**00/00/ 2015**

**CONTRACT**

**For the provision of 2 New Tata LP 713 M 28 Seater Buses**

**Between**

**SAINT HELENA GOVERNMENT**

**-and-**

**XXXXXXXX**

**CONFIDENTIAL**

**Section 1**

**Form of Contract**

**Contract for:**

**THE PROVISION OF: 2 New Tata LP 713M 28 Seater Buses** as specified in Section 4

**THIS CONTRACT is made**

**BETWEEN : Derek Henry, Deputy Director of Environment & Natural Resources Directorate** for the St Helena Government, (“SHG”); St Helena Island,

**AND : XXXXXXXXXXXXXX** (“the Contractor”)

(together “the Parties”).

**WHEREAS:**

1. SHG requires the Contractor to provide the Goods as specified in Section 4 (“the Specification”) for the St Helena Government (“the Authority”); and
2. The Contractor has agreed to provide the Goods on the terms and conditions set out in this Contract.

**IT IS HEREBY AGREED** as follows:

1. **Documents**

This Contract shall be comprised of the following documents:

Section 1 Form of Contract

Section 2 General Conditions

Section 3 Special Conditions

Section 4 Specifications

Section 5 Schedule of Prices

This Contract constitutes the agreement between the Parties in respect of the Contractor’s obligations and supersedes all previous communications between the Parties, other than as expressly provided for in Section 3 and/or Section 5.

1. **Contract Signature**

If the Original Form of Contract is not returned to the Contract Officer (as identified in Section 3) duly completed, signed and dated on behalf of the Contractor within 30 days of the date of signature on behalf of SHG, SHG will be entitled, at its sole discretion, to declare this Contract void.

**No payment will be made to the Contractor under this Contract until a copy of the Form of Contract, signed by or on behalf of the Contractor, is returned to the Contract Officer.**

1. **Commencement and Duration**

This Contract shall commence on 01 Date 2015 and shall, unless the Contract is terminated earlier in accordance with its terms and conditions, terminate when both parties have fulfilled their respective obligations, save for any warranties or any other part of this contract which specifically survive termination.

1. **Financial Limit**

The Payments under this Contract shall not, unless varied in accordance with the terms herein, exceed £000.000 (“the Financial Limit”) which is the Contract Price for the said Goods.

1. **Time of the Essence**

Time shall be of the essence as regards the performance by the Contractor of his obligations under this Contract.

**For and on behalf of the Authority**

Name: Signature:

Position: Date:

Witnessed by:

Name: Signature:

Position: Date:

**For and on behalf of the Contractor**

Name: Signature:

Position: Date:

Witnessed by:

Name: Signature:

Position: Date:

**Section 2**

**General Conditions**

1. Defined Terms and interpretation
   1. In these terms and conditions the words and expressions below will be interpreted to have the meanings adjacent to them:-
      1. “**Affected Party**” means, in the context of Clause 3737, the Party whose obligations under the Contract are affected by the Force Majeure Event;
      2. "**Authority**" means the St Helena Government, (“SHG”); St Helena Island;
      3. **“Commencement Date”** means the date the Contract is due to commence as specified in Clause 3, Section 1.
      4. "**Confidential Information**" means information, data and material of any nature which either Party may receive or obtain in connection with the operation of the Contract and:
2. which comprises Personal Data
3. the release of which is likely to prejudice the commercial interests of the Authority or the Contractor; or
4. which is a trade secret;
   * 1. "**Contract**" means the agreement between the Authority and the Contractor comprising the Order, these terms and conditions and schedules hereto, the Specification, and for the avoidance of doubt all other terms, conditions or warranties other than any terms, conditions or warranties implied by law in favour of the Authority are excluded from the agreement between the Authority and the Contractor unless expressly accepted in writing by the Authority;
     2. “**Contract Period**” means (subject to earlier termination in accordance with its terms or by operation of law) the duration of the Contract, starting on the Commencement Date, as set out in the Order and/or the Specification (or if the Order and/or the Specification does not set out such a duration, the period from the date of the Order until the Authority terminates by giving not less than 1 month’s notice in writing to the Contractor);
     3. "**Contract Price**" means the monies payable by the Authority to the Contractor for the performance by the Contractor of its obligations under the Contract and shall include all royalties, licence fees or similar expenses in respect of the making, use or exercise by the Contractor of any Intellectual Property or Intellectual Property Rights for the purpose of performing the Contract;
     4. “**Contract Standard”** means such standard as complies in each and every respect with all relevant provisions of the Contract;
     5. "**Costs**" includes costs, charges, outgoings and expenses of every description;
     6. “**Force Majeure Event**” means one or more of the following to the extent that it is not attributable to the Contractor or the Contractor’s staff: war, civil war (whether declared or undeclared), riot or armed conflict; radioactive, chemical or biological contamination; pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speed; acts of terrorism; explosion; fire; flood; extraordinarily severe weather conditions which are both unforeseen and for which precautions are not customarily taken by prudent business organisations so as to avoid or mitigate the impact thereof; industrial action which affects the supply of the Goods, but which is not confined to the workforce of the Contractor or is site specific; pestilence; the actions of governmental authorities to the extent that such actions are implemented either pursuant to emergency powers or otherwise outside the usual course of governmental business; or Act of God, or other event which is beyond the reasonable control of the Party in question and could not have been avoided or mitigated by the exercise of all reasonable care by that Party and further provided that such event materially affects the ability of the Party seeking to rely upon it to perform its obligations under the Contract;
     7. "**Goods**" means all goods, materials or articles that the Contractor is required to supply under this Contract, as specified in Section 4;
     8. "**Insolvent**" means:
        1. if the Contractor is an individual, that individual or where the Contractor is a partnership, any partner(s) in that firm becomes bankrupt or shall have a receiving order, administration order or interim order made against him, or shall make any composition or scheme of arrangement with or for the benefit of his creditors, or shall make any conveyance or assignment for the benefit of his creditors, or shall purport to do so, or any application shall be made for sequestration of his estate, or a trust deed shall be granted by him for the benefit of his creditors;
        2. if the Contractor is a company, the passing by the Contractor of a resolution for its winding-up or the making by a court of competent jurisdiction of an order for the winding-up of the Contractor or the dissolution of the Contractor, or if an administrator is appointed, or documents are filed with the court for the appointment of an administrator or notice of intention to appoint an administrator is given by the Contractor or its directors or by a qualifying floating charge holder, or the appointment of a receiver over, or the taking possession or sale by an encumbrancer of any of the Contractor's assets, or if the Contractor makes an arrangement with its creditors generally or makes an application to a court of competent jurisdiction for protection from its creditors generally; and
     9. "**Intellectual Property**" means any and all patents, trade marks, service marks, domain names, registered designs, utility models, applications for and the right to make applications for any of such rights, inventions, Know-How (as defined below), unregistered trade marks and service marks, trade and business names, including rights in any get-up or trade dress, copyrights, (including rights in computer software and in websites) unregistered design rights and other rights in designs and rights in databases, subsisting anywhere in the world; the right for the maker of a database to prevent extraction or reutilisation or both of the whole or a substantial part of the content of that database, as described in Directive 96/9/EC on the legal protection of databases; rights under licences, consents, orders, statutes or otherwise in respect of any rights of the nature specified in this definition "Intellectual Property"; and rights of the same or similar effect or nature as or to those above in each case in any jurisdiction;
     10. "**Intellectual Property Right**" includes the right to exploit any Intellectual Property or any right which is similar or analogous to any Intellectual Property; any moral right; any licence, right or interest of any kind arising out of or granted or created in respect of any Intellectual Property; any right to bring an action for passing off or any similar or analogous proceeding;
     11. “**In writing**” shall be interpreted to include any document which is recorded in manuscript, typescript, any electronic communication but excluding mobile telephone text messages;
     12. "**Location**" means the location for the delivery of the Goods as set out in the Contract or as otherwise agreed in writing between the Authority and the Contractor;
     13. "**Loss**" includes losses, liabilities, claims, costs, charges and outgoings of every description (including legal expenses), compensation payable under contracts with suppliers and/or customers, loss of normal operating profits, loss of opportunity, loss of goodwill, loss of revenue from related contracts and pure economic loss;
     14. "**Order**" means any purchase order placed on the Contractor by the Authority for the supply of the Goods.
     15. “**Party**” means any party to the Contract individually and “Parties” refers to all of the parties to the Contract collectively. A Party shall include all permitted assigns of the Party in question. All persons who are not a Party to the Contract are third parties;
     16. "**Person**" includes any individual, partnership, firm, trust, body corporate, government, governmental body, authority, agency, unincorporated body of persons or association and a reference to a person includes a reference to that person's successors and permitted assigns;
     17. "**Personal Data**" means data which relates to a living individual who can be identified from such data, and/or from such data and other information which is in the possession of, or is likely to come into the possession of the Contractor and includes any expression of opinion about an individual and any indication of the intentions of the Contractor in respect of an individual;
     18. “**Receipt of Order**” means,
         1. if personally delivered, at the time of delivery;
         2. if sent by facsimile, at the time of transmission;
         3. if posted, at the expiration of 48 hours
         4. if sent by electronic mail, at the time of transmission, provided that a telephone call is made to the recipient warning the recipient that an electronic mail message has been sent.
   1. In these terms and conditions, all references to any statute or statutory provision shall be deemed to include references to any statute or statutory provision which amends, extends, consolidates or replaces the same and shall include any orders, regulations codes of practice, instruments or other subordinate legislation made thereunder and any conditions attaching thereto. Moreover, where relevant, references to English statutes and statutory provisions shall be construed as references also to equivalent statutes, statutory provisions and rules of law in other jurisdictions.
   2. Any headings to Clauses, together with the front cover and the Index are for convenience only and shall not affect the meaning of these terms and conditions. Unless the contrary is stated references to Clauses shall mean the Clauses of these terms and conditions.
   3. Unless otherwise expressly defined in these terms and conditions, the words used in these terms and conditions shall bear their natural meaning. The Parties have had equal opportunity to take legal advice and the *contra proferentem* rule shall not apply to the interpretation of these terms and conditions.
   4. Where a term of these terms and conditions provides for a list of items following the word "including" or "includes" then such list is not to be interpreted as being an exhaustive list. Any such list shall not be treated as excluding any item which might have been included in such list having regard to the context of the contractual term in question. The *ejusdem generis* principle is not to be applied when interpreting these terms and conditions. General words are not to be given a restrictive meaning where they are followed by examples intended to be included within the general words.
   5. In these terms and conditions, words importing any particular gender include all other genders.
   6. In these terms and conditions, words importing the singular only shall include the plural and vice versa.
   7. Subject to the contrary being stated expressly or implied from the context in these terms and conditions, all communication between the Parties shall be in writing.
   8. All monetary amounts are expressed in pounds sterling but in the event that pounds sterling is replaced as legal tender in the United Kingdom by a different currency then all monetary amounts shall be converted into such other currency at the rate prevailing on the date such other currency first became legal tender in the United Kingdom.
   9. Except where an express provision of these terms and conditions states the contrary, each and every obligation of a Party under the terms and conditions is to be performed at that Party's cost.
   10. Any reference to a Party "procuring" another person to act or omit to act in a certain manner shall mean that the Party so procuring shall be liable for any default on the part of the person acting or omitting to act in that manner.
   11. All references to the Contract include (subject to all relevant approvals) a reference to the Contract as amended, supplemented, substituted, novated or assigned from time to time.
5. Delivery
   1. The Contractor shall deliver the Goods to the Location and within the time period as stated in Section 5.
   2. Delivery shall be completed when the Goods have been unloaded at the Location and such delivery has been accepted by a duly authorised agent, employee or Location representative of the Authority. The Authority shall procure that such duly authorised agent, employee or Location representative of the Authority is at the delivery location in order to accept such delivery.
   3. In the event that the Authority has specified a date in Section 5 but has not been ready to receive the Goods on that date, the Contractor may charge additional costs of return, storage and redelivery to the Authority, notwithstanding Clause 4.2.
   4. Any carrier engaged in the carriage and/or delivery of the Goods shall be deemed to be an agent of the Contractor and not the Authority.
   5. Part deliveries may be rejected unless the Authority has previously agreed in writing to accept such deliveries.
6. Time
   1. The time of Delivery shall be as detailed in Section 5.
   2. The Parties may alter an agreed time of Delivery provided that a minimum of 4weeks notice is given to the other Party in writing.
   3. Failure by the Contractor to deliver the Goods or any part of them within the time agreed in accordance with Clause 3.1 shall entitle the Authority to terminate the Contract and Order and purchase other goods of the same or similar description to make good such default and recover from the Contractor the amount by which the cost of purchasing other goods exceeds the amount that would have been payable to the Contractor in respect of the Goods replaced by such purchase provided that the Authority uses all reasonable endeavours to mitigate its losses in this respect.
7. Contract Price and Payment
   1. In consideration of the Contractor's due and proper performance of its obligations under the Contract, the Contractor may charge the Authority the Contract Price in accordance with this Clause 4.
   2. The Contract Price shall be net i.e. after the deduction of all agreed discounts. In the absence of written agreement by the Parties to the contrary, the Contract Price shall include the cost of packaging, packing materials, addressing, labelling, loading, insurance and delivery to the Location, and all appropriate tax (excluding VAT) and duty. The amount of any duty additional to the Contract Price and any early settlement discounts shall be shown separately in Section 5.
   3. Invoices shall not be rendered by the Contractor until completion of delivery of all of the Goods which are the subject of the Order unless otherwise agreed in writing. Where the Parties agree delivery by instalments, the Contractor may render an invoice for each instalment as detailed in Section 5.
   4. The Authority shall pay the Contract Price to the Contractor, by BACS (Bank Automated Clearing System) within 30 days of the receipt of the Goods or a valid invoice (rendered in accordance with Clauses 4.3 and 5.1), whichever is later.
   5. The Authority shall be entitled to deduct from any monies due or to become due to the Contractor any monies owing to the Authority from the Contractor.
   6. Except where otherwise stated in the Order, the Contract Price is exclusive of any VAT which shall be payable, if applicable, by the Authority in addition to such Contract Price at the rate prevailing as at the tax invoice date. The invoice provided to the Authority by the Contractor in accordance with Clause 5.1 shall show the VAT calculations separately.
   7. The Authority shall not be responsible for the payment of any charges for Goods supplied in excess of the Goods required by the Order or any variation of it unless authorised in writing by a further Order.
   8. No payment of or on account of the Contract Price shall constitute any admission by the Authority as to proper performance by the Contractor of its obligations.
   9. In the event of the Authority breaching Clause 4.4, the Contractor shall be entitled to charge interest on the outstanding amount owed by the Authority at the Bank of England Base Rate plus 1%.
   10. Subject to Clauses 4.11 and 4.12, the Contract Price shall not be subject to any increase whatsoever by the Contractor during the Contract Period.
   11. In the event that the Contract is varied under Clauses 18 or 19 in such a way as to affect the Contract Price and if agreement between the Parties cannot be reached on the adjustment to the Contract Price within 3 months both Parties shall jointly act to resolve the dispute in accordance with Clause 20.
   12. If the adjusted Contract Price is not so agreed or certified until after such variation has taken place, the Authority shall continue to pay the Contractor at the rate current prior to the variation but shall pay to the Contractor or be entitled to recover from the Contractor as the case may be such sum if any as is equal to the difference between the amount which should have been paid in accordance with the adjusted Contract Price and the amount which was actually paid.
8. Forms
   1. Unless otherwise agreed in writing by the Authority and the Contractor:
      1. a delivery note shall accompany each delivery of the Goods;
      2. an invoice shall be rendered on the Contractor’s own invoice form;
      3. all delivery notes and invoices shall be clearly marked with the Authority’s order number, the name and address of the Authority and the description and quantity of the Goods, and shall show separately any additional charge for containers and/or any other item not included in the Contract Price or, where no charge is made, whether the containers are required to be returned
9. Packaging
   1. The Goods shall be securely packed in trade packages of a type normally used by the Contractor for commercial export deliveries by sea and shall be suitable for transport by sea in every respect.
   2. The following details shall be shown on the outside of every package unless otherwise specified in the Order:
      1. a description of the Goods which shall include, without limitation, the weight of the Goods where available and the Authority's order number;
      2. the quantity in the package where available;
      3. any special directions for storage;
      4. the batch number or unique identifying number(s); and
      5. the name of the manufacturer of the Goods and the Contractor.
10. Not Used
11. Not Used
12. Property and Risk
    1. Risk in the Goods shall pass to the Authority in accordance with the INCOTERMS applicable to this contract, as detailed in Section 5.
    2. All tools, equipment and materials of the Contractor required in the performance of the Contractor's obligations under the Contract shall be and remain at the sole risk of the Contractor whether or not they are situated at the Location.
13. Not Used
14. Rejection Of Goods
    1. Without prejudice to the operation of Clause 11.4, the Goods shall be inspected on behalf of the Authority within a reasonable time after delivery under Clause 2 of the Contract and may be rejected if found to be defective or inferior in quality to or differing in form or material from the requirements of the Contract, or if they do not comply with any term, whether expressed or implied, of the Contract.
    2. Without prejudice to the operation of Clause 11.4, the Authority shall notify the Contractor of:
       1. the discovery of any defect within a reasonable time of its discovery and shall give the Contractor all reasonable opportunities to investigate such defect; and
       2. any shortage or damage caused in transit and found on delivery within 14 days of delivery or such time as agreed by the Parties.
    3. The whole of any delivery may be rejected if any part of the Goods from that delivery is found not to conform in every material respect to the requirements of the Contract.
    4. The Authority’s right of rejection shall continue irrespective of whether the Authority has in law accepted the Goods. In particular, taking delivery, inspection, use or payment by the Authority of the Goods or part of them shall not constitute acceptance, waiver or approval and shall be without prejudice to any right or remedy that the Authority have against the Contractor provided that the right of rejection shall cease within a reasonable time from the date on which the Authority discovers or might reasonably be expected to discover the latent defect or other relevant breach of contract.
    5. Goods so rejected after delivery shall be removed by the Contractor at its own expense within fourteen days from the date of notification of rejection. If the Contractor fails to remove them within such period the Authority may return the rejected Goods at the Contractor’s risk and expense and charge the Contractor for the cost of storage from the date of rejection.
15. Quality
    1. The Goods shall be of first class quality, new, and shall be supplied strictly in accordance with the Specification and, unless otherwise agreed in writing, shall conform to all relevant standards, specifications and conditions and all work performed by the Contractor shall be in accordance with best practice.
    2. The Contractor warrants its expertise and confirms the accuracy of all statements and representations made in respect of the Goods prior to and subsequent to, the Order.
    3. The Contractor agrees to assign to the Authority upon request the benefit of any warranty, guarantee or similar right which it has against any third party manufacturer or supplier of the Goods or any part thereof.
16. Not Used
17. Performance Measurement
    1. The Authority shall ascertain whether the Contractor's provision of the Goods in question meets any performance criteria as specified in the Specification or, if the criteria are not so specified, meets the standards of a professional supplier of the Goods.
    2. The Authority’s rights under Clause 14.1 are without prejudice to any other rights or remedies the Authority may be entitled to.
    3. If required by the Authority, the Parties shall co-operate in sharing information and developing performance measurement criteria with the object of improving the Parties’ efficiency. Any such agreements shall be fully recorded in writing by the Authority.
18. Assignment / Novation
    1. The Contractor shall not assign or novate the whole or any part of the Contract.
19. Limitation of liability
    1. Neither Party shall be liable to the other Party for any loss or damage, costs or expenses incurred or suffered by the other Party as a result of any breach of the terms of the Contract, unless the same were in the reasonable contemplation of the Parties at the time when they entered into the Contract.
    2. Except in the case of death or personal injury caused by negligence, and fraudulent misrepresentation or in other circumstances where liability may not be so limited under any applicable law, the liability of either Party under or in connection with the Contract, whether arising in contract, tort, negligence, breach of statutory duty or otherwise shall not exceed the sum of £5 million.
    3. The Contract Price of the Goods under the Contract has been negotiated and agreed on the basis that the Parties may limit their liability to each other as set out in the Contract and the Parties each confirm that they will themselves bear or insure against any loss for which the other Party has limited its liability under the Contract.
20. Insurance
    1. The Contractor shall insure against its liability under Clause 16.2 with a minimum limit of indemnity of £5 million per annum or such other sum as may be agreed between the Authority and the Contractor in writing.
    2. The Contractor shall hold employer’s liability insurance in respect of the Contractor’s staff in accordance with any legal requirement for the time being in force.
21. Variation of the contract
    1. Any variation to the terms of the Contract must be recorded in writing and executed by a director or company secretary (if the Contractor is a company) or an authorised signatory of the Contractor (if the Contractor is not a company) and the Authorised Officer. Such record of the variation in question must address all consequential amendments required to be made to the Contract as a result of such variation, including adjustment to the Contract Price.
    2. Variations will take effect as from the date specified in the signed record of variation and shall not have retrospective effect unless expressly provided for in such record.
    3. Each record of variation must be dated and sequentially numbered. Each of the Authority and the Contractor will be entitled to an original executed counterpart of the record of variation.
    4. Save as provided in any such record of variation, the Contract will continue in full force and effect.
22. Variation of the specification
    1. The Authority may at any time propose to the Contractor any reasonable variation or addition to the Specification and the Contractor shall not unreasonably withhold or delay its consent to such variation.
    2. No such variation or addition shall affect the continuation of the Contract.
23. Dispute Resolution Procedure
    1. During any dispute, including a dispute as to the validity of the Contract, it is mutually agreed that the Contractor shall continue its performance of the provisions of the Contract (unless the Authority requests in writing that the Contractor does not do so).
    2. If any dispute arises out of the Contract (other than in relation to any matter in which the Authority has a discretion which is exercised in accordance with the terms of the Contract and which shall be final and conclusive) the Parties will use all of their respective reasonable endeavours to resolve it by negotiation. If negotiations fail to resolve such dispute the Parties will attempt to settle it by mediation.
    3. The mediation shall commence within 28 days of the Mediation Notice being served. Neither party will terminate such mediation until each Party has made its opening presentation and the mediator has met each Party separately for at least one hour.
    4. Neither Party will commence legal proceedings against the other until 30 days after such mediation of the dispute in question has failed to resolve the dispute. The Authority and the Contractor will co-operate with any person appointed as mediator providing him with such information and other assistance as he shall require and will pay his costs, as he shall determine or in the absence of such determination such costs will be shared equally.
24. Not Used
25. Termination
    1. The Authority may terminate the Contract (in whole or in part) by serving written notice on the Contractor in any of the following circumstances:-
       1. a material failure (in whole or in part) by the Contractor to perform any obligation of the Contractor under the Contract provided that (if capable of remedy) such failure has not been remedied to the Authority's reasonable satisfaction within a period of 30 days following written notice demanding remedy of the failure in question being served by the Authority on the Contractor; or
       2. the Contractor fails (in whole or in part) to perform any material obligation of the Contractor owed to the Authority on more than 3 occasions; or
       3. the Contractor becomes Insolvent or otherwise ceases to be capable of supplying the Goods; or
       4. the Contractor is in default of any duty of care or any fiduciary or statutory duty owed to the Authority and/or, employee or agent of the Authority; or
       5. there is a change of ownership or control of the Contractor which, in the reasonable opinion of the Authority will have a material impact on the supply of the Goods or the image of the Authority; or
       6. the Contractor purports to assign or novate the Contract in breach of Clause 15; or
       7. the Contractor shall have offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do, or for having done or forborne to do, any action in relation to the obtaining or execution of the Contract or any other contract with the Authority, or for showing or forbearing to show favour or disfavour to any person in relation to the Contract or any other contract with the Authority; or similar acts have been done by any person employed by it or acting on its behalf (whether with or without the knowledge of the Contractor)
    2. The Authority shall be entitled to recover from the Contractor the amount of any Loss resulting from termination under Clause 22.1. For the purpose of this Clause, Loss shall include reasonable cost to the Authority of the time spent by its officers in terminating the Contract and in making alternative arrangements for the provision of the Goods.
    3. The Contractor may terminate the Contract in the following circumstance, by giving 1 month’s written notice:
       1. if the Authority has committed a material breach of the Contract; and
       2. the Contractor has brought the breach of Contract to the attention of the Authority; and
       3. the Authority has not corrected the said breach of Contract within a reasonable period of time.
    4. The Contractor agrees that upon termination for any reason (under Clause 22.1 or otherwise) or expiry of the Contract it shall not be entitled to make a claim against the Authority in relation to costs incurred by the Contractor in providing the Goods or costs incurred in acquiring equipment and/or materials used in the provision of the Goods or in engaging third parties in connection with the Goods whether or not such costs were amortised in the calculation of the Contract Price payable by the Authority under the Contract. For the avoidance of doubt, the Contractor will not be restricted from making any claim in respect of the Contract Price to the extent the Contract Price is outstanding and due and payable.
    5. The Authority and the Contractor agree that termination (in whole or in part) or expiry of the Contract shall not affect either Party's obligations which the Contract provides shall survive the termination or expiry of the Contract or the continuance of the part or parts not terminated where the Contract is terminated in part only.
    6. Any termination (in whole or in part) of the Contract will not prejudice the rights, obligations and duties of each Party arising prior to such termination taking effect.
26. Communications
    1. All written and oral communications, all documents and the labelling and marking of all packages shall be in English.
27. Intellectual Property
    1. Subject to Clause 16, the Contractor agrees to indemnify and keep indemnified the Authority against any costs, claims, proceedings, expenses and demands arising from the use, application, supply or delivery of any process, article, matter or thing supplied under the Contract that would constitute or is alleged to constitute any infringement of any person's Intellectual Property Rights.
28. Not Used
29. Not Used
30. Not Used
31. Confidentiality
    1. In respect of any Confidential Information it may receive from the other party (“the Discloser”) and subject always to the remainder of this Clause 28, each party (“the Recipient”) undertakes to keep secret and strictly confidential and shall not disclose any such Confidential Information to any third party, without the Discloser’s prior written consent provided that:
       1. the Recipient shall not be prevented from using any general knowledge, experience or skills which were in its possession prior to the commencement of the Contract;
       2. the provisions of this Clause 28 shall not apply to any Confidential Information which:-

(a) is in or enters the public domain other than by breach of the Contract or other act or omissions of the Recipient;

(b) is obtained by a third party who is lawfully authorised to disclose such information; or

(c) is authorised for release by the prior written consent of the Discloser

* 1. Nothing in this Clause 28 shall prevent the Recipient from disclosing Confidential Information where it is required to do so by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable law or, where the Contractor is the Recipient, to the Contractor's immediate or ultimate holding company provided that the Contractor procures that such holding company complies with this Clause 28 as if any reference to the Contractor in this Clause 28 were a reference to such holding company.
  2. This Clause 28 shall remain in force without limit in time in respect of Confidential Information which comprises Personal Data. Save as aforesaid and unless otherwise expressly set out in the Contract, this Clause 28 shall remain in force for a period of 3 years after the termination or expiry of this Contract.
  3. In the event that the Contractor fails to comply with this Clause 28, the Authority reserves the right to terminate the Contract by notice in writing with immediate effect.

1. Not Used
2. Not Used
3. Warranty
   1. The Contractor warrants to the Authority that it has all necessary corporate standing and authorisation to enter into and be bound by the terms of the Contract. At all times in connection with the Contract, the Contractor shall be an independent contractor and nothing in the Contract shall create a relationship of agency or partnership or a joint venture as between the Contractor and the Authority and accordingly the Contractor shall not be authorised to bind the Authority.
   2. The Contractor shall provide a warranty for the goods as detailed in Section 4.
4. Relationship of the Parties
   1. The Contractor shall not incur any liabilities on behalf of the Authority or, make any representations, or give any warranty on behalf of the Authority or, enter into any contract or obligation on behalf of the Authority.
5. Not Used
6. Not Used
7. General
   1. Save as required by law and/or the requirements of any relevant stock exchange no publicity shall be made by any of the Parties relating to any matter in connection with the Contract without the prior written consent of the other Party.
   2. Any decision, act or thing that the Authority is required or authorised to take or do under the Contract may be taken or done by any person authorised, either generally or specifically, by the Authority to take or do that decision, act or thing, provided that upon receipt of a written request the Authority shall inform the Contractor of the name of any person so authorised.
   3. The Contractor shall from time to time upon the request of the Authority, execute any additional documents and do any other acts or things which may reasonably be required to implement the provisions of the Contract.
   4. Any provision of the Contract which is held to be invalid or unenforceable in any jurisdiction shall be ineffective to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining provisions hereof and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction.
   5. The Contractor acknowledges and agrees that it has not relied on any representation, warranty or undertaking (whether written or oral) in relation to the subject matter of the Contract and therefore irrevocably and unconditionally waives any rights it may have to claim damages against the Authority for any misrepresentation (whether made carelessly or not) or for breach of any warranty unless the representation relied upon is set out in the Contract or unless such representation was made fraudulently.
   6. The failure by the Authority or the Contractor to insist upon the strict performance of any provision, term or condition of the Contract or to exercise any right or remedy consequent upon the breach thereof shall not constitute a waiver of any such breach or any subsequent breach of such provision, term or condition.
   7. Each Party shall bear its own expenses in relation to the preparation, execution and implementation of the Contract including all costs legal fees and other expenses so incurred.
   8. The Contractor warrants represents and undertakes to the Authority that there are no pending or threatened actions or proceedings before any court or administrative agency which would materially adversely affect the financial condition, business or operations of the Contractor and that there are no material contracts existing to which the Contractor is a party which prevent it from entering into the Contract; and that the Contractor has satisfied itself as to the nature and extent of the risks assumed by it under the Contract and gathered all information necessary to perform its obligations under the Contract and all other obligations assumed by it.
   9. The rights and remedies provided in the Contract are cumulative and not exclusive of any rights or remedies provided by the general law, or by any other contract or document.
8. Notices
   1. Any notice to be given under the Contract shall either be delivered personally, sent by facsimile or electronic mail. The address for service of each Party shall be its registered office or such other address as either Party may previously have notified to the other Party in writing. A notice shall be deemed to have been served:
      1. if personally delivered, at the time of delivery;
      2. if sent by facsimile at the time of transmission;
      3. if sent by electronic mail, a telephone call is made to the recipient warning the recipient that an electronic mail message has been sent.
   2. In proving such service it shall be sufficient to prove that personal delivery was made, or that the envelope containing such notice was properly addressed and delivered into the custody of the postal authority as prepaid first class, recorded delivery or airmail letter (as appropriate) or that the facsimile was transmitted on a tested line or that the correct transmission report was received from the facsimile machine sending the notice as the case may be.
9. Force Majeure
   1. No Party shall be entitled to bring a claim for a breach of obligations under the Contract by the other Party or incur any liability to the other Party for any Loss or damages incurred by that party to the extent that a Force Majeure Event occurs and it is prevented from carrying out obligations by that event of force majeure.
   2. In the occurrence of a Force Majeure Event, the Affected Party shall notify the other Party as soon as practicable. The notification shall include details of the Force Majeure Event, including evidence of its effect on the obligations of the Affected Party and any action proposed to mitigate its effect.
   3. As soon as practicable, following such notification, the Parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and facilitate the continued performance of the Contract.
10. Law
    1. The Contractor submits to the jurisdiction of the courts of St Helena and agrees that the Contract is to be governed and construed according to the laws of St Helena.

**SECTION 3**

**SPECIAL CONDITIONS**

1. **Contract Officer**
2. The Contract Officer within SHG is:

Nicholas George

Vehicle Fleet Manager

Transport Section

Environment & Natural Resources Directorate

St Helena Island

South Atlantic Ocean STHL 1ZZ

Telephone No: 00290 23643

Email : [vehicle.fleet@helanta.co.sh](mailto:vehicle.fleet@helanta.co.sh)

**SECTION 4**

**SPECIFICATION**

**General Description**

**Supply of 2 New Tata LP 713 M 28 Seater Buses**

**Make & Model;**

Tata

LP 713 M

28 seater Bus

Right Hand Drive

Manual

**Dimensions (mm);**

Overall Length 7 125

Overall Width 2 140

Overall Height 2 600

Front Overhang 1 275

Rear Overhang 2 050

Wheelbase 3 800

Turning Radius 8 000

**Mass Data (kg);**

Manufacturer's Gross Vehicle Mass (GVM) 7 700

Manufacturer's Gross Combination Mass (GCM) 9 700

Manufacturer's Front Axle Mass 2 900

Manufacturer's Rear Axle Mass 4 800

Permissible Maximum Vehicle Mass 7 700

Permissible Maximum Front Axle Mass 2 900

Permissible Maximum Rear Axle Mass 4 800

Unladen Front Axle Mass 2 390

Unladen Rear Axle Mass 2 570

Total Unladen Mass 4 780

Permissible Maximum Drawing Vehicle Mass 9 700

**Engine;**

Make / Model Configuration Tata 697 TCIC

Cylinders 6 Inline Turbo Intercooled

Capacity (cc) 5 675

Maximum Power - kW@ r/min 95 @ 2 400

Maximum Torque - Nm @ r/min 416 @ 1 400- 2 700

**Gearbox;**

Make/Model GBS 40

Manual

Number of Gears 5

High and Low Ratios 7.51 - 1.00

Synchromesh

Rear Axle Ratio 3.111:1

Exhaust Brake

Tyres;

Size and Ply Rating 7.5R16 - 14PR

Fuel Tank;

Capacity 120 Litres

**SECTION 5**

**SCHEDULE OF PRICES**

**Contract Price XXXXXXXXXXX**

**Delivery**

Delivery shall be made in accordance with Section 2 Clause 2 and the delivery Location shall be the Quayside at the port of Jamestown on St Helena.

**Time**

Delivery shall be made at a time agreed between the parties which shall not in any circumstances be greater than six months from the date of Order.

**INCOTERMS**

The INCOTERMS 2010 that apply to this Contract are CIF (Quayside at the port of Jamestown on St Helena)

**Insurance**

In accordance with the CIF INCOTERM the Contractor is responsible for procuring and paying for appropriate insurance of the goods to the point of delivery within the Contract Price.