

## E-Bike Hire Agreement

### TERMS AND CONDITIONS OF HIRE

#### 1. INTERPRETATION

1.1 The following definitions and rules of interpretation apply in this agreement.

**Agreement** means the terms and conditions of hire and the condition record in this agreement.

**E-Bike** means the E-Bike bearing the frame number set out on the front page of this Agreement.

**Commencement Date** means the date that the Customer takes Delivery of the E-Bike and Equipment in accordance with the date and times set out on the front page of this Agreement.

**Council** means Aberdeenshire Council, a local authority constituted under the Local Government etc. (Scotland) Act 1994 and having its head office at Woodhill House, Westburn Road, Aberdeen, AB16 5GB.

**Delivery** means the transfer of physical possession of the E-Bike and Equipment to the Customer, being at the point when the Customer takes the E-Bike and Equipment off the Council's premises.

**Equipment** means the items of equipment set out on the front page of this Agreement.

**Customer** means the person named on the front page of this Agreement, who is responsible for the E-bike and Equipment during the period of hire.

**Material Breach** means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the Council would otherwise derive from a substantial portion of this Agreement, over the term of this Agreement. In deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding.

**Rental Payments** means the payments made by or on behalf of Customer for hire of the E-Bike and Equipment in accordance with the booking details set out on the front page of this Agreement.

**Rental Period** means the period of hire as set out in clause 3.

**Parties** means the Council and the Customer, and "Party" means either one of them.

**Total Loss** means the loss, irreparable damage, theft, confiscation or seizure of the E-Bike and or the Equipment, due to the Customer's default.

**VAT** means value added tax chargeable under the Value Added Tax Act 1994 or any equivalent tax chargeable in the UK.

1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement.

1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors and permitted assigns.

1.4 The schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement and any reference to this Agreement includes the schedules.

1.5 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.

- 1.6 Unless the context otherwise requires, words in the singular shall include the plural and vice versa.
- 1.7 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.8 A reference to **writing** or **written** includes e-mail.
- 1.9 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.10 References to clauses and schedules are to the clauses and schedules of this Agreement and references to paragraphs are to paragraphs of the relevant schedule.
- 1.11 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

## **2. GENERAL**

- 2.1 The Customer agrees to:
  - (a) hire the E-Bike and Equipment;
  - (b) pay the Rental Payments and Deposit; and
  - (c) accept the terms and conditions of this Agreement.
- 2.2 The Customer shall during the term of this Agreement:
  - (a) accept complete responsibility during the period of hire for the safe custody of the E-Bike and Equipment and for any loss, theft or damage to it (howsoever caused).
  - (b) be responsible for the security of the E-Bike and must always lock the E-Bike rear wheel using the Locking App whenever the E-Bike is unattended and keep the E-bike and Equipment safe.
  - (c) return the E-bike and Equipment by the time and date booked and paid for. Failing which if not returned by the specified date and time the Customer will be charged at a pro-rata rate per hour until it is returned;
  - (d) notify the Council immediately of any loss, theft, damage or accident to the E-Bike or the Equipment and in the case of theft or an accident involving any other party or vehicle, to the nearest police station.
- 2.3 The minimum age to hire an E-Bike and the Equipment shall be 14 years old. All young persons (aged 17 or younger) must wear a cycle helmet as a condition of hire, and will only be issued with the E-Bike and the Equipment when accompanied by a responsible adult.

## **3. RENTAL PERIOD**

- 3.1 The Rental Period starts on the Commencement Date and shall continue for the agreed hire period unless this Agreement is terminated earlier in accordance with its terms.



#### **4. RENTAL PAYMENTS**

- 4.1 The Rental Payments are inclusive of VAT and any other applicable taxes and duties or similar charges which shall be payable by the Customer at the rate and in the manner from time to time prescribed by law.
- 4.2 All amounts due under this Agreement shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

#### **5. IDENTIFICATION CHECKS**

- 5.1 The Customer agrees to provide the Council with photographic proof of identification prior to the hire of the E-bike and Equipment.

#### **6. CUSTOMER'S RESPONSIBILITIES**

- 6.1 The Customer shall during the term of this Agreement:
- (a) Accept that cycling has risks and confirms that they are a competent cyclist who will follow the Highway Code at all times whilst using the E-Bike and Equipment;
  - (b) Confirm that they are in good general health and that their eyesight is to the standard required to pass a standard UK car driving test;
  - (c) Wear a helmet and use other appropriate safety equipment and clothing when using the E-Bike and Equipment;
  - (d) Operate the front and rear lights on the E-Bike in hours of reduced natural light;
  - (e) Follow any reasonable instruction given by the Council;
  - (f) Agree that they will not use the E-Bike or Equipment for any unlawful purpose; and
  - (g) Accept that they will be responsible to the Council for any loss, theft, damage or failure to return the E-bike or Equipment by the time and date specified on the front page of this Agreement.
- 6.2 The Customer acknowledges and accepts that the E-bike and Equipment is the property of the Council and other than the Customer's right to use the E-bike and Equipment in accordance with the terms of this Agreement, this Agreement does not confer any right, title or interest in the E-bike or Equipment.

#### **7. LIABILITY**

- 7.1 Subject to clause 7.2, the Parties' maximum aggregate liability for breach of this Agreement (including any liability for the acts or omissions of its employees, agents and subcontractors), whether arising in contract, delict (including negligence), misrepresentation or otherwise, shall in no circumstances exceed £250,000 (two hundred and fifty thousand) pounds Sterling.
- 7.2 Nothing in this Agreement shall exclude or in any way limit:
- (a) a Party's liability for death or personal injury;

- (b) a Party's liability for fraud or fraudulent misrepresentation; or
- (c) any other liability which cannot be excluded by law.

7.3 Without prejudice to clause 7.1 and 7.2, a Party shall be liable under this Agreement for the following types of any indirect or consequential loss or damage:

- (a) loss of profit;
- (b) loss of revenue;
- (c) loss of or damage to business; or
- (d) loss of or damage to goodwill.

## **8. TERMINATION**

8.1 Without affecting any other right or remedy available to it, the Council may terminate this Agreement with immediate effect by giving notice to the Customer if:

- (a) the Customer fails to pay any amount due under this Agreement on the due date for payment; or
- (b) a Material Breach is committed of any other term of this Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach upon verbal or written request by the Council;

8.2 This Agreement shall automatically terminate if the E-Bike and Equipment is, in the reasonable opinion of the Council, judged to be a Total Loss.

8.3 Users of the bikes have a 30 minute grace period to unlock access to the bike. Failure to access the bike within 30 minutes will result in an automatic booking cancellation.

8.4 Any refund given will be processed by the Council within fourteen days.

8.5 Following termination of this agreement for whatever reason, clauses which expressly or by implication have effect after termination shall continue in full force and effect.

## **9. ASSIGNATION AND OTHER DEALINGS**

9.1 A Party shall assign, novate, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under this Agreement.

## **10. ENTIRE AGREEMENT**

10.1 This Agreement constitutes the entire agreement between the Parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

10.2 Each Party acknowledges that in entering into this Agreement it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement.

10.3 Each Party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this Agreement.

**11. VARIATION**

11.1 No variation of this Agreement shall be effective unless it is in writing and signed by the Parties (or their authorised representatives).

**12. NO PARTNERSHIP OR AGENCY**

12.1 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the Parties, constitute any Party, the agent of another Party, or authorise any Party to make or enter into any commitments for or on behalf of any other Party.

12.2 Each Party confirms it is acting on its own behalf and not for the benefit of any other person.

**13. GOVERNING LAW AND JURISDICTION**

13.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with Scots law and the Parties irrevocably submit to the exclusive jurisdiction of the Scottish courts.