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**GREATER MANCHESTER CLEAN AIR PLAN**  
**FINANCIAL SUPPORT SCHEME**  
**DEALERSHIP TERMS AND CONDITIONS**

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## **PARTIES**

- (1) **TRANSPORT FOR GREATER MANCHESTER** of 2 Piccadilly Place, Manchester, M1 3BG ("**TfGM**");
  - (2) **THE DEALERSHIP** whose name and details are set out in the Dealership Information,
- each a "party" and together the "parties".

## **INTRODUCTION**

- A TfGM is the public body responsible for coordinating transport services throughout Greater Manchester.
- B The Greater Manchester Local Authorities are together subject to a direction from the Secretary of State for the Environment, Food and Rural Affairs dated 16 March 2020 issued pursuant to section 85(5) of the Environment Act 1995 requiring them to, collectively, implement their local plan for nitrogen dioxide compliance so that: (a) compliance with the legal limit value for nitrogen dioxide is achieved in the shortest possible time and by 2024 at the latest; and (b) exposure to levels above the legal limit for nitrogen dioxide are reduced as quickly as possible.
- C The Greater Manchester Local Authorities intend to implement the GM CAZ jointly pursuant to the making of a charging scheme order under the Transport Act 2000.
- D To accompany the GM CAZ, TfGM has with Government Funding established the Financial Support Scheme intended to provide Eligible Applicants with financial support for the purpose of replacing or upgrading existing Eligible Vehicles that do not meet the GM CAZ requirements, and which will be subject to a charge under the GM CAZ (the "**Financial Support Scheme**"). The Financial Support Scheme will be delivered through the provision of a combination of grants and vehicle finance contributions to support the most economically disadvantaged businesses and individuals who are impacted by the GM CAZ.
- E The Greater Manchester Clean Air Plan ("**GM CAP**") is being co-ordinated by TfGM on behalf of the Greater Manchester Local Authorities who have with the GMCA agreed TfGM will be responsible for the day to day operation of the Financial Support Scheme.

## **AGREEMENT**

### **1 ACCEPTANCE, COMMENCEMENT AND TERM**

- 1.1 By ticking the online box and clicking the "Submit Application" button the Dealership accepts and agrees to the terms and conditions in this Agreement.
- 1.2 This Agreement shall come into force on the Commencement Date.
- 1.3 This Agreement shall expire at the end of the period that is the earlier to occur of:
  - (a) the closure of the FSS;

- (b) the funds available through the FSS being exhausted; or
- (c) early termination in accordance with this Agreement.

1.4 The Dealership accepts that:

- (a) it has read, understood and accepts the terms and conditions of this Agreement; and
- (b) this Agreement constitutes a legally binding contract pursuant to which TfGM appoints the Dealership (and the Dealership agrees) to perform the tasks set out in this Agreement on the basis of the terms and conditions in this Agreement;
- (c) the Dealership Information provided by the Dealership as part of its application shall form part of this Agreement;
- (d) no other terms and/or conditions shall be incorporated into this Agreement.

1.5 For the avoidance of any doubt, all terms and conditions which are proposed by the Dealership at any stage of the contracting process or in any other documentation provided by the Dealership are expressly rejected by TfGM and shall have no force or effect.

## **2 APPOINTMENT AND ACCREDITATION**

- 2.1 TfGM hereby appoints the Dealership as an Accredited Dealership as at the Commencement Date.
- 2.2 The Dealership represents and warrants on the Commencement Date and thereafter on an ongoing basis that it shall meet and comply with the Dealership Accreditation Criteria and that the responses it provided to TfGM's due diligence enquiries remain true, accurate and complete.
- 2.3 The Dealership's appointment as an Accredited Dealership is on a non-exclusive basis.
- 2.4 The parties acknowledge that the terms of this Agreement shall apply for the particular site specified in the Dealership Information and that it is a TfGM requirement that the Dealership shall enter into other agreements on these same terms and conditions in respect of other Dealership sites.

## **3 DEALERSHIP OBLIGATIONS**

- 3.1 In undertaking its obligations under this Agreement and in respect of the FSS the Dealership shall at all times:
  - (a) undertake and perform all Dealership Obligations as described in Schedule 2 at or by the times specified in Schedule 2;
  - (b) at all times perform its obligations under this Agreement in good faith and accordance with Good Industry Practice, Regulatory Requirements and Law;

- (c) conduct its business with integrity, due skill, care and diligence;
  - (d) take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems;
  - (e) maintain adequate financial resources;
  - (f) observe proper standards of market conduct;
  - (g) pay due regard to the interests of all Applicants and treat them fairly;
  - (h) take reasonable care to ensure the suitability of its advice and discretionary decisions for any Applicant who is entitled to rely upon its judgment; and
  - (i) deal with its regulators in an open and cooperative way, and must disclose to the appropriate regulator appropriately anything relating to the Dealership of which that regulator would reasonably expect notice.
- 3.2 The Dealership agrees to hold all monies received by it by way of any Replacement Grant for use by any Approved Applicant on trust for TfGM until such time as (i) the Approved Applicant completes its purchase of the applicable Compliant Vehicle and (ii) the keys and vehicle registration documents are provided to the Approved Applicant by the Dealership ("Completion"). Immediately following Completion, the Dealership is authorised by TfGM to release the applicable Replacement Grant from such trust and to use such monies for its own purposes. If Completion does not for any reason occur within two (2) Working Days of the relevant Replacement Grant monies being paid by TfGM to the Dealership, the Dealership shall within one (1) Working Day return such Replacement Grant monies in full (without deduction or set off) to TfGM.
- 3.3 In performing their respective obligations under this Agreement, each of TfGM and the Dealership shall liaise and cooperate with each other (and in the case of the Dealership, as more particularly set out in Schedule 2 (Dealership Obligations)).
- 3.4 The Dealership shall use all Replacement Grants which are received by it from TfGM on behalf of an Approved Applicant as a contribution to the purchase price of the Compliant Vehicle which the Approved Applicant has applied to TfGM for a Replacement Grant to purchase. In so doing, the full value of the Replacement Grant shall be deducted by the Dealership from the price of the applicable Compliant Vehicle which remain payable by the Approved Applicant. As such, the Dealership agrees with TfGM that the applicable Compliant Vehicle will be sold by the Dealership to the applicable Approved Applicant net of the full value of any such Replacement Grant.
- 3.5 The Dealership shall sell all Compliant Vehicles which are purchased by an Approved Applicants with the benefit of a Replacement Grant to the applicable Approved Applicant (or the finance company who is providing the Approved Applicant with finance to fund the rest of the purchase price of the Compliant Vehicle) with Full Title Guarantee.
- 3.6 The Dealership shall not carry out any act or omit to do anything which has or could reasonably be expected to have an adverse impact on the functionality or security of the FSS, the FSS Portal and any of the TfGM Systems, information and/or details relating to any Applicants or any of the TfGM Data.

- 3.7 If the Dealership receives any written or oral notice from an Approved Applicant for settlement or cancellation of any Application and/ or any Dealership – Applicant Agreement then it shall immediately notify TfGM. In such circumstances, the Dealership shall return any funds that it has received and/or receives by way of a Replacement Grant for any such Approved Applicant within two (2) Working Days of receipt of any such notice from an Approved Applicant. In addition, the Dealership shall provide all necessary and reasonable assistance to enable TfGM to respond to and act upon such notification.
- 3.8 Each Compliant Vehicle sold by a Dealership to an Approved Applicant and in respect of which a Replacement Grant is paid by TfGM under the terms of this Agreement shall conform to the specification of any Compliant Vehicle which has been ordered by an Approved Applicant (rather than simply being purchased from stock), be undamaged (if new), be otherwise in a roadworthy condition, sold with the benefit of any applicable manufacturer's or dealership's warranty and all warranties capable of being implied by law (including those relating to satisfactory quality and fitness for purpose), shall comply with applicable Law including for the avoidance of doubt the GM CAZ rules in relation to Compliant Vehicles and shall be sold in accordance with the terms of this Agreement.
- 3.9 Following the part exchange of any Non-Compliant Vehicle, the Dealership is not permitted to re-sell such Non-Compliant Vehicle to the Approved Applicant or any of its Affiliates nor may it agree or enter arrangements for such Non-Compliant Vehicle to be used or hired by the Approved Applicant or any of its Affiliates.
- 3.10 Any referral of prospective Applicants to TfGM by the Dealership shall take place in accordance with the provisions of this Agreement and the FSS Marketing Guidelines.
- 3.11 The Dealership agrees that it shall be liable to meet from its own resources all and any expenses and/or liabilities which may be incurred by the Dealership in discharging its obligations under or in connection with this Agreement.
- 3.12 TfGM provides no guarantee as to the number or volume of Applicants that may purchase vehicles from the Dealership, nor the value or quantum of any Replacement Grants that may be payable to the Dealership. TfGM provides no guarantee or assurance in respect of the credit worthiness of any Applicant. In addition, Personnel shall not conduct any negotiations with any Applicant which may give rise to a liability for TfGM.
- 3.13 The Dealership shall act on its own account and at its own risk as an independent contractor and shall be solely responsible for making its own independent appraisal and investigation of all risks arising under or in connection with any transaction it enters into with an Applicant, including as to:
- (a) the financial condition, status and nature of each Applicant;
  - (b) the condition, value or status of any Non-Compliant or Compliant Vehicle; and
  - (c) the legality, validity, effectiveness, adequacy or enforceability of any contract or other agreement, arrangement or document entered into by the Dealership with any Applicant,

and, notwithstanding any other provision of this Agreement, the Dealership shall have no recourse whatsoever to TfGM in relation to the same, including for the avoidance of doubt for any total or partial loss it may make in connection with any transaction with an Applicant.

#### **4 REPLACEMENT GRANT PROCESS AND PAYMENT**

4.1 TfGM shall pay each Replacement Grant payment to the Dealership following completion of TfGM's approval processes.

4.2 TfGM shall have the right to issue updates and amendments to the Replacement Grant Process and Dealership Obligations from time to time at its discretion.

4.3 Without prejudice to the provisions and requirements of the Dealership Obligations:

- (a) the Dealership hereby confirms that the bank account provided to TfGM for any and all payments from TfGM to the Dealership is a UK account in the Dealership's name;
- (b) the parties hereby acknowledge and agree that in each case where a Replacement Grant is approved for payment by TfGM, TfGM shall pay the Replacement Grant which is due to an Approved Applicant to the Dealership who will receive such payments for and on behalf of the relevant Approved Applicant;
- (c) the Dealership shall apply the Replacement Grant solely to the Invoice Price of the Compliant Vehicle, exclusive of the cost of any additional products and/or services supplied by the Dealership to the Approved Applicant. Any additional options or services provided by or undertaken by the Dealership to or on behalf of the Approved Applicant shall be invoiced separately by the Dealership to the Approved Applicant by way of the Dealership - Applicant Invoice;
- (d) notwithstanding clause 4.3(c) and provided always that (i) the Applicant has been made aware in advance and has agreed to the same and (ii) the same are chargeable under the terms of the relevant Dealership – Applicant Agreement, the Dealership may charge administration fees to Approved Applicants.
- (e) all such payments made by TfGM to the Dealership shall be in full and final settlement of any TfGM payment liabilities to the Approved Applicant and the Dealership. The parties agree that receipt by the Dealership of a Replacement Grant shall constitute deemed receipt by the Approved Applicant of such Replacement Grant. Every reference in this Agreement to such payments being made by TfGM to the Dealership (or references to repayments of a Replacement Grant and/or Replacement Grants by the Dealership) shall be deemed to be references to payments being made by TfGM to the Dealership (or to be repaid by the Dealership, as the case may be) acting on behalf of an Approved Applicant as the case may be.
- (f) the Dealership acknowledges that the relationship between an Approved Applicant and TfGM, including but not limited to the applicable provisions relating to payment of the Replacement Grant by TfGM to the Dealership on

behalf of the Approved Applicant, is governed by the Applicant Terms and Conditions.

## **5 COMMISSION AND OTHER PAYMENTS**

- 5.1 The Dealership will not be entitled to charge TfGM for undertaking its role under this Agreement. The parties agree that no fee, commission or any equivalent, or any other payment shall be due from or made by TfGM to the Dealership or any Related Parties under the terms of this Agreement.
- 5.2 The Dealership undertakes that any value for the part exchange of a Non-Compliant Vehicle shall feature in the Dealership-Applicant Invoice. The Dealership shall not at any time pay cash and/or offer any payment in kind or equivalent form of consideration to an Eligible Applicant for the part-exchange of a Non-Compliant Vehicle.

## **6 VEHICLE RETURNS AND REPLACEMENT GRANT REPAYMENTS**

- 6.1 In the event that an Approved Applicant returns a Compliant Vehicle to the Dealership:
- (a) for any reason, within any Cooling Off Period; or
  - (b) where such Compliant Vehicle is faulty or defective, at any time within twelve (12) months of the Approved Applicant taking possession of the same,

the Dealership shall within ten (10) Working Days of the date of the return repay, without set off or deduction, the full amount of the relevant Replacement Grant to TfGM.

## **7 PERSONNEL**

- 7.1 Details of the Dealership Representative are set out in the Dealership Information. Details of the Dealership Core Team are to be provided to TfGM by the Dealership upon request. The Dealership shall promptly inform TfGM of any changes or updates to the Dealership Representative and the Dealership Core Team.
- 7.2 The Dealership shall arrange for the Dealership Representative and the Dealership Core Team to complete the necessary Training as required by TfGM from time to time.
- 7.3 The Dealership shall ensure that the Personnel abide by all of the provisions of this Agreement which impose obligations on them and/or the Dealership and such obligations will be performed by a sufficient number of appropriate experienced, qualified, competent, trained and efficient Personnel.
- 7.4 The Personnel shall as the context requires be regarded at all times as employees, agents or subcontractors of the Dealership and no relationship of employer and employee shall arise between TfGM and any Personnel under any circumstances regardless of the degree of supervision that may be exercised over the Personnel by TfGM.

## **8 WARRANTIES AND UNDERTAKINGS**

- 8.1 The Dealership represents, warrants and undertakes to TfGM on the date of this Agreement that the person who has accepted the terms and conditions of this



Agreement by ticking the online box and clicking the "Submit Application" button is duly authorised to do so by the Dealership.

- 8.2 The Dealership represents, warrants and undertakes to TfGM that on the date of this Agreement and at all times during the Term:
- (a) any information it provides to TfGM from time to time is complete and accurate in all material respects as at the date it is provided and is not misleading in any respect and that it shall promptly inform TfGM if any such information ceases to be accurate;
  - (b) it is validly existing under the laws of England and Wales and it has and will continue to have the power, capacity and authority to enter into this Agreement and to perform its obligations hereunder and to conduct its business as it is presently being conducted;
  - (c) there are no grounds for, actions, suits or proceedings or regulatory investigations pending or, to its knowledge, threatened against or affecting it before any court or administrative body or arbitration tribunal that might affect the ability of the Dealership to meet and carry out its obligations under this Agreement.

## **9 INTELLECTUAL PROPERTY RIGHTS**

- 9.1 The parties agree that all Intellectual Property Rights, in the FSS Materials belong to and shall remain vested in TfGM.
- 9.2 TfGM hereby grants to the Dealership a non-exclusive, royalty free, non-transferrable, sub-licensable, irrevocable licence to use the FSS Materials in connection with and for the purposes of performing its obligations under this Agreement including for the purposes of:
- (a) communicating with potential and current Applicants; and
  - (b) business development activities, including side promotions and marketing in accordance with the FSS Marketing Guidelines.
- 9.3 The Dealership hereby expressly agrees not to use, reproduce, disseminate or otherwise deal with the FSS Materials in any manner or form or in any media without obtaining TfGM's prior written consent. If TfGM's consent is given pursuant to this clause the Dealership agrees to comply with the terms of use of the FSS Materials in force from time to time, which TfGM shall provide to the Dealership upon request.
- 9.4 The Dealership hereby grants to TfGM and its Affiliates a non-exclusive, royalty free, non-transferrable, sub-licensable, irrevocable licence to use the Dealership's Materials in connection with and for the purposes of performing its obligations under this Agreement and operating the Portal including for the purposes of:
- (a) communicating with potential and current Applicants; and
  - (b) business development activities, including side promotions and marketing.

- 9.5 The Dealership shall, subject to prior written consent for any shorter notice period (not to be unreasonably withheld or delayed) provide TfGM with not less than sixty (60) Working Days' prior written notice of any change to the Dealership's Materials.
- 9.6 In the event of the termination or expiry of this Agreement, the licences granted pursuant to clause 9.2 and 9.4 and any sub-licences granted by TfGM shall terminate automatically on the date of such termination or expiry.

## **10 PUBLICITY, MARKETING AND MEDIA**

- 10.1 The Dealership shall at all times comply with, and carry out the obligations detailed in, the FSS Marketing Guidelines. The Dealership acknowledges and agrees that TfGM shall have the right to update or amend the FSS Marketing Guidelines from time to time at their discretion.
- 10.2 Subject to clause 10.1, the Dealership shall not:
- (a) make or authorise any public or private announcement or communication concerning this Agreement; or
  - (b) refer to or use any business name or trade mark of TfGM,
- without the prior written approval of TfGM.
- 10.3 All announcements concerning this Agreement will be approved by TfGM and where required by TfGM the parties shall seek to agree a joint communication plan.
- 10.4 The Dealership shall promptly inform TfGM of any enquiries, questions or requests for media responses from any member of parliament, other elected representative or any media organisation.

## **11 REGULATORY COMPLIANCE**

- 11.1 The Dealership represents and warrants as at the Commencement Date that:
- (a) it is FCA Authorised or exempt from FCA Authorisation under section 39 FSMA on the basis that it is an appointed representative of an FCA Authorised principal firm), and that it has holds all necessary approvals and documentation; and
  - (b) it holds and has in place all of the required approvals, consents, licences, authorisations, processes and documentation in relation to money laundering as may be required by The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017.
- 11.2 The Dealership shall at all times conduct all business pursuant to this Agreement in accordance with any rules, codes of practice or guidance issued by any Regulatory Body or by any Law. In addition the Dealership undertakes throughout the Term to maintain and keep in place all of the approvals, consents, licences, authorisations, processes and documentation referred to in clause 11.1 or as may be required by any Regulatory Body or by any Law.

- 11.3 If the Dealership becomes aware of any complaint, licensing or other action taken or proposed by any Regulatory Body, the Dealership must immediately provide written notice to TfGM. In addition, the Dealership shall provide all necessary and reasonable assistance to enable TfGM to resolve and respond to any such actual or proposed action.
- 11.4 The Dealership undertakes to notify TfGM of any changes to, or proceedings, or notices issued in respect of the approvals, consents, licences, authorisations, processes and documentation referred to in clause 11.2 within five (5) Working Days of becoming aware of the same.

## **12 DEALERSHIP ENGAGEMENT MEETINGS**

- 12.1 When requested by TfGM in writing, and on not less than five (5) Working Days' notice, the parties shall hold a Dealership Engagement Meeting on such date as the parties agree, in each case acting reasonably. The parties shall agree an agenda ahead of the Dealership Engagement Meeting.
- 12.2 Notwithstanding the provisions of this clause 12 TfGM may require that a Dealership Engagement Meeting take place within two (2) Working Days in order to discuss the financial condition and risk profile of the Dealership and any Complaints.
- 12.3 TfGM may require the attendance of any Personnel at any Dealership Engagement Meeting.

## **13 INFORMATION AND RECORD KEEPING**

- 13.1 The Dealership shall promptly inform TfGM of any updates or changes or updates to the Dealership Information.
- 13.2 The Dealership shall, during the Term and a period of at least 7 years following the expiry or termination of this Agreement, maintain or cause to be maintained complete and accurate documents and records in relation to this Agreement including but not limited to all Records.
- 13.3 The Dealership shall make the Records available for inspection to TfGM on request, subject to TfGM giving reasonable notice.

## **14 DEALERSHIP MONITORING AND AUDIT**

- 14.1 During the Term, the Dealership shall provide to TfGM such information as TfGM may reasonably request from time to time including information relating to the current financial position of the Dealership and information and procedures relating to fraud, tax evasion, corruption and bribery. The Dealership shall provide such other information within ten (10) Working Days of a request being received from TfGM, or within two (2) Working Days if the Dealership is in breach of this Agreement or fraud, tax evasion, corruption or bribery is suspected.
- 14.2 The Dealership shall promptly inform TfGM of the occurrence of any Insolvency Event.
- 14.3 The Dealership confirms and agrees that TfGM may (at any time) make such enquiries as to its status as TfGM deems necessary in relation to this Agreement and/or entering into it and in particular the Dealership agrees that such enquiries may include credit

reference agencies and fraud prevention agency (or similar) searches or enquiries concerning it and any director, employee or partner of it (as appropriate).

- 14.4 TfGM may at its discretion audit or use subcontractors or advisors to audit (or any Regulatory Body may audit) the Dealership's compliance with this Agreement (including audits of the Dealerships premises and systems) provided that any such audit is carried out with reasonable prior notice and in a reasonable way so as to cause as little disruption as is reasonably possible to the performance of the Services and the Dealership's other business. Where TfGM has reasonable grounds to believe that the Dealership is not complying with its obligations under this Agreement, an audit may be carried out without prior notice.
- 14.5 The Dealership shall provide all assistance reasonably requested by TfGM in relation to any audit, including access to the Dealership's Personnel, records and premises.

## **15 SAFEGUARDS AGAINST FRAUD, CORRUPTION AND BRIBERY**

- 15.1 The Dealership shall ensure that it maintains in place and operates at all times procedures in respect of tax evasion and fraud in accordance with Good Industry Practice and Law to detect and prevent any tax evasion or fraud by itself, its Personnel, any Applicants, any of the Finance Providers or any other persons.
- 15.2 The Dealership shall notify TfGM in writing and immediately if it has reason to suspect that any tax evasion or fraud has occurred, is occurring or is likely to occur, save where complying with this provision would cause the Dealership to commit an offence under the Proceeds of Crime Act 2002 or the Terrorism Act 2000.
- 15.3 The Dealership shall co-operate with TfGM in taking all steps that TfGM reasonably considers necessary in taking action against any person who attempts to conduct or succeeds in conducting any tax evasion or fraud in relation to the FSS.
- 15.4 Without prejudice to clause 15.1, the Dealership shall comply with Good Industry Practice and Law relating to anti-bribery and anti-corruption, including the Bribery Act 2010.
- 15.5 The Dealership shall give reasonable assistance and cooperation to TfGM in relation to any police, judicial or regulatory investigation or enquiry in relation to any suspected tax evasion, fraud, bribery or corruption, whether during the term of this Agreement or up to seven (7) years after its termination.

## **16 LIABILITY AND INDEMNITY**

- 16.1 Nothing in this Agreement shall operate to exclude or restrict, either party's liability for fraud, fraudulent misrepresentation, theft, death or personal injury.
- 16.2 Subject to the other terms of this clause 16, neither party shall be liable in contract, tort (including negligence or breach of statutory duty) or otherwise for any indirect, special or consequential loss or damage including any indirect loss of business or indirect loss of profits arising under or in connection with this Agreement.
- 16.3 The provisions of clause 16.1 shall not limit TfGMs right to recover for:

- (a) any third party claims arising from any breach by the Dealership of this Agreement; or
  - (b) any losses, fines, expenses or other losses arising from a breach by the Dealership of any Law or Regulatory Action; or
  - (c) any act of fraud, corruption or bribery being committed by the Dealership and/or by any third party with the knowledge or consent of the Dealership.
- 16.4 Subject to the other terms of this clause 16, the parties agree that the aggregate annual liability of TfGM to the Dealership under this Agreement shall be limited to an amount equivalent to fifty thousand pounds (£50,000).
- 16.5 The Dealership shall release and indemnify TfGM and its Affiliates from and against all liabilities, damages, costs, charges or penalties (including third party claims) arising out of any breach of this Agreement, negligence, regulatory investigation, fraud, corruption or bribery in each case on the part of the Dealership.

## **17 CONFIDENTIAL INFORMATION**

17.1 For the purposes of this Agreement:

- (a) the term "**Confidential Information**" shall mean information provided by the Disclosing Party that ought to be considered as confidential (however it is conveyed on whatever media it is stored) may include information whose disclosure would, or would like to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either party and all personal data and sensitive personal data within the meaning of Data Protection Legislation; but shall not include information that was in the possession of the Recipient without an obligation of confidentiality or which was already generally available and in the public domain for reasons other than a breach of this Agreement;
- (b) the term "**Disclosing Party**" shall mean a party which discloses or makes available directly or indirectly its Confidential Information and "**Recipient**" shall mean the party which receives or obtains directly or indirectly Confidential Information.

17.2 Except to the extent set out in this clause 17 or where disclosure is expressly permitted elsewhere in this Agreement, the Recipient shall:

- (a) treat the Disclosing Party's Confidential Information as confidential and keep it in secure custody;
- (b) not disclose the Disclosing Party's Confidential Information to any other person, nor use or exploit such information, except as expressly set out in this Agreement or without obtaining the Disclosing Party's prior written consent;

17.3 The Recipient shall be entitled to disclose the Confidential Information of the Disclosing Party where:

- (a) the Recipient is required to disclose the Confidential Information by Law, provided that clause 18 shall apply to disclosures required under the FOIA or the EIRs;
  - (b) the need for such disclosure arises out of or in connection with any actual or threatened legal challenge against TfGM out of or in connection with this Agreement;
  - (c) any examination or audit undertaken by a central Government body or Regulatory Authority.
- 17.4 If the Recipient is required by any Law to make a disclosure of Confidential Information, the Recipient shall, as soon as reasonably practicable and to the extent permitted by Law, notify the Disclosing Party of the full circumstances of the required disclosure, including the relevant Law and/or Regulatory Body requiring such disclosure and the Confidential Information to which such disclosure would apply.
- 17.5 Either party may disclose the Confidential Information of the other on a confidential basis to:
- (a) the other, to the extent necessary in order to process applications for Replacement Grants and Finance;
  - (b) its professional advisors and auditors;
  - (c) in TfGM's case, the GMCA and any Greater Manchester Local Authority and any Government body in connection with any review or audit.

## **18 FREEDOM OF INFORMATION**

- 18.1 The Dealership acknowledges and agrees that the content of this Agreement, including any changes or updates to this Agreement (except for any information which is exempt from disclosure in accordance with the provisions of the FOIA or the EIRs, which shall be determined by TfGM) is not the Confidential Information of the Dealership ("**Transparency Information**").
- 18.2 Notwithstanding any other provision of this Agreement, the Dealership hereby gives its consent for TfGM to publish to the general public the Transparency Information in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA or the EIRs redacted). TfGM shall, prior to publication, endeavour (to the extent permissible and practicable) to consult with the Dealership on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.
- 18.3 The Dealership shall assist and co-operate with TfGM to enable TfGM to publish the Transparency Information, as reasonably requested by TfGM, including providing any information requested by TfGM in connection with the FOIA or the EIRs.
- 18.4 The Dealership shall:
- (a) transfer to TfGM any requests for information under the FOIA or the EIRs relating to this Agreement that it receives as soon as practicable and in any event within two (2) Working Days of receipt; and

- (b) not respond directly to a such a request addressed to TfGM unless authorised in writing to do so by TfGM.

## **19 DATA PROTECTION**

19.1 This clause 19 sets out the framework for the sharing of personal data between the parties as independent data controllers. Each party acknowledges that one party (referred to in this clause as the **Data Discloser**) will regularly disclose to the other party Personal Data collected by the Data Discloser for the Agreed Purposes.

19.2 Each party shall comply with all the obligations imposed on a controller under the Data Protection Legislation, and any material breach of the Data Protection Legislation by one party shall, if not remedied within twenty (20) days of written notice from the other party, give grounds to the other party to terminate this Agreement with immediate effect.

19.3 Each party shall:

- (a) ensure that it has all necessary notices and lawful bases in place to enable lawful transfer of the Shared Personal Data to the Permitted Recipients for the Agreed Purposes;
- (b) give full information to any data subject whose personal data may be processed under this agreement of the nature of such processing. This includes giving notice that, on the termination of this agreement, personal data relating to them may be retained by or, as the case may be, transferred to one or more of the Permitted Recipients, their successors and assignees;
- (c) process the Shared Personal Data only for the Agreed Purposes;
- (d) not disclose or allow access to the Shared Personal Data to anyone other than the Permitted Recipients;
- (e) ensure that all Permitted Recipients are subject to written contractual obligations concerning the Shared Personal Data (including obligations of confidentiality) which are no less onerous than those imposed by this agreement;
- (f) ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.
- (g) not transfer any personal data received from the Data Discloser outside the UK unless the transferor ensures that (i) the transfer is to a country approved under the applicable Data Protection Legislation as providing adequate protection; or (ii) there are appropriate safeguards or binding corporate rules in place pursuant to the applicable Data Protection Legislation; or (iii) the transferor otherwise complies with its obligations under the applicable Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; or (iv) one of the derogations for specific situations in the applicable Data Protection Legislation applies to the transfer.

- 19.4 Each party shall assist the other in complying with all applicable requirements of the Data Protection Legislation. In particular, each party shall:
- (a) consult with the other party about any notices given to data subjects in relation to the Shared Personal Data;
  - (b) promptly inform the other party about the receipt of any data subject rights request;
  - (c) provide the other party with reasonable assistance in complying with any data subject rights request;
  - (d) not disclose, release, amend, delete or block any Shared Personal Data in response to a data subject rights request without first consulting the other party wherever possible;
  - (e) assist the other party, at the cost of the other party, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, personal data breach notifications, data protection impact assessments and consultations with the Information Commissioner or other regulators;
  - (f) notify the other party without undue delay on becoming aware of any breach of the Data Protection Legislation;
  - (g) at the written direction of the Data Discloser, delete or return Shared Personal Data and copies thereof to the Data Discloser on termination of this agreement unless required by applicable Law to store the Shared Personal Data;
  - (h) use compatible technology for the processing of Shared Personal Data to ensure that there is no lack of accuracy resulting from personal data transfers;
  - (i) maintain complete and accurate records and information to demonstrate its compliance with this clause 19; and
  - (j) provide the other party with contact details of at least one employee as point of contact and responsible manager for all issues arising out of the Data Protection Legislation, including the training of relevant staff, the procedures to be followed in the event of a data security breach, and the regular review of the Parties' compliance with the Data Protection Legislation.
- 19.5 Notwithstanding anything to the contrary within this Agreement, in respect of any losses, cost claims or expenses incurred by either party as a result of a personal data breach, the party responsible for the relevant breach shall be responsible for the losses, costs and/or expenses.

## **20 SUSPENSION AND TERMINATION**

- 20.1 The parties hereby agree and acknowledge that TfGM shall in its sole discretion be entitled to restrict, suspend or remove the status of Accredited Dealership and the right and the ability of the Dealership to process Replacement Grants at any time in the following circumstances ("**Suspension Grounds**"):



- (a) the Dealership has committed a material breach of any of the provisions of this Agreement;
  - (b) TfGM believes there has been a change in the business or financial condition of the Dealership which, in TfGM's reasonable opinion, is likely to have an adverse impact on the Dealership's ability to perform its obligations under this Agreement;
  - (c) the Dealership has not supplied a Compliant Vehicle to an Approved Applicant for a period of 6 months or longer;
  - (d) with respect to the payment of Replacement Grants, there has been a substantial occurrence of or a material increase in Complaints, related to Compliant Vehicles (or related services) sold and/or provided by the Dealership in accordance with this Agreement; or
  - (e) where TfGM reasonably suspects that the Dealership has committed a breach of Law and/or is subject to Regulatory Action;
  - (f) failure to adhere to, or non-compliance with the FSS Marketing Guidelines;
  - (g) failure to notify TfGM of a change of Control in accordance with clause 25.1 and/or following such change of Control TfGM does not approve the Dealership's Accreditation;
  - (h) the occurrence of an Insolvency Event in respect of the Dealership;
  - (i) any fees or other charges applied by the Dealership to the Applicant pursuant to clause 4.3 which are considered by TfGM to be excessive or penal;
- 20.2 Without prejudice to clause 20.1, in the event that TfGM has reasonable grounds to suspect the occurrence of the events specified in clause 20.1 TfGM shall notify the Dealership in writing and shall be entitled to suspend all Replacement Grant Processes, Fund Award Notifications and Replacement Grant payments due to the Dealership for up to sixty (60) Working Days whilst it investigates the matter. At the conclusion of that period, TfGM shall either make any Replacement Grant payments delayed as a consequence of the suspension or terminate this Agreement in accordance with clause 23.5. TfGM shall have the right to renew or extend the suspension period at its discretion, should any of the Suspension Grounds continue to be in existence, continuing or unresolved as the case may be.
- 20.3 TfGM shall have the right, without prejudice to its other rights or remedies, to terminate this Agreement:
- (a) immediately by written notice to the Dealership; and/or
  - (b) on the occurrence of an Insolvency Event in respect of the Dealership.
- 20.4 The Dealership shall have the right to terminate this Agreement on thirty (30) Working Days written notice to TfGM.

## 21 CONSEQUENCES OF TERMINATION

- 21.1 Any termination of this Agreement will not affect any accrued rights or liabilities of either party nor will it affect the coming into force or continuation in force of any other clauses and provisions of this Agreement which are expressly or by implication intended to come into force or continue in force on or after termination including, but not limited to clauses 4 (Replacement Grant Process and Payment), 9 (Intellectual Property), 21 (Consequences of Termination), 19 (Data Protection), 15 (Anti-Bribery and Audit), 29.7 (as to rights of third parties), 29.9 (as to governing law and jurisdiction) and 29.11 (as to defined terms and interpretation).
- 21.2 Save as required by Law, immediately upon termination of this Agreement or at any time during the Term when required to do so by TfGM in writing, the Dealership shall:
- (a) repay to TfGM any Replacement Grant Payments that shall be the subject of clause 6, as TfGM may specify;
  - (b) permanently delete all and any Approved Applicant information relating to the Approved Applicant's relationship with TfGM, including any Applicant Information and any other Confidential Information provided to it by TfGM;
  - (c) return to TfGM or destroy (as directed by TfGM) all hard and soft copies of information referred to in clause 21.2(b) and/or documentation in its possession;
  - (d) remove all links or references to the FSS from its website;
  - (d) procure that its Personnel shall, immediately, (or as otherwise advised in writing by TfGM) deliver up to TfGM, or any third party nominated in writing by TfGM, all property belonging to TfGM (including promotional material and application forms, Personal Data and any Confidential Information of TfGM which may be in the possession of, or under the control of the Dealership or its Related Parties and cease to use any FSS Materials or any other references to TfGM (whether or not consented for use by TfGM); and
  - (e) on termination or expiry of this Agreement (howsoever occasioned), the Dealership shall: (i) immediately cease processing any Applications for Replacement Grants; and (ii) promptly notify the relevant Approved Applicants that the processing of their Applications has ceased.
- 21.3 The Dealership may not withhold such delivery of the information and materials listed in clause 21.2 for any reason, including any dispute between TfGM and the Dealership arising from the operation, construction or termination of this Agreement.
- 21.4 In the event that this Agreement is terminated for any reason:
- (a) the terms set out in this Agreement shall still apply to any Compliant Vehicle sold or leased by a Dealership to an Approved Applicant and any other Agreements entered into and/or Replacement Grant Applications approved by TfGM prior to the date of termination.

- (b) the Dealership shall not be entitled to claim any compensation or remuneration, regardless of any activities or agreements with additional third parties entered into before termination.

## **22 TFGM RIGHT TO WITHDRAW/ CLAWBACK OF REPLACEMENT GRANTS**

22.1 Without prejudice to TfGM's rights under clause 6 and clause 21.2 of this Agreement, and any claims or rights TfGM may have against particular Applicants or Finance Providers, TfGM may at any time:

- (a) withdraw a Fund Award Notification in respect of an Approved Applicant; and/or
- (b) require the Dealership to repay to TfGM forthwith any Replacement Grant or Replacement Grants,

following the occurrence of a material breach of clause 8, clause 15, and/or the occurrence of any fraud or corruption in respect of those Replacement Grant or Replacement Grant payments and/or the associated part exchange of any Non-Compliant Vehicle and sale of a Compliant Vehicle.

## **23 COMPLAINTS**

23.1 At all times during the Term, the Dealership shall receive and progress any complaints received in accordance with the requirements of the Complaints Procedure.

23.2 The Dealership shall notify TfGM in accordance with the Complaints Procedure in the event it receives or otherwise becomes aware of any:

- (a) Complaint which relates to TfGM and/or the Replacement Grant Scheme ("**TfGM Complaint**");
- (b) Complaint from an Eligible or Approved Applicant which relates to the Dealership (including, without limitation, the manner of sale) ("**Dealership Complaint**");
- (c) Regulatory Complaint; or
- (d) Complaint from any member of Parliament, any other elected representative and/or the media ("**MP/Media Complaint**"),

in each case, on the same Business Day that the Dealership receives or otherwise becomes aware of the TfGM Complaint, Dealership Complaint, Regulatory Complaint or the MP/Media Complaint (as the case may be).

23.3 The Dealership shall ensure that where a Dealership Complaint is made, it shall use its best endeavours to respond to such Dealership Complaint within ten (10) Working Days of the date on which the Dealership Complaint was first notified to it. The Dealership shall be responsible for resolving any Dealership Complaint and shall provide TfGM with regular updates in respect of any such Dealership Complaint when requested to do so by TfGM. The Dealership also agrees to provide details of or documentation relating to Dealership Complaints to TfGM in a timely manner following a request in writing from TfGM.

- 23.4 The Dealership shall not respond to or otherwise involve itself in any TfGM Complaint, Regulatory Complaint or MP/Media Complaint unless authorised in advance in writing to do so by TfGM or requested by TfGM in writing to do so.
- 23.5 Where the Dealership notifies TfGM of any TfGM Complaint, Dealership Complaint, Regulatory Complaint or MP/Media Complaint pursuant to clause 23.2, it shall provide full details thereof to TfGM and shall provide all necessary and reasonable assistance as TfGM may require to enable TfGM to resolve and respond to the TfGM Complaint, the Dealership Complaint, the Regulatory Complaint or the MP/Media Complaint (as the case may be).
- 23.6 In the event that any Complaint is received by TfGM and after thorough investigation it is considered by TfGM that the Dealership has not complied with the terms of this Agreement, without prejudice to any other remedies which may be available to TfGM, the Dealership shall liaise with TfGM, comply with any instructions issued by TfGM and otherwise deal with the Complaint in accordance with the provisions set out in this clause 23.

## **24 ASSIGNMENT AND SUBCONTRACTING**

- 24.1 The Dealership shall not novate, assign, transfer or otherwise dispose of this Agreement or any interest hereunder except with the prior written consent of TfGM.
- 24.2 TfGM may at its discretion novate, assign, transfer or otherwise deal with this Agreement.
- 24.3 The Dealership may not subcontract the performance of its obligations under this Agreement, or otherwise appoint a third party in connection with this Agreement, without TfGM's prior written consent and TfGM shall have the right to specify conditions to any consent with which the Dealership shall comply.

## **25 CHANGE IN CONTROL**

- 25.1 The Dealership shall inform TfGM of any proposed change in Control within ten (10) Working Days or as soon as reasonably practicable, and shall provide with this information details of the identity of the new owners or replacement persons in Control.
- 25.2 Following the occurrence of a change in Control, the Accreditation of the Dealership will no longer be valid. The Dealership shall within ten (10) Working Days or as soon as reasonably practicable, submit a new application to TfGM in order to become an Accredited Dealership.

## **26 FORCE MAJEURE**

- 26.1 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 is a result of a Force Majeure Event. In such circumstance the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed **OR** the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for sixty (60) Working Days, the party not affected may terminate this agreement by giving twenty (20) Working Days written notice to the affected party.

26.2 For the purposes of this Agreement, "**Force Majeure Event**" means any event outside the reasonable control of either Party affecting the performance of its obligations under this Agreement arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control and which are not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party, including acts of God, riots, war or armed conflict, acts of terrorism, acts of government, local government or Regulatory Bodies, fire, epidemic, pandemic (as so declared by the World Health Organisation) earthquake or disaster, provided however that:

(a) any industrial dispute relating to the Dealership or its Personnel or any other failure in the Dealership's, or a Sub-contractor's supply chain or a Dealership's finance supply chain;

(b) a breach of this Agreement by TfGM,

shall not count as Force Majeure Events.

## **27 NOTICES**

27.1 Subject to clause 27.2 any formal notice, instruction or other communication for the purposes of this Agreement must be in writing, sent via registered post (with a copy by email) for the attention of the TfGM Dealership Team and the Dealership Representative.

27.2 The parties acknowledge that day to day and routine correspondence pursuant to this Agreement shall take place between the Dealership and TfGM via digital means including but not limited to email and the online portal.

## **28 WHOLE AGREEMENT**

28.1 This Agreement constitutes the entire Agreement between the parties relating to the transactions contemplated by this Agreement and supersedes all previous agreements between the parties relating to the transactions.

28.2 Save to the extent permitted by this Agreement, neither party will pledge the credit, or incur any liabilities on behalf of or otherwise bind the other party.

28.3 The provisions of this Agreement shall prevail over any terms or conditions (whether or not inconsistent with this Agreement) contained in or referred to in any correspondence, purchase order or documentation submitted by the Dealership to TfGM or elsewhere or implied by custom, practice or course of dealing.

## **29 GENERAL**

29.1 **No partnership or agency:** Nothing in this Agreement will be deemed to constitute a partnership between the parties or constitute either party as the agent of the other party for any purpose. Neither party shall have the authority or power to bind the other party or to contract in the name of or create liability against the other party in any way or for any purpose.

29.2 **Disputes:** If any dispute arises out of this Agreement, the dispute shall be referred to the Dealership Representative and the TfGM Dealership Team ("**Representatives**"),

who shall seek in good faith to resolve the dispute within thirty (30) Working Days of the issue being referred, escalating it within their respective organisation as necessary for this purpose. If the Representatives are unable to settle any dispute by negotiation within thirty (30) Working Days of the dispute being referred to them, the parties may refer the matter to an independent mediator with each party meeting its own costs. In the event that the parties do not agree to independent meditation then the parties will have the right of termination.

- 29.3 **Waiver:** The rights and remedies under this Agreement may only be waived in writing and specifically and any failure, forbearance or delay in exercising a right or remedy by a party shall not constitute a waiver of that right or remedy or of any other rights of remedies. A waiver of any breach of any of the terms of this Agreement or a default under this Agreement shall not constitute a waiver of any other breach or default or any later breach or default and shall not affect the terms of this Agreement.
- 29.4 **Cumulative rights and remedies:** The rights and remedies provided by this Agreement are cumulative and (unless provided otherwise in this Agreement) are not exclusive of any rights or remedies provided at law and/or at equity (including the right to rescind this Agreement and/or the right to bring this Agreement to an end for repudiatory breach).
- 29.5 **Amendments:** TfGM has the right to amend or vary this Agreement at any time by notice to the Dealership.
- 29.6 **Severability:** If any term of this Agreement is or becomes illegal, invalid or unenforceable in any jurisdiction, that will not affect the legality, validity or enforceability in that jurisdiction of any other term of this Agreement, or the legality, validity or enforceability in other jurisdictions of that or any other provision of this Agreement.
- 29.7 **Third Party Rights:** No term of this Agreement is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this Agreement.
- 29.8 **Counterparts:** This Agreement may be executed in any number of counterparts all of which taken together will constitute one and the same Agreement, and any party may enter into this Agreement by executing a counterpart.
- 29.9 **Governing Law and Jurisdiction:** This Agreement shall in all respects be governed by and be construed in accordance with the law of England and Wales, and all disputes, actions and other matters in connection therewith shall be determined in accordance with such law. The courts of England and Wales shall have exclusive jurisdiction over any such disputes, actions or other matters arising out of or in connection with this Agreement and the parties accordingly submit to the exclusive jurisdiction of the courts of England and Wales.
- 29.10 **Costs and Expenses:** Except as otherwise provided in this Agreement, each Party shall each bear its own costs and expenses in complying with its obligations under this Agreement.
- 29.11 **Definitions and Interpretation:** In this Agreement (unless the context otherwise requires), the terms and phrases set out in paragraph 1 of Schedule 1 shall have the meanings set out therein and the rules of interpretation set out in paragraph 2 of Schedule 1 shall also apply.

## SCHEDULE 1 Definitions and Interpretation

### 1 DEFINITIONS

Unless otherwise provided or the context otherwise requires, the following expressions shall have the meanings set out below:

**"Accredited Dealership"** means a Dealership who has successfully fulfilled the Dealership Accreditation Criteria.

**"Affiliate"** means:

- (a) in relation to a body corporate, any other entity which directly or indirectly controls, is controlled by, or is under direct or indirect common control with, that body corporate from time to time;
- (b) in relation to TfGM, GMCA and all of the GM Local Authorities;

and **"Affiliates"** shall mean any or all of them.

**"Agreed Purpose"** means the performance by each party of its obligations under this Agreement, and the promotion of the Financial Support Scheme that form the subject of this Agreement.

**"Agreement"** means this agreement which shall incorporate the terms and conditions set out in the main body, all of the Schedules and all other documents which are referred to as incorporated in and/or which are appended to this agreement.

**"Applicant"** means the person making an Application, being the owner or registered keeper of an Eligible Vehicle who wishes to replace it with a Compliant Vehicle.

**"Applicant Information"** means all information, details and documentation relating to an Applicant and any Replacement Grant Application including but not limited to personal details, drivers licence number, vehicle registration details (including V5C).

**"Applicant Terms and Conditions"** means the standard TfGM terms and conditions relating to the FSS applicable to the Applicant as may be updated or amended by TfGM and notified to the Dealership from time to time in its sole discretion.

**"Approved Applicant"** means Eligible Applicant who has been issued with a Fund Award Notification.

**"Clean Vehicle Funds Service"** or **"CVFS"** means the service provided to TfGM by the CVFS Supplier pursuant to the CVFS Agreement between TfGM and the CVFS Supplier.

**"Control"** means the possession by a person, directly or indirectly, of the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and **"Controls"** and **"Controlled"** shall be interpreted accordingly.

**"Commencement Date"** means the date of this Agreement.

**"Complaint"** means any oral or written expression of dissatisfaction, whether justified or not, from, or on behalf of, a person (including an Eligible or Approved Applicant) about the performance of the Dealership's and/or TfGM's obligations under the terms of this Agreement.

**"Complaints Procedure"** means the complaints procedure published by TfGM from time to time and as may be amended or replaced by TfGM in its sole discretion.

**"Compliant Vehicle"** means any of the following:

Vehicle Type	Euro Category	Minimum CAZ Compliant Euro Emission Standard
Coach	M3 (Gross Vehicle Weight over 5000kg and more than 8 seats in addition to the driver)	Euro VI
Heavy Goods Vehicle (HGV)	N2 (Gross Vehicle Weight over 3500 kg and ref. mass over 2610 kg) N3 (Gross Vehicle Weight over 5000 kg)	Euro VI
Minibus	M2 (Gross Vehicle Weight not exceeding 5000 kg, reference. mass not exceeding 2840 kg and more than 8 seats in addition to the driver)	Euro VI (diesel) Euro IV (petrol)
Light Goods Vehicle (LGV)	N1 (Gross Vehicle Weight not exceeding 3500 kg and reference. mass not exceeding 1305 kg)	Euro VI (diesel) Euro IV (petrol)
Licensed Hackney Carriages and Private Hire Vehicles (PHVs)	Minibus – M2 (Gross Vehicle Weight not exceeding 5000 kg, reference. mass not exceeding 2840 kg and more than 8 seats in addition to the driver)	Licensed Hackney Carriages and Private Hire Vehicles (PHVs)
Passenger vehicle with up to 8 seats in addition to the driver	Euro 6 (diesel)	Passenger vehicle with up to 8 seats in addition to the driver Euro IV (petrol)

**"Controller, Processor, Data Subject, Personal Data, Personal Data Breach and Processing including and appropriate technical and organisational measures"** all have the meaning as set out in the Data Protection Legislation.

**"Cooling Off Period"** means (i) any period specified by Consumer Contracts Regulations 2013 and (ii) any contractual or similar cooling off or review period as may have been offered by the Dealership to an Applicant.

**"CVFS Supplier"** means the supplier appointed by TfGM from time to time to provide the CVFS including the development, operation and maintenance of the FSS Portal.



**"Data Discloser"** means a Party that discloses Shared Personal Data to the other Party.

**"Data Protection Legislation"** means all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder); the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications); and the guidance and codes of practice issued by the Information Commissioner or other relevant Regulatory Body and applicable to a party.

**"Dealership Accreditation Criteria"** means the following in relation to the Dealership:

- (a) is FCA-authorized, or an appointed representative of FCA-authorized principal firms;
- (b) has been trading for 12 months or more;
- (c) holds a UK bank account;
- (d) is VAT-registered,

as may be amended or updated by TfGM from time to time in its sole discretion.

**"Dealership – Applicant Agreement"** means any contract or associated documentation for the acquisition or leasing of a Compliant Vehicle as between the Dealership and the Approved Applicant in each case.

**"Dealership - Applicant Invoice"** means the invoice to be generated by the Dealership in respect of the relevant Compliant Vehicle and which shall, amongst other things, specify (i) the list price of the Compliant Vehicle, (ii) the relevant Replacement Grant and (iii) the net price of the Compliant Vehicle (being the price LESS the Replacement Grant).

**"Dealership Core Team"** means the core team of personnel from the Dealership and who shall be issued with login details to access the FSS Portal, and as identified by the Dealership upon request by TfGM.

**"Dealership Engagement Meeting"** means any meeting requested by TfGM to be held with the Dealership for the purposes of ongoing liaison and engagement in connection with this Agreement.

**"Dealership Information"** means the key information provided by the Dealership as part of its application and which may include (without limitation) (i) the Dealership's registered and any trading names, (ii) registered and any other business or trading addresses, (iii) the specific site which is the subject of this Agreement, (iv) its Dealership Representative and (v) details of the Dealership Core Team as such information may be updated from time to time.

**"Dealership Obligations"** means the obligations set out in Schedule 2 (Dealership Obligations) that Dealership is required to undertake in order for payment of Replacement Grants to take place, as may be updated or amended by TfGM in its discretion from time to time.

**"Dealership Representative"** means the authorised representative of the Dealership, as initially named in Schedule 3 and as may be replaced from time to time

**"DPA"** means the Data Protection Act 2018.

**"Eligibility Criteria"** means the criteria as specified by TfGM which an Applicant must meet in order to be eligible to receive a Replacement Grant, as may be updated or amended by TfGM in its discretion from time to time.

**"Eligible Applicant"** means any Applicant who satisfies the Eligibility Criteria and has applied to TfGM for the award of a Replacement Grant to be applied against the purchase of a Compliant Vehicle from the Dealership.

**"EIRs"** means the Environmental Information Regulations 2004 (SI 2004/3391).

**"FCA"** means the Financial Conduct Authority or any successor body.

**"FCA Authorisation" and "FCA Authorised"** means authorised by the FCA pursuant to the FSMA or exempt from FCA Authorisation under section 39 of the FSMA on the basis that it is an appointed representative of an FCA Authorised principal firm) enabling it to carry out services and activities of the type that the Dealership is required to perform pursuant to this Agreement.

**"Finance Providers"** means any party appointed by TfGM to the vehicle finance panel as part of the FSS and which is entitled to provide vehicle finance to Eligible Applicants from time to time.

**"FOIA"** means the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or any relevant Central Government Body in relation to such legislation.

**"FSMA"** means the Financial Services and Markets Act 2000.

**"FSS Marketing Guidelines"** means the publicity and marketing guidelines and instructions in respect of the CFF as provided to the Dealership by TfGM from time to time.

**"FSS Materials"** means any materials, documents, publications, information, images or logos relating to the GMCAP, the FSS and TfGM's participation in either.

**"FSS Portal"** means the Funding Support Scheme Service web hosted portal through which the parties shall primarily communicate in relation to this Agreement.

**"FSS Website"** means the website to be built and maintained by TfGM.

**"Financial Support Scheme"** or **"FSS"** has the meaning given in Introduction paragraph D.

**"Full Title Guarantee"** means that:

- (a) the Dealership has title to and is the legal owner of the Compliant Vehicle, and has the right to sell such Compliant Vehicle;

- (b) the Compliant Vehicle is properly registered with the Driver and Vehicle Licensing Agency and the whole (and not part) of such registered Compliant Vehicle is to be sold; and
- (c) the Compliant Vehicle is free of and not subject to any financing arrangements or security in connection with a financing (including any lease financing, hire purchase or unit stocking finance), and nor is subject to any rights, claims or interests held or claimed by or in favour of third parties.

**"Fund Award Notification" or "FAN"** means the confirmation of the award of a Replacement Grant which is issued by TfGM to an Eligible Applicant which notification shall contain a unique identifier that can then be used to confirm the validity of the award throughout the Replacement Grant Issuance Process which notification shall, in so doing:

- (a) confirm that the Eligible Applicant is eligible to receive a Replacement Grant;
- (b) confirm the details of the Eligible Vehicle to be traded in;
- (c) be valid for a period of three (3) months from the date of its issue (as may be extended by TfGM following an application from the Eligible Applicant); and
- (d) be used to review the progress of the Eligible Applicant in applying for and, potentially, obtaining a Replacement Grant.

**"GM CAZ Scheme"** means the clean air zone that will be implemented across Greater Manchester.

**"GMCA"** means the Greater Manchester Combined Authority.

**"Good Industry Practice"** means at any time the exercise of that degree of care, skill, diligence, prudence, efficiency, foresight and timeliness which would be reasonably and ordinarily expected at such time from a skilled and experienced person regulated by the FCA and a leading and expert supplier of services similar to the Services to a customer like TfGM, such person seeking to comply with its contractual obligations in full and complying with applicable Laws.

**"Greater Manchester Local Authorities"** means the following ten local authorities: Bolton, Bury, Manchester, Oldham, Rochdale, Salford, Stockport, Tameside, Trafford and Wigan.

**"Intellectual Property Rights" or "IPRs"** means:

- (a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in Internet domain names and website addresses and other rights in trade names, designs, Know-How, trade secrets and other rights in Confidential Information;
- (b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and
- (c) all other rights having equivalent or similar effect in any country or jurisdiction.

**"Insolvency Event"** means one or more of the following events affecting the Dealership:

- (a) the Dealership becomes unable to pay its debts or is deemed to be unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (assuming, if necessary, that section 123 aforesaid applies to the Party);
- (b) a winding-up petition is presented in respect of the Dealership;
- (c) the Dealership enters into liquidation either compulsory or voluntary (save for the purposes of a solvent reconstruction or amalgamation previously approved in writing by TfGM) or a provisional liquidator is appointed in respect of the Dealership;
- (d) a notice of intention to appoint an administrator is served in respect of the Dealership an application for an administration order in respect of the Dealership is filed at court;
- (e) an administrator, administrative receiver, receiver or manager or similar officer is appointed in respect of the whole or any part of the Dealership's assets;
- (f) the Dealership proposes to enter or enters into any composition or arrangement with its creditors generally or any class of creditors;
- (g) distress execution or other legal process is taken or steps are taken to enforce any encumbrance over all or part of the assets and / or undertaking of the Dealership; or
- (h) the Dealership is subject to an event analogous to any of (a) to (g) above in any other jurisdiction.

**"Invoice Price"** means the price specified by the Dealership for the relevant Compliant Vehicle.

**"Law"** means any law, statute, subordinate legislation regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Dealership is bound to comply.

**"Non-Compliant Vehicle"** means a vehicle which is not a Compliant Vehicle as determined by the "Drive In A Clean Air Zone Checker" and which an Applicant may seek to trade in to the Dealership.

**"Permitted Recipients"** means the parties to this Agreement, the Personnel of each party and any third parties engaged to perform obligations in connection with this Agreement.

**"Personal Data"** means any personal data (as defined under Data Protection Legislation) which is processed by one or more parties under or pursuant to this Agreement.

**"Personnel"** means any employees, agents or subcontractors deployed or engaged by the Dealership in connection with the performance of its obligations under this Agreement.

**"Records"** means all records and information that the Dealership is required to create and maintain in connection with this Agreement and as may be required by Law and Good Industry Practice.

**"Regulatory Action"** means any claim, demand, action or proceeding brought or instituted by any Regulatory Body in respect of the Dealership.

**"Regulatory Body"** means the FCA, a Relevant Tax Authority, the Information Commissioner's Office and any government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Agreement or a Party to this Agreement and **"Regulatory Bodies"** shall be construed accordingly.

**"Replacement Grant"** means a grant from either of: (a) the Clean Commercial Vehicles Fund; or (b) the Clean Taxi Fund (which relates to private hire vehicles and hackney carriages/licensed taxis) and which may relate to the grant-only or combined grant/finance options, and **"Replacement Grants"** shall be construed accordingly.

**"Replacement Grant Application"** means an application for a Replacement Grant made by any Applicant who may or may not become an Eligible Applicant.

**"Replacement Grant Processes"** means all of those processes to be undertaken by the Dealership as listed in the User Guidance Manual

**"Replacement Grant Issuance Process"** means the sequence of steps to support the process from an Applicant making an Application for a Replacement Grant through to the payment of the Replacement Grant to the Dealership and handover of the replacement Compliant Vehicle to an Approved Applicant.

**"Request For Information"** means a Request for Information under the FOIA or the EIRs.

**"Shared Personal Data"** means the personal data to be shared between the Parties under clause 19 of this Agreement. Shared Personal Data shall be confined to the following categories of information relevant to the following categories of data subject:

- (a) Dealership Personnel names, work email addresses and work telephone numbers;
- (b) TfGM Personnel names, business email addresses and business telephone numbers; and
- (c) Applicant names, home and business addresses, business email addresses, telephone number, FAN, Vehicle Details, date of birth, company name / number and, potentially, proof of income.

**"Suspension Grounds"** means any of the grounds listed in clause 20.1.

**"Term"** means the period commencing on the Commencement Date and ending on the occurrence of any of the events listed in clause 1 or on earlier termination of this Agreement.

**"Termination Notice"** means a notice in writing issued by TfGM to the Dealership terminating this agreement.

**"TfGM Data"** means:

- (a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are:
  - (i) supplied to the Supplier by or on behalf of TfGM; and/or
  - (ii) which the Supplier is required to generate, process, store or transmit pursuant to this Agreement; or
- (b) any Personal Data for which TfGM is the Data Discloser.

**"TfGM Dealership Team"** means the dealership team appointed by TfGM from time to time and as may be notified to the Dealership.

**"Training"** means training sessions and materials in respect of the FSS Portal and the FSS as may be provided by TfGM to the Dealership from time to time.

**"Vehicle Details"** means the make, model, mileage, registration number, date of first registration and VIN number of a Vehicle and such other details as TfGM may from time to time require.

**"Working Day"** means 9.00a.m – 5.00p.m on any day (other than a Saturday, Sunday or a public holiday) when banks in London are open for business.

## **2 INTERPRETATION**

In this Agreement, unless the context otherwise requires:

- 2.1 references to the singular include the plural and vice versa, and references to one gender shall include all other genders;
- 2.2 references to a person include individuals, firms, partnerships, bodies corporate and unincorporated associations;
- 2.3 references to a party to this Agreement include references to the successors or assigns (immediate or otherwise) of that party in accordance with clause 24 (Assignment and Subcontracting);
- 2.4 references to any statute or statutory provision includes a reference to that statute or statutory provision as from time to time amended, extended or re-enacted and any regulations made under the same provided that in the event that the amendment, extension or re-enactment of any statute or statutory provision or introduction of any new statutory provision has a material impact on the obligations of either party, the parties will negotiate in good faith to agree such amendments to this Agreement as may be appropriate in the circumstances;
- 2.5 the headings in this Agreement are for ease of reference only and shall not affect its interpretation;
- 2.6 use of the words "include" or "including" and words of similar effect shall not be deemed to limit or to prejudice the effect of the general related words;
- 2.7 the schedules to this Agreement form part of it; and

- 2.8 if there is any conflict, ambiguity or inconsistency between the parts of this Agreement, the following order of precedence shall apply:
- (a) the clauses of this Agreement;
  - (b) the schedules to this Agreement; and
  - (c) any document referred to in this Agreement or the schedules hereto.

## SCHEDULE 2 Dealership Obligations

### 1 INTRODUCTION

This schedule sets out the obligations for Dealerships to undertake within the Financial Support Scheme.

Category	Dealer Task/Obligation	Support	
		Systems	People
Business Relationship	Work collaboratively with Finance Providers in the grant/finance product option - discuss the replacement Compliant Vehicle and suitable Finance product types with an Applicant, so the Finance proposal presented to the Finance Provider is more likely to be approved	N/A	TfGM Customer Contact team
	Notify TfGM of any change of Dealership bank details via the FSS Portal		
Dealer Education	Dealership personnel to complete FSS Portal training provided by TfGM as required, and to also complete revision training to have required knowledge to assist Applicants with the Financial Support Scheme	CVFS	
Digital Security	Create individual User accounts for employees to access the FSS Portal, not one shared User account for the Dealership		
	Ensure User IDs and passwords for the FSS Portal are not shared between employees		
	Ensure User IDs and passwords for the FSS Portal are removed for personnel who are no longer employed by the Dealership by contacting customer services via the FSS portal		
Ordering Process Conformance	Dealership must check and confirm V5C document (which has been uploaded by Applicant onto the FSS Portal) at point of validating the part exchange vehicle against the address declared in the application		
	Dealership to confirm Applicant exchanging/purchasing vehicle is the same as the approved Applicant named on the FSS portal		
	Dealership to confirm on FSS Portal that the non-compliant vehicle being presented for part-exchange is the same vehicle that appears in the FSS Portal		
	Replacement vehicle to be of the same vehicle category		
	Replacement vehicle to be supplied from Dealerships' own stock		
	Pass good title to Applicant on delivery of compliant vehicle		
	Dealership to take ownership of non-compliant vehicle part exchanged on compliant vehicle		
	Perform mandatory validation checks via the FSS portal: - Fund Award Notification (FAN) validity - Part-exchange vehicle identity - Applicant ID		
	Dealership will be liable for return of funds if the checks have not been correctly performed		



	<p>Ensure all details are current and correct in relation to replacement compliant vehicle. Dealer to progressively update the status of the replacement vehicle within the FSS Portal:</p> <ul style="list-style-type: none"> <li>- Replacement compliant vehicle details</li> <li>- Delivery/Handover date</li> <li>- Confirm if OZEV grant applies – inform Applicant that no TfGM grant is available if they choose a replacement vehicle that has an OZEV grant.</li> </ul>		
	Dealership must ensure that any change to the handover date or replacement vehicle details are updated in the FSS portal.		
	Dealership to confirm on FSS Portal that the vehicle handover and handover paperwork is fully complete		
Settlement	Grant payments from TfGM will only be made during business working days (excluding Bank holidays) Mon-Fri.	CVFS	
	Request for same day grant payment must be made between the hours of 08:00h and 16:00h		
	Dealership must attach a copy of a tax invoice between Dealer and Applicant from the Dealership's accounting system (to include grant amount, part-ex identifiers, and deposit) and invoice to TfGM for the grant amount		
Returns Process	A returned vehicle must be registered by the Dealership on the FSS Portal		
	All necessary updates must be performed by the Dealership in the FSS Portal for a returned vehicle		
Conformance	Dealership must relay to the Applicant that they must contact TfGM to request a new Fund Award Notification.		
	Dealership must use the GOV.UK Clean Air Zone vehicle checker to determine if the replacement vehicle is CAZ compliant	GOV.UK website	
	If the Dealership has been removed from the accredited list and a vehicle has been returned by the Applicant, the Dealership must still return the grant money to TfGM if the Applicant is not taking an alternative vehicle from that Dealer	CVFS	
Scheme Auditing	Any fixes to process or data must be implemented by the Dealership	CVFS	

**SCHEDULE 3**  
**Dealership Information**

**1 DEALERSHIP NAME**

**2 REGISTERED ADDRESS**

**3 TRADING ADDRESS**

**4 DEALERSHIP REPRESENTATIVE**