

**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 battery electric vehicles in the Island of Jersey.
- (B) The purchasers of the vehicle are the end recipients and the financial beneficiaries of the incentive. The Authority and the Contractor have agreed that the Contractor shall provide and the Authority shall co-operate with it in providing the Service of applying for the incentive on behalf of their customers 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, the Invitation to Tender, the Contractor’s Tender and any other documents (or parts thereof) specified by the Authority.

“**Approval**” and “**Approved**” means the written consent of the Contract Manager.

“**Approved Vehicle Retailer**” means a vehicle retailer that has completed the Registration Form and been accepted onto the Government of Jersey’s Electric Vehicle Incentive Scheme.

“**Approved Vehicle Dealer Register**” means the list of vehicle dealers that is held by the Government of Jersey for those companies that have successfully applied to and met the registration criteria to be able to submit applications to the Electric Vehicle Incentive Scheme.

“**Authority Property**” means any property, other than real property, issued or made available to the Contractor by the Authority in connection with the Agreement.

“**Battery electric vehicle**” means a type of electric vehicle that exclusively uses chemical energy stored in rechargeable battery packs, with no secondary source of propulsion (a hydrogen fuel cell, internal combustion engine, etc.).

“**Clients**” means members of the public or businesses that are purchasing a battery electric vehicle from the Contractor and wish to apply for the Government of Jersey’s Electric Vehicle Incentive Scheme.

“**Contractor**” means Approved Vehicle Retailer.

“**Commencement Date**” means that date specified as such in Part A of Schedule 1.

“**Commercially Sensitive Information**” means the subset of Confidential Information listed in the Commercially Sensitive Information Schedule comprised of information:

- (a) which is provided by the Contractor to the Authority in confidence for the period set out in that Schedule; and/or
- (b) that constitutes a trade secret.

**“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 and suppliers of either Party, all personal data and special category data within the meaning of the 2018 Law. This includes specific information relating to the fact that a customer has applied for / has received an incentive payment for their purchase.

**“Contract Manager”** means the person for the time being appointed by the Authority as being authorised to administer the Agreement on behalf of the Authority or such person as may be nominated by the Contract Manager to act on its behalf.

**“Contractor’s Representative”** means the individual authorised to act on behalf of the Contractor for the purposes of the Agreement.

**“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 Vehicle”** means a vehicle that uses one or more electric motors for propulsion.

**“Electric Vehicle Incentive Scheme”** means the incentive scheme being run by the Government of Jersey to provide financial support to those looking to buy a battery electric vehicle.

**“Expiry Date”** means that date specified clause 2.1.

**“Extension”** means the extension of the duration of the Agreement agreed in accordance with clause 37.

**“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.

**“General Change in Law”** means a change in Law which comes into effect after the Commencement Date, where the change is of a general legislative nature (including taxation or duties of any sort affecting the Contractor) or which would affect or relate to a comparable supply of Services of the same or a similar nature to the supply of the Services.

**“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 Expiry Date 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.

**"Month"** means calendar month.

**"Named Employee"** has the meaning given to it in clause 24.1.

**"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, as specified in the Services Schedule.

**"Price"** means the price exclusive of any applicable Tax, payable to the Contractor by the Authority under the Agreement, as set out under clause, for the full and proper performance by the Contractor of its obligations under the Agreement but before taking into account the effect of any adjustment of price in accordance with clause 16. GST is not applicable to the incentive payments.

**"Quality Standards"** means the quality standards published by the British Standards Institute, the International Organisation for Standardisation or any other equivalent body, that a skilled and experienced operator engaged in the same type of industry or business as the Contractor would reasonably and ordinarily be expected to comply as supplemented by the Specification.

**"Registration Form"** means the online application form that vehicle dealerships wishing to apply to join the list of Approved Vehicle Retailers on the Electric Vehicle Incentive Scheme.

**"Regulatory Bodies"** means those government departments and regulatory statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Agreement or any other affairs of the Authority and "Regulatory Body" shall be construed accordingly.

**"Replacement Contractor"** means any third party Contractor appointed by the Authority from time to time, to provide any services which are substantially similar to any of the Services, and which the Authority receives in substitution for any of the Services following the expiry, termination or partial termination of the Agreement, whether those services are provided by the Authority internally and/or by any third Party.

**"Requests 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.

“**Scheme Administrator**” means the individual, team or organisation that has been appointed by the Government of Jersey to perform the function of receiving and processing applications to the Electric Vehicle Incentive Scheme.

“**Service Data**” means the relevant information required by the Scheme Administrator to apply for the Services and upon the completion of the Services on behalf of each Client.

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

“**Services Schedule**” means Schedule 1 hereto containing details of the Services.

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

“**Specific Change in Law**” means a change in Law which comes into effect after the Commencement Date that relates specifically to the business of the Authority, and which would not affect a comparable supply of services of the same or a similar nature to the supply of the Services.

“**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.

“**Terms and Conditions of the Electric Vehicle Incentive Scheme**” means the terms and conditions published on [www.gov.je](http://www.gov.je) regarding the Electric Vehicle Incentive Scheme.

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

“**Variation**” has the meaning given to it in 33.

“**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) references to the Supplier or Contractor shall be a reference to the Contractor and vice versa and shall have the same meaning as Contractor;
- (h) the words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”; and
- (i) 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 Commencement Date and shall expire automatically on 31<sup>st</sup> December 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 33. 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 33.

## **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**

- 4.1.** 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, Terms and Conditions of the Electric Vehicle Incentive Scheme and other documents referred to or attached to the Agreement, the conflict shall be resolved in accordance with the following order of precedence:
  - (1) Terms and Conditions of the Electric Vehicle Incentive Scheme shall prevail over;

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

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

6.1. 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, signed for post, or by the recorded delivery service), by facsimile transmission or electronic mail (confirmed in either case 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 or facsimile transmission or sooner where the other Party acknowledges receipt of such letters, facsimile transmission 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 company address provided on the Registration Form

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

## 8. Mistakes in Information

8.1. The Contractor shall be responsible for the accuracy of all drawings, 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**

- 10.1. 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 Authority's Premises at any reasonable time or, provided that the Authority gives reasonable notice to the Contractor, at any other premises where any part of the Services is being performed.

- 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. Subject to the Authority providing Approval in accordance with clause 11.3, 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.

## **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.

## **13. Standard of Work**

- 13.1. The Contractor shall at all times comply with the Quality Standards, and where applicable shall maintain accreditation with the relevant Quality Standards authorisation body. To the extent the standard of Services has not been specified in the Agreement, the Contractor shall agree the relevant standard of Services with the Contract Manager prior to execution, and 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 Equivalent 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 14 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 Authority.

**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 incentive award confirmation which has been issued by the Scheme Administrator which has been redeemed by a Client against the purchase of a Battery Electric Vehicle within the preceding 6 months (the "**Price**").

**17. 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, sub-contractors, suppliers or agents or anyone acting on the Contractor's behalf, engages in conduct prohibited by clauses 29.1 or 29.2 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, Discrimination (Jersey) Law 2013, 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**

- 21.1.** 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. Criminal Records Check**

**24.1.** The Contractor shall procure that in respect of all potential Staff or persons performing any of the Services (each a “Named Employee”) before a Named Employee begins to attend any private premises to perform any of the Services:

- (a) each Named Employee is questioned as to whether he or she has any convictions; and
- (b) the results are obtained of a check of the most extensive available kind made pursuant to Part V of the Police Act 1997 in respect of each Named Employee. The check for each Named Employee shall include:
  - a. a search of the list held pursuant to the Safeguarding of Vulnerable Groups Act 2006 where the performance of the Services may involve contact with children; and/or
  - b. a search of the list held pursuant to Part VII of the Care Standards Act 2000 where the performance of the Services may involve contact with vulnerable adults (as defined in the Care Standards Act).; and
- (c) a copy of the results of such check are notified to the Authority.

**24.2.** The Contractor shall procure that the Authority is kept advised at all times of any member of Staff who, subsequent to his/her commencement of employment as a member of Staff, receives a conviction or whose previous convictions become known to the Contractor (or any employee of a sub-contractor involved in the provision of the Services).

## **25. Data Protection**

**25.1.** 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) and Schedule 2 of this Agreement.

**25.2.** 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.

**25.3.** The provisions of this clause and Schedule 2 shall apply during the continuance of the Agreement and indefinitely after its expiry or termination.

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

**26.1.** 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, (please see the relevant links at Schedule 3).

**26.2.** If requested to do so by the Authority at any time, the Contractor will, within 15 Working Days, develop (and obtain the Authority’s written Approval of) an appropriate 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.

- 26.3.** 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.
- 26.4.** 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.
- 26.5.** 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

## **27. Confidentiality**

### **27.1.** Each Party:-

- (a) shall treat all Confidential Information belonging to the other Party as confidential and safeguard it accordingly; and
- (b) shall not disclose any Confidential Information belonging to the other Party to any other person without the prior written consent of the other Party, except to such persons and to such extent as may be necessary for the performance of the Agreement or except where disclosure is otherwise expressly permitted by the provisions of the Agreement.

### **27.2.** The Contractor shall take all necessary precautions to ensure that all Confidential Information obtained from the Authority under or in connection with the Agreement:

- (a) is given only to such of the Staff and professional advisors or Contractors engaged to advise it in connection with the Agreement as is strictly necessary for the performance of the Agreement and only to the extent necessary for the performance of the Agreement;
- (b) is treated as confidential and not disclosed (without prior Approval) or used by any Staff or such professional advisors or Contractors otherwise than for the purposes of the Agreement.

### **27.3.** Where it is considered necessary in the opinion of the Authority, the Contractor shall ensure that Staff or such professional advisors or Contractors sign a confidentiality undertaking before commencing work in connection with the Agreement. The Contractor shall ensure that Staff or its professional advisors or Contractors are aware of the Contractor's confidentiality obligations under the Agreement.

### **27.4.** The Contractor shall not use any Confidential Information it receives from the Authority otherwise than for the purposes of the Agreement.

### **27.5.** The provisions of clauses 27.1 to 27.4 shall not apply to any Confidential Information received by one Party from the other:

- (a) which is or becomes public knowledge (otherwise than by breach of this clause);
- (b) which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
- (c) which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;

- (d) is independently developed without access to the Confidential Information; or
- (e) which must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the Party making the disclosure, including any requirements for disclosure under the FOIL pursuant to clause 28.

**27.6.** Nothing in this clause shall prevent the Authority:

- (a) disclosing any Confidential Information for the purpose of:
  - a. the examination and certification of the Authority's accounts; or
  - b. any examination pursuant to the Public Finances (Jersey) Law 2019 of the economy, efficiency and effectiveness with which the Authority has used its resources; or
- (b) disclosing any Confidential Information obtained from the Contractor:
  - a. to any Government of Jersey department or any administration of the Government of Jersey. All Government of Jersey departments or any administration of the Government of Jersey receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Government of Jersey departments or any administration of the Government of Jersey on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Government of Jersey department or any administration of the Government of Jersey; or
  - b. to any person engaged in providing any services to the Authority for any purpose relating to or ancillary to the Agreement;
  - c. provided that in disclosing information under sub-paragraph (b) the Authority discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.

**27.7.** Nothing in this clause shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Agreement in the course of its normal business, to the extent that this does not result in a disclosure of Confidential Information or an infringement of Intellectual Property Rights.

## **28. Freedom of Information**

**28.1.** 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).

**28.2.** 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.

**28.3.** The Authority shall be responsible for determining at its absolute discretion whether the Commercially Sensitive Information and/or any other 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.

**28.4.** 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.

**28.5.** 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.

**28.6.** The Contractor acknowledges that any lists or Schedules provided by it outlining Confidential Information are of indicative value only and that the Authority may nevertheless be obliged to disclose Confidential Information in accordance with clause 28.4.

## **29. Security of Confidential Information**

**29.1.** In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in the performance of the Agreement, the Contractor undertakes to maintain security systems Approved by the Authority. Where necessary to prevent such access, the Authority may require the Contractor to alter any security systems at any time during the Term at the Contractor's expense.

**29.2.** The Contractor will immediately notify the Authority of any breach of security in relation to Confidential Information and all data obtained in the performance of the Agreement and will keep a record of such breaches. The Contractor will use its best endeavours to recover such Confidential Information or data however it may be recorded. This obligation is in addition to the Contractor's obligations under clause 36. The Contractor will co-operate with the Authority in any investigation that the Authority considers necessary to undertake as a result of any breach of security in relation to Confidential Information or data.

## **30. Intellectual Property Rights**

**30.1.** All Intellectual Property Rights in any specifications, instructions, plans, data, drawings, databases, patents, patterns, models, designs or other material:

- (a) furnished to or made available to the Contractor by the Authority shall remain the property of the Authority;
- (b) prepared by or for the Contractor for use, or intended use, in relation to the performance of the Agreement shall belong to the Authority and the Contractor shall not, and shall procure that the Contractor's employees, servants, agents, suppliers and sub-contractors shall not, (except when necessary for the implementation of the Agreement) without prior Approval, use or disclose any such Intellectual Property Rights, or any other information (whether or not relevant to the Agreement) which the Contractor may obtain in performing the Agreement except information which is in the public domain.

- 30.2.** The Contractor shall obtain Approval before using any material, in relation to the performance of the Agreement which is or may be subject to any third party Intellectual Property Rights. The Contractor shall procure that the owner of the rights grants to the Authority a non-exclusive licence, or if itself a licensee of those rights, shall grant to the Authority an authorised sub-licence, to use, reproduce, and maintain the material. Such licence or sub-licence shall be non-exclusive, perpetual and irrevocable, shall include the right to sub-license, transfer, novate or assign to other Contracting Authorities, the Replacement Contractor or to any other third party providing services to the Authority, and shall be granted at no cost to the Authority.
- 30.3.** 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.
- 30.4.** 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).
- 30.5.** 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 30.3(a) and (b),
- 30.6.** 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.
- 30.7.** 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.

**30.8.** 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.

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

### **31. Audit**

**31.1.** The Contractor shall keep and maintain until twelve 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 cooperate 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.

### **32. Waiver**

**32.1.** 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.

**32.2.** 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.

**32.3.** 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.

### **33. Variation of the Services**

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

### **34. Severability**

**34.1.** If any provision of the Agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of the Agreement shall continue in full force and effect as if the Agreement had been executed with the invalid, illegal or unenforceable provision eliminated.

**34.2.** In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Agreement, the Parties shall immediately commence negotiations in good faith to remedy the invalidity.

### **35. Remedies in the event of inadequate performance**

**35.1.** Where a complaint is received or a problem indicated about the standard of Services or about the way any Services have been delivered or about any other matter connected with the performance of the Agreement and compliance with the Terms and Conditions of the

Electric Vehicle Incentive, then the Contract Manager shall take all reasonable steps to ascertain whether the complaint is valid.

**35.2.** If a breach in the Agreement or non-compliance with the Terms and Conditions of the Electric Vehicle Incentive is found then the Contract Manager will as the Contractor to take reasonable steps to remedy them. Such actions will be at the cost to the Contractor.

**35.3.** Where the issue is not remedied to the satisfaction of the Contract Manager or there is repeated non-compliance with the Agreement or Terms and Condition of the Electric Vehicle Incentive the Contract Manager reserves the right to terminate the Agreement and remove the Contractor from the list of Approved Vehicle Dealers.

### **36. Monitoring of Performance**

The Contractor shall provide such data and information as the Contractor may reasonably be required to produce regarding to the incentives the Contractor has submitted.

### **37. 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 2 year(s). 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.

### **38. Novation**

**38.1.** 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 Contracting Authority, 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.

**38.2.** 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.

### **39. Liabilities**

**39.1.** 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.

**39.2.** 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.

**39.3.** 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.

**39.4.** 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.

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

#### **40. Warranties and Representations**

**40.1.** 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.

#### **41. Termination on change of control and insolvency**

**41.1.** 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.

**41.2.** The Authority may only exercise its right under clause 41.1(a) within six months after a change of control occurs and shall not be permitted to do so where it has agreed in advance to the particular change of control that occurs. The Contractor shall notify the Contract Manager immediately when any change of control occurs.

**41.3.** 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 or the Contractor's Representative with immediate effect.

## **42. Termination on Default**

**42.1.** The Authority may terminate the Agreement, or terminate the provision of any part of the Agreement by written notice to the Contractor or the Contractor's Representative 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.

**42.2.** 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.

**42.3.** 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 42.3 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.

## **43. Break**

The Authority 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 Months' written notice to the Contractor.

## **44. Consequences of Termination**

Upon termination no further payments shall be payable by the Authority to the Contractor, providing all eligible approved and qualifying incentive payments have been paid by the Authority, except in circumstances where the Contractor has been found to breach the terms of the Agreement.

#### **45. Recovery upon Termination**

- 45.1.** 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.
- 45.2.** The provisions of this clause shall survive the continuance of the Agreement and indefinitely after its termination.

#### **46. Force Majeure**

- 46.1.** For the purpose of this clause, "Force Majeure" means any event or occurrence which is outside the reasonable control of the Party concerned, and which is not attributable to any act or failure to take preventative action by the Party concerned, including (but not limited to) governmental regulations, fire, flood, or any disaster. It does not include any industrial action occurring amongst the Contractor's Staff or any staff of any sub-contractor.
- 46.2.** Neither Party shall be liable to the other Party for any delay in or failure to perform its obligations under the Agreement (other than a payment of money) if such delay or failure results from a Force Majeure event. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations hereunder for the duration of such Force Majeure event. However, if any such event prevents either Party from performing all of its obligations under the Agreement for a period in excess of 6 Months, either Party may terminate the Agreement by notice in writing with immediate effect.
- 46.3.** Any failure or delay by the Contractor in performing its obligations under the Agreement which results from any failure or delay by an agent, sub-contractor or supplier shall be regarded as due to Force Majeure only if that agent, sub-contractor or supplier is itself impeded by Force Majeure from complying with an obligation to the Contractor.
- 46.4.** This clause 46 does not affect the Authority's rights under clause 45.2.
- 46.5.** If either of the Parties becomes aware of circumstances of Force Majeure which give rise to or which are likely to give rise to any such failure or delay on its part as described in clause 61.3 it shall forthwith notify the other by the most expeditious method then available and shall inform the other of the period which it is estimated that such failure or delay shall continue.
- 46.6.** For the avoidance of doubt it is hereby expressly declared that the only events which shall afford relief from liability for failure or delay of performance of the Agreement shall be any event qualifying for Force Majeure hereunder.

#### **47. 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.

#### **48. Dispute Resolution**

- 48.1.** 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.

- 48.2.** 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.
- 48.3.** The performance of the Agreement shall not be suspended, cease or be delayed by the reference of a dispute to mediation and the Contractor (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 Contractor shall commence providing the Services no earlier than 29<sup>th</sup> August 2023.
2. The Services shall be as follows: Provision of electric vehicle incentive to eligible customers purchasing qualifying battery electric vehicle
3. The provision of the Services will include the following:
  - a. The Contractor will inform Clients of the availability and eligibility criteria provided with the Terms and Conditions of the Electric Vehicle purchase incentive for the purchase of Battery Electric Vehicles within the following categories of vehicle only and for a vehicle not exceeding the maximum vehicle value cap.

<b>EU Classification</b>	<b>Definition</b>	<b>Basic</b>
M1	Vehicles used for the carriage of passengers and comprising not more than eight seats in addition to the driver's seat.	Car
N1	Vehicles used for the carriage of goods and having a maximum mass not exceeding 3.5 tonnes.	Light Commercial < 3,500kg
L1e-B	A two-wheeled vehicle, maximum design speed of 30 mph, maximum kerbside weight of 250 kg. If internal combustion engine maximum capacity of 50cc or electric motor max rated power 4kW	Moped
L3e-A1	A two-wheeled vehicle, unladen mass not exceeding 153kg, If internal combustion engine maximum capacity of 125cc, maximum power output not exceeding 11Kw, Power to weight ratio does not exceed 100Kw per metric tonne.	Light Motorcycle
L3-e-A2 & L3e-A3	A two-wheeled vehicle not being a moped or light motorcycle and the weight of which unladen does not exceed 410kg.	Heavy Motorcycle
<b>L6 *</b>	A vehicle with four wheels whose unladen mass is not more than 350 kg, not including the mass of the batteries in case of electric vehicles, whose maximum design speed is not more than 45 km/h, and whose engine cylinder capacity does not exceed 50 cm <sup>3</sup> for spark (positive) ignition engines, or whose maximum net power output does not exceed 4 kW in the case of other internal combustion engines, or whose maximum continuous rated power does not exceed 4 kW in the case of electric engines.	Light Quadricycle *
<b>L7 *</b>	A vehicle with four wheels, other than that classified for the category L6, whose unladen mass is not more than 400 kg (550 kg for vehicles intended for carrying goods), not including the mass of batteries in the case of electric vehicles and whose maximum continuous rated power does not exceed 15 kW.	Heavy Quadricycle *

- b. The Contractor will make an application for the incentive on behalf of the Client in

- accordance with the Terms and Conditions of the Electric Vehicle Incentive Scheme.
- c. The Scheme Administrator acting on behalf of the Authority will provide confirmation on the incentive award and value to the Contractor and the Client. This incentive may be redeemed against the purchase of an eligible battery electric vehicle only.
  - d. The Contractor agrees to allow Clients to exchange the incentive award for a reduction in the price of an eligible battery electric vehicle by the equivalent pound sterling value stated on the incentive confirmation.
  - e. The Contractor agrees to verify the identity of Clients by matching the name and address stated against Necessary Identification.
  - f. 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 vehicle purchase.
  - g. The Contractor must provide proof of order to the scheme administrator via email before application can be verified.
  - h. Arrival dates of more than 6 months from order will be rejected.
  - i. No payment will be made by the Authority until evidence is provided by the Contractor that the vehicle is on-Island and the Client portion of the costs have been received by the Contractor.
  - j. The Contractor must provide an appropriate level of warranty for the vehicle to the customer.
  - k. The Contractor must provide up-to-date advice on the safe charging of vehicles to customers, with particular reference to fire safety requirements.
  - l. The Contractor must immediately inform the Scheme Administrator in writing if the Client no longer wishes to proceed with the vehicle purchase or if the ordered vehicle will not be in the Island within the 6 month deadline.
  - m. 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.
  - n. Both Parties shall take all reasonable steps to ensure the observance of the provisions of clause m of this Schedule 1 by all their servants, employees, agents, professional advisors and Contractors.

## **Schedule 2 – Data Protection**

### **INTRODUCTION AND SCOPE**

Notwithstanding the terms of this Agreement, except where indicated otherwise, from the Effective Date, the obligations of the 2018 Law shall apply to the relationship between the Parties and these additional terms shall take precedence over the terms in the Agreement where they conflict.

### **1. DEFINITIONS AND INTERPRETATIONS**

1.1 The definitions in this Schedule, including the terms “**Authority**”, “**Controller**”, “**Data Subject(s)**”, “**Processor**”, “**processing**”, “**personal data**” and “**personal data breach**” are the same as set out in the 2018 Law and in addition these following definitions shall apply:

“**Privacy and Data Protection Requirements**” all applicable laws and regulations relating to the processing of personal data and privacy in any relevant jurisdiction, including, if relevant, the 2018 Law, the General Data Protection Regulation (EU) 2016/679 (the “**GDPR**”), the Regulation of Investigatory Powers (Jersey) Law 2005, the Electronic Communications (Jersey) Law 2000, any amendment, consolidation or re-enactment thereof, any legislation of equivalent purpose or effect enacted in Jersey or the United Kingdom, and any orders, guidelines and instructions issued under any of the above by relevant national authorities, a judicial authority in Jersey, England and Wales or a European Union judicial authority.

### **2. GENERAL**

2.1 Both Parties warrant that they will comply with their respective obligations under the Privacy and Data Protection Requirements and the terms of this Schedule.

2.2 For the purpose of this Agreement, both Parties warrant to undertake the obligations relevant to them as Controller or Processor as defined under the 2018 Law.

2.3 The Authority is the Controller and the Contractor is the Processor.

2.4 Both Parties shall comply any registration requirements under the 2018 Law and will only process personal data as necessary to fulfil the terms of this Agreement and for the duration of this Agreement.

### **3. NATURE OF THE DATA**

3.1 The subject-matter of the processing of personal data covers the following types/categories of data:

- x Name
- x Address
- x Contact information (e.g. phone number, email address)

3.2 Persons affected (data subjects)

The data subjects whose personal data will be processed includes:

- x Businesses
- x Members of the public

### **4. CONTROLLER OBLIGATIONS**

4.1 The Controller warrants and represents that all instructions provided to the Processor in relation to the processing of personal data are lawful and shall as a minimum include:

- (a) The nature and purpose of the processing of the personal data;

- (b) The types of personal data to be processed; and
  - (c) The categories of data subjects to whom the personal data relates.
- 4.2 The Controller shall only provide instructions to the Processor that are in accordance with the terms of the Agreement and this Schedule. Such instructions shall be limited to the subject matter of providing Services under the Agreement.
- 4.3 The Controller acknowledges it is solely responsible for determining the lawful processing condition upon which it shall rely in providing instructions to the Processor to process personal data for the purposes of Services as set out in the Agreement.
- 4.4 The Parties acknowledge and accept that processing of third country or other international organisation's resident personal data shall be lawful only if and to the extent that either:
- (a) an adequacy decision is in place under Article 45 of the GDPR;
  - (b) there are appropriate safeguards in place that meet the requirements of Article 67 of the 2018 Law; or
  - (c) the transfer falls within the exceptions set out in Schedule 3 of the 2018 Law.

## **5. PROCESSOR OBLIGATIONS**

- 5.1 The Processor shall:
- (a) only carry out processing of personal data in accordance with the Controller's documented instructions, including where relevant for transfers of third country resident personal data or to an international organisation, in which case the Processor shall inform the Controller of that legal requirement (unless prohibited by law), and shall immediately inform the Controller if, in the Processor's opinion, any instruction given by the Controller to the Processor infringes Privacy and Data Protection Requirements;
  - (b) notify the Controller without undue delay of any requests received from a Data Subject exercising their rights under Privacy and Data Protection Requirements and, taking into account the nature of the processing, assist the Controller by taking appropriate technical and organisational measures, insofar as this is possible, with fulfilling its obligations in respect of Data Subject rights under the Privacy and Data Protection Requirements, including responding to any subject access requests or requests from Data Subjects for access to, rectification, erasure or portability of personal data, or for restriction of processing or objections to processing of personal data;
  - (c) take all security measures required in accordance with the Privacy and Data Protection Requirements (including where relevant, Article 21 and 22 of the 2018 Law), and at the request of the Controller provide a written description of, and rationale for, the technical and organisational measures implemented, or to be implemented, to protect the personal data against unauthorised or unlawful processing and accidental loss; and detect and report personal data breaches without undue delay;
  - (d) where relevant for the processing of third country or other international organisation's resident personal data and taking into account the nature of the processing and the information available to the Processor, use all measures to assist the Controller in ensuring compliance with the Controller's obligations to:
    - i. keep personal data secure (Article 21 of the 2018 Law);



- ii. notify personal data breaches to the Authority (Article 20 of the 2018 Law);
  - iii. advise data subjects when there has been a personal data breach (Article 20(6) of the 2018 Law);
  - iv. carry out data protection impact assessments (Article 16 of the 2018 Law); and
  - v. consult with the Authority where a data protection impact assessment indicates that there is an unmitigated high risk to the processing (Article 17 of the 2018 Law).
- (e) without undue delay, inform the Controller of becoming aware of a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, the personal data transmitted, stored or otherwise processed. The Processor accepts and acknowledges that the Controller shall direct in its sole discretion, any and all steps and measures taken to remedy a breach by the Processor under the Privacy and Data Protection Requirements, including but not limited to any communications with the Authority. The Processor agrees not to act in any way upon such disclosure without the prior written consent of the Controller;
- (f) make available to the Controller all information necessary to demonstrate compliance with the obligations laid down in this Agreement and allow for and contribute to audits, including inspections, conducted by the Controller or another auditor mandated by the Controller as set out in paragraph 5 below; and
- (g) in addition to the confidentiality obligations contained within the Agreement, ensure that persons authorised to process the personal data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.
- 5.2 On expiry or termination of the Agreement, the Processor shall immediately cease to use personal data and shall arrange for its safe return or destruction as shall be required by the Controller (unless otherwise prescribed by law).

## **6. AUDIT RIGHTS**

- 6.1 Upon the Controller's reasonable request, the Processor agrees to provide the Controller with any documentation or records (which may be redacted to remove confidential commercial information not relevant to the requirements of this Agreement) which will enable it to verify and monitor the Processor's compliance with its data protection and security obligations under the terms of this Agreement, within 14 days of receipt of such request, and to notify the Controller of the person within the Processor's organisation who will act as the point of contact for provision of the information required by the Controller. For this purpose, the Processor may present up-to-date attestations, reports or extracts thereof from independent bodies (e.g. external auditors, internal audit, the data protection officer, the IT security department or quality auditors) or suitable certification by way of an IT security or data protection audit;
- 6.2 Where, in the reasonable opinion of the Controller, such documentation is not sufficient in order to meet the obligations of Article 21 of the 2018 Law, the Controller will be entitled, upon reasonable prior written notice to the Processor and upon reasonable grounds, to conduct an on-site audit of the Processor's premises used (save for domestic premises), solely to confirm compliance with its data protection and security obligations under this Schedule
- 6.3 Any audit carried out by the Controller will be conducted in a manner that does not disrupt, delay or interfere with the Processor's performance of its business. The Controller shall ensure that the individuals carrying out the audit are under the same confidentiality obligations as set out in the Agreement.
- 6.4 The Processor shall be entitled to carry out an audit of the Controller on reciprocal terms as those set out in clauses 6.1, 6.2 and 6.3.

## **7. USE OF SUB-PROCESSORS**

- 7.1 The Processor will only engage a sub-processor with the prior consent of the Authority in writing and the Controller shall not unreasonably withhold their consent. If the Controller has a reasonable basis to object to Processor's use of a sub-processor, the Controller shall notify the Processor promptly in writing within ten (10) days after receipt of the Processor's notice. Sub-processing does in particular not include ancillary services, such as telecommunication services, postal / transport services, maintenance and user support services or the disposal of data carriers, as well as other measures to ensure the confidentiality, availability, integrity and resilience of the hardware and software of data processing equipment.
- 7.2 Where the Processor uses a third party and where they are acting as a sub-processor in relation to the personal data the Processor shall:
- (a) in relation to third country or other international organisation's resident personal data, enter into a legally binding written agreement that places the equivalent data protection obligations as those set out in this Schedule to the extent applicable to the nature of the services provided by such sub-processor, in particular providing sufficient guarantees to implement appropriate technical and organisational measures in such a manner that the processing will meet the requirements of the Privacy and Data Protection Requirements;
  - (b) shall remain liable for any act or omission of a sub-processor that does not comply with the data protection obligations as set out in this Schedule; and
  - (c) where required by law, the Processor shall inform the Controller of any intended changes concerning the addition or replacement of a sub-processor with access to personal data and give the Controller the opportunity to object to such changes.

**Schedule 3 – Cyber Essentials Scheme Requirements**

Information on Cyber Essentials Scheme can be found at  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/526200/ppn\\_update\\_cyber\\_essentials\\_0914.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/526200/ppn_update_cyber_essentials_0914.pdf)

Any Cyber Essential system development by the Supplier should also comply with the United Kingdom government's '10 Steps to Cyber Security' guidance, available at  
<https://www.ncsc.gov.uk/guidance/10-steps-cyber-security>