

# ELECTRIC BUS VEHICLE SCHEME IN CARDIFF

## TERMS AND CONDITIONS

### DEFINITIONS

1. In these Terms and Conditions, the following terms have the following meanings –
  - a. "**Application**" means the Grant Recipient's application for the Grant, as annexed or referred to (as the case may be) at Schedule 3 (*Application*);
  - b. "**Clause**" means a clause of these Terms and Conditions;
  - c. "**Council**" means the County Council of the City and County of Cardiff;
  - d. "**Council Representative**" means the designated contact person for the Council as notified in writing to the Grant Recipient from time to time;
  - e. "**Electric Buses**" means the vehicles to be acquired as set out in the Scheme;
  - f. "**Eligible Costs**" means costs reasonably incurred by the Grant Recipient in undertaking the purchase of electric bus vehicles that does not increase the size of the fleet and/or supporting electric charging infrastructure excluding VAT and "**Non-Eligible Costs**" shall be construed accordingly;
  - g. "**Freedom of Information Legislation**" means the Freedom of Information Act 2000, any secondary legislation and/or statutory guidance made or published under or in connection with it, and the Environmental Information Regulations 2004;
  - h. "**Grant**" means the grant as set out in Schedule 1 (*Grant and Indicative Payment Profile*);
  - i. "**Grant Offer Letter**" means the letter to which these Terms and Conditions are attached;
  - j. "**Grant Recipient**" means the grant recipient named in the Grant Offer Letter;

- k. "**Grant Recipient Representative**" means the designated contact person for the Grant Recipient as notified in writing to the Council from time to time;
  - l. "**Indicative Payment Profile**" means the indicative payment profile set out at Schedule 1 (*Grant and Indicative Payment Profile*);
  - m. "**Invitation to Bid**" means the invitation to apply for the Grant issued by the Council and attached at Schedule 2 (*Invitation to Bid*);
  - n. "**Notification Events**" means the notification events set out at Schedule 4 (*Notification Events*);
  - o. "**Purpose**" means the purpose for which the Grant is made, being to increase the use of electric buses primarily within the city of Cardiff as set out in the Welsh Government Grant Letter;
  - p. "**Schedule**" means a schedule to these Terms and Conditions;
  - q. "**Scheme**" means the purchase of electric bus vehicles that do not increase the size of the fleet and/or supporting electric charging infrastructure for the Purpose as further detailed in the Invitation to Bid and the Application;
  - r. "**Terms and Conditions**" means these terms and conditions including the Clauses and the Schedules and any document which is expressly referred to as being incorporated into the Terms and Conditions;
  - s. "**Warranties**" has the meaning given in Clause 11;
  - t. "**Welsh Government Grant Letter**" means the grant letter dated 14<sup>th</sup> March 2022 issued to the Council by the Welsh Government, a copy of which is annexed at Schedule 5 (*Welsh Government Grant Letter*); and
  - u. "**Working Day**" means the hours of 09:00 to 17:00, Monday to Friday, excepting any day which is a public holiday in England and Wales or in Wales only.
2. Any reference to any legislation whether domestic or international law will include all amendments to and substitutions and re-enactments of that legislation in force from time to time.
3. The Clauses, Schedules and other documents stated to be incorporated into these Terms and Conditions are to be read together with the intention that they

be construed as being consistent with one another. Should any unavoidable inconsistency, conflict or ambiguity arise, the order of precedence for resolving it shall be as follows –

- a. the Clauses;
- b. the Schedules (provided that Schedule 2 (*Invitation to Bid*) shall take precedence over Schedule 3 (*Application*); and
- c. any other documents stated to be incorporated into these Terms and Conditions.

## **GENERAL**

4. The Grant is offered to the Grant Recipient to contribute to Eligible Costs excluding VAT.
5. The Grant Recipient shall -
  - a. deliver the requirements of the Scheme in accordance with any timescales set out in the Scheme;
  - b. report regularly to the Council Representative regarding progress in delivering the Scheme;
  - c. make timely and clearly evidenced claims for payment of the Grant;
  - d. ensure any vehicles acquired using grant will be insured, maintained and serviced in accordance with the supplier maintenance schedules by the operator;
  - e. ensure any vehicles displaced by the electric buses in the bus operator's fleet are only used to replace more polluting buses and not increase the size of the fleet;
  - f. ensure the electric bus vehicles are appropriately accredited and manufactured with proven technologies that will perform in-service for the expected level of performance; and
  - g. ensure the electric bus vehicles meet the specification in Schedule 6.
6. The Grant Recipient shall promptly inform the Council if the Grant Recipient Representative leaves the Grant Recipient or ceases to fulfil that role for any reason and provide contact details for the replacement Grant Recipient Representative as soon as possible.

7. Under no circumstances may the Grant be claimed or used for Non-Eligible Costs, or to cover costs incurred for those purposes.
8. The offer of the Grant is conditional on the Grant Recipient providing the Council with the following information and evidence, in a form reasonably satisfactory to the Council:
  - a. evidence confirming that it can pay the balance of the Eligible Costs (that is the share of the costs not being provided by the Council in the form of this Grant); and
  - b. quarterly submissions of progress reports and expenditure.
9. The Grant Recipient must ensure that the delivery timescales and spend set out in the Scheme are met to achieve acquisition of the Electric Buses and the supporting electric charging infrastructure with final acquisition costs being paid by 31<sup>st</sup> March 2024. Should the Grant Recipient fail to do so or should the Council reasonably conclude that the information and evidence provided prior to that deadline is unsatisfactory, the Council shall be entitled to withdraw this offer and/or the Grant.
10. The provision of the Grant is also subject to the following:
  - a. that the Grant Recipient complies with these Terms and Conditions and continues to do so (where relevant) after payment of the Grant;
  - b. that the Grant Recipient will allow access for the Council or its representatives to scheme sites and to relevant records for the purposes of monitoring, evaluation and audit. This includes any national audit requirements. The Grant Recipient must retain all accounting records including invoices and receipts relating to the grant funded activities for at least seven (7) years from the date of payment of the final element of the Grant;
  - c. if at any stage the Grant Recipient should become aware of, or suspect, any misappropriation or diversion of funds or possible fraud or corruption relating to the scheme activities funded by this Grant, the Grant Recipient must report the matter immediately to the Council;
  - d. the Grant Recipient will provide route service information that the Electric Buses have been used on and the absolute total mileage (broken down by route) travelled by each Electric Bus in the fleet will be provided to the

Council annually following the start of operation of the Electric Buses for a period of five (5) years;

- e. that the Council will not be responsible for the activities of any person or third party engaged by the Grant Recipient as a result of these terms and conditions, nor will the Council be liable for any costs incurred by the Grant Recipient in terminating the engagement of any such person; and
  - f. that if any changes occur which, in the opinion of the Council, significantly impair the delivery of the Scheme, the Council and the Grant Recipient will consult at the earliest opportunity on measures to resolve the problem and identify possible courses of action. In any event, the Council may at its sole discretion modify or terminate the Grant in any circumstances by giving three (3) months' notice in writing.
11. The Grant Recipient is required to secure (so far as reasonably available and at reasonable cost) -
- a. warranties for the Electric Buses and batteries for a minimum of three (3) years with an option to extend this to five (5) years; and
  - b. warranties against power train failure of the Electric Buses for a minimum of three (3) years with an option to extend this to five (5) years

together referred to as the "**Warranties**". Should the Grant Recipient be unable to procure the Warranties or the Grant Recipient maintains that the cost of the Warranties is not reasonable, the Grant Recipient shall immediately notify the Council and the Parties shall meet and discuss in good faith how to protect their respective interests. The Council shall in no circumstances bear any liability for matters which are intended to be covered by the Warranties or if the Grant Recipient fails to secure the Warranties.

12. Future potential franchising arrangements are not known at this time. The Grant funding does not account for any future franchising arrangements. Any matters that relate to impacts on incumbent bus services resulting from a future franchise are a matter to be taken up with the franchiser at the relevant time.

### **ISSUE OF FUNDS**

13. No funds will be issued until the Council has received an original of the Grant Offer Letter, signed on behalf of the Grant Recipient accompanied with a signed certificate of guarantee to confirm parent company and/or board endorsement.

14. All funds requested must be accounted for in GB pounds sterling.
15. The Grant will be paid to the Grant Recipient on a reimbursement basis excluding VAT, provided that:
  - a. the Grant Recipient reasonably and properly incurs any Eligible Costs within the period to which the relevant instalment of Grant applies; and
  - b. the Council receives a claim for payment of the Grant in full compliance with these Terms and Conditions.
16. The Council will endeavour to pay the Grant Recipient within thirty (30) days of being satisfied that the Grant Recipient has complied with all relevant requirements of these Terms and Conditions.
17. The Grant Recipient's claims for payment of Grant must include all relevant information and supporting evidence required for processing payment of the invoice. The Council may request (and the Grant Recipient must provide) any additional information regarding the claim for payment of the Grant.
18. When submitting the claim for payment of the Grant, the Finance Officer or another responsible officer for the Grant Recipient must certify the claim for payment of the Grant and any accompanying detailed statements of expenditure and/or projected expenditure statement, as follows:

“I certify that all the amounts detailed above have been actually and necessarily expended under the Grant, in accordance with the Terms and Conditions set out in the Grant Offer Letter for the period to [INSERT DATE].”
19. Statements so certified may be accepted as a proper discharge for the monies provided from the Council and documentary evidence of the various payments made by the Grant Recipient will not normally be required. However, the Council reserves the right to call for and examine such evidence prior to making any payments under these Terms and Conditions.

## **REPORTING**

20. Reporting of route service information, route mileage that the Electric Buses have been used on and the absolute number of miles travelled by each electric bus in the fleet (broken down by route) will continue for a period of five (5) years

from an Electric Bus entering service. Data shall be submitted to the Council in an easily accessible format (Microsoft Word and/or Excel).

21. All data will be treated as potentially commercially confidential and will be aggregated and anonymised prior to any publication.
22. The Council may publish analysis based on the data reporting and shall consult with the Grant Recipient, to ensure an adequate opportunity to make representations and so that any commercial confidentiality is protected (subject always to the Council's obligations under the Freedom of Information Legislation).
23. The Council may withhold or seek a reimbursement of Grant funding if the Grant Recipient does not comply with the reporting requirements.

#### **FREEDOM OF INFORMATION**

24. The Council may be obliged to disclose information relating to the grant and this offer under the Freedom of Information Legislation or under any other applicable law.
25. The Grant Recipient must assist and cooperate with the Council as reasonably requested, to enable the Council to comply with those requirements.

#### **VALUE FOR MONEY/PROCUREMENT REQUIREMENTS**

26. The Grant Recipient must secure the best value for money in all purchases of goods and services made for the purposes of the Scheme and ensure compliance with any applicable procurement rules.

#### **SUSPENSION, REDUCTION, WITHDRAWAL AND REPAYMENT**

27. The Council may require repayment of any of the Grant already paid, together with interest from the date of payment, if required to do so as a result of a decision of the Welsh Government or any obligation under law.
28. If the Grant Recipient fails to comply with any of the Terms and Conditions, the Council may reduce, suspend, or withhold Grant payments, or require all or any part of the Grant to be repaid. The Council may exercise those rights if:

- a. any Electric Bus(es) and/or the infrastructure as set out in the Scheme is subsequently not bought; or
- b. any Electric Bus(es) is/are bought but does/do not come into operation within twelve (12) months of the date of claim for payment of the relevant part of the Grant; or
- c. any Electric Bus(es) and/or infrastructure does/do not operate in the way set out in the Scheme and the Purpose for five (5) years following the date of coming into service; or
- d. the reporting required in these Terms and Conditions is not provided to the Council; or
- e. any Electric Bus(es) bus and/or the infrastructure is/are sold within five (5) years of its purchase; or
- f. the Grant Recipient purports to transfer or assign any rights, interests or obligations arising under the Grant Offer Letter and/or the Terms and Conditions or otherwise relating to the Grant without the agreement in advance of the Council; or
- g. there is a change in control or ownership in the Grant Recipient, or the Grant Recipient ceases to operate or change the nature of its operations to an extent which the Council considers to be significant or prejudicial to the satisfactory continuance of the Scheme; or
- h. the Grant Recipient is the subject of a proposal for a voluntary arrangement; or has a petition for an administration order or a winding up order brought against it; or the Grant Recipient passes a resolution to wind up (other than for the purpose of a bona fide solvent reconstruction); or makes any composition, arrangement, conveyance or assignment for the benefit of the Grant Recipient's creditors, or purports to do so; or are subject to the appointment of a receiver, administrator or liquidator; or, being a charity, are struck from the register at the Charity Commission, or, being a company, are struck from the register at Companies House; or
- i. any information provided in the application for funding or in a claim for payment or in subsequent or supporting correspondence is found to be materially incorrect or incomplete to an extent which the Council considers to be material; or



- j. if the Grant Recipient takes inadequate measures to investigate and resolve any reported irregularity; or
  - k. it appears to the Council that the Grant Recipient no longer requires grant assistance in order to carry out the Scheme; or
  - l. it appears to the Council that other circumstances have arisen or events have occurred which are likely significantly to affect the Grant Recipient's ability to complete or continue the Scheme in a satisfactory manner; or
  - m. a charge is secured against a fixed asset acquired or improved wholly or partly using financial assistance provided under the Grant; or
  - n. the Grant Recipient commits any of the following acts:
    - (i) any offences under the Bribery Act 2010;
    - (ii) any offences in respect of fraudulent acts set out in the Fraud Act 2006 or any other Act; or
    - (iii) defrauding or attempting to defraud or conspiring to defraud the Council.
29. Any repayment of Grant required by the Council shall be made within thirty (30) days of the date of notice to repay, or within such longer period as the Council may in writing determine.
30. Where the Council requires the Grant Recipient to repay any amount, the Council may recover that amount by withholding or deducting the amount from any sum due to the Grant Recipient from the Council under an offer of grant for any other schemes or activities under any scheme or programme administered by the Council.
31. A decision to ask the Grant Recipient to repay the grant will be communicated by letter, and the Grant Recipient must make that repayment within thirty (30) days of the date of that letter or within any later reasonable deadline agreed by the Council in writing.
32. Ordinary interest will be calculated from the date of the Grant payment to the date of repayment at the rate of two per cent (2%) above the base rate of the Bank of England but, if the Grant Recipient fails to make the relevant repayment by the relevant deadline, further interest on the outstanding sum (inclusive of ordinary interest) will accrue after that deadline, at the statutory rate of interest under section 6 of the Late Payment of Commercial Debts (Interest) Act 1998 or any other rate required by law in the circumstances, if higher.

33. Any failure by the Council to exercise its rights, or any delay in doing so, shall not constitute a waiver of those rights unless the Council confirms that waiver in writing. Furthermore, any such waiver shall not be taken as a precedent for any other, or subsequent, circumstances.

### **LAW AND JURISDICTION**

34. If this offer is accepted, the resulting agreement will be governed by the law of England and Wales as it applies in Wales and is subject to the exclusive jurisdiction of the courts of England and Wales sitting at Cardiff, subject only to the ability of the Cardiff Courts to deal with any matter.

### **WARRANTIES**

35. In accepting the grant and any payment of it, the Grant Recipient represents, warrants and undertakes that:

- a. the Grant Recipient has full capacity and authority to undertake the Scheme and to agree to the Terms and Conditions;
- b. the Grant Recipient has obtained any consents necessary to undertake the Scheme;
- c. the information and evidence in the Application remains true, complete and accurate, and that the Grant Recipient's circumstances have not materially changed since the date of submission of the Application; and
- d. the Grant Recipient will comply with all Terms and Conditions and is not aware of the existence of any circumstances entitling the Council to reduce or withdraw the Grant or to require the Grant Recipient to repay it.

36. In accepting the Grant and any payment of it, the Grant Recipient represents and warrants that it is not aware of any circumstances which might materially and adversely impact on its ability to undertake the Scheme or comply with the Terms and Conditions including (without limitation):

- a) any contractual obligations;
- b) any legal or administrative proceedings (such as any litigation or any winding-up or insolvency proceedings); and
- c) any circumstances which might give rise to such proceedings.

## **LIMITATION OF LIABILITY**

37. The Council's liability to the Grant Recipient is limited to payment of the Grant (subject to the Grant Recipient's compliance with the Terms and Conditions). The Grant Recipient remains entirely responsible for all risks and liabilities in undertaking the Scheme and (to the fullest extent permitted by law) the Council shall have no liability for any consequence, direct or indirect, that may arise through the Grant Recipient's undertaking of the Scheme or its use of the Grant.

## **INDEMNITY**

38. The Grant Recipient agrees to indemnify and hold harmless the Council against all claims, demands, actions, proceedings, costs, charges, expenses, losses, damages or other liabilities arising from its acts or omissions, or those of its employees, contractors, agents or partners, in undertaking the Scheme and in using the Grant.

## **DURATION OF OFFER**

39. This offer remains open for one (1) calendar month from the date of the Grant Offer Letter, at which point it expires. If the Grant Recipient wishes to accept this offer, it must ensure that the Council receives formal acceptance, in compliance with the acceptance requirements set out in the Grant Offer Letter, on or by that time.

## **COMPLIANCE WITH THE WELSH GOVERNMENT GRANT LETTER**

40. The Welsh Government Grant Letter is incorporated into and forms part of these Terms and Conditions.

41. The Grant Recipient is deemed to be fully aware of the provisions of the Welsh Government Grant Letter, including its Conditions and Schedules (each as defined therein).

42. The Grant Recipient is further deemed to be aware that –

a. any failure by the Council to comply with its obligations under the Welsh Government Grant Letter which is caused or contributed to by any act or omission of the Grant Recipient will –

i. amount to a material breach of these Terms and Conditions; and

- ii. entitle the Council to suspension, reduction, withdrawal and/or repayment of all or any part of the Grant in accordance with Clauses 27 and/or 28 above; and
- b. any repayment of grant monies under the Welsh Government Grant Letter for which the Council becomes liable shall entitle the Council to suspension, reduction, withdrawal and/or repayment of an equivalent amount of Grant (plus costs and interest) from the Grant Recipient in accordance with Clauses 27 and/or 28 above.

43. The Grant Recipient undertakes –

- a. not to cause the Council to be in breach of any of the Council's obligations under the Welsh Government Grant Letter; and
- b. to provide all reasonable assistance to the Council in complying with the Council's obligations under the Welsh Government Grant Letter (including providing any information required by Welsh Government and allowing audit of its accounts and records by Welsh Government).

44. The Grant Recipient shall notify the Council if any Notification Event occurs immediately (and in any event within no more than two (2) Working Days of becoming aware of the occurrence of a Notification Event).

## SCHEDULE 1 – GRANT

1. Amount of Grant - £[**to be completed**]
2. Indicative Payment Profile – [**to be inserted**]

## **SCHEDULE 2 – INVITATION TO BID**

The Invitation to Bid annexed to this Schedule 2 is incorporated into and forms part of these Terms and Conditions.

***[Drafting Note: attach a full copy of the Invitation to Bid.]***

### SCHEDULE 3 - APPLICATION

The Application which is [annexed to this Schedule 3][identified below][***delete as appropriate***] is incorporated into and forms part of these Terms and Conditions.

***[Drafting Note: EITHER copy the Application in full and attach it to this Schedule, OR include a statement along the following lines – " The Application submitted by [name of applicant] on [date] titled [insert full title] version no. [insert version no. if applicable, or delete]"***

## **SCHEDULE 4 – NOTIFICATION EVENTS**

The Notification Events are listed below:

1. repayment of any part of the Grant is required in accordance with any relevant legislation;
2. the Grant Recipient fails to comply with any of the Terms and Conditions;
3. the Grant, in full or in part, is not being used for the Purpose;
4. the Grant Recipient fails to provide information about the Grant or the Scheme requested by the Council, Welsh Government or any UK subsidy enforcement body or any of its or their auditors, agents or representatives;
5. the Grant Recipient has reasonable grounds to believe that it and/or any of its officers, employees, agents, consultants and/or sub-contractors of any tier are or have been involved in fraudulent activity relating to the Grant and/or the Scheme;
6. the Council has made an overpayment of Grant;
7. there is a duplication of funding in respect of any part of the Purpose and/or the Scheme. This includes but is not limited to any payments received by the Grant Recipient in relation to the effects of the spread of the Coronavirus (COVID-19) from its insurance provider (cancellation/business disruption insurance), the UK Government's Coronavirus Job Retention Scheme and/or any Welsh Government fund/scheme;
8. any declaration made in Clause 35 and/or 36 (Warranties) is, or proves to be, incomplete, untrue or misleading, incorrect in any respect or, if repeated at any time with reference to the facts and circumstances then existing, would be incorrect;
9. there has been a modification (qualification, adverse or disclaimer) to the auditor's opinion on the Grant Recipient's financial statements;
10. an event or circumstance has occurred and is outstanding which constitutes (or, with the expiry of a grace period, the giving of notice, the making of any determination or any combination thereof, would constitute) a default or termination event (howsoever described) under any other agreement or instrument which is binding on the Grant Recipient or to which any of its assets is subject;



11. a moratorium in respect of all or any of the Grant Recipient's debts or assets or a composition or an agreement with its creditors is agreed, applied for, ordered or declared;
12. the Grant Recipient stops or suspends payment of any debts or is unable, or admits in writing its inability, to pay its debts as they fall due;
13. the value of the Grant Recipient's assets is less than its liabilities (taking into account contingent and prospective liabilities);
14. the Grant Recipient commences negotiations, or enters into any composition, compromise, assignment or arrangement, with one or more of its creditors with a view to rescheduling any of its indebtedness (because of actual or anticipated financial difficulties);
15. any action, proceedings, procedure or step is taken in relation to the Grant Recipient in relation to:
  - 15.1. the suspension of payments, a moratorium in respect of any indebtedness, winding up, dissolution, administration or reorganisation (using a voluntary arrangement, scheme of arrangement or otherwise); or
  - 15.2. a composition, compromise, assignment or arrangement with any of its creditors; or
  - 15.3. the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of it or any of its assets;
16. a statutory demand is issued against the Grant Recipient;
17. the Grant Recipient ceases, or threaten to suspend or cease, to carry on all or a material part of its business;
18. there is a change in the Grant Recipient's constitution, status, control or ownership and/or its external auditors resign;
19. the Grant Recipient fails to comply with any statutory reporting obligations which are applicable to it (including, but not limited to, filing requirements at Companies House, the Charity Commission and/or the Financial Conduct Authority);
20. there is any change, whether permanent or temporary, in the Grant Recipient's shareholders, directors, trustees, partners and/or personnel which may affect its ability to deliver the Scheme and/or the Purpose;

21. any event occurs or circumstances arise which gives reasonable grounds for believing that providing the Grant and/or the continuation of the arrangements contemplated by these Terms and Conditions could bring the Council into disrepute; and/or
22. any event occurs or circumstances arise which gives reasonable grounds for believing that the Grant Recipient may not, or may be unable, to perform or comply with any of its obligations under the Terms and Conditions.

## SCHEDULE 5 – WELSH GOVERNMENT GRANT LETTER

**[Drafting Note: copy to be annexed]**

## **SCHEDULE 6 – ELECTRIC BUS VEHICLE SPECIFICATION**

- 6.1 All vehicles procured via this grant must meet current zero emissions standards.
- 6.2 The operator shall provide vehicles suitable for the said purpose which comply with the Wheelchair Accessible Vehicle Specification and at all times shall keep the same in a proper state of mechanical repair and condition. In addition, the operator shall fulfil all statements of intent that were made when applying for his/her Public Service Vehicle Operators Licence, including in regard to maintenance.
- 6.3 Any vehicle(s) procured via this grant must:
- i) Be fitted with a front and rear destination box and electronic equipment for prominently displaying any terminal point and subsidiary information and route number, and must be illuminated in the hours of darkness,
  - ii) Be fitted with a power operated entrance door which is capable of being remotely controlled by the driver at all times,
  - iii) Be fitted with USB charge points and have accessible WiFi
  - iv) Be fitted with electronic audio visual next stop information in English and Welsh.