

**THIS AGREEMENT** is made between The Government of Jersey (acting through the Minister for the Environment) or where the context requires, any administration of the Government of Jersey of 19-21 Broad Street, St Helier, Jersey JE2 3RR (the “**Authority**”); and you, (the “**Contractor**”).

**RECITALS:**

- (A) The Authority wishes to provide financial incentives to speed up the adoption of electric bikes in the Island of Jersey
- (B) The Authority and the Contractor have agreed that the Contractor shall provide, and the Authority shall co-operate with it, in providing the Services in the manner and upon the terms hereinafter set out.

**1. Definitions and Interpretations**

**1.1.** In this Agreement unless the context otherwise requires the following terms shall have the meanings given to them below:

“**2018 Law**” means the Data Protection (Jersey) Law 2018.

“**Agreement**” means this agreement between the Authority and the Contractor consisting of these clauses and any attached Schedules and any other documents (or parts thereof) specified by the Authority.

“**Client**” means the holder of a Voucher, seeking to procure an Electric Cycle.

“**Confidential Information**” means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to the business, affairs, properties, assets, trading practices, Services, developments, trade secrets, Intellectual Property Rights, know-how, personnel, customers, Clients and suppliers of either Party, all personal data and special category data within the meaning of the 2018 Law.

“**Default**” means any breach of the obligations of either Party (including but not limited to fundamental breach or breach of a fundamental term) or any default, act, omission, negligence or statement of either Party, its employees, agents or sub-contractors in connection with or in relation to the subject matter of the Agreement and in respect of which such Party is liable to the other.

“**Electric Cycle**” means a cycle equipped with an electric motor to assist the cyclist when pedalling, complying in all respects with the definition of “electrically assisted pedal cycles” within the meaning of the Pedal Cycles (Jersey) Order 1998. This is referred to in the grant scheme as a standard e-bike.

Including:

- (a) A bicycle or tricycle (but not a tandem) designed and equipped by its manufacturer for carrying heavy or bulky loads, or passengers, including children, via a long-tail design, cargo-box or tricycle and which complies in all respects with the definition of “electrically assisted pedal cycles” within the meaning of the Pedal Cycles (Jersey) Order 1998. This is referred to in the grant scheme as an e-cargo bike.
- (b) An electric cycle, other than a conventional two-wheeled human-powered or electric-assisted bicycle, that provides active mobility opportunities to people who have difficulty riding a conventional bicycle. Examples include tricycles, recumbent cycles, handcycles, and tandem cycles which comply in all respects with the definition of “electrically assisted pedal cycles” within the meaning of the Pedal Cycles (Jersey) Order 1998. This is referred to in the grant scheme as an adapted e-cycle.
- (c) Excluding: Full suspension e-mountain bikes (eMTBs) which are electrically assisted mountain bikes primarily used for off-road sport and recreation.

“**Equipment**” means the Contractor’s equipment, plant, materials, and such other items supplied and used by the Contractor in the performance of its obligations under the Agreement.

**“Extension”** means the extension of the duration of the Agreement agreed in accordance with clause 43.

**“FOIL”** means the Freedom of Information (Jersey) Law 2011 and any subordinate legislation made under this Law from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation.

**“Information”** has the meaning given under Article 1 of the Freedom of Information (Jersey) Law 2011.

**“Initial Term”** or **“Term”** means the period from the Commencement Date to the 31 December 2023 or such earlier date of termination or partial termination of the agreement in accordance with clause 2.1 of the Agreement.

**“Intellectual Property Rights”** means patents, inventions, trade marks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country (including but not limited to the Channel Islands or the United Kingdom) and the right to sue for passing off.

**“Law”** means any applicable enactment, sub-ordinate legislation within the meaning of Article 10 of the Interpretation (Jersey) Law 1954 passed by the States of Jersey and confirmed by Her Majesty in Council and any provision of any regulations, Order, rules, scheme or other instrument passed or made in Jersey under the authority or any Order in Council or under any such Law as aforesaid, bye-laws, regulatory policy, guidance or industry code, judgement of a relevant court of law, or directives or requirements of any Regulatory Body of which the Contractor is bound to comply or the equivalent enactment in England where the context otherwise requires.

**“Malicious Software”** means any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence.

**“Necessary Identification”** means:

- (a) A passport, driving licence or national identity card which includes a photograph; and
- (b) A utility bill or government issued letter with a date no earlier than three months prior to the date stated on the Client’s Voucher.

**“Party”** means a party to the Agreement and “Parties” shall be construed accordingly.

**“Premises”** means the location where the Services are to be performed.

**“Price”** means the price exclusive of any applicable Tax, payable to the Contractor by the Authority under the Agreement, for the full and proper performance by the Contractor of its obligations under the Agreement.

**“Request for Information”** shall have the meaning set out in FOIL or any apparent request for information under the FOIL.

**“Schedule”** means a schedule attached to the Agreement.

**“Service Data”** means the online form specified in Schedule 1.

**“Services”** means the services to be provided as specified in Schedule 1.

**“Specification”** means the description of the Services to be provided under the Agreement and attached as Schedule 1.

**“Staff”** means all persons employed by the Contractor to perform the Agreement together with the Contractor’s servants, agents and sub-contractors used in the performance of the Agreement.

**“Tax”** means Value Added Tax (VAT) / Goods and Services Tax (GST) to the extent that either is applicable.

“**Users**” means a reasonably representative sample of those users who consume or benefit from the Services.

“**Voucher**” means a paper or electronic document issued by the Authority to a Client which is personal to the Client.

“**Working Day**” means a day (other than a Saturday or Sunday) on which banks are open for domestic business in Jersey.

**1.2.** In the Agreement except where the context otherwise requires:

- (a) the terms and expressions set out in clause 1.1 shall have the meanings ascribed therein;
- (b) words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- (c) words importing the masculine include the feminine and the neuter;
- (d) reference to a clause is a reference to the whole of that clause unless stated otherwise;
- (e) references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
- (f) references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assignees or transferees;
- (g) the words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”; and
- (h) headings are included in the Agreement for ease of reference only and shall not affect the interpretation or construction of the Agreement.

**2. Term**

**2.1.** The Agreement shall take effect on the 2 January 2023 and shall expire automatically on 31 January 2025, unless it is otherwise terminated in accordance with the Agreement, or otherwise lawfully terminated.

**2.2.** The Authority may seek to extend the duration of the Agreement in accordance with clause 43. During the Extension, the obligations under the Agreement shall continue (subject to any variation) until the expiry of the period specified in accordance with clause 43.

**3. Contractor’s Status (Principal)**

**3.1.** In carrying out the Services the Contractor shall be acting as principal and not as the agent of the Authority.

**3.2.** Accordingly:

- (a) the Contractor shall not (and shall procure that the Staff do not) say or do anything that might lead any other person to believe that the Contractor is acting as the agent of the Authority; and
- (b) nothing in the Agreement shall impose any liability on the Authority in respect of any liability incurred by the Contractor to any other person but this shall not be taken to exclude or limit any liability of the Authority to the Contractor that may arise by virtue of either a breach of the Agreement or by negligence on the part of the Authority, the Authority’s employees, servants or agents.

**4. Authority’s Obligations**

Save as otherwise expressly provided, the obligations of the Authority under the Agreement are obligations of the Authority in its capacity as a contracting counterparty and nothing in the Agreement shall operate as an obligation upon, or in any other way fetter or constrain the Authority in any other capacity, nor shall the exercise by the Authority of its duties and powers

in any other capacity lead to any liability under the Agreement (howsoever arising) on the part of the Authority to the Contractor.

## **5. Entire Agreement**

**5.1.** The Agreement constitutes the entire agreement between the Parties relating to the subject matter of the Agreement. The Agreement supersedes all prior negotiations, representations and undertakings, whether written or oral, except that this clause shall not exclude liability in respect of any fraudulent misrepresentation.

**5.2.** In the event of and only to the extent of any conflict between the body of the Agreement, Specification, and other documents referred to or attached to the Agreement, the conflict shall be resolved in accordance with the following order of precedence:

- (1) the body of the Agreement shall prevail over;
- (2) the Schedules; and
- (3) any other document referred to in the Agreement.

Unless expressly agreed, a document varied pursuant to clause 31 shall not take higher precedence than specified here.

**5.3.** The Agreement may be executed in counterparts, each of which when executed and delivered shall constitute an original but all counterparts together shall constitute one and the same instrument.

## **6. Scope of Agreement**

Nothing in the Agreement shall be construed as creating a partnership or a contract of employment between the Authority and the Contractor.

## **7. Notices**

**7.1.** Except as otherwise expressly provided within the Agreement, no notice or other communication from one Party to the other shall have any validity under the Agreement unless made in writing by or on behalf of the Party concerned.

**7.2.** Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, post, registered post or by the recorded delivery service), or electronic mail (confirmed by letter). Such letters shall be addressed to the other Party in the manner referred to in clause 7.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given 2 Working Days after the day on which the letter was posted, or four hours, in the case of electronic mail transmission or sooner where the other Party acknowledges receipt of such letters or item of electronic mail.

**7.3.** For the purposes of clause 7.2, the address of each Party shall be:

- (a) For the Authority:  
19-21 Broad Street, PO Box 353, St Helier, Jersey, JE2 3RR  
For the attention of: Sustainability and Foresight Team
- (b) For the Contractor:, the address provided by the Contractor as part of the registration process to participate in the e-bikes scheme.

**7.4.** Either Party may change its address for service by serving a notice in accordance with this clause.

## **8. Mistakes in Information**

The Contractor shall be responsible for the accuracy of all documentation and information supplied to the Authority by the Contractor in connection with the provision of the Services and shall pay the Authority any extra costs occasioned by any discrepancies, errors or omissions therein.

## **9. Conflicts of Interest**

**9.1.** The Contractor shall take appropriate steps to ensure that neither the Contractor nor any employee, servant, agent, supplier or sub-contractor is placed in a position where in the reasonable opinion of the Authority there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor or such persons and the duties owed to the Authority under the provisions of the Agreement. The Contractor will disclose to the Authority full particulars of any such conflict of interest which may arise.

**9.2.** The provisions of this clause shall apply during the continuance of the Agreement and for a period of two years after its termination.

## **10. Fraud**

The Contractor shall take all reasonable steps, in accordance with good industry practice, to prevent any fraudulent activity by the Staff, the Contractor (including its shareholders, members, directors) and/or any of the Contractor's suppliers, in connection with the receipt of monies from the Authority. The Contractor shall notify the Authority immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.

## **11. The Services**

**11.1.** The Contractor shall provide the Services during the Term in accordance with the Authority's requirements as set out in the Specification and the terms of the Agreement. The Authority shall have the power to inspect and examine the performance of the Services at the Premises at any reasonable time or, provided that the Authority gives reasonable notice to the Contractor.

**11.2.** The Contractor shall at all times deliver the Services in accordance with the Law.

**11.3.** If the Authority informs the Contractor that the Authority considers that any part of the Services do not meet the requirements of the Agreement or differ in any way from those requirements, and this is other than as a result of Default or negligence on the part of the Authority, the Contractor shall at its own expense re-schedule and carry out the Services in accordance with the requirements of the Agreement within such reasonable time as may be specified by the Authority.

**11.4.** Timely provision of the Services shall be of the essence of the Agreement, including in relation to commencing the provision of the Services within the time agreed or on a specified date.

**11.5.** Without prejudice to any other rights and remedies the Authority may have pursuant to the Agreement, the Contractor shall reimburse the Authority for all reasonable costs incurred by the Authority which have arisen as a consequence of the Contractor's delay in the performance of its obligations under the Agreement and which delay the Contractor has failed to remedy following reasonable notice from the Authority. For the avoidance of doubt, the Contractor's obligation to reimburse the Authority under this clause does not arise to the extent that the delay was caused by a delay or failure by the Authority to provide Approval .

## **12. Manner of Carrying Out the Services**

**12.1.** The Contractor shall perform the Services in accordance with the service levels and standards set out in Schedule 1.

**12.2.** The Contractor shall provide and, unless otherwise agreed, install all the Equipment necessary for the provision of the Services which shall be performed on the Premises.

**12.3.** All Equipment shall be at the risk of the Contractor and the Authority shall have no liability for any loss of or damage to any Equipment unless the Contractor is able to demonstrate that such loss or damage was caused or contributed to by the negligence or Default of the Authority.

### **13. Standard of Work**

- 13.1.** The Contractor shall execute the Agreement with reasonable care and skill and in accordance with good industry practice.
- 13.2.** The Contractor warrants and represents that all Staff assigned to the performance of the Services shall possess and exercise such qualifications, skill and experience as are necessary for the proper performance of the Services.

### **14. Jersey Living Wage**

- 14.1** The Contractor will ensure that all relevant Staff employed or engaged by the Contractor are paid an hourly wage which is equal to or exceeds the Jersey Living Wage.
- 14.2** The Contractor will provide to the Authority such information concerning the Jersey Living Wage and the performance of its obligations under clause 17 as the Authority may reasonably require and within the deadlines it reasonably imposes.

### **15. Sub-Contracting for the Delivery of the Services**

The Contractor shall not assign, transfer, sublet or subcontract in whole or in part any of the Services without the prior written consent of the States.

### **16. Price**

In consideration of the performance of the Contractor's obligations under the Agreement by the Contractor, the Authority shall reimburse the Contractor an amount in pounds sterling equal to the value stated on each Voucher which has been redeemed by a Client against the purchase of a Contractor Electric Cycle within the preceding 90 days (the "Price").

### **17. Payment and Tax**

No Tax shall be due and payable by either Party to the other under this Agreement.

### **18. Recovery of Sums Due**

- 18.1.** Wherever under the Agreement any sum of money is recoverable from or payable by the Contractor (including any sum which the Contractor is liable to pay to the Authority in respect of any breach of the Agreement), the Authority may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Contractor under the Agreement or under any other agreement or contract with the Authority.
- 18.2.** Any overpayment by the Authority to the Contractor, whether of the Price or of tax, shall be a sum of money recoverable by the Authority from the Contractor.
- 18.3.** The Contractor shall make any payments due to the Authority without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Contractor has a valid court order requiring an amount equal to such deduction to be paid by the Authority to the Contractor.

### **19. Prevention of Corruption**

- 19.1.** The Contractor shall not offer or give, or agree to give, to any employee, agent, servant or representative of the Authority any gift or consideration of any kind as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Agreement or any other contract with the Authority, or for showing or refraining from showing favour or disfavour to any person in relation to the Agreement or any such contract. The attention of the Contractor is drawn to the criminal offences under the Prevention of Corruption Acts 1889 to 1916 and the Corruption (Jersey) Law 2006.
- 19.2.** The Contractor warrants that it has not paid commission or has agreed to pay any commission to any employee or representative of the Authority by the Contractor or on the Contractor's behalf.
- 19.3.** Where the Contractor or Contractor's employees, servants, suppliers or agents or anyone acting on the Contractor's behalf, engages in conduct prohibited by clauses 19.1

or 19.2 in relation to this or any other contract with the Authority, the Authority has the right to:

- (a) terminate the Agreement and recover from the Contractor the amount of any loss suffered by the Authority resulting from the termination; or
- (b) recover in full from the Contractor any other loss sustained by the Authority in consequence of any breach of this clause, whether or not the Agreement has been terminated.

## **20. Discrimination**

**20.1.** The Contractor shall not unlawfully discriminate either directly or indirectly on such grounds as race, colour, ethnic or national origin, disability, sex or sexual orientation, religion or belief, or age and without prejudice to the generality of the foregoing the Contractor shall not unlawfully discriminate within the meaning and scope of the Sex Discrimination Act 1975, the Equal Pay Acts 1970 and 1983, the Disability Discrimination Act 1995, the Employment Equality (Sexual Orientation) Regulations 2003, the Employment Equality (Religion or Belief) Regulations 2003, the Human Rights Act 1998, Human Rights (Jersey) Law 2000 or other relevant legislation, or any statutory modification or re-enactment thereof.

**20.2.** The Contractor shall take all reasonable steps to secure the observance of clause 20.1 by all servants, employees or agents of the Contractor and all suppliers and sub-contractors employed in the execution of the Agreement.

## **21. Rights of Third Parties**

No person who is not a Party to the Agreement (including without limitation any employee, officer, agent, representative, or sub-contractor of either the Authority or the Contractor) shall have any right to enforce any term of the Agreement, which expressly or by implication, confers a benefit on him without the prior agreement in writing of both Parties, which agreement should specifically refer to this clause 21. This clause does not affect any right or remedy of any person which exists or is available otherwise.

## **22. Health and Safety**

**22.1.** The Contractor shall promptly notify the Authority of any health and safety hazards which may arise in connection with the performance of the Agreement.

**22.2.** The Contractor shall comply with the requirements of the Health and Safety at Work (Jersey) Law 1989 and to the extent applicable, the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Staff and other persons working on the Premises in the performance of the Agreement.

**22.3.** The Contractor shall ensure that its health and safety policy statement (if applicable) is made available to the Authority on request.

## **23. Safeguarding**

**23.1.** The Contractor shall ensure that it has appropriate written safeguarding adults and children policies and shall ensure that all staff engaged in the provision of Services, adhere to such policies.

**23.2.** Where there is a legal requirement to do so, the Contractor will undertake that staff be subject to valid, appropriate disclosure check undertaken through the Disclosure and Barring Service (DBS) including a check against the adults' barred list or the children's barred list, as appropriate.

## **24. Data Protection**

**24.1.** The Parties shall (and shall procure that any of its Staff involved in the provision of this Agreement) comply with the 2018 Law or any applicable equivalent legislation in the contractors jurisdiction (if outside Jersey).

- 24.2.** It is not anticipated that any personal data will be exchanged in the performance of this Agreement. Prior to the exchange of any personal data, the Parties will ensure that the exchange process is agreed between them and in compliance with the 2018 Law.
- 24.3.** The provisions of this clause shall apply during the continuance of the Agreement and indefinitely after its expiry or termination.

## **25. Cyber Essentials Scheme / Information Security Management System**

- 25.1.** The Contractor acknowledges that the Authority is required to reduce the levels of cyber security risk in its supply chain and the Authority seeks the Contractor's compliance where appropriate to Cyber Essentials Security/Information Security System model or alternative accreditation such as ISO 27001.
- 25.2.** If requested to do so by the Authority, before entering into this Agreement the Contractor will, within 15 Working Days of the date of this Agreement, develop (and obtain the Authority's written Approval of) a Security Management Plan and an Information Security Management System. After Authority Approval the Security Management Plan and Information Security Management System will apply during the Term of this Agreement. Both plans will comply with the Authority's security policy and protect all aspects and processes associated with the delivery of the Services.
- 25.3.** The Contractor will use software and the most up-to-date antivirus definitions available from an industry-accepted antivirus software seller to minimise the impact of Malicious Software.
- 25.4** If Malicious Software causes loss of operational efficiency or loss or corruption of Service Data, the Contractor will help the Authority to mitigate any losses and restore the Services to operating efficiency as soon as possible.
- 25.5** Responsibility for costs will be at the:
- (a) Contractor's expense if the Malicious Software originates from the Contractor software or the Service Data while the Service Data was under the control of the Contractor, unless the Contractor can demonstrate that it was already present, not quarantined or identified by the Authority when provided; or
  - (b) Authority's expense if the Malicious Software originates from the Authority software or the Service Data, while the Service Data was under the Authority's control

## **26. Confidentiality**

Each Party:

- (a) Shall treat all information designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including but not limited to any information which relates to its business, affairs, this Agreement as confidential and safeguard it accordingly; and
- (b) Shall not disclose any such confidential information belonging to the other Party to any other person without the prior written consent of the other Party, except to the Contractor or to such other persons as may be necessary for the performance of this Agreement or the Contractor except where disclosure is otherwise expressly permitted by the provisions of this Agreement.

## **27. Freedom of Information**

- 27.1.** The Contractor acknowledges that the Authority is subject to the requirements of the FOIL and shall assist and cooperate with the Authority (at the Contractor's expense) to enable the Authority to comply with information disclosure requirements (if necessary).
- 27.2.** The Contractor shall and shall procure that its sub-contractors shall:
- (a) transfer the Request for Information to the Authority as soon as practicable after receipt and in any event within two Working Days of receiving a Request for Information;



- (b) provide the Authority with a copy of all Information in its possession or power in the form that the Authority requires within five Working Days (or such other period as the Authority may specify) of the Authority requesting that Information; and
  - (c) provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to a Request for Information within the time for compliance set out in Article 13 of the FOIL or any subordinate legislation made under the Law.
- 27.3.** The Authority shall be responsible for determining at its absolute discretion whether any Information:
- (a) is exempt from disclosure in accordance with the provisions of the FOIL;
  - (b) is to be disclosed in response to a Request for Information; and
- in no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Authority.
- 27.4.** The Contractor acknowledges that the Authority may, acting in accordance with the FOIL be obliged under FOIL to disclose Information:
- (a) without consulting with the Contractor, or
  - (b) following consultation with the Contractor and having taken its views into account.
- 27.5.** The Contractor shall ensure that all Information produced in the course of the Contract or relating to the Contract is retained for disclosure for the Term of this Agreement or as otherwise agreed and shall permit the Authority to inspect such records (including but not limited to audit records of disposed information) as requested from time to time.

## **28. Intellectual Property Rights**

- 28.1** All Intellectual Property Rights in any specifications, instructions, plans, data, drawings, databases, patents, patterns, models, designs or other material furnished to or made available to the Contractor by the Authority shall remain the property of the Authority.
- 28.2** It is a condition of the Agreement that the Services will not infringe any Intellectual Property Rights of any third party and the Contractor shall during and after the Term on written demand indemnify and keep indemnified the Authority against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Authority may suffer or incur as a result of or in connection with any breach of this clause, except where any such claim relates to:
- (a) designs furnished by the Authority;
  - (b) the use of data supplied by the Authority which is not required to be verified by the Contractor under any provision of the Agreement.
- 28.3** The Authority shall notify the Contractor in writing of any claim or demand brought against the Authority for infringement or alleged infringement of any Intellectual Property Right in materials supplied or licensed by the Contractor. The Contractor shall at its own expense conduct all negotiations and any litigation arising in connection with any claim for breach of Intellectual Property Rights in materials supplied or licensed by the Contractor, provided always that the Contractor:
- (a) shall consult the Authority on all substantive issues which arise during the conduct of such litigation and negotiations;
  - (b) shall take due and proper account of the interests of the Authority; and
  - (c) shall not settle or compromise any claim without the Authority's prior written consent (not to be unreasonably withheld or delayed).
- 28.4** The Authority shall at the request of the Contractor afford to the Contractor all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the Authority or the Contractor for infringement or alleged infringement of any Intellectual Property Right in connection with the performance of the Agreement and shall

be repaid all costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so. Such costs and expenses shall not be repaid where they are incurred in relation to a claim, demand or action which relates to the matters in clause 28.3(a) and (b),

28.5 The Authority shall not make any admissions which may be prejudicial to the defence or settlement of any claim, demand or action for infringement or alleged infringement of any Intellectual Property Right by the Authority or the Contractor in connection with the performance of the Agreement.

28.6 If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Right is made in connection with the Agreement or in the reasonable opinion of the Contractor is likely to be made, the Contractor may at its own expense and subject to the consent of the Authority (not to be unreasonably withheld or delayed) either:

- (a) modify any or all of the Services without reducing the performance or functionality of the same, or substitute alternative Services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the terms herein shall apply with any necessary changes to such modified Services or to the substitute Services; or
- (b) procure a licence to use and provide the Services, which are the subject of the alleged infringement, on terms which are acceptable to the Authority.

28.7 At the termination of the Agreement the Contractor shall immediately return to the Authority all materials, work or records held, including any back-up media.

28.8 The provisions of this clause shall apply during the continuance of the Agreement and indefinitely after its expiry or termination.

## **29 Audit**

The Contractor shall keep and maintain until six years after the Agreement has been completed, or as long a period as may be agreed between the Parties, full and accurate records of the Agreement including the Services provided under it, all expenditure reimbursed by the Authority, and all payments made by the Authority. The Contractor shall on request afford the Authority or the Authority's representatives such access to those records as may be required by the Authority in connection with the Agreement, shall co-operate fully with the Authority or the Authority's representatives in respect of any reasonable requests and shall respond in a timely manner to any questions raised.

## **30 Waiver**

30.1 The failure of either Party to insist upon strict performance of any provision of the Agreement or the failure of either Party to exercise any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the Agreement.

30.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with the provisions of clause 7.

30.3 A waiver of any right or remedy arising from a breach of the Agreement shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Agreement.

## **31 Variation of the Services**

Any variation to the Agreement will only be valid if agreed in writing by both Parties.

## **32 Severability**

If any provision in this Agreement is found by any court of competent jurisdiction to be invalid or unenforceable, such provision shall not invalidate the remaining provisions of this Agreement.

## **33 Remedies Cumulative**

Except as otherwise expressly provided by the Agreement, all remedies available to either Party for breach of the Agreement are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

#### **34 Possible Extension of Term**

Subject to satisfactory performance by the Contractor during the Initial Term, the Authority may wish to extend the Agreement for a further period of up to one year. The Authority may approach the Contractor if it wishes to do so before the end of the Initial Term. The clauses in the Agreement will apply throughout any such extended period unless otherwise stated to the contrary.

#### **35 Novation**

35.1 The Authority shall be entitled to assign, novate or otherwise dispose of its rights and obligations under this Agreement or any part thereof to any private sector body or any other body established under statute (a "Transferee") provided that any such assignment, novation or other disposal shall not increase the burden of the Contractor's obligations under this Agreement.

35.1 The Authority shall be entitled to disclose to any Transferee any Confidential Information of the Contractor which relates to the performance of the Agreement by the Contractor. In such circumstances the Authority shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Agreement and for no other purposes and shall take all reasonable steps to ensure that the Transferee accepts an obligation of confidence.

#### **36 Liabilities**

36.1 The Contractor:

- (a) warrants that it will exercise in the performance of the Services all the reasonable skill care and diligence as may be expected of a properly qualified and competent member of the Contractor's profession.
- (b) accepts the Authority will be relying upon the Contractor's skill care and diligence and its expertise and experience in the provision of the Services and also upon the accuracy of all representations or statements made and the advice given by the Contractor in connection with the provision of the Services and the accuracy of all contractual documentation and the Contractor hereby agrees to indemnify the Authority against all loss, damage, costs, legal costs and professional and other expenses of any nature whatsoever incurred or suffered by the States or by a third party as a result of such reliance.

36.2 The Contractor accepts:

- (a) liability for death and personal injury howsoever resulting from the Contractor's negligence; and
- (b) liability for damage to property resulting from the Contractor's negligence where such negligence has arisen or arises in connection with the provision of the Services or in connection with any other activities undertaken by the Contractor pursuant to or for any purpose related to the Agreement.

36.3 The Contractor hereby agrees to indemnify the Authority against all and any liability, loss, damage, costs and expense of whatsoever nature incurred or suffered by the Authority or by any third party whether arising from any disputes, contractual, tortious or other claims or proceedings which seek to recover loss and damage incurred by reason of any such death, personal injury or damage to property in relation to the provision of the Services.

36.4 The Contractor undertakes to maintain, at its own cost, public liability insurance for the amount of £2,000,000 (two million pounds) or any other amount agreed in writing between the Parties in respect of any one occurrence or series of occurrences arising out of one event.

36.5 The provisions of this condition shall survive the termination of the Agreement for any reason.

### **37 Warranties and Representations**

37.1 The Contractor warrants and represents that:

- (a) the Contractor has the full capacity and authority and all necessary consents (including, but not limited to, where its procedures so require, the consent of its parent company) to enter into and perform the Agreement and that the Agreement is executed by a duly authorised representative of the Contractor;
- (b) the Contractor shall discharge its obligations hereunder with all due skill, care and diligence including but not limited to good industry practice;
- (c) all obligations of the Contractor pursuant to the Agreement shall be performed and rendered by appropriately experienced, qualified and trained Staff with all due skill, care and diligence;
- (d) the Contractor is not in default in the payment of any due and payable taxes or in the filing, registration or recording of any document or under any legal or statutory obligation or requirement which default might have a material adverse effect on its business, assets or financial condition or its ability to observe or perform its obligations under the Agreement.

### **38 Termination on change of control and insolvency**

38.1 The Authority may terminate the Agreement by notice in writing with immediate effect where:

- (a) the Contractor undergoes a change of control, within the meaning of section Article 3A of the Income Tax (Jersey) Law 1961, which impacts adversely and materially on the performance of the Agreement; or
  - (b) the Contractor is an individual or a firm and a petition is presented for the Contractor's bankruptcy, or a criminal bankruptcy order is made against the Contractor or any partner in the firm, or the Contractor or any partner in the firm makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignment for the benefit of creditors, or if an administrator is appointed to manage the Contractor's or firm's affairs; or
  - (c) the Contractor is a company, if the company passes a resolution for winding up or dissolution (otherwise than for the purposes of and followed by an amalgamation or reconstruction) or an application is made for, or any meeting of its directors or members resolves to make an application for an administration order in relation to it or any Party gives or files notice of intention to appoint an administrator of it or such an administrator is appointed, or the court makes a winding-up order, or the company makes a composition or arrangement with its creditors, or an administrative receiver, receiver, manager or supervisor is appointed by a creditor or by the court, or possession is taken of any of its property under the terms of a fixed or floating charge; or
  - (d) where the Contractor is unable to pay its debts within the meaning of the Bankruptcy (Désastre) (Jersey) Law 1990; or
  - (e) any similar event occurs under the law of any other jurisdiction.
- 38.2 If the Contractor, being an individual, shall die or be adjudged incapable of managing his or her affairs within the meaning of the Mental Health (Jersey) Law 1969, the Authority shall be entitled to terminate the Agreement by notice to the Contractor with immediate effect.

### **39 Termination on Default**

- 39.1 The Authority may terminate the Agreement, or terminate the provision of any part of the Agreement by written notice to the Contractor with immediate effect if the Contractor commits a Default and if:
- (a) the Contractor has not remedied the Default to the satisfaction of the Authority within 25 Working Days, or such other period as may be specified by the Authority, after issue of a written notice specifying the Default and requesting it to be remedied; or
  - (b) the Default is not, in the opinion of the Authority, capable of remedy; or
  - (c) the Default is a material breach of the Agreement.
- 39.2 In the event that through any Default of the Contractor, data transmitted or processed in connection with the Agreement is either lost or sufficiently degraded as to be unusable, the Contractor shall be liable for the cost of reconstitution of that data and shall provide a full credit in respect of any charge levied for its transmission and shall reimburse the Authority for any costs charged in connection with such Default of the Contractor.
- 39.3 The Contractor may terminate the Agreement if the Authority is in material breach of its obligations to pay undisputed charges by giving the Authority 60 Working Days notice specifying the breach and requiring its remedy. The Contractor's right of termination under this clause 39.3 shall not apply to non payment of the charges or Price where such non payment is due to the Authority exercising its rights under clauses 18.1.

### **40 Break**

The Authority and the Contractor shall have the right to terminate the Agreement, or to terminate the provision of any part of the Agreement at any time by giving one month's written notice to the Contractor.

### **41 Consequences of Termination**

Upon termination no further payments shall be payable by the Authority to the Contractor.

### **42 Recovery upon Termination**

- 42.1 Termination or expiry of the Agreement shall be without prejudice to any rights and remedies of the Contractor and the Authority accrued before such termination or expiration and nothing in the Agreement shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry.
- 42.2 The provisions of this clause shall survive the continuance of the Agreement and indefinitely after its termination.

### **43 Extension of Time**

- 43.1 f, for any cause beyond the reasonable control of the Contractor, performance of the Services, is delayed, then the time for delivery/performance may be rescheduled by the Authority (acting reasonably). Delay for any other reason shall be at the sole discretion of the Authority, in which case the Contractor shall be responsible for any additional costs.
- 43.2 Notification of any anticipated or actual delay must be immediately communicated to the Authority by the Contractor specifying the reasons for the delay.

### **44 Governing Law**

The Agreement shall be governed by and interpreted in accordance with Jersey law and the Parties submit to the exclusive jurisdiction of the courts of Jersey.

### **45 Dispute Resolution**

- 45.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Agreement within 20 Working Days of either Party notifying the other of the dispute such efforts shall involve the escalation of the dispute to the finance director (or equivalent) of each Party.

- 45.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of the competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.
- 45.3 The performance of the Agreement shall not be suspended, cease or be delayed during the period of any dispute and the Contractor and the Authority (or employee, agent, supplier or sub-contractor) shall comply fully with the requirements of the Agreement at all times.

**Schedule 1 – Services & Service Levels**

- 1 The Authority will grant Clients a Voucher which may be redeemed against the purchase of an Electric Cycle.
- 2 The Contractor agrees to allow Clients to exchange a Voucher (one per transaction) for a reduction in the price of an Electric Cycle by the equivalent pound sterling value stated on the Voucher.
- 3 The Contractor agrees to verify the identity of Clients by matching the name and address stated on a Voucher against Necessary Identification.
- 4 The Contractor must not charge Clients any additional cost unless, Clients are made fully aware of all additional charges for additional goods and services prior to the redemption of a Voucher.
- 5 The Contractor should extend any other discounts they are offering all customers of Electric Cycles from time to time to the Client.
7. For each Voucher redeemed under the scheme, the Contractor must complete the cycle retailer e-bike point of sale online form whilst the sale is being made, which provides the information including:
  - Contractor’s name
  - Client unique grant code
  - e-bike brand
  - e-bike retail price before grant is deducted (GST should be charged on the full retail price)
  - e-bike serial number
  - Date of sale
  - Estimated delivery date (if not date of sale)
  - Date of 3 month service
- 6 The Contractor must complete the confirmation of delivery online form once the Electric Cycle is in the Client’s possession.
- 7 The Contractor must provide a service check within 3 months of the Electric Cycle delivery free of charge to the Client, and complete the Service Data online form. Each month, the Contractor will ensure that all fees and billing procedures are presented to the Authority on the first working day of each month, using the following table:

Date of Sale	Voucher number	e-bike serial number	TOTAL
xx-xx-20xx		xxxxxx	£
			£
			£
			£

Along with an invoice for the total value of Vouchers redeemed.

- 8 No payment will be made by the Authority until each Voucher can be reconciled against both a completed e-bike point of sale and confirmation of delivery online form.
9. The Contractor must immediately inform the Authority in writing if a Client returns their Electric Cycle.
- 10 Without prejudice to the Authority’s obligations under the FOIL, neither Party shall make any press announcements or publicise the Agreement or any part thereof in any way, except with the written consent of the other Party.
11. Both Parties shall take all reasonable steps to ensure the observance of the provisions of clause 10 of this Schedule 1 by all their servants, employees, agents, professional advisors and Contractors.