



Transport for
Greater Manchester

DATED

2022

(1) TRANSPORT FOR GREATER MANCHESTER

- and -

(2) TAMESIDE METROPOLITAN BOROUGH COUNCIL

AGREEMENT

relating to
the delivery, installation, commissioning,
operation, maintenance and removal of
Electric Vehicle Charging Point(s) at premises
in Tameside for use by hackney taxis and
private hire vehicles

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BETWEEN:

- (1) **TRANSPORT FOR GREATER MANCHESTER** of 2 Piccadilly Place Manchester M1 3BG ("**Supplier**"); an
- (2) **TAMESIDE METROPOLITAN BOROUGH COUNCIL** of Tameside One, Market Place, Ashton-under-Lyne, Tameside OL6 6BH ("**Customer**").

each one a **Party** and together the **Parties**.

IT IS AGREED:

1. INTERPRETATION

- 1.1 Except where the context otherwise requires capitalised terms shall have the following meanings:

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

"**Charging Point(s)**" means the charging point(s) and associated infrastructure such as feeder pillar meters and protection barriers supplied by the Supplier for installation at the Site, the specification for which is set out in schedule 1;

"**Commencement Date**" means the earlier of installation of the Charging Point(s) at the Site or the date of this agreement;

"**CRC Order**" means the CRC Energy Efficiency Scheme (Revocation and Savings) Order 2018 (SI 2018/841) and shall also include any such replacement or alternative statutory scheme;

"**CRC Scheme**" means the carbon reduction commitment scheme established by the CRC Order or such other emissions trading scheme affecting the Supplier and/or the Customer;

"**Dispute Resolution Procedure**" means the process set out in clauses 29 and 30 of this agreement;

"**Electric Vehicle Charging Services**" means recharging of electric vehicles for free or a fee and remote collection of usage and transactional data;

"**Intellectual Property Rights**" means all patents, copyrights, design rights, trade-marks, service marks, trade secrets, know-how, database rights and other rights in the nature of intellectual property rights (whether registered or not) and all applications for the same which may now or in the future subsist anywhere in the world, including the right to sue for and recover damages for past infringements;

“Meters” means such metering devices used to measure usage of electricity, water and all other services and utilities together with all structures, machinery and equipment ancillary to those devices (if any);

“Rights” means:

- (a) a non-exclusive licence to enter and remain upon those parts of the Site that the Supplier and/or any Supplier Party reasonably requires access to with or without workmen, plant, machinery, equipment and materials in order to:
 - (i) deliver the Charging Point(s) to the Site in accordance with clause 6;
 - (ii) install the Charging Point(s) at the Site and carry out equipment tests in accordance with clause 4;
 - (iii) provide Electric Vehicle Charging Services at the Site;
 - (iv) maintain the Charging Point(s) at the Site in accordance with clause 7;
 - (v) take readings from the Meters on the Site and to inspect, repair, maintain, install or replace the Meters on the Site;
 - (vi) procure repair, maintenance, installation, construction, re-routing, removing or replacing of any Service Media at the Site and serving the Charging Point(s);
 - (vii) test, inspect, upgrade and/or service the Charging Point(s) at the Site where necessary during the Term;
 - (viii) remove the Charging Point(s) at the end of the Term in accordance with clause 8;
- (b) keep the Charging Point(s) at the Site throughout the Term;
- (c) such rights of access to and egress from the Site as are reasonably necessary for the Supplier and any Supplier Party to perform their obligations and exercise their rights under this Agreement; and
- (d) rights of free and uninterrupted passage and running of water, oil, gas, electricity, telephone and other services reasonably required by the Supplier through the Service Media and from time to time at the Site and serving the Charging Point(s) provided that the route of Service Media may be varied by the Customer and at the cost of the Customer to such alternative routes as the Customer may reasonably specify from time to time;

“Service and Support Plan” means the service and support plan contained in SCHEDULE 2: Part 2: ;

“Service Media” means all media for the supply or removal of electricity, gas, water, energy, telecommunications, data and all other services and utilities and all structures, machinery and equipment ancillary to those media;

"**Site**" means the location(s) at which the Charging Point(s) are to be installed as specified in the plan contained in part 1 of schedule **Error! Reference source not found.**;

"**Supplier Party**" means any agent, employee, contractor or subcontractor (of any tier) of the Supplier or combination of any of the aforementioned and will also include (but not be limited to) sub-contractors of a Supplier Party;

"**Term**" unless terminated in accordance with clause 16 means the period from and including the Commencement Date and (subject to clause 16) expiring on 5th December 2026; and

"**VAT**" means value added tax chargeable under the Value Added Tax Act 1994 and any similar additional tax or any other similar turnover, sales or purchase tax or duty levied in any other jurisdiction.

- 1.2 A reference to one gender includes a reference to the other genders.
- 1.3 Words in the singular include the plural and in the plural include the singular.
- 1.4 References to including or includes shall be deemed to have the words "without limitation" inserted after them.
- 1.5 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment, and includes any subordinate legislation for the time being in force made under it.
- 1.6 Except where a contrary intention appears, a reference to a clause, schedule, annex or appendix is a reference to a clause of, schedule, annex or appendix to, this agreement.
- 1.7 Clause and schedule headings do not affect the interpretation of this agreement.
- 1.8 The schedules to this agreement, together with any documents referred to in them, form an integral part of this agreement and any reference to this agreement means this agreement together with the schedules and all documents referred to in them, and such amendments in writing as may subsequently be agreed between the Parties.
- 1.9 If any conflict arises between the terms and conditions of this agreement and any provision of any schedule, the terms and conditions of the agreement shall prevail.
- 1.10 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.11 Any obligation on or benefit to the Supplier contained or referred to in this agreement may in fact be undertaken or procured or create a benefit on behalf of the Supplier by a Supplier Party or Parties.

2. COMMENCEMENT AND TERM

- 2.1 From the Commencement Date and throughout the Term (or until the Supplier has completed its obligations pursuant to clause 8 if later) the Customer grants the Rights to the Supplier and/or the Supplier Party.

2.2 Between six and three months before the expiry of the Term, the Parties shall each use reasonable endeavours to meet with one another to determine whether they wish to agree to extend the Term on the basis of the terms and conditions of this agreement and any operational amendments to this agreement that, without prejudice to clause 21, are necessary or desirable should the Parties agree to extend the Term, the Parties acting reasonably. Any extension to the Term must be in writing and signed by both parties. In the event that the Parties agree to extend the Term, the duly extended Term shall be deemed to be the "**Term**" for the purposes of this agreement.

2.3 This agreement is entered into on the basis of the consideration attributable to a Party's respective undertakings to the other.

3. CUSTOMER OBLIGATIONS

3.1 Notwithstanding that this is a personal licence, the Customer shall ensure that from the date the Charging Point(s) have been commissioned for use by or on behalf of the Supplier and thereafter for the duration of the Term the Site shall be:

3.1.1 designated as areas solely to be used for the charging of electric vehicles; and

3.1.2 made available to the Supplier for the sole use by the Supplier for the purpose of operating the Charging Point(s) at the Site.

3.2 The Customer shall, prior to the Commencement Date, obtain all statutory consents required for the use of the Site by the Supplier or Supplier Party for the exercise of the Rights.

3.3 The Customer shall ensure that there are two (2) (clearly signed and marked-out) dedicated car parking spaces for each commissioned dual Charging Point or one (clearly signed and marked-out) dedicated parking space in circumstances where a single charging point is installed for the exclusive use of electric vehicle users to facilitate the charging of electric vehicles during the normal operating hours of the applicable Site. The costs associated with works relating to lining and signing of the car parking spaces shall be borne by the Supplier and the Customer shall be entitled to invoice the Supplier in relation to such costs;

3.4 The Customer shall use reasonable endeavours to take appropriate enforcement action in line with its usual enforcement policies (including, without limitation, by levying parking fines) against any vehicle parked within the Site that is not connected to a Charging Point. Any revenue generated from the enforcement action referred to in this clause 3.4 shall be solely for the account of the Customer who shall also be solely responsible for any liabilities arising from any appeals or prosecutions relating to such enforcement action.

3.5 The Customer shall not be permitted to make any charge to electric vehicle users for any electricity supplied at the Site and the Customer understands that all electricity shall be made available to users of electric vehicles by or on behalf of the Supplier at a cost which may be determined by the Supplier and on such terms and conditions of supply as may be determined by the Supplier.

3.6 The Customer shall be permitted to make standard parking charges at the Site during the period that an electric vehicle is being charged at a Charging Point and the revenue arising from such parking charges shall during the Term be solely for the account of the Customer.

4. HARDWARE TESTING

- 4.1 Before delivering any Charging Point(s) to the Site, the Supplier shall carry out all required tests under the manufacturer's guidance to ensure that such Charging Point(s) are in operable condition.
- 4.2 Following installation of each Charging Point, the Supplier shall carry out such equipment tests as are required and shall on request supply the Customer with copies of the installation test certificate.
- 4.3 Once the Supplier has issued an installation test certificate to the Customer in accordance with clause 4.2, the Supplier may allow users of electric vehicles to use the Charging Point to charge their electric vehicles.

5. SITES

- 5.1 At all times during the Term, the Supplier may access the Site to maintain and meter the Charging Point(s) on reasonable prior notice except in the cases of emergency when no such notice shall be required.
- 5.2 At any time during the Term the Supplier and the Customer may agree to vary the location and/or number of the Charging Point(s) at the Site and sign a memorandum to this effect and, without prejudice to clause 21, from the date of signature of such memorandum (which shall be annexed to this agreement) the terms of this agreement shall apply to the Site as varied. Neither Party may unreasonably refuse a request from the other to vary the location and/or number of the Charging Points pursuant to this clause 5.2. Any such additional Site shall be made available by the Customer to the Supplier on the same basis as set out in this agreement as was the case for the Site that was the subject of this agreement at the outset.
- 5.3 Any works required to vary the location of the Charging Point(s) at the Site shall be undertaken at the sole expense of the Party requesting the change.
- 5.4 Any works required to vary the location and/or number of the Charging Point(s) at the Site as a consequence of circumstances that are beyond the reasonable control of the Parties shall be undertaken at the sole expense of the Supplier, such works to include the installation of infrastructure and/or equipment, together with the costs associated with works relating to lining and signing of the car parking spaces.
- 5.5 If, at any time during the Term, the Customer commits a material breach of any term of this agreement in connection with a particular site and/or Charging Point and fails to remedy that breach within a period of twenty (20) Business Days after being notified in writing to do so then the Supplier shall be entitled to either:
 - 5.5.1 in circumstances where a suitable alternative location or site can be identified and agreed between the Parties relocate the affected charging point to such alternative location or site owned by the Customer (in which case the provisions of clause 5.2 shall apply); or
 - 5.5.2 in the event that a suitable alternative location or site cannot be identified and agreed between the Parties remove the Charging Point(s) (in which case the provisions of clause 8 shall apply in respect of reinstatement).

5.6 The Parties agree that the Supplier may increase the number of bays at a particular site and as a result, this agreement shall govern and apply to any reasonably foreseen increase in the number of bays at a particular site. Any works required to increase the number of bays in accordance with this clause 5.6 shall be undertaken at the sole expense of the Supplier.

5.7 Any dispute under this clause 5 shall be dealt with under the Dispute Resolution Procedure.

6. DELIVERY, INSTALLATION AND OPERATION

6.1 The Supplier shall procure the design, installation, operations and maintenance of all the Charging Point(s) at the Site to its own specification and design.

6.2 The Supplier shall use reasonable endeavours to deliver the Charging Point(s) to the Site at such time or times as shall be mutually agreed between the Supplier and the Customer.

6.3 The Supplier shall supply to the Customer, within a reasonable time before the delivery of the Charging Point(s), such information and assistance as may be necessary to enable the Customer to prepare the Site for the installation of the Charging Point(s) in accordance with clause 3.

6.4 The Supplier shall install the Charging Point(s) at the Site and reinstate surface materials to the reasonable satisfaction of the Customer and where necessary, in accordance with any applicable laws and regulations.

6.5 The Parties acknowledge that the Charging Point(s) shall, at all times during and after the Term, remain the property of the Supplier.

6.6 The Customer shall permit the Supplier to upgrade the Charging Point(s) which are installed at any Site upon reasonable prior written notice, being at least ten (10) Business Days.

7. MAINTENANCE

7.1 During the Term, the Supplier shall be responsible for the maintenance and repair of the Charging Point(s) at the cost of the Supplier.

7.2 The Customer shall inform either the Supplier or the designated Supplier Party as soon as it becomes aware that a Charging Point is malfunctioning or has failed.

7.3 On the Customer informing the Supplier Party that a Charging Point is malfunctioning or has failed, the Supplier Party shall perform maintenance of the Charging Point(s) in accordance with the Service and Support Plan.

7.4 In performing maintenance of the Charging Point(s), the Supplier shall use reasonable endeavours to restore any malfunctioning or failed equipment to working order while in attendance at the Site. Where this is not reasonably practicable, or not reasonably practicable within normal working hours, the Supplier shall either arrange for a further visit to the Site within normal working hours to complete the repair, or remove the equipment or part of the equipment for repair off-site.

8. REMOVAL AND REINSTATEMENT

Within a reasonable period following the end of the Term, the Supplier shall remove the Charging Point(s) and return the Site to the Customer in good condition to the reasonable satisfaction of the Customer. If the Supplier fails to do so, the provisions of clause 16.4 shall apply.

9. CHARGING

9.1 The Customer acknowledges that the Supplier shall be entitled to levy charges on individuals and/or organisations using the Charging Point(s) in accordance with the agreements entered into by those individuals and /or organisations with the Supplier including (but not limited to):

9.1.1 for the cost of electricity;

9.1.2 as a contribution towards the costs of maintaining the Charging Point(s);

9.1.3 as a contribution towards the costs of operating a back-office management system; and

9.1.4 for an element of asset depreciation.

9.2 In circumstances where the Supplier incurs the direct electricity supply costs for the Customer's own use of the Charging Point(s) at any Site the Supplier will be entitled to charge the Customer for the electricity supply costs incurred by the Supplier as a consequence of the Customer's own use of the Charging Point(s) at the Site pursuant to a separate supply contract to be entered into between the Supplier and the Customer but for the avoidance of doubt the Supplier shall not in these circumstances be entitled to charge anything to the Customer as (i) a contribution towards the costs of maintaining the Charging Points (ii) a contribution towards the costs of operating a back-office management system or (iii) for an element of asset depreciation.

9.3 For the avoidance of doubt, the Supplier is responsible for procuring the energy supply at the Charging Point(s) together with the costs of such energy supply, save where energy supply costs arise as a direct result of the Customer varying the Service Media and/or the location of the Charging Point(s) then such costs (for the avoidance of doubt only in relation to the relocating or moving of the Charging Point(s) or works to vary the Service Media) should be the responsibility of the Customer .

10. OWNERSHIP AND INSURANCE

10.1 The Charging Points and any Intellectual Property Rights in or relating to the Charging Point(s) are, and shall remain, the property of the Supplier.

10.2 The Customer shall put and keep in place throughout the Term occupiers' liability insurance for the Site.

10.3 The Supplier shall procure the effecting and maintenance of the following types of insurance policies for up to the following amounts with a reputable insurance company:

10.3.1 professional indemnity insurance covering the legal liability for an insured amount of not more than £5 million during any one insurance period;

- 10.3.2 public liability insurance for an insured amount of not more than £10 million per occurrence during any one insurance period); and
- 10.3.3 property damage insurance for the Charging Point(s).

11. SUPPLIER PERSONNEL: SYSTEM AND MAINTENANCE SERVICES

- 11.1 The Supplier undertakes that the Supplier Party will, while on the Site, comply with all relevant rules and regulations which are reasonably laid down by the Customer from time to time in the context of the Site for the behaviour of its own employees and contractors whilst working at that Site, as notified to the Supplier in writing from time to time.
- 11.2 The Supplier alone shall be responsible for the supervision, direction, control, wages, taxes, national insurance and benefits of any Supplier Party. The Supplier assumes full responsibility for the acts and omissions of the Supplier Party and acknowledges that they are not employees or agents of the Customer.

12. MAINTENANCE: CUSTOMER'S OBLIGATIONS

- 12.1 During the Term the Customer shall not, without the Supplier's prior written approval, allow any person other than a representative of the Supplier to modify, repair or maintain any part of the Charging Point(s).
- 12.2 The Customer may restrict access to certain areas of its premises or systems on reasonable security grounds.
- 12.3 The Customer's primary contact with the Supplier for the purpose of the provision of services under this agreement shall be the Head of Estates (or equivalent as applicable), and the Customer shall notify the Supplier of any replacement from time to time for those individuals promptly on their appointment.
- 12.4 The Customer shall comply, as soon as reasonably practicable, with all the Supplier's reasonable requests for information or assistance required to assist with the terms of this agreement.

13. CONFIDENTIALITY AND PUBLICITY

- 13.1 Subject to any required statutory consents and/or permissions, and following consultation with the Customer, the Customer acknowledges that the Supplier shall be entitled to place branding upon the Charging Point(s) but shall not, in any promotional literature or materials, be entitled to refer to the Customer without the Customer's consent (not to be unreasonably withheld or delayed).
- 13.2 Save as expressly set out in this agreement, nothing in this agreement grants to a Customer any rights or interests in any of the Supplier's Intellectual Property Rights.
- 13.3 The Customer agrees not to display any logos, trade-marks or branding on the Charging Point(s) or on any hoods or coverings of each Charging Point and on signage at the Site relating to the Charging Point(s).
- 13.4 The Customer shall be entitled to provide information and place signage relating to the Charging Point(s) in the wider locality to direct users to the Charging Point(s).

13.5 If this agreement terminates or expires the Customer agrees not to display any logos, trademarks or branding on the Charging Point(s) or on any hoods or coverings of each Charging Point similar to that used by the Supplier that may cause confusion amongst users of electric vehicles where such remains on Site following such termination or expiration.

14. RESTRICTIONS AND LIMITATION OF LIABILITY

14.1 The Customer shall use reasonable endeavours to:

14.1.1 not knowingly permit or allow the Charging Point(s) to be used for any purpose other than the charging of electric vehicles by authorised users of the Supplier;

14.1.2 ensure that the Charging Point(s) are not used by any third party for any purpose other than the charging of electric vehicles by authorised users of the Supplier;

14.1.3 ensure that no third party acquires any legal or equitable title or other interest in the Charging Point(s);

14.1.4 not make any act or omission that, or permit any third party to make any act or omission, that would or would be likely to invalidate any manufacturer's warranty for the Charging Point(s);

14.1.5 not publish any material or do or omit to do anything that would or would be likely to damage the image or reputation of the Supplier or any Supplier Party.

14.2 Subject to any express contractual terms and conditions of this agreement, in no event shall either Party be liable to the other for:

14.2.1 loss of profits;

14.2.2 loss of business;

14.2.3 depletion of goodwill or similar losses;

14.2.4 loss of anticipated savings;

14.2.5 loss of goods; or

14.2.6 loss of use,

provided that this clause 14.2 shall not prevent claims for direct financial loss that are not excluded by any of categories 14.2.1 to 14.2.6 inclusive of this clause 14.2.

14.3 Nothing in this agreement shall limit or exclude the liability of either Party for:

14.3.1 death or personal injury resulting from negligence;

14.3.2 fraud;

14.3.3 fraudulent misrepresentation;

14.3.4 breach of any of the obligations under the Sale of Goods Act 1979 or the Supply of Goods and Services Act 1982;

14.3.5 or any other liability which may not be excluded by contract or law.

15. ASSIGNMENT

15.1 Prior to or on the Customer transferring any proprietary interest in any Site or granting a lease of the Site or any part or parts thereof to a third party, the Customer shall procure that such third party agrees, in terms reasonably satisfactory to the Supplier, to be bound by the terms of this agreement in respect of any Charging Point(s) located at the applicable Site.

15.2 The Supplier shall be entitled (and the Customer shall consent) to make an application to HM Land Registry to note this agreement on the Customer's registered title to the Site.

15.3 The Supplier shall be entitled to assign, novate or otherwise transfer or dispose of its own rights and obligations under this agreement to any other party or body (including a private sector organisation) which substantially performs the functions that had been performed by the Supplier and shall procure that such party or body agrees to be bound by the terms of this agreement in respect of any Charging Point(s) located at the Site..

15.4 Subject to clause 15.1 the Customer shall not be permitted to assign any right or benefit arising under this agreement.

15.5 Each Party confirms it is acting on its own behalf and not for the benefit of any other person.

15.6 Notwithstanding clause 13, a Party assigning any or all of its rights under this agreement may disclose to a proposed assignee any information in its possession that relates to this agreement or its subject matter, the negotiations relating to it and the other Party which is reasonably necessary to disclose for the purposes of the proposed assignment, provided that no disclosure pursuant to this clause 15.6 shall be made until notice of the identity of the proposed assignee has been given to the other Party.

16. TERMINATION

16.1 Without prejudice to any rights that have accrued under this agreement or any of its rights or remedies, either Party may at any time terminate this agreement with immediate effect by giving written notice to the other Party if:

16.1.1 the other Party commits a substantial breach of any material term of this agreement and (if such breach is remediable) fails to remedy that breach within a period of twenty (20) Business Days after being notified in writing to do so;

16.1.2 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;

16.1.3 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 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;
- 16.1.4 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that 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;
- 16.1.5 an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other Party;
- 16.1.6 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 fourteen (14) days;
- 16.1.7 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 16.1.2 to clause 16.1.6 (inclusive);
- 16.1.8 the Supplier has ceased providing Electric Vehicle Charging Services at the Site for a continuous period of ninety (90) days;
- 16.1.9 the Supplier has failed for a period of twenty eight (28) days from written demand to reimburse the Customer its costs where applicable, including but not limited to, those arising under clauses 3.3 and 19 in this agreement, where such costs are not in dispute; or
- 16.1.10 the other Party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business.
- 16.2 Either Party may terminate this agreement in accordance with clause 26.
- 16.3 Termination of this agreement, for any reason, shall not affect the accrued rights, remedies, obligations or liabilities of the Parties existing at termination.
- 16.4 On termination of this agreement for any reason, the Supplier shall, within a reasonable period, vacate the Site in accordance with clause 8 and shall procure at its own cost the reinstatement of the Site by the relevant Supplier Party to good condition. Any goods, materials or equipment that have not been removed after sixty (60) Business Days after termination of this agreement may be removed and disposed of by the Customer as it thinks fit and any proper costs incurred by the Customer in disposing of such goods, materials or equipment and returning the Site(s) to the Customer in good condition shall be reimbursed to the Customer by the Supplier provided that the Supplier shall only be obliged to meet such costs directly relating to the Customer's removal and/or reinstatement of the Site(s) in relation to (i) disconnection of the electrical supply to the Charger Point; (ii) removal of the feeder pillar and Charger; (iii) removal of any civil works required to enable the construction of the Charger; and (iv) reinstatement and making good of the Site(s) in accordance with the position agreed pursuant to this agreement.

17. WAIVER

No failure or delay by a Party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

18. REMEDIES

Except as expressly provided in this agreement, the rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

19. INDEMNITY

Subject to clauses 14.2 and 14.3, the Supplier indemnifies the Customer against all actions, proceedings, costs, damages, losses, claims, expenses and demands whatsoever in respect of injury (including fatal injury) or damage to any person or property arising from the act neglect or default of the Supplier or of agents or servants of the Supplier or arising directly or indirectly out of the Rights or the presence of the Charging Points at the Site.

20. ENTIRE AGREEMENT

20.1 This agreement and any documents annexed to it and initialled by the Parties constitute the whole agreement between the Parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter of this agreement.

20.2 Each Party acknowledges that, in entering into this agreement and the documents annexed to it, it does not rely on any statement, representation, assurance or warranty of any person (whether a Party to this agreement or not) other than as expressly set out in this agreement or those documents.

20.3 Each Party agrees that the only rights and remedies available to it arising out of or in connection with a representation shall be for breach of contract as provided in this agreement.

21. VARIATION

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

22. SEVERANCE

22.1 If any court or competent authority finds that any provision of this agreement (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this agreement shall not be affected.

22.2 If any invalid, unenforceable or illegal provision of this agreement would be valid, enforceable and legal if some part of it were deleted, the Parties shall negotiate in good faith to amend such provision such that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the Parties' original commercial intention.

23. COUNTERPARTS

This agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this agreement, but all the counterparts shall together constitute the same agreement.

24. THIRD-PARTY RIGHTS

No person other than a Party to this agreement shall have any rights to enforce any term of this agreement.

25. NO PARTNERSHIP OR AGENCY

Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the Parties, constitute any Party the agent of another Party, nor authorise any Party to make or enter into any commitments for or on behalf of any other Party, except as expressly authorised by the Customer or the Supplier (as the case may be).

26. FORCE MAJEURE

Neither Party shall be in breach of this agreement nor liable for delay in performing, or failure to perform, any of its obligations under this agreement if such delay or failure results from events, circumstances or causes beyond its reasonable control, and in such circumstances the affected Party shall be entitled to a reasonable extension of the time for performing such obligations, provided that if the period of delay or non-performance continues for thirty (30) days or more, the Party not affected may terminate this agreement by giving fourteen (14) days' written notice to the other Party.

27. NOTICES

27.1 Any notice or other communication required to be given under this agreement, shall be in writing and shall be delivered personally, or sent by pre-paid first-class post or recorded delivery or by commercial courier, to each Party required to receive the notice or communication to the address detailed in clause 27.2 or as otherwise specified by the relevant Party by notice in writing to each other Party.

27.2 Notice details

Supplier	Customer
Address: 2 Piccadilly Place, Manchester M1 3BG	Address: Tameside One, Market Place, Ashton-under-Lyne, Tameside OL6 6BH
For the attention of: Head of Legal with copy to Facilities.Helpdesk@tfgm.com and evcitransition@tfgm.com	For the attention of: The Borough Solicitor and Head of Estates

27.3 Any notice shall be deemed to have been duly received:

27.3.1 if delivered personally, when left at the address and for the contact referred to in this clause;

- 27.3.2 if sent by pre-paid first-class post or recorded delivery, at 9.00am on the second Business Day after posting; or
- 27.3.3 if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.
- 27.4 A notice required to be given under this agreement shall not be validly given if sent by fax or e-mail.
- 27.5 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

28. STATUTORY REQUIREMENT TO PROVIDE OF INFORMATION

The Freedom of Information Act 2000 and the Environmental Information Regulations 2004 (SI 2004/3391) ("**EIR**") gives a general right of access to information held by public authorities. Subject to any applicable exemptions and where relevant and/or applicable, the Customer and the Supplier shall comply fully with any application for information made pursuant to either the Freedom of Information Act 2000 and/or the EIR.

29. DISPUTE RESOLUTION PROCEDURE

- 29.1 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 dispute resolution procedure set out in this clause. 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 documentation. On service of the Dispute Notice senior representatives of the Parties shall attempt in good faith to resolve the Dispute.
- 29.2 If the matter is not resolved by the senior representatives of the Parties, or if no direct negotiations take place within ten (10) Business Days or such other period as the Parties may agree to attempt to resolve the matter:
- (a) each Party shall give serious consideration to the use of mediation; and
 - (b) notwithstanding any other provision of this agreement, either Party may refer the dispute for expert decision pursuant to clause 30 of this agreement.

30. REFERENCE TO EXPERT

- 30.1 Any matter or dispute relating to this agreement which is to be determined by expert's decision shall be referred to a suitably qualified and experienced person (**Expert**) nominated either jointly by the Parties, or failing agreement between them within ten (10) Business Days after the service by one Party on the other of a written request to agree the Expert, on the application of either of them by the President for the time being (or, if he is not available, the next most senior officer) of the Law Society in England and Wales or any successor body.
- 30.2 The Expert shall act as expert and not as an arbitrator and Expert's decision is not a quasi-judicial procedure.
- 30.3 The Expert's fees shall be payable by the Party the Expert determines but in the absence of determination, in equal shares.

- 30.4 The referral to an Expert shall not constitute grounds entitling either Party to suspend performance of this agreement.
- 30.5 The terms of appointment of the Expert shall include:
- 30.5.1 a commitment by the Parties to supply the Expert with the assistance, documents and information he requires for the purpose of his determination;
 - 30.5.2 a requirement on the Expert to hold professional indemnity insurance both then and for three years following the date of his determination;
 - 30.5.3 and a requirement to give his decision within twenty (20) Business Days after his appointment, or if longer, a reasonable period.
- 30.6 Unless or until the relevant dispute or matter is finally determined by the English Courts, the Expert's determination shall be final and binding on the Parties in the absence of manifest error.
- 30.7 Except for any Party's right to seek interlocutory relief in the courts, no Party may commence legal proceedings whilst an Expert has been appointed under this agreement.

31. GOOD FAITH

- 31.1 The Supplier and the Customer will act in good faith with one another in relation to the application of the provisions of this agreement and while this agreement remains in force all dealings between the Supplier and the Customer shall be conducted in good faith.

32. GOVERNING LAW AND JURISDICTION

- 32.1 This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- 32.2 The Parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

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

SCHEDULE 1: CHARGING POINT SPECIFICATION

Part 1: Sites

Site		Comments
Mulberry Street Car Park	OL6 6EL	New installation
Union Street (full details to be provided)		New installation
Beeley Street Car Park	SK14 2TB	New installation



Part 2: Service and Support Plan

DN: To be replaced with separate service and support document – see email attachment.

IN WITNESS whereof the Parties hereto have executed this agreement as a Deed (but it remains undelivered until the day and year first above written)

THE COMMON SEAL of TRANSPORT for)
GREATER MANCHESTER was)
hereunto affixed in the presence of:)

AUTHORISED SIGNATORY	Signature
Name IN CAPITALS	

AUTHORISED SIGNATORY	Signature
Name IN CAPITALS	

THE COMMON SEAL of TAMESIDE)
METROPOLITAN BOROUGH COUNCIL was)
hereunto affixed in the presence of:)

AUTHORISED SIGNATORY	Signature
Name IN CAPITALS	