dispute is referred to arbitration; and

37.7.2.2 providing details of the issues to be resolved;

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

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

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

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

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