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**CONTRACT FOR THE PROVISION OF
A FULLY FITTED MOBILE LIBRARY ELECTRIC VEHICLE**

BETWEEN

[REDACTED] (1)

AND

NORTH SOMERSET COUNCIL (2)

N P Brain
Assistant Director Governance
North Somerset Council
Town Hall, Walliscote Grove Road
Weston-super-Mare
BS23 1UJ
(Ref:LS043944)

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This agreement is dated

2024

Parties

- (1) [FULL COMPANY NAME], a company incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (Supplier)
- (2) NORTH SOMERSET COUNCIL, of Town Hall, Walliscote Grove Road, Weston-super-Mare, BS23 1UJ (Customer)

BACKGROUND

- (A) The Supplier carries on the business of manufacturing, fitting out and selling vehicles of the same type as the Vehicle (as defined herein).
- (B) The Customer wishes to buy, and the Supplier wishes to supply, the Vehicle on the terms and conditions set out in this agreement.

Agreed terms

1. Interpretation

- 1.1 The following definitions and rules of interpretation in this **Clause** apply in this agreement.

ADR notice: has the meaning given in clause 25.1(c).

Affected Party: has the meaning given in clause 21.2.

Business Day: a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

Business Hours: the period from 9.00 am to 5.00 pm on any Business Day.

Commencement Date: the date of this agreement.

Confidential Information: any information of a confidential nature concerning the business, assets, affairs, customers, clients or suppliers of the other party or of any member of its Group, including information relating to a party's operations, processes, plans, product information, know-how, designs, trade secrets, software, market opportunities and customers.

Customer's Manager: the Customer's manager for the Services, appointed in accordance with **Clause Error! Reference source not found.**

Delivery: completion of delivery of the Vehicle specified in accordance with clause 7.2 or clause 7.4(a).

Delivery Date: the date specified for delivery of the Vehicle specified in accordance with 7.

Delivery Location: the location Units 4-6 Tweed Road, Clevedon, Somerset, BS21 6RR or such other location as is specified for delivery of the Vehicle specified in accordance with Clause 7.

Deliverables: the Vehicle and all Documents, products and materials developed by the Supplier or its agents, subcontractors, consultants and employees in relation to the Vehicle and/or Services in any form, including computer programs, data, reports and specifications (including drafts).

Dispute: has the meaning given in clause 25.1.

Document: includes, in addition to any document in writing, any drawing, map, plan, diagram, design, logo, picture or other image, tape, disk or other device or record embodying information in any form.

Expert: has the meaning given in clause 20.1.

Force Majeure Event: has the meaning given in clause 21.1.

Group: in relation to a company, that company, any subsidiary or holding company at the date of this agreement of that company.

holding company: has the meaning given in **Clause Error! Reference source not found.**

In-put Material: all Documents, information and materials provided by the Customer relating to the Services, including computer programs, data, reports and specifications.

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and neighbouring and related rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Mandatory Policies: the Customer's business policies listed in **Schedule 4.**

month: a calendar month.

Pre-existing Materials: all Documents, information and materials provided by the Supplier relating to the Services which existed prior to the commencement of this agreement, including computer programs, data, reports and specifications

Vehicle: the Vehicle and the other Vehicle set out in the Specification in **Schedule 1** and, where the context requires, the Vehicle ordered by and supplied to the Customer.

Project: the project for the provision of the Vehicle being fully fitted electric vehicle as set out in the Proposal, the Project Plan and as described in the Project Specification.

Project Specification: the specification for the Vehicle to be provided in accordance with the Project Plan to be agreed in accordance with **Clause** Error! Reference source not found. and, on such agreement, to be attached to this agreement and to form **Error! Reference source not found.**

Proposal: the tender and materials set out in **Schedule 1** provided to the Customer supporting the Supplier's presentation to the Customer and describing how the Supplier proposes to carry out the Project.

Services: the services to be provided by the Supplier under this agreement, as set out in the Project Plan and the Supplier's obligations under this agreement, together with any other services which the Customer takes from the Supplier.

Specification: the specification of the Vehicle set out in **Schedule 3**.

Supplier's Equipment: any equipment, including tools, systems, cabling or facilities, provided by the Supplier or its subcontractors and used directly or indirectly in the supply of the Services which are not the subject of a separate agreement between the parties under which title passes to the Customer.

Supplier's Manager: the Supplier's manager for the Project appointed under **Clause 3.5(b)**Error! Reference source not found..

Supplier's Team: the Supplier's Manager and all employees, consultants, agents and subcontractors which it engages in relation to the Project.

Term: the term of the agreement, as determined in accordance with clause **2**.

VAT: value added tax chargeable in the UK.

the Vehicle: the electric van to be provided and fitted out as required by the Project and this includes all items fitted to or provided with the Vehicle.

year: any period of 12 consecutive months from 1 January to the following 31 December.

- 1.2 **Clause, Schedule** and **Paragraph** headings shall not affect the interpretation of this agreement.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 The **Schedules** form part of this agreement and shall have effect as if set out in full in the body of this agreement and any reference to this agreement includes the **Schedules**.

- 1.5 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 A reference to a **holding company** or a **subsidiary** means a holding company or a subsidiary (as the case may be) as defined in section 1159 of the Companies Act 2006 [and a company shall be treated, for the purposes only of the membership requirement contained in sections 1159(1)(b) and (c), as a member of another company even if its shares in that other company are registered in the name of (a) another person (or its nominee), whether by way of security or in connection with the taking of security, or (b) its nominee. For the purposes of determining whether a limited liability partnership is a subsidiary of a company or another limited liability partnership, section 1159 of the Companies Act 2006 shall be interpreted so that: (a) references in sections 1159(1)(a) and (c) to voting rights are to the members' rights to vote on all or substantially all matters which are decided by a vote of the members of the limited liability partnership; and (b) the reference in section 1159(1)(b) to the right to appoint or remove a majority of its board of directors is to the right to appoint or remove members holding a majority of the voting rights.
- 1.7 Unless the context otherwise requires, words in the singular shall include the plural and vice versa.
- 1.8 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.9 This agreement shall be binding on, and enure to the benefit of, the parties to this agreement and their respective personal representatives, successors and permitted assigns, and references to any party shall include that party's personal representatives, successors and permitted assigns.
- 1.10 Unless expressly provided otherwise in this agreement, a reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.11 Unless expressly provided otherwise in this agreement, a reference to legislation or a legislative provision shall include all subordinate legislation made from time to time under that legislation or legislative provisions.
- 1.12 A reference to **writing** or **written** excludes fax and email.
- 1.13 Any obligation in this agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.

- 1.14 References to a document in **agreed form** are to that document in the form agreed by the parties and initialled by or on their behalf for identification.
- 1.15 A reference to **this agreement** or to any other agreement or document is a reference to this agreement or such other agreement or document, in each case as varied from time to time.
- 1.16 References to **Clauses** and **Schedules** are to the **Clauses** and **Schedules** of this agreement; references to **Paragraphs** are to **Paragraphs** of the relevant **Schedule**.
- 1.17 Any words following the terms **including, include, in particular, for example** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.

2. Commencement and term

- 2.1 The Supplier shall provide the Vehicle and Services to the Customer on the terms and conditions of this agreement.
- 2.2 The Services supplied under this agreement shall continue to be supplied until the Project for the fit out and provision of the Vehicle is completed in accordance with the Project Plan unless this agreement is terminated in accordance with **Clause 17 (Termination)**.

3. Supplier's Responsibilities

- 3.1 Within 14 days of the date of this Agreement, the Supplier shall produce the proposed final version of the Project Plan and submit it to the Customer for approval, which plan shall inter alia include four milestones for the Project relating to the staged payments:
- (a) **Milestone 1** being a date on or after receipt of the Council's written approval in accordance with **clause 3.2(a)** and being a payment of not more than 25%;
 - (b) **Milestone 2** being a stage/date to be agreed by the parties as part of the Project Plan, being a payment of not more than 25%;
 - (c) **Milestone 3** being on delivery of the vehicle in accordance with **clause 7.4** and being a payment of 45% of the agreed price; and
 - (d) **Milestone 4** being 2 months after delivery of the vehicle (the end of the snagging period) and being 5% of the contract value.
- 3.2 Within 10 days of receipt of the Project Plan in accordance with **Clause 3.1**, the Customer shall either:
- (a) Provide its written confirmation of its approval of the Project Plan; or

- (b) Request that the Supplier amend the Project Plan and resubmit it for approval by the Customer in accordance with **Clause 3.1**.
 - (c) If the Parties fail to agree on a suitable Project Plan within 3 months either party may terminate this agreement by serving written notice on the other and any sums paid by the Customer shall be reimbursed by the Supplier within 10 working days.
- 3.3 Following approval of the Project Plan, the Supplier shall manage and complete the Services, and deliver the Vehicle and the Deliverables to the Customer, in accordance with the Project Plan and Project Specification, and shall allocate sufficient resources to the Project to enable it to comply with this obligation.
- 3.4 The Supplier shall meet, and time is of the essence as to, any Project Milestones specified in the Project Plan and, in any case where **Clause 3.1** applies, the time stipulated for the delivery of a draft Project Plan and Project Specification. If the Supplier fails to do so, the Customer may (without prejudice to any other rights it may have):
 - (a) terminate this agreement in whole or in part without liability to the Supplier;
 - (b) refuse to accept any subsequent performance of the Services which the Supplier attempts to make;
 - (c) purchase substitute services from elsewhere;
 - (d) hold the Supplier accountable for any loss and additional costs incurred; and
 - (e) have all sums previously paid by the Customer to the Supplier under this agreement refunded by the Supplier.
- 3.5 The Supplier shall:
 - (a) co-operate with the Customer in all matters relating to the Project;
 - (b) subject to the prior written approval of the Customer, appoint or, at the request of the Customer, replace without delay the Supplier's Manager, who shall have authority under this agreement contractually to bind the Supplier on all matters relating to the Services who shall be suitably skilled, experienced and qualified to carry out the Services;
 - (c) subject to **Clause 3.5(b)**, ensure that the same person acts as the Supplier's Manager throughout the term of this agreement;
 - (d) procure the availability of the Supplier's Manager to provide the Services on such days, and at such times, as the Customer may require during the Project;
 - (e) promptly inform the Customer of the absence (or anticipated absence) of the Supplier's Manager, or any member of the Supplier's Team. If the Customer requires, the Supplier shall provide a suitably qualified replacement;

- (f) not make any changes to the Supplier's Manager without the prior written approval of the Customer (such approval not to be unreasonably withheld or delayed); and
- (g) ensure that the Supplier's Team use reasonable skill and care in the performance of the Services.

3.6 The Supplier shall:

- (a) notify the Customer as soon as it becomes aware of any health and safety hazards or issues which arise in relation to the Services; and
- (b) before the date on which the Services are to start, obtain, and at all times maintain, all necessary licences and consents and comply with all relevant legislation in relation to:
 - (i) the Services;
 - (ii) the installation of the Supplier's Equipment;
 - (iii) the use of In-put Material; and
 - (iv) the use of all Documents, information and materials provided by the Supplier or its agents, subcontractors, consultants or employees relating to the Services which existed prior to the commencement of this agreement, including computer programs, data, reports and specifications.

3.7 The Supplier acknowledges and agrees that:

- (a) the Customer is entering into this agreement on the basis of the Proposal, the Proposal is accurate and complete in all material respects, and is not misleading; and
- (b) if it considers that the Customer is not, or may not, be complying with any of the Customer's obligations, it shall only be entitled to rely on this as relieving the Supplier's performance under this agreement;
 - (i) to the extent that it restricts or precludes performance of the Services by the Supplier; and
 - (ii) if the Supplier, promptly after the actual or potential non-compliance has come to its attention, has notified details to the Customer in writing.

4. Customer's Obligations

4.1 The Customer shall:

- (a) co-operate with the Supplier in all matters relating to the Services and appoint (and, as it thinks fit, replace) the Customer's Manager in relation to the Project,

who shall have the authority contractually to bind the Customer on matters relating to the Project;

- (b) provide such access to the Customer's premises and data, and such office accommodation and other facilities as may reasonably be requested by the Supplier and agreed with the Customer in writing in advance, for the purposes of the Project;
- (c) provide the In-put Material or such information as the Supplier may reasonably request and the Customer considers reasonably necessary, in order to carry out the Project, in a timely manner, and ensure that it is accurate in all material respects; and
- (d) inform the Supplier of all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Customer's premises.

5. Change Control

- 5.1 The Customer's Manager and the Supplier's Manager shall meet at least once every month to discuss matters relating to the Project. If either party wishes to change the scope or execution of the Services, it shall submit details of the requested change to the other in writing.
- 5.2 If either party requests a change to the scope or execution of the Services, the Supplier shall, within a reasonable time (and in any event not more than 10 working days after receipt of the Customer's request), provide a written estimate to the Customer of:
- (a) the likely time required to implement the change;
 - (b) any necessary variations to the Supplier's charges arising from the change;
 - (c) the likely effect of the change on the Project Plan; and
 - (d) any other impact of the change on this agreement.
- 5.3 Unless both parties consent to a proposed change, there shall be no change to the Project Plan or this agreement.
- 5.4 If both parties consent to a proposed change, the change shall be made, only after agreement of the necessary variations to the Supplier's charges, the Services, the Project Plan and any other relevant terms of this agreement to take account of the change that has been reached and this agreement has been varied in accordance with **Clause 27**~~Error! Reference source not found.~~.
- 5.5 If the Supplier requests a change to the scope or execution of the Services, in order to comply with any applicable safety or statutory requirements, and such changes do not materially affect the nature, scope of, or charges for the Services, the Customer shall not

unreasonably withhold or delay consent to it. Unless the Supplier's request was attributable to the Customer's non-compliance with the Customer's obligations, neither the Supplier's charges, the Project Plan or any other terms of this agreement shall vary as a result of such change.

6. Manufacture, quality and packing

- 6.1 The Vehicle supplied to the Customer by the Supplier under this agreement shall:
- (a) conform to the Specification;
 - (b) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and 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 judgment;
 - (c) be free from defects in design, material and workmanship and remain so for 3 years after Delivery or as specified in **Schedule 3 Specification** whichever is the longer period; and
 - (d) comply with all applicable statutory and regulatory requirements;
 - (e) comply with Government Buying Standards (GBS) Minimum mandatory standards for transport 2017.
- 6.2 The Supplier shall ensure that the Vehicle are delivered in such manner as to enable them to reach their destination in good condition.
- 6.3 The Supplier shall obtain and maintain in force for the Term all licences, permissions, authorisations, consents and permits needed to manufacture and supply the Vehicle in accordance with the terms of this agreement.
- 6.4 The Supplier shall comply with all applicable laws, enactments, orders, regulations and other instruments relating to the manufacture, packing, packaging, marking, storage, handling, and delivery of the Vehicle.
- 6.5 The Customer shall have the right to enter the Supplier's premises to inspect the manufacturing facilities and the equipment used by the Supplier in the manufacture of the Vehicle:
- 6.6 Inspections carried out pursuant to **clause 6.5** shall be carried out during business hours on reasonable notice to the Supplier, provided that, in the event of an emergency, the Supplier shall grant the Customer immediate access to its premises.
- 6.7 If following an inspection the Customer reasonably considers that the Vehicle are not or are not likely to be as warranted under clause **6.1**, the Customer shall inform the Supplier

and the Supplier shall immediately take such action as is necessary to ensure that the Vehicle are or will be as warranted under clause 6.1. The Customer shall have the right to re-conduct inspections and take further samples after the Supplier has carried out its remedial actions.

7. Delivery

7.1 The Supplier shall deliver the Vehicle specified to the Delivery Location on the Delivery Date.

7.2 Delivery of the Vehicle shall be complete on the completion of unloading of the Vehicle at the Delivery Location.

7.3 If the Vehicle is not delivered on the specified Delivery Date, then, without limiting any other right or remedy the Customer may have, the Customer may:

- (a) refuse to take any subsequent attempted delivery of the Vehicle;
- (b) terminate this agreement with immediate effect;
- (c) obtain a substitute Vehicle from another supplier and recover from the Supplier any costs and expenses reasonably incurred by the Customer in obtaining such a substitute Vehicle; and
- (d) subject to clause 15, claim damages for any other costs, expenses or losses resulting from the Supplier's failure to deliver the Vehicle on the Delivery Date, provided that the Supplier shall have no liability for any failure or delay in delivering the Vehicle to the extent that such failure or delay is caused by the Customer's failure to comply with its obligations under this agreement.

7.4 If the Customer fails to accept delivery of the Vehicle on the specified Delivery Date, then, except where such failure or delay is caused by the Supplier's failure to comply with its obligations under this agreement or a Force Majeure Event:

- (a) the Vehicle shall be deemed to have been delivered at 9.00am on the Delivery Date; and
- (b) the Supplier shall store the Vehicle until the Customer takes possession of the Vehicle and charge the Customer for all related costs and expenses (including insurance).

8. Acceptance and defective Products

8.1 The Customer shall not be deemed to have accepted the Vehicle until it has had a reasonable time to inspect it following Delivery, or, in the case of a latent defect in the Vehicle, until a reasonable time after the latent defect has become apparent.

- 8.2 If the Vehicle delivered to the Customer does not comply with **clause 6.1**, or is otherwise not in conformity with the terms of this agreement, then, without limiting any other right or remedy that the Customer may have, the Customer may reject the Vehicle and:
- (a) require the Supplier to repair or replace the rejected Vehicle at the Supplier's risk and expense within five Business Days of being requested to do so; or
 - (b) require the Supplier to repay the price of the rejected Vehicle in full (whether or not the Customer has previously required the Supplier to repair or replace the rejected Vehicle); and
 - (c) claim damages for any other costs, expenses or losses resulting from the Supplier's delivery of the Vehicle that do not conform with the terms of this agreement.
- 8.3 The Customer's rights and remedies under this clause **8** are in addition to the rights and remedies available to it in respect of the statutory conditions relating to description, quality, fitness for purpose and correspondence with sample implied into this agreement by the Sale of Goods Act 1979.
- 8.4 The terms of this agreement shall apply to any repaired or replacement Vehicle supplied by the Supplier.
- 8.5 If the Supplier fails to promptly repair or replace the rejected Vehicle in accordance with **clause 8.2(a)**, the Customer may, without affecting its rights under **clause 8.2(c)**, obtain a substitute Vehicle from a third party supplier, or have the rejected Vehicle repaired by a third party, and the Supplier shall reimburse the Customer for the costs it incurs in doing so.
- 8.6 If the parties dispute whether any Vehicle complies with clause **6.1**, either party may refer the matter to an Expert for determination in accordance with clause **20**.

9. Title and risk

- 9.1 The risk in the Vehicle delivered to the Customer shall pass to the Customer on Delivery.
- 9.2 Title to the Vehicle delivered to the Customer shall pass to the Customer on Delivery.

10. Product prices

- 10.1 The Vehicle Price (fully fitted) shall be the prices set out in **Schedule 1**.
- 10.2 The Vehicle and fit out Price is exclusive of amounts in respect of VAT. The Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on a supply of the Vehicle.

10.3 The Product Prices are inclusive of the costs of packaging, insurance and carriage of the Vehicle.

10.4 The Customer shall be entitled to the Supplier's standard discount for prompt payment.

11. Terms of payment

11.1 The Supplier shall be entitled to invoice the Customer for the Vehicle on completion of each of the three agreed milestones. Each invoice shall quote the relevant milestone payment reference numbers.

11.2 The Customer shall pay invoices in full within 30 days of receipt. Payment shall be made to the bank account nominated in writing by the Supplier.

11.3 If a party fails to make a payment due to the other party under this agreement by the due date, then, without limiting the other party's remedies under clause 17.1, the defaulting party shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this **Clause** will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.

11.4 If the Customer disputes any invoice or other statement of monies due, the Customer shall immediately notify the Supplier in writing. The parties shall negotiate in good faith to attempt to resolve the dispute promptly. The Supplier shall provide all such evidence as may be reasonably necessary to verify the disputed invoice or request for payment. If the parties have not resolved the dispute within 30 days of the Customer giving notice to the Supplier, the dispute shall be resolved in accordance with clause 25, except for any dispute relating to a Discount Statement, which shall be referred to an Expert for determination in accordance with clause 20. Where only part of an invoice is disputed, the undisputed amount shall be paid on the due date as set out in clause 11.2. The Supplier's obligations to supply the Vehicle shall not be affected by any payment dispute.

11.5 Each party may at any time, without notice to the other party, set off any liability of the other party to it against any liability it has to the other party, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this agreement. Any exercise by a party of its rights under this clause 11.5 shall not limit or affect any other rights or remedies available to it under this agreement or otherwise.

12. Compliance with laws and policies

12.1 In performing its obligations under the agreement, the Supplier shall and shall procure that each member of its Group comply with:

- (a) all applicable laws, statutes, regulations and codes from time to time in force; and

(b) the Mandatory Policies.

12.2 The Customer may terminate the agreement with immediate effect by giving written notice to the Supplier if the Supplier commits a breach of clause 12.1.

13. Indemnity

13.1 The Supplier shall indemnify the Customer against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and other reasonable professional costs and expenses) suffered or incurred by the Customer arising out of or in connection with:

- (a) 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 supply or use of the Vehicle;
- (b) any claim made against the Customer by a third party arising out of, or in connection with, the supply of the Vehicle, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of this agreement by the Supplier, its employees, agents or subcontractors; and
- (c) any claim made against the Customer by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in the Vehicles, to the extent that the defect in the Vehicle is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors.

13.2 If any third party makes a claim, or notifies an intention to make a claim, against the Customer which may reasonably be considered likely to give rise to a liability under this indemnity (**Claim**), the Customer shall:

- (a) as soon as reasonably practicable, give written notice of the Claim to the Supplier, specifying the nature of the Claim in reasonable detail;
- (b) not make any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of the Supplier (such consent not to be unreasonably conditioned, withheld or delayed), provided that the Customer may settle the Claim (after giving prior written notice of the terms of settlement (to the extent legally possible) to the Supplier, but without obtaining the Supplier's consent) if the Customer reasonably believes that failure to settle the Claim would be prejudicial to it in any material respect;
- (c) give the Supplier and its professional advisers access at reasonable times (on reasonable prior notice) to its officers, representatives or advisers, and to any relevant assets, accounts, documents and records within the power or control of the Customer, so as to enable the Supplier and its professional advisers to examine

them and to take copies (at the Supplier's expense) for the purpose of assessing the Claim; and

- (d) subject to the Supplier providing security to the Customer to the Customer's reasonable satisfaction against any claim, liability, costs, expenses, damages or losses which may be incurred, take such action as the Supplier may reasonably request to avoid, dispute, compromise or defend the Claim.

13.3 If a payment due from the Supplier under this **Clause** is subject to tax (whether by way of direct assessment or withholding at its source), the Customer shall be entitled to receive from the Supplier such amounts as shall ensure that the net receipt, after tax, to the Customer in respect of the payment is the same as it would have been were the payment not subject to tax.

13.4 Nothing in this **Clause** shall restrict or limit the Customer's general obligation at law to mitigate a loss which it may suffer or incur as a result of a matter that may give rise to a claim under this indemnity.

14. Insurance

14.1 During the Term and for a period of six years afterwards the Supplier shall maintain in force the following insurance policies with reputable insurance companies public liability insurance and product liability insurance to cover the liabilities that may arise under or in connection with this Agreement, and shall, on the Customer's request provide the Customer with copies of the insurance policy certificates and details of the cover provided.

14.2 The Supplier shall ensure that any subcontractors also maintain adequate insurance having regard to the obligations under this agreement which they are contracted to fulfil.

14.3 The Supplier shall:

- (a) do nothing to invalidate any insurance policy or to prejudice the Customer's entitlement under it; and
- (b) notify the Customer if any policy is (or will be) cancelled or its terms are (or will be) subject to any material change.

14.4 The Supplier's liabilities under this agreement shall not be deemed to be released or limited by the Supplier taking out the insurance policies referred to in clause 14.1.

14.5 If the Supplier fails or is unable to maintain insurance in accordance with clause 14.1, or fails to provide evidence that it has paid the current year's premiums in accordance with clause 14.1, the Customer may, so far as it is able, purchase such alternative insurance cover as it deems to be reasonably necessary and shall be entitled to recover all reasonable costs and expenses it incurs in doing so from the Supplier.

15. Limitation of liability

- 15.1 References to liability in this clause 15 include every kind of liability arising under or in connection with this agreement including liability:
- (a) in contract, tort (including negligence), misrepresentation, restitution or otherwise; and
 - (b) arising out of any use made or resale of the Vehicle by the Customer.
- 15.2 Nothing in this agreement limits any liability which cannot legally be limited, including liability for:
- (a) death or personal injury caused by negligence;
 - (b) fraud or fraudulent misrepresentation;
 - (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979; and
 - (d) breach of section 2 of the Consumer Protection Act 1987.
- 15.3 Nothing in this agreement shall limit any liability under clause 13 of this agreement.

16. Confidentiality

- 16.1 Each party undertakes that it shall not at any time during this agreement and for a period of two years after termination or expiry of this agreement disclose to any person any Confidential Information, except as permitted by clause 16.2.
- 16.2 Each party may disclose the other party's Confidential Information:
- (a) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this agreement. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's Confidential Information comply with this clause 16; and
 - (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 16.3 Neither party shall use the other party's Confidential Information for any purpose other than to exercise its rights and perform its obligations under or in connection with this agreement.
- 16.4 Each party reserves all rights in its Confidential Information. No rights or obligations in respect of a party's Confidential Information other than those expressly stated in this agreement are granted to the other party, or to be implied from this agreement.

17. Termination

- 17.1 Without affecting any other right or remedy available to it, either party may terminate this agreement with immediate effect by giving written notice to the other party if:
- (a) the other party fails to pay any undisputed amount due under this agreement on the due date for payment and remains in default not less than 28 days after being notified in writing to make such payment;
 - (b) the other party commits a material breach of any other term of this agreement and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
 - (c) the other party repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;
 - (d) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (**IA 1986**) as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the IA 1986;
 - (e) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
 - (f) the other party applies to court for, or obtains, a moratorium under Part A1 of the IA 1986;
 - (g) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or on connection with the winding up of the other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
 - (h) an application is made to court, or an order is made, for the appointment of an administrator or a notice of intention to appoint an administrator is given or an administrator is appointed over the other party;
 - (i) the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
 - (j) a person becomes entitled to appoint a receiver over all or any of the assets of the other party or a receiver is appointed over all or any of the assets of the other party;
 - (k) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or

sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;

- (l) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 17.1(d) to clause 17.1(k) (inclusive); or
- (m) the other party ceases, or threatens to cease, to carry on all or substantially the whole of its business; or
- (n) the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of this agreement is in jeopardy; or
- (o) there is a change of control of the other party (within the meaning of section 1124 of the Corporation Tax Act 2010).

17.2 For the purposes of clause 17.1(b), a **material breach** means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the terminating party would otherwise derive from:

- (a) a breach of any of the obligation set out in **Clause 6.1**

18. Obligations on termination

18.1 On termination of this agreement:

- (a) each party shall promptly:
 - (i) return to the other party all documents and materials (and any copies) containing the other party's Confidential Information;
 - (ii) erase all the other party's Confidential Information from its computer systems (to the extent possible); and
 - (iii) on request, certify in writing to the other party that it has complied with the requirements of this clause 18.

19. Survival

19.1 On termination or expiry of this agreement the following **Clauses** shall continue in force:

- (a) clause 13 (Indemnity);]
- (b) clause 14 (Insurance);
- (c) clause 15 (Limitation of liability);
- (d) clause 16 (Confidentiality);
- (e) clause 18 (Obligations on termination);
- (f) clause 25 (Dispute resolution);

- (g) clause 33 (Governing law); and
- (h) clause 34 (Jurisdiction)

19.2 Termination [or expiry] of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination [or expiry], including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination [or expiry].

20. Expert determination

20.1 An Expert is a person appointed in accordance with this clause 20 to resolve certain matters as specified in this agreement.

20.2 Where under this agreement a party wishes to refer a matter to an Expert, the parties shall agree on the appointment of an independent Expert and shall agree with the Expert the terms of their appointment.

20.3 Where the parties propose to appoint an Expert, the Expert shall be a suitably qualified mediator or if the parties are unable to agree on an Expert or the terms of appointment within seven days of either party serving details of a suggested expert on the other, either party shall then be entitled to request the President of the Law Society to appoint an Expert.

20.4 The Expert is required to prepare a written decision including reasons and give notice (including a copy) of the decision to the parties within a maximum of three months of the matter being referred to the Expert.

20.5 If the Expert dies or becomes unwilling or incapable of acting, or does not deliver the decision within the time required by this clause 20, then:

- (a) the parties may agree to discharge the Expert; and
- (b) the parties may proceed to appoint a replacement Expert in accordance with this clause 20 which shall apply to the replacement Expert as if they were the first Expert to be appointed.

20.6 All matters to be determined in accordance with this clause 20 must be conducted, and the Expert's decision shall be written, in the English language.

20.7 The parties are entitled to make submissions to the Expert [including oral submissions] and will provide (or procure that others provide) the Expert with any assistance and documents as the Expert reasonably requires to reach a decision.

- 20.8 To the extent not provided for by this clause 20, the Expert may, in their reasonable discretion, determine any other procedures to assist with the conduct of the determination as the Expert considers just or appropriate, including (to the extent the Expert considers necessary) instructing professional advisers to assist the Expert in reaching a determination.
- 20.9 Each party shall with reasonable promptness supply each other with all information and give each other access to all documents, personnel and things as the other party may reasonably require to make a submission under this clause 20.
- 20.10 The Expert shall act as an expert and not as an arbitrator. The Expert shall determine the matters referred to the Expert under the agreement which may include any issue involving the interpretation of any provision of this agreement, their jurisdiction to determine the matters and issues referred to them and the terms of reference. The Expert may award interest as part of their decision. The Expert's written decision on the matters referred to them shall be final and binding on the parties in the absence of manifest error or fraud.
- 20.11 Each party shall bear its own costs in relation to the reference to the Expert. The Expert's fees and any costs properly incurred by them in arriving at their determination (including any fees and costs of any advisers appointed by the Expert) shall be borne by the parties equally or in any other proportions as the Expert shall direct.
- 20.12 All matters concerning the process and result of the determination by the Expert shall be kept confidential among the parties and the Expert.
- 20.13 Each party shall act reasonably and co-operate to give effect to the provisions of this clause 20 and otherwise do nothing to hinder or prevent the Expert from reaching their determination.
- 20.14 The Expert shall have no liability to the parties for any act or omission in relation to this appointment, save in the case of bad faith.

21. Force majeure

- 21.1 **Force Majeure Event** means any circumstance not within a party's reasonable control including:
- (a) acts of God, flood, drought, earthquake or other natural disaster;
 - (b) epidemic or pandemic;
 - (c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;

- (d) nuclear, chemical or biological contamination or sonic boom;
 - (e) any law or any action taken by a government or public authority, including imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;
 - (f) collapse of buildings, fire, explosion or accident;
 - (g) any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the party seeking to rely on this **Clause**, or companies in the same group as that party);
 - (h) non-performance by suppliers or subcontractors (other than by companies in the same group as the party seeking to rely on this **Clause**); and
 - (i) interruption or failure of utility service.
- 21.2 Provided it has complied with clause 21.4, if a party is prevented, hindered or delayed in or from performing any of its obligations under this agreement by a Force Majeure Event (**Affected Party**), the Affected Party shall not be in breach of this agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.
- 21.3 The corresponding obligations of the other party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.
- 21.4 The Affected Party shall:
- (a) as soon as reasonably practicable after the start of the Force Majeure Event but no later than 5 days from its start, notify the other party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the agreement; and
 - (b) use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.
- 21.5 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than 8 weeks, the party not affected by the Force Majeure Event may terminate this agreement by giving 4 weeks' written notice to the Affected Party.

22. Assignment and other dealings

- 22.1 Neither party shall assign, novate, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under

this agreement without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed).

23. Costs

Except as expressly provided in this agreement, each party shall pay its own costs incurred in connection with the negotiation, preparation and execution of this agreement and any documents referred to in it.

24. Severance

24.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement.

24.2 If any provision or part-provision of this agreement is deemed deleted under clause 24.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

25. Multi-tiered dispute resolution procedure

25.1 If a dispute arises out of or in connection with this agreement or the performance, validity or enforceability of it (**Dispute**) then except as expressly provided in this agreement, the parties shall follow the procedure set out in this **Clause**:

- (a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, the [EMPLOYEE TITLE] of the Supplier and the Director of Place of the Customer shall attempt in good faith to resolve the Dispute;
- (b) if the [EMPLOYEE TITLE] of the Supplier and the Director of Place of the Customer are for any reason unable to resolve the Dispute within 30 working days of service of the Dispute Notice, the Dispute shall be referred to the [SENIOR OFFICER TITLE] of the Supplier and Chief Executive of the Customer who shall attempt in good faith to resolve it;
- (c) if the [SENIOR OFFICER TITLE] of the Supplier and Chief Executive of the Customer are for any reason unable to resolve the Dispute within 30 working days of it being referred to them, the parties agree to enter into mediation in good faith to settle the Dispute in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties within 30 working days of service of the Dispute Notice, the mediator will be nominated by CEDR. To initiate the mediation, a party must give notice in writing (**ADR notice**) to the other party to the Dispute, referring the dispute to mediation. A copy of the ADR notice should be sent to CEDR;

- (d) if there is any point on the logistical arrangements of the mediation, other than nomination of the mediator, upon which the parties cannot agree within 30 working days from the date of the ADR notice, where appropriate, in conjunction with the mediator, CEDR will be requested to decide that point for the parties having consulted with them; and]
- (e) unless otherwise agreed between the parties, the mediation will start not later than 20 working days after the date of the ADR notice.

25.2 The commencement of mediation shall not prevent the parties commencing or continuing court proceedings.

25.3 If for any reason the Dispute is not resolved within 90 working days of commencement of the mediation, the Dispute shall be referred to and finally resolved by the courts of England and Wales in accordance with clause 34.

26. Further assurance

At its own expense, each party shall, and shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute and deliver such documents and perform such acts as may reasonably be required for the purpose of giving full effect to this agreement.

27. Variation

No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

28. Waiver

28.1 A waiver of any right or remedy under this agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.

28.2 A failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

29. Notices

29.1 Any notice given to a party under or in connection with this agreement shall be in writing and shall be:

- (a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- (b) sent by email to the following addresses (or an address substituted in writing by the party to be served):
 - (i) Supplier: the address **shown at the top of page 3 of this Agreement.**
 - (ii) Customer: Town Hall, Walliscote Grove Road, Weston-super-Mare, BS23 1UJ.

29.2 Any notice shall be deemed to have been received:

- (a) if delivered by hand, at the time the notice is left at the proper address;
- (b) if sent by pre-paid first-class post or other next working day delivery service, at 11.00 am on the second Business Day after posting.

29.3 This **Clause** does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

29.4 A notice given under this agreement is not valid if sent by email.

30. Entire agreement

30.1 This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous and contemporaneous agreements, promises, assurances and understandings between them, whether written or oral, relating to its subject matter.

30.2 Each party acknowledges that in entering into this agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement.

30.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

30.4 Nothing in this **Clause** shall limit or exclude any liability for fraud.

31. Third party rights

This agreement, does not give rise to rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

32. Counterparts

- 32.1 This agreement may be executed in any number of counterparts, each of which shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.
- 32.2 No counterpart shall be effective until each party has delivered to the others at least one executed counterpart.]

33. Governing law

This agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

34. Jurisdiction

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this agreement or its subject matter or formation.

This agreement has been entered into on the date stated at the beginning of it.

Schedule 1 The Proposal

Schedule 2 The Project Plan

Schedule 3 Specification

A bespoke specialist electric vehicle, with suitable range and fit out to provide a mobile library service and support library outreach activities in locations across the Council's district of North Somerset in accordance with the requirements set out in "Appendix 1 EV Specification and Pricing Schedule" .

[Note: To be attached to final contract Appendix 1 EV Specification and Pricing Schedule]

Schedule 4 Customer's Mandatory Policies

The Customer's Mandatory Policies:

- NS Modern Slavery Transparency Statement 2023.24
- North Somerset Council Social Value Policy
- Anti-bribery and Corruption Policy
- Equality Policy
- Corporate Information Security Policy v3

Signed by [NAME OF DIRECTOR] for and on behalf of [NAME OF SUPPLIER]	 Director
Signed by [NAME OF DIRECTOR] for and on behalf of NORTH SOMERSET COUNCIL	 Director