

# Colchester eCargo Bike Library Pay As You Go hire agreement

This Agreement is dated

2023

BETWEEN

(1) Colchester City Council of Rowan House, 33 Sheepen Road, Colchester CO3 3WG (the “**Council**”)

And

(2) (the “**Scheme Member**”)

## Definitions

### 1. Interpretation

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

**Agreement:** means this agreement and any documents that are referred to in this agreement

**Booking System:** means a booking system run by Spokesafe and used by Scheme Members to book, pay for the hire of eBike and which allows access to the Location in order for the Scheme Member to collect the eBike at the beginning and return it at the end of any agreed Hire Period

**eBike:** means a Council owned the electric bicycles and electric cargo eBikes that are available for hire via the Booking System to Scheme Members .

**Hire Charges:** means the initial sum of £3 for a minimum of up to 2 hours, £4.50 up to 3 hours, £6 up to 4 hours and £10 for daily rental over 4 hours for the hirer of eBikes inclusive of VAT and these fees may be decreased or increased by the Council or Spokesafe giving notice via the Booking App

**Hire Period:** means the period of time that the Scheme Member has requested the hire of an eBike which has been agreed by Spokesafe via the Booking System in accordance with Spokesafe’s Terms and Conditions

**Induction:** means an induction provided by the Council to the Scheme Members on use of the eBikes

**Location:** means Unit 3 Portal Precinct, Sir Isaacs Walk, Colchester, Essex CO1 1JJ

**Location Partnership Agreement:** means a Location and Partnership Agreement dated 22<sup>nd</sup> February 2023 and made between the Council and Spokesafe in relation to the use of the Location

**Other Equipment:** Locks, raincover, and other removal accessories that are booked via the Booking System

**Scheme Member:** means the party to this Agreement that has successfully completed the induction course for the use of eBikes and where the Council has notified Spokesafe that the Scheme Member can book and pay for the use of eBikes via the Booking System for the agreed Hire Period

**Spokesafe:** means Spoke Safe LTD whose registered office is at 87 Roan Road, London E2 OQN

**Spokesafe's Terms and Conditions:** means the terms and conditions which relate to the use by the Scheme Member of the Location, the Booking System and payments for the hire of an eBike during any agreed Hire Period

**GDPR:** has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

- 1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.4 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.5 A reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted from time to time
- 1.6 A reference to legislation or a legislative provision shall include all subordinate legislation made from time to time under that legislation or legislative provisions.
- 1.7 A reference to **writing** or **written** excludes fax but not email.
- 1.8 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.

- 1.9 A reference to **this agreement** or to any other agreement or document is a reference to this agreement or such other agreement or document, in each case as varied from time to time.
- 1.10 Any words following the terms **including, include, in particular, for example** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.
- 1.11 If there is any conflict with the terms of this Agreement and the Spokesafe Terms and conditions then this Agreement will prevail in relation to the use of the eBike/eCargo bike and the Spokesafe Terms and Condition will prevail in relation to the use of the Location and but only to the extent necessary to resolve any conflict

## **2. Introduction**

- 2.1 The Council and Spokesafe have agreed a scheme where Scheme Members can book and hire eBikes and Other Equipment via the Booking System for collection and return of eBikes and Other Equipment from the Location during any agreed Hire Period
- 2.2 The Scheme Member agrees that these hire conditions will apply to the hire and use of an eBike and the hire of any Other Equipment each time they that are successfully hired by the Scheme Member via the Booking System

## **3. Term**

- 3.1 This Agreement will continue until it is terminated in accordance with its terms.
- 3.2 The Council and the Scheme Member agree to comply with their respective obligations under terms of this Agreement throughout the term of this Agreement.

## **4. Warranty by the Scheme Member**

- 4.1 The Scheme Member warrants for the duration of this Agreement and each time that they hire an eBike via the Booking System that they:-
- i) are physically fit and competent to ride the eBike on the roads.
  - ii) in good health and that their eyesight is up to the standard required for a road driving test.
  - iii) have not suffering from any medical conditions or disability which is likely to adversely affect their control and use of the eBike
  - ii) are aware of the requirements of the Highway Code
  - iii) will use the eBike and Other Equipment as agreed via the Induction that the Scheme Member has undertaken prior to the date of this agreement as part of the process to become a Scheme Member

## **5. Scheme Member Responsibilities.**

5.1 The Scheme Member agrees that when hiring an eBike they will:-

- i) act and ride responsibly and within their personal limits and skills and that they will not undertake any manoeuvres that are beyond their level of skill
- ii) not carry out any stunts, tricks, wheelies or other extreme moves when using the eBike
- iii) not use the eBike while under the influence of alcohol or drugs.
- iv) used the eBikes with reasonable care and skill and in accordance with the manufacturer's recommendations; and
- v) use the eBike as instructed in the induction provided by the Council.
- vi) Only ride the bike where bikes are legally permitted for example but not limited to cycle lanes, bus lanes, bridleways and roads
- vii) Use appropriate safety equipment

5.2 If an eBike is being hired by a Scheme Member to carry children it is their responsibility to ensure that they hire an appropriate eBike with safety harnesses and safety bars and it is also the responsibility of the Scheme Member to satisfy themselves that the safety features provided are adequate to secure their child/children in accordance with their age, weight, height, ability.

5.3 The Scheme Member agrees that it will be solely responsible for its use of the eBike during any agreed Hire Period and for ensuring that all laws and regulations relating to the use of the eBike are complied with and that they use appropriate safety equipment when necessary

5.4 The ownership of the eBike(s) and Other Equipment will remain with the Council and the Scheme Member will not sell, hire out, lend, charge, or otherwise part with the eBike (s) and/or Other Equipment

5.5 It is the responsibility of the Scheme Member to report any issues with the eBikes during or at the end of their eBike hire, so that the Council can rectify or remove it from service before any new hire commences and this includes but is not limited to any maintenance issues, eBike condition and cleanliness.

5.6 On picking up a eBike at the start of an agreed Hire Period the Scheme Member also agrees to carry out a visual check of the eBike which will also include a safety check of the brakes, and tyre pressure and a damage check of the bike and box in accordance with the safety check instructions provided at induction

to ensure the eBike was in a roadworthy condition and safe to use and they must report any concerns or issues to Spokesafe before using the eBike.

- 5.7 In the event that the eBike is not deemed safe to take out on hire Spokesafe will use its reasonable endeavours to provide an alternative eBike for the Scheme Member but the Scheme Member accepts that there is no guarantee that a replacement eBike would be available or if there is a replacement that it would be available for the whole of agreed Hire Period and in this event Spokesafe will arrange for a refund which will be processed via the Booking System.
- 5.8 The Scheme Members must:-
- i) only use the eBike within the eBikes' battery capacity area as detailed in Schedule 2
  - ii) give proper and due regard to the circumstances that can change the batteries capacity as detailed in Schedule 1 and the eBikes must not be transported or used in other areas during any agreed Hire Period.
- 5.10 The charging cable for the eBike hired can be taken with prior agreement, but the Scheme Member must comply with the requirements of clause 8.3 and if the charging cable is not returned the Scheme Member agrees to reimburse the Council for the cost of replacing the charging cable.
- 5.11 Scheme Members acknowledge and accept that there is no guarantee on availability of the eBikes and that sometimes eBikes may have to be taken out of service at short notice where no alternative eBike is available and that this can occur during an agreed Hire Period and that the Scheme Members only remedy (where there is a confirmed booking via the Booking System) will be to have a refund of any hire charges for the period that the eBike is not available

## **6. Hire Period**

- 6.1 If a Scheme Member hires a Council owned eBike they must hire it via the Booking System for the date and time required (subject to availability), pay the appropriate Hire Charges and return the eBike to the Location before the end of the agreed Hire Period
- 6.2 Prior to the expiry of any agreed Hire Period the Scheme Member can request an extension via the Booking System which might be granted if the eBike is not already booked by another user.
- 6.3 If a Scheme Member returns a hired eBike late being after the agreed Hire Period without prior agreement then a penalty of £30 will be charged per day and this will be deducted from the deposit or if insufficient funds available the Scheme Member agrees to pay these charges on request. If the Scheme member returns late with prior notification the penalty charge is reduced to £20.

- 6.4 The Scheme Member accepts that it will not be entitled to a refund if it returns the eBike earlier than the agreed Hire Period.
- 6.5 The Scheme Member acknowledges and accepts that Spokesafe manages payments for any eBikes that the Scheme Members hires for any agreed Hire Period and the current hire charges will be detailed and payable via the Booking System at the time that the Scheme Member arranges the booking via the Booking System
- 6.6 The Scheme Member also agrees to comply with the Spokesafe's Terms and Conditions when hiring an eBike via the Booking System and with the obligations contained in Schedule 1

## **7. Damage**

- 7.1 The Council will be entitled to charge the Scheme Member for all damage caused to the eBike (s) during the Hire Period (excluding any damage which has been caused by a risk the Council has insured against (where a valid claim can be made by the Council under the terms of its insurance policy) and/or if the Council has to arrange for the eBike (s) to be cleaned after the agreed Hire Period
- 7.2 The Council will take a £50 returnable deposit on each booking or as an upfront one off deposit returnable if the Scheme Member leaves the scheme, depending on the Scheme Members preference which will be payable via the Booking System. The £50 deposit will be returnable so long as the Scheme Member returns the eBike without damage and on time. If £50 is insufficient to meet repair costs or late penalties incurred, a further invoice will be issued and membership suspended until the invoice is paid and the Council will be entitled to recover any shortfall as a contractual debt plus costs, interest and any other cost the Council will reasonably incur in seeking to recover any unpaid sums.
- 7.3 If all or part of the £50 deposit is lost due to damage or late return penalties but scheme membership continues, a new £50 deposit will have to be paid or made up to ensure a £50 deposit is always available.

## **8. Maintenance and breakdown**

- 8.1 The eBikes will be checked by the Council or a Council contractor at a minimum once a week for any issues, damage or maintenance problems and will be serviced on a regular basis.
- 8.2 The Scheme Member must report any faults or damage to the eBike or other equipment occurring during any agreed Hire Period to Spokesafe at the earliest opportunity or at the latest when they have returned the eBike at the end of the agreed Hire Period so it can be rectified prior to the next hire.

- 8.3 The Scheme Member must remove the battery and put it on charge on the specified shelf following the induction instructions provided. The Scheme Member must not interfere with the plug and timer arrangements on the sockets associated with the batteries specified storage shelf.
- 8.4 In the event the eBike fails during an agreed Hire Period due to a technical or mechanical malfunction or due to damage incurred and the eBike cannot be ridden the Scheme Member must contact the Spokesafe by email or telephone immediately to discuss a resolution:
- 8.5 If an eBike has to be left while awaiting recovery, it must be secured to an immovable object using the three locks provided, recovery of both the Scheme Member and the eBike will be discussed with Spokesafe or Spokesafe will refer the Scheme Member to the Council depending on the situation.

## **9 Recovery by the Council**

- 9.1 Whilst it is the Scheme Member's obligation to return any hired eBike to the Location at the end of the agreed Hire Period the Council will normally arrange for the recovery of a hired eBike for free if there has been a mechanical or electrical failure not caused by a Scheme Member, but the Scheme Member agrees to reimburse the Council for any recovery costs if recovery is needed for any of the reasons outlined below:
- i) Rider Capability and Fatigue (the rider is not in a condition to continue to use the eCargo eBike effectively and or safely)
  - ii) Rider scheduling and battery discharge (the rider does not meet their schedule and needs to abort their trip or route planning and preparedness leaving the rider without sufficient electrical power)
  - iii) an accident prevents further travel (where the damage to the eBike has not been caused by an Insured Risk)
  - iv) If the hired eBike is outside the recommended round trip limit and/or has run out of battery due to the Scheme Member inappropriately using the electrical assist modes.
  - v) For any other reason as the Council shall consider reasonable in the circumstance

## **10. Insurance**

- 10.1 It is strongly recommended that the Scheme Member has public liability insurance to cover all third-party risks and/or for personal injury when it hires and eBike. If the Scheme Member does not obtain such an insurance policy it

acknowledges and agrees that it will remain responsible for riders, passengers, third parties or any such goods, items or equipment that are injured, lost, stolen or damaged during usage and/or in relation to any third party claims that might be made against them

- 10.2 The eBike that is hired is covered by the Council's insurance policy for damage by a third party where a claim cannot be made against the third party of any reason or theft so long as it is kept, stored, secured and ridden in accordance with this Agreement when the eBike is hired.
- 10.3 The Scheme Member must not do anything that would invalidate any insurance claim made under the terms of the Council's insurance policy for an insured risk and if the Scheme Member is in breach of its obligations under this clause it will indemnify the Council against any costs that it incurs for the replacement or repair of the eBike that have been damaged or stolen (as appropriate)
- 10.4 The Scheme Member will also reimburse the Council in a timely manner for the policy excess which is £250 for each and every claim that it is required to pay under the terms of the insurance policy for the eBike where a claim is made by the Council for an insured risk that occurred during the period that a Scheme Member hired an eBike.
- 10.5 If the eBike (s) are damaged by a third party where a claim cannot be made against the third party for any reasons or it is stolen and in both cases where a valid claim can be made under the Council's insurance policy the Council will use the insurance monies received to repair or replace the damaged or stolen eBike (as appropriate) as soon as possible.
- 10.6 The Scheme Member will provide the Council with all reasonable support and/or assistance to enable a valid insurance claim to be made by the Council or to enable it to pursue a claim against any third party
- 10.7 In the event of an incident or accident the Scheme Member must contact Spokesafe on 020 3488 0060 as soon as possible to report the details and to agree the recovery of the eBike if required. Also report to the police if relevant and gain a crime number.
- 10.8 If the eBike is destroyed or damaged by third party events during any agreed Hire Period the Scheme Member will provide the Council with all reasonable support and/or assistance in trying to recover the costs for any repairs or the cost of the replacement from the relevant third party

## **11. Liability and Termination**

- 11.1 If a Scheme Member commits any material breaches of the terms of this Agreement or if minor breaches continue the Council shall be entitled, but without prejudice, to any other rights or remedies which it may have to terminate this Agreement and the Scheme Member will no longer be able to hire any



eBike via the Booking System and the Council will be able to recover possession of any eBike (s) and Other Equipment that is being hired with or without notice, and to make reasonable charge for such a repossession.

11.2 This agreement will also automatically terminate if the Scheme Member breaches Spokesafe's Terms and Conditions and Spokesafe terminates the Scheme Member's use of the Booking System and/or the use of the Location or if the Location Partnership Agreement is terminated for any reason

11.3 Either party is able to terminate this Agreement on giving the other party not less than five working days' notice and on expiry of the said notice this Agreement will terminate but without prejudice to either parties right or remedies that occurred prior to the date of termination and any bookings made by the Scheme Member will be automatically cancelled if they relate to a period after the expiry of the said notice

11.4 The Scheme Member agrees that the Council's total liability for any breaches of the following:

- i) Contract
- ii) Tort (including negligence)
- iii) breach of statutory duty,
- iv) misrepresentation,
- v) restitution or otherwise arising in connection with this agreement

will be limited to the value of the eBike (s) hired.

11.5 The limit of liability specified in clause 11.3 will not apply to death or personal injury caused by the negligence of the Council or its employees.

11.6 Either party shall not be liable to the other for any:-

- (a) economic loss;
- (b) loss of profits;
- (c) loss of sales or business;
- (d) loss of agreements or contracts;
- (e) loss of anticipated savings;
- (f) loss of or damage to goodwill; and
- (g) indirect or consequential loss.

11.7 Any conditions or warranties which might be implied by statute on the part of the Council, are excluded unless it would be unlawful to do so.

11.7 The Scheme Member will indemnify the Council on a full indemnity basis against all losses, liabilities, damages, injuries, claims, demands, costs and expenses in relation to any claims arising from any breach of its obligations under this Agreement and/or in relation to its use of the eBike (s) (excluding any liability for death or personal injury caused by the negligence of the Council or its employees)

## **12. Data Protection**

12.1 The Scheme Member agrees that the Council can share their data with Spokesafe but only to the extent necessary to notify them of their status as a Scheme Member and to confirm completion of the induction on the safe use of the eBike and/or in relation to matters relating to the hire of the eBike and Other Equipment via the Booking System

12.2 The Council and Spokesafe will comply with their respective obligations under GDPR in relation to the use of the Scheme Member's personal data

12.3 You have a right to request a copy of the data we hold for you. If you wish to exercise this right please email your request to [transportandsustainability@colchester.gov.uk](mailto:transportandsustainability@colchester.gov.uk)

## **13. General**

13.1 The headings in this Agreement are inserted for convenience only and shall not affect its construction.

13.2 Any notice given under this Agreement shall be in writing and signed by or on behalf of the party giving it and shall be served by delivering it personally or sending it by pre-paid recorded delivery or registered post to the relevant party at the address specified at the beginning of this agreement, or by sending it by email or fax to email address or the fax number notified by the relevant party to the other party. Any such notice shall be deemed to have been received:

13.2.1 if delivered personally, at the time of delivery

13.2.2 in the case of pre-paid recorded delivery or registered post, 48 hours from the date of posting; and

13.2.3 in the case of email or fax, at the time it is set or of transmission.

13.3 In proving such service, it shall be sufficient to prove that the envelope containing the notice was addressed to the address of the relevant party and delivered either to that address or into the custody of the postal authorities as a pre-paid recorded delivery or registered post or that the notice was emailed or transmitted by fax to the email address or fax number of the relevant party.

13.4 If the Scheme Member fails to make any payments when due under the terms of this Agreement the Council will be entitled to treat any outstanding payments

as a contractual debt and to recover all its cost and expenses on a full indemnity basis from the Scheme Member and to recover interest at the appropriate County Court rate until the outstanding payments have been paid in full.

- 13.5 The relevant provisions within this Agreement will continue and shall survive termination or expiry of this Agreement.
- 13.6 If any of the provisions of this Agreement is judged to be illegal or unenforceable, the continuation in full force and effect of the remainder of them will not be prejudiced.
- 13.7 No forbearance or delay by either party in enforcing its respective rights will prejudice or restrict the rights of that party, and no waiver of any such rights or of any breach of any contractual terms will be deemed to be a waiver of any other right or of any later breach.

#### **14. Entire Agreement**

- 14.1 Each party on behalf of itself acknowledges and agrees with the other party that:
  - 14.1.1 this Agreement together with any documents referred to in it constitutes the entire agreement and understanding between the Council and the Scheme Member; and
  - 14.1.2 in entering into this Agreement neither party has relied on any pre-contract statements or correspondence-Contractual Statement

#### **15 Variation**

- 15.1 The Scheme Member agrees that the Council will be entitled to vary, amend, update or replace these terms and conditions on giving the Scheme Member not less than one calendar month's notice which can be issued via email and if the Scheme Member remains a Scheme Member after the expiry of the one calendar month notice it will be deemed to have accepted the revised or amended terms and conditions
- 15.2 If the Scheme Member is not willing to agree the proposed amendments and/or variations it can give the Council 5 days notice within the period referred to in clause 15.1 and on expiry of the notice they will cease to be a Scheme Member and will no longer be entitled to hire and eBike from the Location.

## **16. Third Party Rights**

- 16.1 A person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.
- 16.2 The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this Agreement are not subject to the consent of any person that is not a party to this Agreement.

## **17 Governing Law and Jurisdiction**

- 17.1 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 the law of England.
- 17.2 The parties irrevocably agree that the courts of England shall have non-exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).
- 17.3 By signing this Agreement, the Authorised Representative confirms that they are duly authorised to enter into this Agreement on behalf of the Scheme Member and that they have read and understood the terms of this Agreement.

## Schedule 1

Bookings are made via the Booking System and access to the Location is via a generated code.

A locker with a set of keys inside is available for each eBike and can be accessed with the access code provided when the eBike is booked.

The batteries are stored and charged in the cupboard. The Scheme Member must collect the battery and return it for charging as per the induction instructions. The Scheme Member will ensure that the cupboard is locked at all times.

At the end of the hire period the eBike must be locked to the Sheffield Bike frame using the two locks provided and the frame lock. The keys must then be returned to the specified secure locker.

In the event the Scheme Member loses or damages the keys to the eBike (s) it will reimburse the Council in a timely manner for obtaining replacement keys.

The period of the hire commences at the time the bicycle is unlocked and collected and is deemed to continue until the Bicycle is returned to the Secure Bike Park, adequately locked in accordance with the instructions and keys returned to the key safe. However the Member will be charged for the number of hours booked regardless of when they pick up or return the bike.

The Scheme Member will be responsible for all the eBike (s) and Other Equipment that it hires from the Council during the agreed Hire Period and to return them to the Location on or before the expiry of the agree Hire Period in a good clean condition free from any damage .

The Scheme Member will use the scheme in accordance with the Terms and Conditions, Induction and User Guide provided.

The Scheme Members must only use the eBike within the range of the eBike battery and their own capabilities. The Scheme Member must avoid running the battery to completely flat as this can damage the battery. As this is dependent on what mode of electrical assist is used, the weight of the load carried and the local terrain, the Scheme Member must check the displayed maximum range shown on the cycle computer display for each power assist mode and limit their journeys accordingly. Distance will automatically adjust to riding style, so the Scheme Member may end up with more or less total range as the ride goes on. As a best case scenario in minimal assist mode, you should be able to get approximately a maximum 40 mile round trip. If a heavy load is being carried

this may be limited to a maximum 20 mile round trip. The map in schedule 2 provides a guide on distances from Colchester.

### **Locking the eBike securely, parking when not in use and overnight storage**

A gold rated D lock and gold rated chain lock (plus in most cases a rear wheel frame lock) are provided with each eBike . The Scheme Member confirms they know how to use the locks provided by the Council and that the eBike (s) will be attached to an immovable object using at least 2 of the locks every time when not in use save for very short temporary periods (not exceeding 5 minutes) when the frame lock alone is permitted.

The eBike should not be left on the roadside overnight. If the eBike is kept overnight it must be stored in a covered, enclosed secure storage area such as a locked garage or locked garden shed in a secure garden, and locked to an immovable object (floor/wall anchor or similar) using the two locks provided by the Council as well as the frame lock (where available).

If an eBike is stolen whilst it is not locked in the specified way or its left unattended without being locked the Scheme Member will be fully responsible for any losses incurred by the Council and that the Council be entitled to charge the Scheme Member for the full replacement value of the eBike which the Scheme Member agrees to pay to the Council in a timely manner.

In the event of the theft of an eCargo eBike(s) the Scheme Member will as soon as is reasonably practicable report the theft to the Police and obtain a crime or incident number and provide this to the Council as soon as possible together with such other information as the Council's insurer shall reasonably require in order to progress an insurance claim. Proof of break in and/or lock breakage is required for any insurance claim.

The Scheme Member acknowledges that the eBike is fitted with a GPS tracker for the purposes of recovery in the event of a theft and for data collection on routes used to feed into future plans for cycle infrastructure improvements.

## Schedule 2 – Map of distances



This Agreement takes effect on the date stated at the beginning of it.

Signed on for and on behalf of the Council: -

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Proper Officer Transport & Sustainability project lead

Signed on for and on behalf of the Scheme Member : -

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