

Dated

2020

(1) CAMBRIDGESHIRE COUNTY COUNCIL

and

(2) CAMBUS LIMITED

Contract

in relation to low emission bus early adoption and operation

This AGREEMENT is dated

2020

Parties

- (1) **CAMBRIDGESHIRE COUNTY COUNCIL** of Shire Hall, Castle Hill, Cambridge, CB3 0AP (**"Council"**)
 - (2) **CAMBUS LIMITED** incorporated and registered in England and Wales with company number 01822941 whose registered office is at One Stockport Exchange, 20 Railway Road, Stockport, Cheshire, SK1 3SW (**"Recipient"**)
- each a **"Party"**, and together, the **"Parties"**.

Background

- A. The Parties wish to enter into an agreement for the early adoption of low emission buses by the Recipient.
- B. The Council is providing funding towards the Low Emission Buses and wishes to collaborate with the Recipient on the purchase and operation of the Low Emission Buses in Cambridge City.

1 Interpretation

1.1 In these terms and conditions:

"Agreement" means the contract between (i) the Council and (ii) the Recipient

"Bribery Act" means the Bribery Act 2010 and any subordinate legislation made under the Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation.

"Charges" means the charges for the adoption of Low Emission Buses as specified in Annex 1 of this Agreement;

"Conditions Precedent" means the requirements set out in Annex 3 (Conditions);

"Confidential" means all information, whether written or oral (however recorded), provided

Information”	by the disclosing Party to the receiving Party and which (i) is known by the receiving Party to be confidential; (ii) is marked as or stated to be confidential; or (iii) ought reasonably to be considered by the receiving Party to be confidential;
“Commencement Date”	means the date of this Agreement;
“Commercially Sensitive Information”	means information of a commercially sensitive nature relating to the Recipient, its intellectual property rights or its business or which the Recipient has indicated to the Council that, if disclosed by the Council, would cause the Recipient significant commercial disadvantage or material financial loss;
“Data Subject”	as defined in the GDPR
“Dispose”	means sell, lease, transfer, grant rights over or otherwise dispose of one or both of the Vehicles;
“Expiry Date”	means the date that is five (5) years after the Operational Start Date;
“FOIA”	means the Freedom of Information Act 2000;
“GDPR”	means the General Data Protection Regulation 2016/679 and any subordinate legislation made under such Regulation from time to time as may be amended, replaced or re-enacted by any subsequent directive, statute, regulation, order, instrument, code or guidelines together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation;
“Good Industry Practice”	the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector;
“Information”	has the meaning given under section 84 of the FOIA;
“Living Wage”	means the figure set annually for areas outside of London by the Centre for Research and Social Policy currently at Loughborough University or its successor or anybody which subsequently takes up the responsibility for setting the figure;

“Long Stop Date”	means the date three (3) months after the Planned Operational Commencement Date (as may be extended pursuant to clauses Error! Reference source not found. and 4.6);
“Party”	means the Recipient or the Council (as appropriate) and “Parties” shall mean both of them;
“Personal Data”	means personal data (as defined in the GDPR) which is processed by the Recipient or any Staff on behalf of the Council pursuant to or in connection with this Agreement;
“Personal Data Breach”	as defined by the GDPR
“Planned Operational Commencement Date”	means not later than 1 month after the Commencement Date;
“Process” or “Processing”	shall have the same meanings as set out in the GDPR but for the purposes of this Agreement shall include both manual and automatic processing;
“Request for Information”	has the meaning set out in the FOIA or the Environmental Information Regulations 2004 as relevant (where the meaning set out for the term “request” shall apply);
“Operational Commencement Date”	means the date on which the Council accepts in writing that the Conditions Precedent have been satisfied in accordance with clause [4];
“Operational Start Date”	means the date on which the Recipient commences the operation of the Low Emission Buses;
“Specification”	means the specification for the operation of the Low Emission Buses (including as to quantity, description and quality) as specified in Annex 2 of this Agreement;
“Staff”	means all directors, officers, employees, agents, consultants and contractors of the Recipient and/or of any sub-contractor of the Recipient engaged in the

performance of the Recipient's obligations under the Agreement;

"Staff Vetting Procedures" means vetting procedures that accord with Good Industry Practice;

"Recipient" means the person named as Recipient in this Agreement;

"Term" means the period from the Commencement Date to the Expiry Date or earlier if terminated in accordance with the terms and conditions of the Agreement;

"Low Emission Bus Agreement" means the early adoption of the Low Emission Buses purchased and operated by the Supplier under this Agreement as set out in the Specification;

"VAT" means value added tax in accordance with the provisions of the Value Added Tax Act 1994; and

"Vehicle Charging Equipment" as set out in Annex 1

"Low Emission Buses" means the two fully electric buses purchased and operated by the Recipient, as set out in Annex 1, in accordance with the terms and conditions of this Agreement; and

"Working Day" means a day (other than a Saturday or Sunday) on which banks are open for business in the City of London.

1.2 In this Agreement, unless the context otherwise requires:

- 1.2.1 references to numbered clauses are references to the relevant clause in these terms and conditions;
- 1.2.2 any obligation on any Party not to do or omit to do anything shall include an obligation not to allow that thing to be done or omitted to be done;
- 1.2.3 the headings to the clauses of these terms and conditions are for information only and do not affect the interpretation of the Agreement;
- 1.2.4 any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment; and
- 1.2.5 the word 'including' shall be understood as meaning 'including without limitation'.

2 Operation of Low Emission Buses

- 2.1 In consideration of the Council's agreement to pay the Charges, the Recipient shall operate the Low Emission Buses for the Term subject to and in accordance with the terms and conditions of the Agreement.
- 2.2 In operating the Low Emission Buses, the Recipient shall:
- 2.2.1 co-operate with the Council in all matters relating to the Low Emission Buses and comply with all the Council's reasonable instructions;
 - 2.2.2 ~~perform~~ operate the Low Emission Buses with all reasonable care, skill and diligence in accordance with Good Industry Practice in the Recipient's industry, profession or trade;
 - 2.2.3 use Staff who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Recipient's obligations are fulfilled in accordance with the Agreement;
 - 2.2.4 ensure that the Low Emission Buses and their operation shall conform with all descriptions and specifications set out in the Specification;
 - 2.2.5 comply with all applicable laws (which for the avoidance of doubt includes the Modern Slavery Act 2015 and s182 of the Finance Act 1989) ; and
 - 2.2.6 provide all equipment, tools and vehicles and other items as are required to provide and operate the Low Emission Buses.
- 2.3 The Council may by written notice to the Recipient at any time request a variation to the scope of the purchase and operation of the Low Emission Buses. In the event that the Recipient agrees to any variation to the scope of the purchase and operation of the Low Emission Buses (which, for the avoidance of doubt, it is not obliged to do), the Charges shall be subject to fair and reasonable adjustment to be agreed in writing between the Council and the Recipient. In the event the Parties cannot reach agreement on such adjustment to the Charges, the proposed variation shall not take effect.

3 Term

- 3.1 Subject to clause 4 (Conditions Precedent), this Agreement and the rights and obligations of the Parties to this Agreement shall take effect on the Commencement Date and shall terminate on the Expiry Date, unless terminated in accordance with the terms and conditions of the Agreement.

4 Conditions Precedent

- 4.1 The following clauses of this Agreement shall commence on the Commencement Date.
- 4.2 The Recipient shall procure that the Conditions Precedent set out in Annex 3 (Conditions) are satisfied as soon as reasonably practicable after the Commencement Date and in any event (subject to clause 4.5) by the Planned Operational Commencement Date.
- 4.3 On the satisfaction of all the Conditions Precedent, the Recipient shall notify the Council within 5 working days. The Council shall, if satisfied (acting reasonably) that the Recipient has complied with the Conditions Precedent, notify the Recipient in writing that the Council accepts the notification within 5 working days.

- 4.4 The date the Council notifies the Recipient of its acceptance in accordance with clause 4.3 shall be the Operational Commencement Date, whereupon this Agreement shall become unconditional and effective.
- 4.5 If the Conditions Precedent are not satisfied by the Long Stop Date this Agreement shall terminate from such date and no payment will be due by either Party to the other by way of compensation or for services provided.
- 4.6 The Long Stop Date may be extended from time to time by mutual agreement between the Parties.

5 Charges, Payment and Recovery of Sums Due

- 5.1 The Charges for the purchase and operation of the Low Emission Buses shall be as set out in Annex 1 of this Agreement.
- 5.2 The Recipient shall issue invoices for the Charges as set out and in accordance with in Annex 1.
- 5.3 The Council shall not be obliged to pay any charges or fees to the Recipient for any Low Emission Buses other than those set out in Annex 1.
- 5.4 The Recipient shall invoice the Council as specified in the Agreement.
- 5.5 In consideration of the purchase and operation of the Low Emission Buses by the Recipient, the Council shall pay the Recipient the invoiced amounts no later than thirty (30) days after receipt of a valid invoice.
- 5.6 All amounts stated are exclusive of VAT which shall be charged at the prevailing rate. The Council shall, following the receipt of a valid VAT invoice, pay to the Recipient a sum equal to the VAT chargeable in respect of the Low Emission Buses.
- 5.7 If there is a dispute between the Parties as to the amount invoiced, the Council shall pay the undisputed amount. Any disputed amounts shall be resolved through the dispute resolution procedure detailed in clause 21.
- 5.8 If a payment of an undisputed amount is not made by the Council by the due date, then the Council shall pay the Recipient interest at the interest rate specified in the Late Payment of Commercial Debts (Interest) Act 1998.
- 5.9 The Recipient shall promptly repay to the Council any money incorrectly paid to it either as a result of an administrative error or otherwise. This includes (without limitation) situations where either an incorrect sum of money has been paid.

6 Premises and equipment

The Council may (given that the Recipient will be operating the Low Emission Bus at or from its own premises), during normal business hours and on reasonable notice, inspect and examine the manner in which the relevant Low Emission Buses is operated at or from the relevant premises.

7 Staff and Key Personnel

- 7.1 If the Council reasonably believes that any of the Staff are unsuitable to undertake work in

respect of the Agreement, it shall discuss its concerns with the Recipient (and bring to the Recipient's attention any evidence that supports such concerns), following which the Recipient (acting reasonably) may agree that the Council may, by giving written notice to the Recipient:

7.1.1 direct the Recipient to end the involvement in the provision of the Low Emission Buses of the relevant person(s); and/or

7.1.2 require that the Recipient replace any person removed under this clause 7.1 with another suitably qualified person,

and the Recipient shall comply with any such notice.

7.2 The Recipient shall:

7.2.1 ensure that all Staff are vetted in accordance with the Staff Vetting Procedures; and

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

7.3 The Recipient shall pay at least the Living Wage to all its employees who are employed in connection with the operation of the Low Emission Buses.

8 Assignment and sub-contracting

8.1 The Recipient shall not without the written consent of the Council (not to be unreasonably withheld or delayed) assign, sub-contract, novate or in any way dispose of the benefit and/ or the burden of the Agreement or any part of the Agreement. The Council may, in the granting of such consent, provide for additional terms and conditions relating to such assignment, sub-contract, novation or disposal. The Recipient shall be responsible for the acts and omissions of its sub-contractors as though those acts and omissions were its own.

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

8.3 The Council may assign, novate, or otherwise dispose of its rights and obligations under the Agreement with the consent of the Recipient (not to be unreasonably withheld or delayed) provided that such assignment, novation or disposal shall not increase the burden of the Recipient's obligations under the Agreement.

9 Intellectual Property Rights

9.1 All intellectual property rights in any materials provided by the Council to the Recipient for the purposes of this Agreement shall remain the property of the Council but the Council hereby grants the Recipient a royalty-free, non-exclusive and non-transferable licence to use such materials as required until termination or expiry of the Agreement for the sole purpose of enabling the Recipient to perform its obligations under the Agreement.

9.2 All intellectual property rights in any materials created or developed by the Recipient pursuant to the Agreement or arising as a result of the purchase and operation of the Low Emission Buses shall vest in the Recipient. If, and to the extent, that any intellectual property rights in such materials vest in the Council by operation of law, the Council hereby assigns to the Recipient by way of a present assignment of future rights that shall take place immediately on the coming into existence of any such intellectual property rights all its intellectual property rights in such

materials (with full title guarantee and free from all third party rights).

9.3 The Recipient hereby grants the Council:

9.3.1 a perpetual, royalty-free, irrevocable, non-exclusive licence (with a right to sub-license) to use all intellectual property rights in the materials created or developed pursuant to the Agreement;

10 Governance and Records

10.1 The Recipient shall:

10.1.1 attend progress meetings with the Council at the frequency and times specified by the Council (acting reasonably) and shall ensure that its representatives are suitably qualified to attend such meetings; and

10.1.2 submit progress reports to the Council at the times and in the format specified by the Council (acting reasonably).

10.2 The Recipient shall keep and maintain until three (3) years after the end of the Agreement, or as long a period as may be agreed between the Parties, full and accurate records of the Agreement including the operation of the Low Emission Buses supplied under it and all payments made by the Council. The Recipient shall on request afford the Council or the Council's representatives such access to those records as may be reasonably requested by the Council in connection with the Agreement.

11 Confidentiality, Transparency and Publicity

11.1 Subject to clause 11.2, each Party shall:

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

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

11.2 Notwithstanding clause 11.1, a Party may disclose Confidential Information which it receives from the other Party:

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

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

11.2.3 on a confidential basis, to its professional advisers;

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

11.2.5 where the receiving Party is the Recipient, to the Staff on a need to know basis to enable performance of the Recipient's obligations under the Agreement provided that the Recipient shall procure that any Staff to whom it discloses Confidential Information pursuant to this clause 11.2.5 shall observe the Recipient's confidentiality obligations under the Agreement; and

11.2.6 where the receiving Party is the Council:

- (a) on a confidential and need to know basis to the employees, agents, consultants and contractors of the Council;
- (b) on a confidential basis to any other Central Government Body, any successor body to a Central Government Body or any company to which the Council transfers or proposes to transfer all or any part of its business;
- (c) to the extent that the Council (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions; or
- (d) in accordance with clause 12.

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Council under this clause 12.

11.3 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of the Agreement is not Confidential Information and the Recipient hereby gives its consent for the Council to publish this Agreement in its entirety to the general public (but with any information that is exempt from disclosure in accordance with the FOIA redacted which, for the avoidance of doubt, shall include without limitation the contents of Annex 1 - Charges) including any changes to the Agreement agreed from time to time. The Council shall consult with the Recipient to inform its decision regarding any redactions but shall have the final decision in its absolute discretion whether any of the content of the Agreement is exempt from disclosure in accordance with the provisions of the FOIA.

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

12 Freedom of Information

12.1 The Recipient acknowledges that the Council is subject to the requirements of the FOIA and the Environmental Information Regulations 2004 and shall:

- 12.1.1 provide all reasonably practicable assistance and cooperation as reasonably requested by the Council to assist the Council in complying with its obligations under the FOIA and the Environmental Information Regulations 2004;
- 12.1.2 transfer to the Council all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within five (5) Working Days of receipt;
- 12.1.3 provide the Council with a copy of all Information belonging to the Council that may reasonably be requested in a Request for Information which is in its possession or control and where reasonably practicable to do so within five (5) Working Days (or such other period as the Council may reasonably specify) of the Council's request for such Information; and
- 12.1.4 not respond directly to a Request for Information unless authorised in writing to do so by the Council, provided that Recipient may state that the matter has been referred to the Council and that it does not consider that it is bound by the FOIA or the Environmental Information Regulations 2004.

- 12.2 The Recipient acknowledges that the Council may be required under the FOIA and the Environmental Information Regulations 2004 to disclose Information concerning the Recipient or the purchase and operation of the Low Emission Buses (including Commercially Sensitive Information) without consulting or obtaining consent from the Recipient. In these circumstances the Council shall, in accordance with any relevant guidance issued under the FOIA, take reasonable steps, where appropriate, to give the Recipient advance notice, or failing that, to draw the disclosure to the Recipient's attention after any such disclosure.
- 12.3 Notwithstanding any other provision in the Agreement, the Council shall be responsible for determining in its absolute discretion whether any Information relating to the Recipient or the purchase and operation of the Low Emission Buses is exempt from disclosure in accordance with the FOIA and/or the Environmental Information Regulations 2004.

13 Protection of Personal Data, Security of Data and Audit

- 13.1 To the extent the Recipient processes Personal Data pursuant to this Agreement, the Recipient shall, and shall procure that all Staff shall, comply with any notification requirements under the GDPR and both Parties shall duly observe all their obligations under the GDPR which arise in connection with the Agreement.
- 13.2 Notwithstanding the general obligation in clause 13.1, where the Recipient is processing Personal Data for the Council as a data processor in relation to this agreement (as defined by the GDPR) the Recipient shall:
- 13.2.1 process such data and information only in accordance with the Council's instructions and shall not transmit such data and information to a country or territory outside the European Economic Area without the Council's prior express written consent, unless required to do so by union or member state law to which the Recipient is subject. In such a case, the Recipient shall inform the Council of that legal requirement before processing, unless union or member state law prohibits such information on important grounds of public interest;
 - 13.2.2 provide the Council with a written description of the technical and organisational measures it shall take against unauthorised or unlawful processing of the Personal Data (and against accidental loss or destruction of, or damage to, the Personal Data) and for the secure destruction and permanent deletion of Personal Data as requested by the Council;
 - 13.2.3 demonstrate that employees, servants, or other agents associated with the performance of this Agreement are aware of their personal responsibilities under the GDPR and under the Agreement to maintain security of Personal Data controlled by the Council;
 - 13.2.4 ensure that all Staff required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the confidentiality obligations in respect of the Personal Data as imposed on the Recipient under the terms of this Agreement;
 - 13.2.5 ensure that none of the Staff publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Council;

- 13.2.6 obtain prior written consent from the Council in order to transfer the Personal Data to any sub-contractor for the purchase and operation of the Low Emission Buses and should such consent be given ensure that in relation to Personal Data, such sub-contractors or agents are under contractual obligations which are no less protective than the data protection requirements set out in this Agreement. Where the sub-contractor fails to fulfil the data obligations under this Agreement, the Recipient shall remain fully liable to the Council for the performance of the sub-contractor's data obligations;
- 13.2.7 permit the Council or the Council's representative (subject to reasonable and appropriate confidentiality requirements), to inspect and audit, in accordance with clause 13.2.8, the Recipient's data processing activities (and/or those of its agents, subsidiaries and sub-contractors) and comply with all reasonable requests or directions by the Council to enable the Council to verify and/or procure that the Recipient is in full compliance with its obligations under this Agreement;
- 13.2.8 keep and maintain full and accurate records of the Agreement including but not limited to the purchase and operation of the Low Emission Buses supplied under it, and all payments made by the Council. The Recipient shall on reasonable request afford the Council or the Council's representatives such access to those records as may be reasonably requested by the Council in connection with the Agreement;
- 13.2.9 notify the Council of any suspected Personal Data Breach (as defined by the GDPR) within 24 hours of becoming aware of such breach. The notifications shall:
- (a) describe the nature of the personal data breach including where possible, the categories and approximate number of data subjects concerned and the categories and approximate number of personal data records concerned;
 - (b) communicate the name and contact details of the data protection officer or other contact point where more information can be obtained;
 - (c) describe the likely consequences of the Personal Data Breach; and
 - (d) describe the measures taken or proposed to be taken by the Recipient to address the Personal Data Breach, including, where appropriate, measures to mitigate its possible adverse effects.
- 13.2.10 notify the Council (within two (2) Working Days) if it receives:
- (a) a request from a Data Subject concerning any aspect of the processing or handling of that person's Personal Data; or
 - (b) a complaint or request relating to the Council's obligations under the GDPR;
 - (c) any contact from another organisation concerning Council data; and ensure that it does not knowingly or negligently do or omit to do anything which places the Council in breach of the Council's obligations under the GDPR.
- 13.2.11 provide the Council with full co-operation and assistance in relation to any complaint or request made, including by:

- (a) providing the Council with full details (as are known to it) of the complaint or request;
- (b) providing the Council with any Personal Data it holds in relation to a Data Subject (within the timescales required by the Council); and
- (e) providing the Council with any information reasonably requested by the Council;

13.2.12 Provide reasonable assistance to the Council in complying with its obligations under Articles 32 to 36 of the GDPR (including without limitation relating to security, breach notification, data privacy impact assessments and consulting with supervisory authorities).

13.2.13 make available to the Council all information reasonably necessary to demonstrate compliance with the GDPR

13.3 When handling Council data (whether or not Personal Data) in connection with this Agreement, the Recipient shall ensure the security of the data is maintained in line with the security requirements of the Council as notified to the Recipient from time to time.

13.4 The Council warrants and represents that it has obtained all necessary consents in respect of the Personal Data it transfers to the Recipient, or has otherwise determined alternative lawful grounds upon which it is permitted to transfer such Personal Data for processing by the Recipient. The Recipient shall not be liable for the processing of Personal Data that was unlawfully transferred to the Recipient by the Council.

14 Liability

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

14.2 Subject always to clauses 14.3 and **Error! Reference source not found.:**

14.2.1 the aggregate liability of the Recipient to the Council in respect of all defaults, claims, losses or damages howsoever caused, whether arising from breach of the Agreement, the purchase and operation of the Low Emission Buses, misrepresentation (whether tortious or statutory), tort (including negligence), breach of statutory duty or otherwise shall be the levels of insurance cover specified in clause 15 where a claim falls within the insurances that the Recipient is required under this Agreement to have. Where a claim does not fall under any insurance that the Recipient is required to have under this Agreement, the Recipient's liability shall in no event exceed a sum equal to 100% of the Charges paid to the Recipient in the 12 months prior to the event giving rise to the liability; and

14.2.2 In no event shall the Recipient be liable to the Council for any:

- (a) loss of profits;
- (b) loss of business;
- (c) loss of revenue;
- (d) loss of or damage to goodwill;
- (e) loss of savings (whether anticipated or otherwise); and/or

(f) any indirect, special or consequential loss or damage.

14.3 Nothing in the Agreement shall be construed to limit or exclude the Recipient's liability for:

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

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

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

15 Insurance

15.1 The Recipient shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance providing as a minimum the following levels of cover:

(a) public liability insurance with a limit of indemnity of not less than £5,000,000.00 in relation to any one claim or series of claims;

(b) employer's liability insurance with a limit of indemnity of not less than £5,000,000.00;

(the "**Required Insurances**") in respect of all risks which may be incurred by the Recipient, arising out of the Recipient's performance of the Agreement, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Recipient.

15.2 The Recipient shall give the Council, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the Required Insurances are in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

15.3 If, for whatever reason, the Recipient fails to give effect to and maintain the Required Insurances, the Council may (acting reasonably) make alternative arrangements to protect its interests and may recover the reasonable costs of such arrangements from the Recipient.

15.4 The terms of any insurance or the amount of cover shall not relieve the Recipient of any liabilities under the Agreement.

16 Force Majeure

Neither Party shall have any liability under or be deemed to be in breach of the Agreement for any delays or failures in performance of the Agreement which result from circumstances beyond the reasonable control of the Party affected. Each Party shall promptly notify the other Party in writing when such circumstances cause a delay or failure in performance and when they cease to do so. If such circumstances continue for a continuous period of more than two (2) months, either Party may terminate the Agreement by written notice to the other Party.

17 Termination

17.1 Without prejudice to any other right or remedy it might have, the Council may terminate the Agreement by written notice to the Recipient with immediate effect if the Recipient:

17.1.1 is in material breach of any obligation under the Agreement which is not capable of

remedy;

- 17.1.2 repeatedly breaches any of the terms and conditions of the 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 and conditions of the Agreement;
 - 17.1.3 does not comply with Annex 2 of this Agreement;
 - 17.1.4 is in material breach of any obligation which is capable of remedy, and that breach is not remedied within thirty (30) days of the Recipient receiving notice specifying the breach and requiring it to be remedied;
 - 17.1.5 undergoes a change of control within the meaning of section 416 of the Income and Corporation Taxes Act 1988; or
 - 17.1.6 becomes insolvent, or if an order is made or a resolution is passed for the winding up of the Recipient (other than voluntarily for the purpose of solvent amalgamation or reconstruction), or if an administrator or administrative receiver is appointed in respect of the whole or any part of the Recipient's assets or business, or if the Recipient makes any composition with its creditors or takes or suffers any similar or analogous action (to any of the actions detailed in this clause 17.1.6) in consequence of debt in any jurisdiction.
- 17.2 Where the Council is entitled to terminate under clause 17.1, they have the right to claw back the Charges (or part of the Charges) as set out at Annex 1.
- 17.3 The Recipient shall notify the Council as soon as practicable of any change of control as referred to in clause 17.1.5 or any potential such change of control.
- 17.4 The Recipient may terminate the Agreement by written notice to the Council if the Council:
- 17.4.1 is in material breach of any obligation under the Agreement which is not capable of remedy;
 - 17.4.2 repeatedly breaches any of the terms and conditions of the 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 and conditions of the Agreement;
 - 17.4.3 is in material breach of any obligation which is capable of remedy, and that breach is not remedied within thirty (30) days of the Authority receiving notice specifying the breach and requiring it to be remedied;
 - 17.4.4 has not paid any undisputed amounts within ninety (90) days of them falling due.
- 17.5 Termination or expiry of the Agreement shall be without prejudice to the rights of either Party accrued prior to termination or expiry and shall not affect the continuing rights of the Parties under this clause and clauses [] or any other provision of the Agreement that either expressly or by implication has effect after termination.

18 Effects of Expiry or Termination

- 18.1 Upon expiry of this Agreement the Recipient shall use its best endeavours to continue operating the Low Emission Buses in the County of Cambridgeshire, City of Cambridge for a further period of 3 years. This clause will survive the Expiry Date of this Agreement

For the avoidance of doubt, operating the Low Emission Buses in the City of Cambridge, means

that part of the bus route is to be within the City of Cambridge.

19 Compliance

19.1 The Recipient shall promptly notify the Council of any health and safety hazards which may arise in connection with the performance of its obligations under the Agreement.

19.2 The Recipient shall:

19.2.1 notify the Council promptly within 10 working days in the event of any incident occurring in the performance of its obligations under the Agreement where that incident causes any personal injury or damage to property which could give rise to personal injury; and

19.2.2 perform its obligations under the Agreement in accordance with all applicable equality law and the Council's equality and diversity policy as provided to the Recipient from time to time; and

19.2.3 take all reasonable steps to secure the observance of clause 19.2.2 by all Staff.

20 Prevention of Fraud and Corruption

20.1 The Recipient shall not offer, give, or agree to give anything, to any person an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Agreement or for showing or refraining from showing favour or disfavour to any person in relation to the Agreement.

20.2 The Recipient shall take all reasonable steps, in accordance with Good Industry Practice, to prevent fraud by the Staff and the Recipient (including its shareholders, members and directors) in connection with the Agreement and shall notify the Council immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.

20.3 If the Recipient or the Staff engages in conduct prohibited by clause 20.1 or commits fraud in relation to the Agreement, the Council may:

20.3.1 terminate the Agreement and recover from the Recipient the amount of any loss suffered by the Council resulting from the termination, including the cost reasonably incurred by the Council of making other arrangements for the operation of the Low Emission Buses and any additional expenditure incurred by the Council throughout the remainder of the Agreement; or

20.3.2 recover in full from the Recipient any other loss sustained by the Council in consequence of any breach of this clause 20.

20.4 The Recipient shall during the term of this Agreement, establish, maintain and enforce, and require that its Sub-Contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Bribery Act.

21 Dispute Resolution

21.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Agreement and such efforts shall involve the escalation of the dispute to an appropriately senior representative of each Party.

- 21.2 If the dispute cannot be resolved by the Parties within one month of being escalated as referred to in clause 21.1, the dispute may by agreement between the Parties be referred to a neutral adviser or mediator (the "Mediator") chosen by agreement between the Parties. All negotiations connected with the dispute shall be conducted in confidence and without prejudice to the rights of the Parties in any further proceedings.
- 21.3 If the Parties fail to appoint a Mediator within one month, or fail to enter into a written agreement resolving the dispute within one month of the Mediator being appointed, either Party may exercise any remedy it has under applicable law.

22 General

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

23 Notices

- 23.1 Any notice to be given under the Agreement shall be in writing and may be served by personal

delivery, first class recorded or, subject to clause 23.3, e-mail to the address of the relevant Party set out in this Agreement, or such other address as that Party may from time to time notify to the other Party in accordance with this clause 23.1.

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

23.3 Notices under clauses 16 (Force Majeure) and 17 (Termination) may be served by email only if the original notice is then sent to the recipient by personal delivery or recorded delivery in the manner set out in clause 23.1.

24 Governing Law and Jurisdiction

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

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

THE COMMON SEAL OF
CAMBRIDGESHIRE COUNTY
COUNCIL was affixed in the
presence of:

.....
Authorised Signatory

Signed by
and

.....for and on
behalf of CAMBUS LIMITED

.....

Director

.....

Director

Annex 1 - Charges

The Charges should reflect the differential cost to the Recipient's purchase of 'the Low Emission Buses' which are 2 full electric buses [INSERT BUS REGISTRATION PLATE NUMBERS], as opposed to 2 Euro V1 diesel buses.

The total charge should be divided into the First Charge and Second Charge to be paid in accordance with this Annex 1.

<u>First Charge (50% of the Total)</u>	<u>Second Charge (50% of the Total)</u>	<u>Total</u>
£	£	£

The Recipient will invoice the Council (and provide a receipt of purchase) within 14 days the date of this Agreement.

The Recipient will invoice the Council within 14 days of the date of the first operation of the 2 vehicles for the Second Charge

The following charges will be paid by the Council to the Recipient in addition to the above Table towards the Vehicle Charging Equipment as set out below The Recipient will invoice the Council within 14 days of the installation of the Vehicle Charing Equipment:

<u>Electric charging infrastructure to include:</u> <u>Project design and management costs</u> <u>Civil Engineering costs</u> <u>Electrical Installation labour and materials</u> <u>Charging Hardware (2x40kW BYD Chargers)</u> <u>Bollards/line marking/charger covers</u>	<u>The charge payable towards the Vehicle Charging Equipment will be based on the actual amount invoiced by the Recipient for the Vehicle Charging Equipment purchased. The Council will require the Recipient to provide copies of the invoices that have been paid to procure the equipment when invoicing for payment</u> <u>The charges payable towards the Vehicle Charging Equipment will be limited to a maximum of £44,979 (excluding VAT), unless otherwise agreed between the Parties in writing.</u>
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Annex 2 - Specification

- Preparation for the operation of the Low Emission Buses including:
 - an estimate of the Low Emission Buses cost to be prepared by the Recipient; and
 - the procurement of vehicles and associated Vehicle Charging Equipment by the Recipient to support the operation of the Low Emission Buses.
 -
- The Recipient will provide to the Council details on the operation of the proposed Low Emission Buses on an annual basis including:
 - details of the routes upon which the buses are operated;
 - a timetable for the routes upon which the buses are operated;
 - a template to be agreed with the Council for the final report that will show how the operation of the Low Emission Buses achieved its aims, to include but not be limited to:
 - operational issues and benefits;
 - usage information including mileage travelled;
 - lessons learned;
 - how the Low Emission Buses can support the wider rollout of electric buses in the Greater Cambridge area.
- The Recipient will operate the Low Emission Buses as agreed between the Parties to the Agreement.
- The Recipient will ensure that the Low Emission Buses will display the Greater Cambridgeshire Partnership logo for the Term of the Agreement.
- The Recipient is to operate the Low Emission Buses in the City of Cambridge area. For the avoidance of doubt this means that part of any route upon which the Low Emission Buses operate passes through the city centre area; that is the area bounded by the inner ring road (A1134 and A603)
- The Recipient will provide an update on the use of the Low Emission Buses and issues encountered on an annual basis. This will be used to support the final report to be prepared by the Recipient.
- The Recipient will provide annual figures from the Operation Commencement Date and information in relation to the usage of the Low Emission Buses, including but not limited to figures such as how many passengers have the vehicles serviced, how many times the vehicles have been removed from service due to break downs, how many times the vehicles have encountered issues and any feedback received in relation to the Low Emission Buses.
- The Recipient will provide a final report no more than three (3) months after the end of the Agreement.

Annex 3 - Conditions

- Condition 1 The Recipient will submit a written statement providing details of the procurement in relation to the purchase and operation of 2 fully electric buses, set out in Annex 1 by the Planned ~~Agreement~~ Commencement Date.
- Condition 2 Before the Planned Commencement Date the Recipient will need to reasonably demonstrate to the Council that the Low Emission Buses selected provide value for money.
- Condition 3 The Council will confirm that the Conditions under this Annex 3 have been met in writing to the Recipient.