

Dated 2013

DUBLIN CITY COUNCIL
and
JCDECAUX IRELAND LIMITED

SERVICES AGREEMENT
Extension of dublinbikes Scheme

McCann FitzGerald
Riverside One
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Dublin 2

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THIS SERVICES AGREEMENT is made on

2013

BETWEEN

- (1) **DUBLIN CITY COUNCIL** of the Civic Offices, Wood Quay, Dublin 8 (the "**Council**"); and
- (2) **JCDECAUX IRELAND LIMITED** a company incorporated in Ireland (registered number 318760) and having its registered office at 6 Sandyford Park, Burton Hall Road, Leopardstown, Dublin 18, Ireland ("**JCD**").

RECITALS:-

- (A) By a concession contract dated 23 November 2006 between JCD and the Council, JCD agreed to provide the Council with outdoor advertising and public amenity services in Dublin including a bike scheme (the "**dublinbikes Scheme**"), the scope of which was further extended by written agreement between the parties in or around 10 February 2010 (the "**Original Agreement**").
- (B) The scope of the dublinbikes Scheme provided, operated and maintained by JCD under the Original Agreement is comprised of 550 bikes and 44 stations (the "**Existing Bike Scheme**"). The Council wishes to extend the scope of the Existing Bike Scheme to 5000 bikes and 300 stations over a period of approximately 5 years from the date of this Agreement. In particular, the Council wishes to prioritise the roll-out of Phase 2a and Phase 2b (each as defined below) of the dublinbikes Scheme. Phase 2a and Phase 2b, and any further future expansion which may be agreed between the Parties, shall be collectively referred to as the "**Extended Bike Scheme**".
- (C) The Council invited JCD to submit a commercial proposal in respect of the implementation, operation and maintenance of the Extended Bike Scheme.
- (D) Through a series of consultation meetings and other requests for clarification, the Parties engaged in detailed discussions regarding the technical, financial and commercial aspects of the Extended Bike Scheme as a result of which the parties agreed the Final Agreed Proposal.
- (E) JCD has agreed to provide and the Council has agreed to engage JCD to perform services relating to the Extended Bike Scheme on the terms and conditions set out in this Services Agreement (the "**Agreement**").

NOW IT IS AGREED as follows:

1. Interpretation

1.1 Definitions

In this Agreement, unless the context requires otherwise:

"Ancillary Infrastructure" means all ancillary infrastructure (not including Equipment) associated with each Station including traffic islands, road markings, bollards, etc;

"Applicable Laws" means all laws applicable to the provision of the Services including all domestic and European laws, common law, regulations, directives, orders, instruments, codes, other enactments, codes of practice, guidelines and/or agreed procedures and standards specified by any competent authority;

"Bicycles" means all bicycles, bicycle components and related accessories to be provided by JCD pursuant to this Agreement;

"Branding Guidelines" means: (i) in respect of the Council, the branding guidelines entitled "A guide to working with the brand" dated 15 August 2007; and (ii) in respect of JCD, the branding guidelines entitled "Technical guidelines for the logo type" dated March 2006, or in each case such replacement guidelines as may be agreed between the parties from time to time;

"Business Day" means a day other than a Saturday or Sunday on which banks are generally open for business in Ireland;

"Change Control Procedure" means the change control procedure set out in Schedule 4;

"Completion Date" means the date identified in the Implementation Timetable by which a Site must be made available to the Council for carrying out the Construction Sign-Off Procedure;

"Construction Sign-Off Procedure" means the procedure set out in Schedule 3;

"Control" means with respect to any entity, where a person or persons acting in concert has/have or acquire(s) direct or indirect control:

- (i) of the affairs of that entity;
- (ii) over more than 50% of the total voting rights conferred by all the issued shares in that entity which are ordinarily exercisable in general meeting; or
- (iii) of the composition of the board of directors of that entity,

and the term **"Change of Control"** shall be construed accordingly;

"Council Policies" means all policies which are notified to JCD from time to time and which ordinarily apply to the Council employees, agents and sub-contractors including, without limitation, policies relating to health and safety and the appointment of sub-contractors;

"Council Trademarks" means the Council trade marks and logos referred to in the Council's Branding Guidelines;

"Council Project Manager" means the Council project manager identified in the Final Agreed Proposal or as otherwise notified by the Council to JCD from time to time;

"Data Protection Acts" means the Data Protection Acts 1988 and 2003 and any guidance issued by the Office of the Data Protection Commissioner from time to time;

"Detailed Design Documents" means the detailed design documents for each of the New Sites as set out in Appendix B;

"dublinbikes Scheme" has the meaning set out in Recital A;

"Effective Date" means the date on which ground works commence on one or more New Sites;

“Electronic Privacy Regulations” means the EC (Electronic Communications Networks and Services) (Privacy and Electronic Communications) Regulations 2011 and any relevant guidance issued by the Office of the Data Protection Commissioner from time to time;

“Equipment” means the Bicycles, terminals, stands and all other equipment located at each Station but shall not include the Ancillary Infrastructure;

“euro”, “€” and “EUR” means the lawful currency of Ireland;

“Existing Bike Scheme” has the meaning set out in Recital B;

“Extended Bike Scheme” has the meaning set out in Recital B;

“Exit Management Plan” has the meaning set out in Schedule 5;

“Final Agreed Proposal” means the Final Agreed Proposal set out in Appendix A;

“First Repeat Sign-Off Procedure” and **“Second Repeat Sign-Off Procedure”** have the meaning set out in clause 11;

“Go-Live Date” means the date on which each New Site enters into live use;

“Implementation Services” means the implementation services set out in the Final Agreed Proposal;

“Implementation Timetable” means the timetable set out in Schedule 2 of this Agreement;

“JCD Project Manager” means the JCD project manager identified in the Final Agreed Proposal or as otherwise notified by JCD to the Council from time to time;

“JCD Staff” means all employees, servants, agents, contractors and sub-contractors of JCD (and all employees of any such agents, contractors and sub-contractors) who are involved in providing the Services or any of them to the Council from time to time for and on behalf of JCD;

“JCD Trademarks” means the JCD trade marks and logos referred to in JCD’s Branding Guidelines;

“Liquidated Damages” means the liquidated damages set out in the Implementation Timetable;

“Material Change to the Services” means a change to the way in which the Services are operated including, without limitation, any change to the hours of operation, ticketing system or subscription fee;

“New Service Provider” means any person appointed or contracted by the Council, at its discretion, to provide services which are comparable with or intended to replace the Services on termination or expiry of this Agreement;

“New Sites” means the Phase 2a and Phase 2b sites at which Stations are to be located as set out in Schedule 1 or as otherwise determined by the Council in accordance with the provisions of clause 4.

“Operation and Maintenance Services” means the operation and maintenance services set out in the Final Agreed Proposal;

“Operational Data” means all data relating to the operation of the Extended Bike Scheme as detailed in the Final Agreed Proposal

“Original Agreement” has the meaning set out in Recital A;

“Payments Schedule” means the payments schedule set out in the Final Agreed Proposal which is based on the costing principles set out in Schedule 1.

“Persistent Service Level Breach” has the meaning set out in the Service Level Agreement;

“Phase 2a” means the extension of the dublinbikes Scheme to the International Financial Services Centre and the Docklands in respect of which the New Sites are set out in Schedule 1;

“Phase 2b” means the extension of the dublinbikes Scheme to the environs of Heuston Station and Kilmainham in respect of which the New Sites are set out in Schedule 1;

“Project Completion Date” means 17 July 2014 or such other date as may be specified in the Final Agreed Proposal for completion of the construction phase of the Extended Bike Scheme;

“Road Safety Audit” has the meaning set out in clause 4.1;

“Service Level Agreement” means the service level agreement in respect of the Operation and Maintenance Services as set out in the Final Agreed Proposal;

“Service Credits” means the service credits payable in respect of failure to meet the Service Levels as set out in the Service Level Agreement;

“Service Levels” means the service levels in respect of the Operation and Maintenance Services as set out in the Service Level Agreement;

“Services” means the Implementation Services, the Operation and Maintenance Services and any other services to be provided by JCD under this Agreement;

“Stand-Still Period” and **“Three Month Date”** have the meanings set out in clause 19.5;

“Station” means the entire area at each of the New Sites encompassing the cycle stands, terminals, Equipment and all Ancillary Infrastructure as set out in the Detailed Design Documents;

“Subscriber” means a subscriber to the dublinbikes Scheme;

“Term” has the meaning set out in clause 17.1.

1.2 Further definitions

In this Agreement, unless the context requires otherwise:

- (a) words importing the singular number shall include the plural number and vice versa;
- (b) words importing a particular gender include all genders;
- (c) any reference to a “person” shall be construed as a reference to any individual, partnership, firm, trust, body corporate, government, governmental body, authority,

emanation, agency or instrumentality, unincorporated body of persons or associations;

- (d) save as otherwise provided herein any reference to a section, clause, paragraph or sub-paragraph shall be a reference to a section, clause, paragraph or sub-paragraph (as the case may be) of this Agreement and any reference in a clause or paragraph shall be a reference to the clause or paragraph in which the reference is contained unless it appears from the context that a reference to some other provision is intended;
- (e) the provisions of any Schedules to this Agreement shall form an integral part of this Agreement and shall have as full effect as if they were incorporated in the body of this Agreement and the expressions “this Agreement” and “the Agreement” shall be deemed to include any Schedules to this Agreement;
- (f) any reference in this Agreement and/or in the Schedules to any statute or statutory provision shall be deemed to include any statute or statutory provision which amends, extends, consolidates, re-enacts or replaces same, or which has been amended, extended, consolidated, re-enacted or replaced (whether before or after the date of this Agreement) by same and shall include any orders, regulations, instruments or other subordinate legislation made under the relevant statute;
- (g) any reference to an Irish legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall, in respect of any jurisdiction other than Ireland, be deemed to include a reference to what most nearly approximates in that jurisdiction to the Irish legal term;
- (h) any words following the terms “including”, “include”, in particular, or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms;
- (i) any reference to “day” shall, unless otherwise stated, mean the period of time which begins with one midnight and ends with the next; and
- (j) all references to time of day shall be a reference to whatever time of day shall be in force in Ireland.

1.3 Headings and captions

The section headings and captions to the clauses in this Agreement are inserted for convenience of reference only and shall not be considered a part of or affect the construction or interpretation of this Agreement.

2. Original Agreement, Priority of Documents

2.1 Save as expressly provided otherwise in this Agreement:

- (a) the Original Agreement is entirely separate to this Agreement and shall remain in full force and effect and shall not be affected by any provision of this Agreement; and
- (b) the outdoor advertising and public amenity services in the Original Agreement shall continue unaffected by the provisions of this Agreement.

- 2.2 Subject to the provisions of clause 2.3 below, it is agreed between the parties that this Agreement shall be co-terminous with the Original Agreement.
- 2.3 The Council shall be entitled to terminate this Agreement and the Original Agreement, insofar as it relates to the Existing Bike Scheme at any time on or after the expiry of 10 years from the Effective Date by giving 12 months' notice in writing to JCD. For the avoidance of doubt, such notice may be issued 12 months in advance of the expiry of 10 years from the Effective Date or any time thereafter. In such circumstances, the following provisions shall apply:
- (a) the parties shall agree such changes to the payments structure under the Original Agreement as may be necessary to reflect the cessation of the Existing Bike Scheme and the continuation of the outdoor advertising and public amenity services under the Original Agreement; and
 - (b) subject to clause 2.3(a) or as otherwise agreed in writing between the parties, the Original Agreement, insofar as it relates to outdoor advertising and public amenity services, shall continue in full force and effect.
- 2.4 The Service Level Agreement shall apply in respect of the services to be provided in respect of the Existing Bike Scheme under the Original Agreement.
- 2.5 In the event of a conflict or inconsistency between any provisions of this Agreement, the Detailed Design Documents and/or the Final Agreed Proposal, such conflict or inconsistency shall be resolved by giving the following precedence:
- (a) the Agreement;
 - (b) the Final Agreed Proposal; and
 - (c) the Detailed Design Documents.
- 3. Supply of Services/Relationship with Subscribers**
- 3.1 In consideration of the payment by the Council of the fees to be charged by JCD in accordance with the Payments Schedule, JCD agrees to supply the Services to the Council in accordance with the terms of this Agreement.
- 3.2 JCD shall ensure that the Implementation Services are performed in accordance with the timeframes set out in the Implementation Timetable and that each of the New Sites is ready for the Council to carry out the Construction Sign-Off Procedure by the Completion Date.
- 3.3 Where JCD fails to meet the Project Completion Date, the Council shall be entitled to Liquidated Damages as provided for in the Implementation Timetable.
- 3.4 JCD shall ensure that in providing the Implementation Services, and placing the New Sites into live use, it does not interfere with or cause disruption to the operation of the Existing Bike Scheme.
- 3.5 Contracts with Subscribers shall be entered into directly between JCD and Subscribers. JCD shall ensure that it complies with the terms and conditions of contracts with Subscribers and that such contracts shall comply at all times with Applicable Laws.
- 3.6 JCD shall be solely responsible for managing, responding to and making all reasonable efforts to resolve any inquiries or complaints by Subscribers in respect of the Extended Bike Scheme

and, save as provided in clause 3.7 below, the Council shall have no responsibility in this respect.

- 3.7 The parties acknowledge that JCD is the data controller, within the meaning of the Data Protection Acts, in respect of personal data relating to Subscribers during the Term of this Agreement. JCD shall ensure during the Term that all such personal data relating to Subscribers is processed in accordance with the Data Protection Acts and the Electronic Privacy Regulations (where relevant). The parties acknowledge that JCD shall not transfer personal data relating to Subscribers to the Council whether during the Term or on expiry or termination of this Agreement. JCD shall, however, ensure that it notifies the Subscribers on expiry or termination of this Agreement of the identity and contact details of any successor operator of a replacement bike scheme.

4. **New Sites**

- 4.1 The Council shall be responsible for carrying out a three stage road safety audit in respect of each of the New Sites ("**Road Safety Audit**"). The Council shall be entitled, in its absolute discretion, to replace any of the New Sites with an alternative site, in circumstances where the Council is not satisfied with the outcome of the Road Safety Audit and the list of New Sites shall be updated accordingly. The Council shall be responsible for any costs incurred as a result of replacing New Sites pursuant to this clause provided that any costs of JCD shall be reasonable and vouched.
- 4.2 Following completion of the Road Safety Audit, and in accordance with the timeframes set out in the Implementation Timetable, JCD shall be responsible for constructing the New Sites. JCD shall ensure that each of the New Sites is constructed in accordance with the Detailed Design Documents. JCD shall inform the Council in a timely manner if it believes for any reason that JCD will not be in a position to meet the requirements of the Detailed Design Documents in respect of any New Site. In such circumstances, the parties shall endeavour to agree such changes as may be appropriate in accordance with the Change Control Procedure.
- 4.3 JCD shall be responsible for discharging punctually all taxes, assessments, duties, charges, impositions and outgoings payable in respect of the New Sites, and shall be responsible for managing the payment of any rates that may be levied as provided for in the Final Agreed Proposal.
- 4.4 JCD shall be responsible for procuring all Equipment and Ancillary Infrastructure required for the construction and maintenance of New Sites and for the provision of the Services under this Agreement.
- 4.5 On expiration or termination of this Agreement for any reason, unless otherwise agreed with the Council, JCD shall be responsible, at its own cost, for removing all Equipment and Ancillary Infrastructure at the Site and reinstating each Site to the condition it was in prior to the construction of a Station on the Site.

5. **Prime Contractor**

- 5.1 JCD shall act as prime contractor and shall remain primarily liable to the Council for the supply of the Services to the Council notwithstanding the appointment of the JCD Staff. JCD shall ensure that the appointment of the JCD Staff is carried out in accordance with Applicable Laws including, without limitation, all Applicable Laws governing the procurement of goods and services.

- 5.2 JCD shall indemnify and keep indemnified the Council from and against all damages, costs, charges and expenses arising from or incurred by reason of any act or omission of the JCD Staff or any breach of the provisions of this clause 5.

6. Step In Rights

- 6.1 If at any time during the term of this Agreement:

- (a) JCD commits a material breach of this Agreement which, if capable of remedy, has not been remedied within 20 Business Days of receipt of notice in writing of such breach;
- (b) JCD fails, in the reasonable opinion of the Council, to take all reasonable steps to enforce its rights against a member of the JCD Staff; or
- (c) the relationship between JCD and the member of the JCD Staff has, in the reasonable opinion of the Council, irretrievably broken down,

then, without prejudice to any other right or remedy to which may be entitled, the Council may require JCD to assign and/or novate to the Council its rights against the member of JCD Staff and to take all such further steps as may be reasonably necessary to ensure that such rights are directly enforceable by the Council against the JCD Staff. JCD shall give all reasonable assistance to the Council in this regard and shall procure that the JCD Staff are made aware of and agree to comply with the provisions of this clause. For the avoidance of doubt, where the Council exercises its step-in rights pursuant to this clause, save in respect of any undisputed accrued payment obligations, the charges payable under this Agreement shall be reduced pro-rata with the amounts being paid directly by the Council to the relevant member of the JCD Staff.

7. Change Control / Future Developments

- 7.1 Save as otherwise provided in this Agreement, and subject always to Applicable Laws and/or obtaining such third party consents or approvals as may be required, any request for changes to the Services shall be dealt with in accordance with the Change Control Procedure.
- 7.2 JCD acknowledges that the Extended Bike Scheme may need to be amended from time to time to take account of future developments including, without limitation, future expansion of the dublinbikes Scheme, overall integrated transport planning, traffic management, major events, major infrastructure projects, best practice changes and advances in technology. JCD shall provide all reasonable co-operation and assistance to the Council in implementing such changes, the effect of which on the terms of this Agreement shall be agreed pursuant to the Change Control Procedure save in exceptional circumstances where the changes are required as a matter of emergency by the Council in which case JCD will comply with all reasonable directions of the Council, all costs shall be agreed in writing between the parties and there shall be no requirement to follow the Change Control Procedure.

8. Sponsorship

- 8.1 The granting of any sponsorship arrangement in respect of the Extended Bike Scheme, whether by way of a naming rights deal or otherwise, shall be subject to prior written agreement between the parties.

9. **Project Management, Reporting**

9.1 The respective roles and responsibilities of each party with regard to project are as set out in the Final Agreed Proposal.

9.2 JCD shall comply with the reporting requirements set out in the Final Agreed Proposal.

10. **Access to the New Sites**

10.1 The Council shall afford to JCD, and the JCD Staff, at reasonable times and upon receipt of adequate prior notice, such access to the New Sites as may be necessary for the performance of JCD's obligations under this Agreement. All such access shall be subject to compliance by JCD, and the JCD Staff, with the Council Policies.

10.2 The Council shall have the right to refuse admission to, or order the removal from, the New Sites of any member of the JCD Staff who is in breach of any of the Council Policies or Applicable Laws or who, in the reasonable opinion of the Council, is under the influence of alcohol or drugs whilst on any Site. Action taken pursuant to this clause shall be confirmed forthwith in writing to JCD by the Council. Any such person who has been expelled from a New Site shall not be re-admitted without the prior written consent of the Council.

10.3 JCD shall be fully responsible for providing the Services in accordance with all relevant health and safety requirements, whether arising under Applicable Laws or otherwise.

11. **Construction Sign-Off Procedure**

11.1 JCD shall provide to the Council not less than 5 Business Days' written notification that each New Site is ready for the Construction Sign-Off Procedure.

11.2 The Council shall accept each New Site on the date that it successfully completes the Construction Sign-Off Procedure.

11.3 If any New Site fails to successfully complete the Sign-Off Procedure then JCD shall forthwith rectify free of charge such defects in the New Site in sufficient time to make possible the repetition of the Construction Sign-Off Procedure within 10 Business Days of the date of failure (or such later date as the parties may agree) (the "**First Repeat Sign-Off Procedure**").

11.4 If any New Site fails the First Repeat Sign-Off Procedure then the Council may at its option require JCD by written notice to forthwith rectify free of charge such defects in the New Site in sufficient time to make possible the repetition of the Construction Sign-Off Procedure within 10 Business Days of the date of failure (or such later date as the parties may agree) (the "**Second Repeat Sign-Off Procedure**"). If JCD shall not have completed such alterations or modifications within 10 Business Days (or such later date as the parties may agree) of the First Repeat Sign-Off Procedure or if the New Site shall fail the Second Repeat Sign-Off Procedure then the Council shall be entitled at its option to proceed under clause 11.4(a) to (c) below;

(a) fix a new date for repeating out the Construction Sign-Off Procedure on the same terms and conditions as the Second Repeat Sign-Off Procedure;

(b) without prejudice to any rights or remedies to which the Council may be entitled hereunder or at law terminate this Agreement and receive a refund of any monies paid to JCD in respect of the New Sites; or

- (c) accept such Second Repeat Sign-Off Procedure subject to an abatement of the charges set out in the Payments Schedule for such amount as may be agreed between the parties.
- 11.5 The parties hereby agree to provide each other all such assistance and advice as is reasonable in connection with the procedure to be carried out pursuant to this clause 11 with a view to ensuring that the New Sites successfully complete the Construction Sign-Off Procedure.
- 12. **Charges and Terms of Payment**
- 12.1 The funding arrangements in respect of the Existing Bike Scheme, as provided for in the Original Agreement, shall continue in full force and effect in respect of the Existing Bike Scheme.
- 12.2 Save as provided in clause 12.1 above, the charges payable by the Council under this Agreement are set out in, and shall be paid in accordance with the terms of, the Payments Schedule.
- 12.3 The Council reserves the right to withhold payment against any invoice which is not submitted in accordance with this Agreement and shall forthwith notify JCD in writing of the reasons for withholding payment. All payment obligations of the Council under this Agreement shall be contingent on JCD providing appropriate supporting documentation in accordance with any requirements set out in the Final Agreed Proposal.
- 12.4 If the payment of any sum due under this Agreement shall be delayed by the Council other than in accordance with clause 12.2 above, JCD shall be entitled to charge interest at the rate specified in the EC (Late Payment in Commercial Transactions) Regulations 2002 on the amount of the delayed payment for the period of delay.
- 12.5 The charges set out in the Payments Schedule are exclusive of Value Added Tax or any other applicable sales taxes. The charges shall be deemed to include all import and customs duties, and like imposts and surcharges.
- 12.6 Unless otherwise agreed in writing between the parties, JCD shall ensure that:
 - (a) the Council has at all times during the term of this Agreement full visibility of any third party costs incurred by JCD in connection with the provision of the Services which are to be passed through to the Council; and
 - (b) any third party costs which are to be passed through to the Council are passed through at their actual cost. Such costs shall be subject to a management fee as provided for in the Final Agreed Proposal.
- 12.7 JCD shall maintain at all times during the Term of this Agreement a valid tax clearance certificate, within the meaning of Section 1095 of the Taxes Consolidation Act 1997, or C2 Certificate, as appropriate, copies of which shall be made available to the Council on request. JCD shall, to the extent required by Applicable Law, complete, enter into and submit to the Irish Revenue Commissioners all necessary forms and returns required for the purposes of any tax relevant to the Agreement and retain copies thereof. JCD shall further procure the compliance by the JCD Staff with the provisions of this clause.

13. Warranties and Representations

- 13.1 JCD warrants that from the Go-Live Date each Site shall meet the performance requirements set out in the Service Level Agreement. JCD shall correct any failure to meet such requirements in accordance with the terms of the Service Level Agreement.
- 13.2 JCD warrants that from the Go-Live Date, the New Sites shall be fully interoperable with the Existing Bike Scheme including, without limitation, that all hardware, software and systems used in connection with the New Sites and the Existing Bike Scheme together with the locking systems for the Bicycles and user identification systems for the New Sites and the Existing Bike Scheme shall be fully interoperable.
- 13.3 JCD warrants that all Bicycles used in connection with the Extended Bike Scheme shall:
- (a) As a minimum, be of the same or a higher standard than the Bicycles used in the Existing Bike Scheme;
 - (b) Be fit for purpose and free from material defects in normal use;
 - (c) Comply with the requirements of Directive 2001/95/EC on product safety, as implemented under Irish law and shall, as a minimum, be certified as being compliant with European Standard EN 14764 for City and Trekking Bicycles or such other replacement standard as may be established by the European Committee for Standardization (CEN) or otherwise from time to time during the Term; and
 - (d) Incorporate adequate space for advertising and comply with the Branding Guidelines.
- 13.4 JCD warrants that the supply of the Services shall not infringe the Intellectual Property Rights of any third parties.
- 13.5 JCD warrants that the supply of the Services to the Council will not cause JCD to breach any contractual or other obligation which JCD owes to any third party.
- 13.6 JCD warrants that the Services shall be provided by appropriately experienced, qualified and trained personnel and that the Services shall be rendered with all due skill, care and diligence.
- 13.7 JCD warrants that the Services will at all times be provided in material compliance with Applicable Laws.
- 13.8 JCD warrants that it is a company duly incorporated and validly existing under the laws of Ireland.
- 13.9 Each party represents and warrants to the other party that it has full power and authority to execute and deliver this Agreement and to comply with the provisions of, and perform all its obligations and exercise all of its rights under, this Agreement.
- 13.10 Except as expressly set forth in this Agreement, all warranties, conditions, representations, statement, terms and provisions express or implied by statute, common law or otherwise are excluded to the greatest extent permitted by law.

14. Insurance

- 14.1 JCD shall be required at all times during the Term of this Agreement to effect and maintain such levels of insurance with a reputable insurer as may be required to cover any insurable potential liability of JCD under this Agreement.
- 14.2 Without prejudice to the generality of clause 14.1, JCD shall, as a minimum, carry throughout the Term of this Agreement the following levels and types of insurance under forms of policy which are acceptable to the Council:
- (a) Public Liability and Products Liability Insurance with a limit of indemnity of not less than €6.5 million per claim or series of claims arising from one event and:
 - (i) unlimited in any one period for Public Liability claims; and
 - (ii) in the aggregate in respect of Products Liability; and
 - (b) Employers' Liability insurance with a limit of indemnity of not less than €13 million per claim or series of claims arising from one event and unlimited in any one period.
- 14.3 JCD shall notify the Council as soon as practicable in the event that any of the insurances ceases to be available or maintained.
- 14.4 The insurance policies described in clause 14.2 shall include an indemnity clause specifically indemnifying the Council and any third party landowners whose land may be used in connection with the Extended Bike Scheme where the Council and/or the relevant third party suffers a loss, or damage is caused to the relevant land, due to the negligence of JCD or breach of the terms of this Agreement by JCD. None of the policies described in the Insurance Schedule shall include any terms or conditions to the effect that JCD must discharge any liability before being able to recover from the insurers.
- 14.5 JCD agrees, represents and warrants to the Council that the insurance policies referred to in clause 14.2 will also be used to indemnify the Council against the acts, omissions, negligence or breach of any JCD Staff, or that such JCD Staff will carry insurance to the same levels and on terms at least as favourable to the Council as those required from JCD. JCD shall indemnify the Council for any loss suffered by the Council due to the failure of JCD to comply with this obligation.
- 14.6 If JCD fails to provide the insurance cover specified in clause 14.2, the Council may do so for the whole or part of the period for which such cover is required, without being under any obligation so to do, and may deduct any costs it incurs in obtaining such cover from any sums due to JCD under this Agreement, or otherwise recover such sums from JCD.
- 14.7 JCD shall be liable to pay the full amount of any deductibles or excess amounts payable under the policies of insurance referred to in clause 14.2 in the event of a claim under any of the policies.

15. Ownership and Licensing

- 15.1 The Council grants to JCD during the Term a limited, non-exclusive, non-transferable, royalty-free licence to use the Council Trademarks solely as strictly necessary for the supply of the Services under this Agreement and subject always to compliance by JCD with the Council's Branding Guidelines.

- 15.2 JCD grants to the Council during the Term a limited, non-exclusive, non-transferable, royalty-free licence to use the JCD Trademarks solely as strictly necessary for performance by the Council of its obligations under this Agreement and subject always to compliance by the Council with JCD's Branding Guidelines.
- 15.3 JCD acknowledges that the Intellectual Property Rights in any materials (including without limitation the Detailed Design Documents and any and all computer programs, data, diagrams, charts, reports, specifications, studies, and development tools) provided by the Council to JCD shall at all times vest in and be the absolute property of the Council or its third party licensors. The Council hereby grants JCD a limited non-exclusive, non-transferable, royalty-free licence during the Term to use such materials solely as strictly necessary for the performance by JCD of its obligations under this Agreement.
- 15.4 The Council acknowledges that the Intellectual Property Rights in all software, hardware and associated documentation used by JCD in connection with the provision of the Services shall at all times vest in and be the absolute property of JCD or its third party licensors.
- 15.5 During the Term of this Agreement all Operational Data and all data relating to Subscribers shall vest in and be the absolute property of JCD and the Council shall, at the request of JCD, do all things necessary or desirable to give effect to the provisions of this clause.
- 15.6 The Equipment and Ancillary Infrastructure shall vest in and be the absolute property of JCD.
16. **Intellectual Property Indemnity**
- 16.1 JCD shall indemnify and keep indemnified the Council from and against all damages, costs, charges and expenses arising from or incurred by reason of any claims that the supply of the Services infringes the Intellectual Property Rights of any third party, subject to the following:-
- (a) the Council shall promptly notify JCD in writing of any alleged infringement of which it has notice;
 - (b) the Council must make no admissions without JCD's prior written consent; and
 - (c) the Council, at JCD's request and expense, shall allow JCD to conduct any negotiations or litigation and/or settle any claim. The Council shall give JCD all reasonable assistance. The costs incurred or recovered in such negotiations or settled claim shall be for JCD's account.
- 16.2 If at any time an allegation of infringement of Intellectual Property Rights is made in relation to the Services or, if in JCD's reasonable opinion such an allegation is likely to be made, JCD may at its own expense modify or replace the relevant aspect of the Services so as to avoid the infringement, without detracting from the overall performance, JCD making good to the Council any loss of use during modification or replacement.
17. **Termination**
- 17.1 This Agreement shall commence on the Effective Date, and subject to the remaining provisions of this Agreement, shall continue for the term of the Original Agreement (the "Term").
- 17.2 Notwithstanding the provisions of clause 2.3, this Agreement may be terminated by the Council at any time on reasonable prior written notice to JCD where it is agreed between the parties, acting reasonably, that such termination would be appropriate as a result of unforeseen circumstances, outside the reasonable control of the Council or relevant

Government or statutory body. Dependent on the circumstances the Council shall pay JCD (i) for all Services which have been performed up to and including the date of termination, (ii) for any other reasonable stranded costs or expenses incurred by JCD as a result of early termination to be evidenced to the reasonable satisfaction of the Council and (iii) any amounts (if any) which may be agreed in writing between the parties as appropriate compensation, provided however that no such amounts shall be payable in circumstances where Clause 21 (force majeure) applies.

- 17.3 In the event of termination of the Original Agreement for any reason, the Council shall be entitled to terminate this Agreement on reasonable written notice to JCD.
- 17.4 This Agreement may be terminated by the Council at any time on giving 6 months' written notice to JCD in the event of a Change of Control of JCD.
- 17.5 This Agreement may be terminated at any time by the Council where such termination is reasonably necessary as a result of legal or regulatory changes to which the Council is subject. In such circumstances the Council shall:
- (a) give JCD as much notice as may be reasonably practicable. JCD acknowledges, however, that the relevant legal or regulatory changes may be imposed on the Council at short notice; and
 - (b) pay JCD for: (i) all Services which have been performed up to and including the date of termination; (ii) any other reasonable stranded costs or expenses incurred by JCD as a result of early termination to be evidenced to the reasonable satisfaction of the Council; and (iii) any amounts (if any) which may be agreed in writing between the parties as appropriate compensation, provided however that no such amounts shall be payable in circumstances where Clause 21 (force majeure) applies
- 17.6 This Agreement may be terminated forthwith by the Council on written notice to JCD in the event of Persistent Service Level Breach by JCD.
- 17.7 This Agreement may be terminated forthwith by either party on written notice if the other party is in material breach of the terms of the Agreement and, in the event of a breach capable of being remedied, fails to remedy the breach within 20 Business Days of receipt of notice in writing of such breach.
- 17.8 Either party may terminate this Agreement forthwith on written notice if a receiver, examiner or administrator is appointed of the whole or any part of the other party's assets or the other party is struck off the Register of Companies in the jurisdiction where it was incorporated or an order is made or a resolution passed for winding up the other party (unless such order or resolution is part of a voluntary scheme for the reconstruction or amalgamation of the party as a solvent corporation and the resulting corporation, if a different legal person, undertakes to be bound by this Agreement) or if anything analogous to the foregoing occurs in any applicable jurisdiction.
- 17.9 The parties shall develop an Exit Management Plan in accordance with the provisions of Schedule 5. On termination of this Agreement for any reason, the provisions of the Exit Management Plan shall apply.
- 17.10 Termination of this Agreement shall not prejudice any rights of either party which may have arisen on or before the date of termination. For the avoidance of doubt, save in respect of any undisputed accrued payment obligations or as expressly provided otherwise in this Agreement, the Council shall not be liable to make any further payments to JCD in respect of termination.

18. **Indemnity**

- 18.1 JCD shall indemnify and keep indemnified the Council its directors, officers, employees, agents and representatives, and any third party landowners whose land is used in connection with the Extended Bike Scheme, from and against any damage or loss suffered by any of them in connection with the supply of the Services and whether caused by any negligence, breach of contract, breach of statutory duty or other wrongful act or omission (which includes any deliberately wrongful act or omission or any breach howsoever fundamental, of any of the express or implied terms of this Agreement) on the part of JCD or the JCD Staff.

19. **Transfer of Undertakings**

- 19.1 It is expressly acknowledged by JCD that the provision of the Services pursuant to this Agreement may constitute the transfer of a business within the meaning of the European Communities (Protection of Employees on the Transfer of Undertakings) Regulations 2003 (the “**Regulations**”).

- 19.2 It is accepted that if the Regulations apply or will apply to the Services (or part of the Services) on termination of this Agreement and to any of the JCD Staff or any other employees of JCD (including any person claiming to be an employee or former employee of JCD) wholly or mainly assigned to the provision of the Services (the “**Affected Employees**”) the following provisions shall apply:

- (a) JCD shall provide the Council, as soon as practicable, with information including addresses, remuneration details, dates of commencement of employment, hours of work, accrued holiday entitlement, job descriptions, copy contracts of employment or written statements of terms and conditions in compliance with the Terms of Employment (Information) Acts 1994 and 2001, details of employee claims or other liabilities, collective agreements, customs and practices applicable to Affected Employees and any other details reasonably requested by the Council;
- (b) JCD and the Council agree that each severally shall comply with its respective obligations to inform and/or consult Affected Employees (or affected employees in the case of the Council) under Regulation 8 of the Regulations about the transfer of some or all of the Services;
- (c) JCD shall indemnify and keep indemnified the Council and any New Service Provider against any and all Liabilities arising from or incurred by reason of any claims made under the Regulations or any claims made by any Affected Employees in circumstances where such claim relates to:
 - (i) JCD’s failure to comply with its obligations under the Regulations;
 - (ii) any and all Liabilities arising out of or in connection with the deemed transfer of Affected Employees under the Regulations (including, if applicable, the termination of the Affected Employees’ employment by JCD and/or the Council or New Service Provider) or the termination of the employment of another employee of the Council or New Service Provider where the Council, or as the case may be a New Service Provider, is required by law to terminate the employment of the other employee instead;
 - (iii) any event or occurrence related to or arising out of the employment of an Affected Employee prior to the date of termination of this Agreement for which JCD is liable; or

- (iv) any material term of any contract of employment (whether written or oral) not disclosed to the Council or disclosed inaccurately in a material respect to the Council and which term has effect as if originally made between the Council or a New Service Provider and any Affected Employee as a result of the provisions of Regulations 3 or 4 of the Regulations.

For the purposes of clauses 19.1 and 19.2 “**Liabilities**” means costs (including the cost of wages, salaries and other remuneration or benefits), expenses, taxation, PRSI payments, health contributions, levies, losses, claims, damages, demands, actions, fines, penalties, awards, liabilities and expenses (including legal expenses on an indemnity basis), in each case howsoever arising.

- 19.3 At the Council’s request from time to time, JCD shall provide the Council, as soon as practicable, with information including addresses, remuneration details, dates of commencement of employment, hours of work, accrued holiday entitlement, job descriptions, copy contracts of employment or written statements of terms and conditions in compliance with the Terms of Employment (Information) Acts 1994 and 2001, details of employee claims or other liabilities, collective agreements, customs and practices and any other details reasonably requested by the Council applicable to JCD Staff and any other employees of JCD to whom the Regulations may apply on termination of this Agreement. JCD hereby consents to disclosure of any information provided or to be provided to the Council pursuant to this clause 19.3 to any candidates in a competition for the award of a contract to replace (in whole or in part) this Agreement. JCD shall ensure that it obtains all requisite consents from JCD Staff and other Affected Employees with respect to disclosure of such information to the Council and to any candidates in such a competition as aforesaid.
- 19.4 JCD shall comply with all laws relating to employment or employees in Ireland and in any other applicable jurisdiction and shall indemnify and keep indemnified the Council during the term of this Agreement and for a period of three years following termination in respect of:
- (a) any claims by any member of JCD Staff or any other employees, sub-contractors or agents of JCD or any of the JCD Staff that they were employees, agents or sub-contractors of the Council during the term of this Agreement or have become employees, agents or sub-contractors of the Council (or a New Service Provider) on the termination of this Agreement or, as the case may be, on termination of any of the Services; and
 - (b) any breach of such laws or claims by any employee, agent or sub-contractor of JCD arising out of such breach during the term of this Agreement.
- 19.5 During the Stand-Still Period (defined below) JCD will (and will procure that JCD Staff will):
- (a) not initiate or make any changes in the composition or identities of the personnel engaged in providing the Services without the prior written consent of the Council save where JCD or, as the case may be, Contractor Staff member, is required to do so by law;
 - (b) not amend or vary (or promise to amend or vary) the terms and conditions of employment or engagement (including for the avoidance of doubt, pay) of the personnel engaged in providing the Services without the prior written consent of the Council save where JCD or, as the case may be Contractor Staff member is required to do so by law; and

- (c) make no commitments to Contractor Staff whether under its information and consultation obligations under the Regulations or otherwise without the Council's prior, written consent.

For the purposes of this Clause 19.5, "**Stand-Still Period**" means:

- (a) where any notice is given terminating this Agreement prior to the date on which it would otherwise expire, the period commencing on the date of such notice and ending on the date on which this Agreement expires pursuant to the terms of such notice or such later date on which JCD ceases to provide the Services; or
- (b) where no such notice has been given by the date which falls three months before the date on which the Agreement would ordinarily expire under clause 17.1 of the Agreement (the "**Three Month Date**"), the period commencing on the Three Month Date and ending on the normal expiry date or such later date on which JCD ceases to provide the Services.

19.6 If and to the extent that the Regulations apply by reason of the transaction given or to be given effect to by or pursuant to and in accordance with this Agreement, JCD shall comply with the Regulations.

20. Confidentiality

20.1 In this clause 20, "**Confidential Information**" means all information disclosed (whether in writing, orally or by any other means and whether directly or indirectly and whether specifically designated as 'confidential' or which ought reasonably be regarded as confidential) under or in connection with this Agreement by one party (the "**Disclosing Party**") to the other party (the "**Receiving Party**") whether before or after the date of this Agreement including, without limitation, information relating to the Disclosing Party's products, services, operations, processes, plans or intentions, product information, know-how, design rights, trade secrets, market opportunities and business affairs.

20.2 During the Term of this Agreement and after termination or expiration of this Agreement for any reason the Receiving Party:

- (a) will not use Confidential Information for a purpose other than the performance of its obligations under this Agreement;
- (b) will not disclose Confidential Information to a person except with the prior written consent of the Disclosing Party or in accordance with clauses 20.3 and 20.4; and
- (c) shall make every effort to prevent the unauthorised use or disclosure of Confidential Information.

20.3 During the term of this Agreement the Receiving Party may disclose Confidential Information to any of its directors, other officers and employees (a "**Recipient**") to the extent that disclosure is reasonably necessary for the purposes of this Agreement. The Receiving Party shall ensure that a Recipient is made aware of and complies with the Receiving Party's obligations of confidentiality under this Agreement as if the Recipient was a party to this Agreement.

20.4 Each party may disclose Confidential Information if and to the extent that:

- (a) this is required by the law of any relevant jurisdiction (including without limitation pursuant to the Freedom of Information Acts 1997 and 2003 or the European

Communities (Access to Information on the Environment) Regulations 2007) or pursuant to an order of a court of competent jurisdiction or that of a competent regulatory authority;

- (b) the information is disclosed on a strictly confidential basis to the professional advisers, auditors and bankers of that party;
- (c) the information has come into the public domain through no fault of that party;
- (d) the information was in the possession of the Receiving Party before such disclosure by the Disclosing Party, as aforesaid; or
- (e) the information was obtained by the Receiving Party from a third party who was free to divulge the same;
- (f) the Disclosing Party has given prior written approval to the Receiving Party in respect of the disclosure, such approval not to be unreasonably withheld or delayed; or
- (g) this is required to enable that party to enforce its rights under this Agreement

Provided that any such information disclosed pursuant to clause 20.4(a) shall be disclosed, where reasonably practicable, only after notice to the other party and, where relevant, in accordance with any consultation procedure which may be required pursuant to the Freedom of Information Acts 1997 and 2003.

- 20.5 The obligations of both parties as to disclosure and confidentiality shall continue in force notwithstanding the termination of this Agreement.

21. Force Majeure

- 21.1 If and to the extent that either party (the “**Affected Party**”) is hindered or prevented by circumstances not within its reasonable ability to control, including, but not limited to, acts of God, inclement weather, flood, lightning, fire, trade disputes, strikes, lockouts, acts or omissions of Governments or other competent authority, acts of terrorism, war, military operations, acts or omissions of third parties for whom the Affected Party is not responsible (“**Force Majeure**”) from performing any of its obligations under this Agreement, the Affected Party shall be relieved of liability for failure to perform such obligations.
- 21.2 The Affected Party shall promptly notify the other party (the “**Other Party**”) of the estimated extent and duration of such inability to perform its obligations (the “**Force Majeure Notification**”).
- 21.3 Upon the cessation of the event of Force Majeure the Affected Party shall notify the Other Party of such cessation.
- 21.4 If, as a result of Force Majeure, the performance by the Affected Party of its obligations under this Agreement is only partially affected, the Affected Party shall subject to the provisions of clause 21.5 nevertheless remain liable for the performance of those obligations not affected by Force Majeure.
- 21.5 In the case a Force Majeure notification then:-

- (a) any obligation outstanding shall be fulfilled by the Affected Party as soon as reasonably possible after the Force Majeure event has ended, save to the extent that such fulfilment is no longer possible or is not required by the Other Party;
- (b) if the Force Majeure lasts for more than 45 days from the date of the Force Majeure notification and notice of cessation has not been given pursuant to clause 21.3 and such Force Majeure prevents the Affected Party from performing its obligations in whole or to a material extent during that period, the Other Party shall be entitled (but not obliged) to terminate this Agreement by giving not less than 14 days written notice to the Affected Party after expiry of the said 45 day period provided that such notice shall be deemed not to have been given in the event that notice of cessation of the Force Majeure given pursuant to clause 21.3 is received by the Other Party prior to the expiry of the fourteen days' notice. If this Agreement is not terminated in accordance with the provisions of this sub-clause 21.5(b) then any obligations outstanding shall be fulfilled by the Affected Party as soon as reasonably possible after the Force Majeure event has ended, save to the extent that such fulfilment is no longer possible or is not required by the Other Party.

22. Assignment and Sub-contracting

- 22.1 JCD shall not assign any of its obligations under this Agreement without the prior written consent of the Council.
- 22.2 JCD shall not sub-contract its obligations under this Agreement without the prior written consent of the Council, such consent not to be unreasonably withheld, provided that in such circumstances the provisions of clause 5 shall apply.

23. Non-solicitation

- 23.1 During the term of this Agreement or for a period of 12 months following its termination or expiration, neither party shall directly or indirectly solicit the employment or services of any personnel of the other party who have been engaged in connection with the Services. Provided however that nothing in this clause 23 shall prevent either party from recruiting any person who replies to a publicly issued advertisement.

24. Audit

- 24.1 The Council (or its authorised representative) may, at reasonable times and on reasonable notice to JCD, undertake a review of all or any of the Services being provided by JCD under this Agreement and JCD shall co-operate fully and provide any information or other facility reasonably required by the Council (or its authorised representative) for the purpose of undertaking such review.

25. Dispute Resolution

- 25.1 The Council Project Manager and the JCD Project Manager shall use all reasonable endeavours to settle any dispute that may arise in connection with this Agreement.
- 25.2 If any dispute cannot be settled amicably the Council Project Manager and the JCD Project Manager within [10] Business Days, the dispute shall be referred to the Council's Executive Manager in the Planning and Economic Development Department and JCD's Managing Director who shall use all reasonable endeavours to settle the dispute.
- 25.3 If the Council's Executive Manager in the Planning and Economic Development Department and JCD's Managing Director are unable to resolve the dispute within [10] Business Days of

the dispute being referred to them, either party may refer the dispute to mediation in accordance with the International Centre for Effective Dispute Resolution ("CEDR") procedures then in force. The mediation process will be commenced by service by one party on the other of a written notice that the issue is to be referred to mediation (the "**Mediation Notice**"). The parties shall agree on a choice of mediator with adequate knowledge and experience to comprehend the technical and economic issues raised. In the event that the parties are unable to agree on a choice of mediator within [10] Business Days of the date of service of the Mediation Notice, the parties shall accept a mediator nominated by CEDR. The costs of the mediation shall be shared equally between the parties.

25.4 Nothing contained in this clause 25 shall restrict the Party's freedom to commence legal proceedings to preserve any legal right or remedy or protect any Intellectual Property Rights.

26. **Waiver**

A failure to exercise or delay in exercising a right or remedy provided by this Agreement or by law does not constitute a waiver of the right or remedy or a waiver of other rights or remedies. No single or partial exercise of a right or remedy provided by this Agreement or by law prevents further exercise of that right or remedy or the exercise of another right or remedy.

27. **Notices**

27.1 Notices or other communications given pursuant to this Agreement shall be in writing and shall be sufficiently given:

- (a) if delivered by hand or sent by post to the address and for the attention of the person set forth in this clause of the party to which the notice or communication is being given or to such other address and for the attention of such other person as such party shall communicate to the party giving the notice or communication; or
- (b) if sent by facsimile to the correct facsimile number of the party to which it is being sent; or
- (c) if sent by e-mail to the correct e-mail address of the party to which it is being sent.

27.2 Any notice, or communication, given or sent by post under this clause, shall be sent by ordinary post and each person giving a notice or communication by facsimile in accordance with this clause shall promptly post the original copy to the person to whom the notice or communication was given but the absence of such posting shall not affect the validity of the notice or communication.

27.3 Every notice or communication given in accordance with this clause shall be deemed to have been received as follows:

Means of Dispatch

Deemed Received

Delivery by hand

the day of delivery

Post

2 Business Days after posting

Facsimile:

when sender receives a completed transmission sheet or otherwise receives a mechanical confirmation of transmission

E-mail when the e-mail is received by the intended recipient's e-mail server

Provided that if, in accordance with the above provisions, any such notice or other communication would otherwise be deemed to be given or made outside working hours (being 9 a.m. to 5 p.m. on a Business Day) such notice or other communication shall be deemed to be given or made at the start of working hours on the next Business Day.

- 27.4 The relevant addressee, address and facsimile number of each party for the purposes of this Agreement, subject to clause 27.5 are:

Name/Address of Party	Fax number/E-mail
FAO Jim Keogan	Fax number 01 2222278
Dublin City Council	
Civic Offices	E-mail jim.keogan@dublincity.ie
Wood Quay	
Dublin 8	
FAO Joanne Grant	Fax number 01 2958177
JCDcaux Ireland Limited	
6 Sandyford Park	E-mail joanne.grant@jcdecaux.ie
Burton Hall Road	
Leopardstown	
Dublin 18	

- 27.5 A party shall notify the other of a change to its name, relevant addressee, address or facsimile number for the purposes of clause 27.4. Such notification shall only be effective on:

- (a) the date specified in the notification as the date on which the change is to take place; or
- (b) if no date is specified or the date specified is less than 5 Business Days after the date on which notice is given, the date falling 5 Business Days after notice of any such change has been given.

28. Variations

- 28.1 A variation of this Agreement is valid only if it is in writing and signed by a duly authorised representative of each party.

29. General

- 29.1 Except where this Agreement provides otherwise the rights and remedies contained in this Agreement are cumulative and not exclusive of rights or remedies provided by law.

- 29.2 Any liability to any party under the provisions of this Agreement may in whole or in part be released, varied, compounded or compromised by such party in its absolute discretion as regards any party under such liability without in any way prejudicing or affecting its rights against any other party under the same or a like liability whether joint and several or otherwise.

30. **No partnership, agency etc.**

Nothing in this Agreement shall create, or be deemed to create, a partnership or the relationship of principal and agent or employer and employee between the parties hereto or between the Council and the JCD Staff.

31. **Entire Agreement**

This Agreement contains the entire agreement between the parties with respect to the subject matter hereof, supersedes all previous agreements and understandings between the parties with respect hereto.

32. **Severability**

If at any time any provision of this Agreement (or any part of a provision of this Agreement) is or becomes illegal, invalid or unenforceable in any respect under the law of any applicable jurisdiction, that shall not affect or impair:

- (a) the legality, validity or enforceability in that jurisdiction of any other provision of this Agreement (including the remainder of a provision, where part thereof has become illegal, invalid or unenforceable); or
- (b) the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this Agreement.

33. **Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of Ireland and, subject to clause 25 (dispute resolution) the parties hereto submit to the exclusive jurisdiction of the Irish Courts for the resolution of disputes hereunder.

IN WITNESS WHEREOF the parties hereto have executed this Agreement on the date written above.

SIGNED BY

for and on behalf of

DUBLIN CITY COUNCIL

in the presence of:

SIGNED BY

for and on behalf of

JCDECAUX IRELAND LIMITED

in the presence of:

Schedule 1 - Sites

dbs Phase 2 List of Stations as of 30/04/2013				
No	Phase	Station	Location	Stands
	1B	SS155	Talbot Street Extension	20

dbs Phase 2 List of Stations as of 30/04/2013				
No	Phase	Station	Location	Stands
1	1B	SS103	College Green at Centre Island	40
2	1B	SS105	Dame Court	35
3	1B	SS112	Kevin Street	40
4	1B	SS116	Fitzwilliam Square East	40
5	1B	SS118	St Stephen's Green South at Newman House	40
6	1B	SS120	Clonmel Street	33
7	1B	SS121	Hatch Street	36
8	1B	SS124	Setanta Place (West)	32
9	1B	SS125	Setanta Place (East)	33
10	1B	SS126	York Street (West)	40
11	1B	SS127	York Street (East)	31
12	1B	SS151	Strand Street Great	34
13	1B	SS154	Deverell Place	30
14	1B	SS158	Wolfe Tone Street	30
15	1B	SS163	Mater Hospital at NCR New entrance	40
16	1B	SS168	Hardwicke Place	25
17	1B	SS169	Mater Hospital at Eccles St East	23
18	1B	SS164	Denmark Street Great	20
19	1B	SS167	North Circular Road	30
20	2A	SS45	Benson Street	40
21	2A	SS48	Lime Street	40
22	2A	SS50	City Quay	30
23	2A	SS53	Hanover Quay	40
24	2A	SS54	Grand Canal Dock	40
25	2A	SS55	Barrow Street	40
26	2A	SS56	Mount Street Lower	40
27	2A	SS57	Grattan Street	23
28	2A	SS58	Grand Canal Street Lower at Sir Patrick Dun's	37
29	2A	SS59	Fenian Street	35
30	2A	SS61	Sandwith Street / Townsend Street	40
31	2A	SS62	Georges Dock	40
32	2A	SS63	North Wall Quay at Excise Walk	40
33	2A	SS64	North Wall Quay at The Convention Centre	40
34	2A	SS65	North Wall Quay at New Central Bank	40
35	2A	SS66	North Wall Quay at the O2	40
36	2A	SS67	South Dock Road	30
37	2A	SS68	Linear Park, Guild Street	40
38	2B	SS71	John Street West	31
39	2B	SS72	Oliver Bond Street	30
40	2B	SS73	James Street	40
41	2B	SS74	Market Street South	36
42	2B	SS75	St James Hospital at the Luas Stop	40
43	2B	SS76	Military Road at the Royal Hospital	40
44	2B	SS77	Kilmainham Lane at the Garda Station	30
45	2B	SS78	Emmet Road	40
46	2B	SS79	Inchicore Road at Kilmainham Jail	40
47	2B	SS81	Parkgate Street One at the Bridge	40
48	2B	SS82	Parkgate Street Two at the Triangle	35

49	2B	SS83	Liffey Street West at the Collins Barracks Museum	35
50	2B	SS84	Blackhall Place	30
51	2B	SS85	Heuston Station Location One at the Liffey	25
52	2B	SS86	Heuston Station Location Two at the Drivers Accommodation	40
53	2B	SS87	Heuston Station Location Three at the Car Park	40
54	2B	SS88	St James Hospital – Central	40
55	2B	SS91	Francis Street	30
56	2B	SS92	Brookfield Road	40
57	2B	SS93	Rothe Abbey off SCR	40
58	2B	SS94	Mount Brown	30
				2,079

		€'000	Notes
Capital	Groundworks (estimate including 17.5% management fee)	2,154	1
	Street furniture including terminals / stands	3,000	1
	Initial bike and vehicle fleet	1,960	1
		7,114	

		€'000	Notes
Annual Charge		1,925	2
Estimated value of bike scheme sponsorship		300	3
Estimated annual subscription / usage monies generated		1,434	3
Projected annual net charge to Dublin City Council		191	
Note: All amounts are exclusive of VAT at the applicable rate			

Proposal based on the following assumptions (Notes 1)

- JCDcaux street furniture to include 58 terminals, of which 21 are credit card enabled, 2,079 bike stands which will fully integrate with current bike scheme, a 20 stand extension at Talbot St and the purchase of initial bike and vehicle fleet.
- JCDcaux management fee of 17.5% will be applied to groundworks final costs (included in estimate)
- Groundworks to be tendered when designs finalised.

Groundworks estimate based on following assumptions

- Average electrical trench of 9.5m plus average road crossing trench of 2.9m.
- Provision made for excavation and reinstatement of a 500mm foundation strip as standard.
- There will be increased costs for any non-standard build element e.g. additional traffic bollards.
- Provision made for the installation of small concrete islands at each end of stations constructed on road sites, together with the provision and installation of one lighthouse bollard and one dynaflex bollard on each concrete island.
- Road marking on road based stations estimated at €1,000 (excluding JCDcaux management fee)
- Construction proceeding without any unforeseen additional work/delays occurring. Additional work may arise in the event that unknown/undetected underground services/cellars, etc are uncovered. The cost of overcoming such issues will be additional above that outlined in the estimate with such charge being based on the rates forming part of the groundworks tender.
- Provision for ESB connection costs of €1,710 per terminal (excluding JCDcaux management fee)
- Provision for T2 application by JCDcaux to conduct groundworks.
- Appointed contractor assumed to perform PSCS function and provide as-built drawings at no additional charge.
- Dublin City Council to fund cost of PSDP for the project and preliminary H&S plan and preliminary traffic management plan.
- Dublin City Council to fund all design drawings, site investigation works and road safety audits, where required.
- Price includes the acquisition of 1,427 bikes and 9 vehicles with this payable upfront by Dublin City Council.
- Subsequent replacement bike fleet and bike scheme vehicles to be covered by the annual maintenance charge.
- Bikes and vehicles to remain the property of JCDcaux.

- These prices are confined to the expansion Phase 1b/2a/2b and are not binding in the event of a further expansion beyond this. However JCDecaux will commit to providing the same value for money on any additional expansion above the current and proposed levels.

Based on the following assumptions (Notes 2)

- 15 year scheme term.
- Annual charge to be increased by CPI each year of operation.
- Vandalism in excess of 5% of overall fleet per rolling 12 months to be borne in 66.66/33.33 Dublin City Council/JCD ratio.
- Dublin City Council continue to be responsible for transaction charges on subscription/usage fees.
- Expansion bike stations not subject to rates charge.
- Maintenance of an additional 950 (plus 30% buffer stock) bikes of the same standard as the current bike fleet.
- Includes replacement cost of bike and vehicle fleet over the course of the contract.
- These prices are confined to the expansion Phase 1a/2a/2b and are not binding in the event of a further expansion. However JCDecaux will commit to providing the same value for money on any additional expansion above the current and proposed levels.

Based on the following assumptions (Notes 3)

- Estimated at Long Term subscription of €20 per annum and Short Term subscription rate of €5.
- Estimated value of dublinbikes sponsorship

	Upfront €'000	Cost per annum €'000	Notes
Capital Costs			
Bike acquisition costs	1,460	173	
Bike vehicles	500	100	
Total Bike scheme capital costs	1,960	273	
	Upfront	Total	
Bikes acquired	1,427	2,565	
Vehicles acquired	9	27	

(Notes)

- Price is based on an upfront payment for the initial tranche of bikes/vehicles with subsequent replacement fleet to be covered by the annual charge (CPI linked).
- Based on 1,235 bikes purchased and replaced twice during the 15 years of the contract. It also provides for an attrition rate of 5% of the nominal fleet per annum bringing the original tranche of bikes to 1,427. Costs above this to be borne by DCC/JCD in the ration of 66.66%/33.33%.
- Based on purchase of 9 additional regulation/mechanical/cleaning vehicles three times during term of contract.

Minor Works Variation Pricing

	Peripheral/High density €'000	Central €'000	Notes
Capital cost per station			
Groundworks	42	42	
Street furniture	58	58	
Total capital cost per additional station	100	100	

	Peripheral/High density €'000	Central €'000	Notes
Annual maintenance charge per station	39.0	32.5	1

(Notes 1)

Inclusive of replacement bike capital recharge of €5.7k per annum - if the capital cost of the additional bikes is paid upfront or in three tranches the annual maintenance charge will decrease on an indicative basis as follows based on 15 year duration.

	Peripheral/High density €'000	Central €'000	Notes
Reduction in annual charge	5.7	5.7	
Conditional on Option 1 or 2 below			
Option 1 – Upfront payment	75	75	
Option 2 – Three tranche payment per station	23	23	
	28	28	
	33	33	
	84	84	

Capital cost proposal based on the following assumptions

- Costings apply to a maximum of five stations.
- Each new terminal to a maximum of five would require an additional 20 bikes.
- JCDecaux and Dublin City Council to mutually agree locations of new stations before proceeding.
- General ratio of credit card enabled/non credit card enabled stations to be maintained in any expansion.
- Each terminal to have an average of 35 stands.
- JCDecaux management fee of 17.5% will be applied to groundworks final costs (included above).
- Groundworks to be tendered when designs finalised.

Estimates based on following assumptions

- Average electrical trench of 9.5m plus average road crossing trench of 2.9m.
- Provision for excavation and reinstatement of a 500mm foundation strip as standard.
- Additional charges for any non-standard build element e.g. additional traffic bollards.
- Provision made for the installation of small concrete islands at each end of stations constructed on road sites, together with the provision and installation of one lighthouse bollard and one dynaflex bollard on each concrete island. Any larger/additional islands/bollards will result in an additional charge.
- Provides for road marking on road based stations of €1,000 (excluding JCDecaux management fee)
- Construction proceeding without any unforeseen additional work/delays occurring. Additional work may arise in the event that unknown/undetected underground services/cellars etc are uncovered. The cost of overcoming such issues will attract additional costs above those outlined in the estimate with such charge being based on the rates forming part of the groundworks tender.
- Provision has been made for ESB connection of €1,710 per terminal (excluding JCDecaux management fee)
- Provision for T2 application by JCDecaux to conduct groundworks - any additional costs in relation to the cost of road opening will be recharged by JCDecaux to Dublin City Council.
- Appointed contractor assumed to perform PSCS function and provide as-built drawings at no additional charge.
- Dublin City Council to fund cost of PSDP for the project and preliminary H&S plan and preliminary traffic management plan.
- Dublin City Council to fund all design drawings, site investigation works and road safety audits, where required.
- Offer valid in 2013 and to be adjusted upwards by CPI each year onwards.

Annual charge based on the following assumptions

- Additional bike stations not subject to rates charge.
- Additional bikes required are replaced twice over the contract term.
- Annual charge to be increased by CPI each year of operation.
- Dublin City Council continue to be responsible for transaction charges on subscription/usage fees.
- Additional terminals/stands/bikes to fall within the scope of the service level agreements in place.
- Option 2 – Three tranche payment per station based on initial tranche payable upfront, tranche two payable in August 2018 and tranche three payable in August 2023.
- Offer valid in 2013 and to be adjusted upwards by CPI each year onwards.

Payment schedule dublinbikes expansion

Annual charge

Annual charge to be invoiced quarterly in advance

Payment terms 30 days from date of invoice

Annual charge to be calculated on a pro-rata basis prior to the scheme expansion becoming fully operational in line with each tranche of 5 additional stations i.e. if 15 new stations are commissioned in Month 1 then charge for that month is $15/58 \times \text{annual charge}$ with 58 being the final agreed number of additional bike stations

Service level credits, to the extent that they arise, to be invoiced by Dublin City Council on quarterly basis with credit terms of 30 days from the date of invoice

Subscription monies

Dublin City Council to have subscription monies, net of applicable commission remitted on a bi-monthly basis

Capital charges

Street furniture (bike stands, bikes fleet, vehicle fleet and terminals) to be invoiced in line with each tranche of 5 additional stations becoming operational i.e. if 15 new stations are commissioned in November then amount payable is $15/58 \times \text{overall street furniture capital charge}$ with 58 being the final agreed number of additional bike stations

Ground works element to be invoiced on monthly basis in line with certified progress on the project as validated by the recommendation of the quantity surveyor engaged. Payment terms for the monthly ground works element to include the JCDecaux Ireland management fee of 17.5% is 30 days from the date of the invoice

Minor works variation/Additional stations to be invoiced on completion with payment terms of 30 days from date of invoice

Schedule 2 - Implementation Timetable

See attached timetable

Liquidated Damages

JCD shall pay the Council the sum of €10,000 for every week (or part thereof) beyond the Project Completion Date by which JCD is delayed in completing the construction phase of the Extended Bike Scheme save that this sum shall not be payable for any week (or part thereof) in which the delay is wholly or mainly attributable to the Council. It is noted between the parties that Liquidated Damages shall not be payable for the duration of any period in which an event of Force Majeure prevents JCD from performing its obligations under this Agreement.

9 Appendix

Schedule 3 – Construction Sign-Off Procedure

After construction JCD will provide the Council with the documentation confirming that the Stations have been built as per the Detailed Design Documents and that all Equipment is fully interoperable with the Existing Bike Scheme. This documentation should include an 'as built drawing' which includes all ancillary service connections.

Schedule 4 – Change Control Procedure

1. Where either party (the “**Requesting Party**”) wishes to make a Material Change to the Services, the procedure in this Schedule (the “**Change Control Procedure**”) shall apply. The Change Control Procedure shall also apply in respect of any matters which are specifically identified in the Agreement as being subject to the Change Control Procedure.
2. All change requests must be documented by the Requesting Party in a request form (a “**Change Request Form**”) which shall include, as a minimum, the following details:
 - (a) description of the requirements for the change;
 - (b) comparison of the new requirements with the existing requirements;
 - (c) reasons for the change, including a high level description of the proposed business impact; and
 - (d) timeframe for completion of the change.
3. The Change Request Form shall be signed by the Project Manager of the Requesting Party and submitted to the Project Manager of the other party, who shall be referred to as the Responding Party.
4. JCD shall provide the Council Project Manager with an impact statement (an “**Impact Statement**”) within a timeframe to be agreed between the parties from date of issue of the Change Request Form (or such longer period as the parties may subsequently agree). The Council shall provide JCD with such co-operation and assistance as may be reasonably requested by JCD in preparing the Impact Statement. The Impact Statement shall include, as a minimum, the following details:
 - (a) the estimated number of working days and personnel (including levels of qualification) and details of the work categories required to deliver the change within the timeframe specified in the Change Request Form;
 - (b) overall forecasted impact on the charges payable under this Agreement (i.e. reduction or increase) which shall include a detailed breakdown of how such forecast relates to the details in (a) above so as to facilitate, where relevant, any reduction being offset against any increase in fees;
 - (c) provisional timetable for the change including any impact on timeframes for delivery of the Services;
 - (d) anticipated impact on the Services to be provided under the Agreement and
 - (e) confirmation of the number of hours spent producing the Impact Statement.
5. After consideration, the parties may agree
 - (a) to implement the Impact Statement in which case the Agreement shall be amended accordingly;
 - (b) to reject the Impact Statement in which case the Agreement shall remain unchanged; or

- (c) that JCD will produce a revised Impact Statement by repeating the process set out in paragraphs 4 and 5 of this Schedule, up to a maximum of two repetitions following the initial request.
- 6. Following completion of the procedure in paragraph 5 above, where the parties fail to reach agreement on a request for change, the dispute resolution procedure in clause 25 of the Agreement may be invoked by either party.
- 7. Any work undertaken by either party in preparing an Impact Statement or otherwise following the procedure set out in this Schedule shall be at each party's own expense up to a maximum of 20 hours in any contract year. Any work beyond this timeframe shall be conducted on the basis of terms agreed between the parties in advance, in writing.

Schedule 5 – Exit Management Plan**1. Development and Updating of Exit Management Plan**

- 1.1 The parties shall discuss and agree an exit management plan within not more than 6 months from the Effective Date of this Agreement (the “**Exit Management Plan**”) covering action to be taken in respect of the termination or expiry or assignment of the Agreement.
- 1.2 The parties shall review and, if necessary, agree updates to the Exit Management Plan at annual intervals from the date on which the Exit Management Plan is first agreed in order to ensure that it reflects the contemporaneous state of the Services.

2. Content of Plan

- 2.1 The Exit Management Plan shall, as a minimum:

- (a) provide for the completion of all outstanding obligations under contracts with Subscribers;
- (b) seek to ensure that there is an orderly and smooth transition from the performance of the Services by JCD to the performance of any replacement services, by the Council or a New Service Provider;
- (c) define the responsibilities of both parties clearly in the event of exit and transfer;
- (d) provide a plan for the reinstatement of Sites and removal of Equipment and Ancillary Infrastructure from the Sites in accordance with the requirements of this Agreement;
- (e) subject to clause 3.7 of this Agreement, provide for the handover of the following data to the Council in such manner as the Council may reasonably require:
 - (i) the Operational Data and all such other data relating to the operation of the Services as the Council may deem necessary to facilitate the provision of any replacement services by the Council or a New Service Provider seamlessly and without interruption; and
 - (ii) all such data as the Council may deem necessary to enable a New Service Provider to tender for the provision of any replacement services; and
- (f) provide for any other matters identified in the Final Agreed Proposal as matters to be dealt with in the Exit Management Plan.

- 2.2 The Exit Management Plan shall include the following:

- (a) a list and timetable of activities for the Council and JCD to undertake during the exit management period;
- (b) full details of any dependencies on the Council for the successful implementation of the Exit Management Plan;
- (c) details specifying any continuing obligations owed by JCD to Subscribers post termination, expiry or assignment of the Agreement; and

- (d) such other details as the Council and JCD consider appropriate when agreeing the terms of the Exit Management Plan.

Appendix A - Final Agreed Proposal

30.04.2013

**Out of Home
Media**

Algeria
Argentina
Australia
Austria
Belgium
Bosnia
Brazil
Bulgaria
Canada
Chile
China
Croatia
Czech Republic
Denmark
Estonia
Finland
France
Germany
Greece
Hungary
Iceland
India
Ireland
Italy
Japan
Kazakhstan
Korea
Latvia
Lithuania
Luxembourg
Malaysia
Montenegro
Norway
Oman
Poland
Portugal
Qatar
Romania
Russia
Serbia
Singapore
Slovakia
Slovenia
Spain
Sweden
Switzerland
Thailand
The Netherlands
Turkey
Ukraine
United Arab Emirates
United Kingdom
United States
Uruguay
Uzbekistan

Mr Jim Keogan
Planning & Economic Development Department
Dublin City Council
Block 4, Floor 3, Civic Offices
Wood Quay
Dublin 8

Dear Jim

dublinbikes – proposal for expansion

Further to the discussions and meetings which have taken place in relation to the potential expansion of dublinbikes we are now in a position to put forward a final proposal to Dublin City Council.

It is our understanding that Dublin City Council has taken external professional advice and is in a position to request a proposal from JCDecaux in relation to the expansion of dublinbikes without going to public tender.

It is our expectation that a contract could be signed by Friday 10th May 2013 and it is on this basis that we set out our offer and any timelines included within this document.

Expansion of dublinbikes scheme

The original scheme is tremendously popular and is one of the most successful bike rental schemes in the world. We in JCDecaux are very proud of dublinbikes, and continue to do our utmost to deliver a premium service to subscribers.

It is our objective to offer an expansion which will supplement the success of the original scheme into the IFSC and Heuston areas. This expansion will include 58 new stations and a 20 stand extension at Talbot Street station. There will be 2,079 additional stands and 950 additional bicycles. The expansion will deliver a combined fully integrated system of 102 stations, 3,186 stands and 1,500 bicycles.

JCDecaux
6 Sandyford Park - Burton Hall Road - Leopardstown - Dublin 18 - Ireland
Tel: +353 (1) 295 8170 - Fax: +353 (1) 295 8177 - www.jcdecaux.ie

Proprietor: JCDecaux Ireland Ltd. Registered Office: 6 Sandyford Park, Burton Hall Road, Leopardstown, Dublin 18. Registered in Ireland Company No. 318760
Directors: J. Grant (Managing), P. Mannion, J. Mulleady, N. Roberts, A. Sherry

Indicative Timetable

JCDecaux anticipate total completion of the expansion project by Summer 2014. This is based on signing a contract with Dublin City Council by Friday 10th May 2013. It would be our intention to commence groundworks during October 2013, adding additional stations to the network in batches, with the entire project fully completed by Friday 25th July 2014. Each station added to the network will be fully functional and integrated into the original network of dublinbikes. Additional bikes will be added to the fleet on a phased basis, as stations are added.

This proposal is made on the basis of final sign off within the necessary timelines by Dublin City Council on the proposed stations, etc. JCDecaux and Dublin City Council have engaged in a series of consultative meetings in relation to the design of the extended network. This process is now at a very advanced stage.

Technical Programme

An overall construction programme for the entire expansion is attached in the Appendix Page 9. Appendix Page 1 and 2 includes a list of the new stations and the number of stands per station.

JCDecaux confirm that all the equipment which will be used in the expansion of dublinbikes will be of at least the same standard as the equipment used for the original contract.

We confirm that the expansion will be fully interoperable with the original dublinbikes network and that all infrastructures will be similar in nature to the original scheme.

JCDecaux confirm that we will construct the stations and any amended stations in accordance with the agreed detailed design documentation. After construction, JCDecaux will provide Dublin City Council with the documentation confirming that the stations have been built as per the design specification and that all equipment is fully interoperable with the original dublinbikes scheme.

Project team

The project team for the implementation of the dublinbikes expansion will be led by our Technical Director and assisted by our Technical Manager. All contact in relation to the provision of dublinbikes and the service levels will be through our Technical Director and Manager.

Any financial reporting or queries in relation to subscriber charges / usage fees, etc will be made through our Financial Director.

We confirm that any subcontractors involved in the expansion of dublinbikes will be with the consent of the working group which includes representatives of JCDecaux and Dublin City Council. We furthermore confirm that at all times JCDecaux remain responsible to Dublin City Council for the overall delivery of dublinbikes irrespective of any subcontractor involvement in the process.

Financial Proposal for the expansion of dublinbikes

	€000
Groundworks <i>(Estimate including 17.5% management fee)</i>	2,154
Street furniture – terminals and stands	3,000
Street furniture – initial bike/vehicle fleet	1,960
Total Capital	7,114
Annual charge	1,925
Estimated annual subscription/usage monies generated based on €20 long term fee / €5 short term subscription	1,434
Estimated Dublin City Council portion of sponsorship monies	300
Projected annual net charge to Dublin City Council	191

JCDecaux is offering a proposal to cover the expansion of dublinbikes which results in a capital cost payable at the beginning of the contract of €7.114m. The annual running charge of €1.925m is to be increased by CPI on an annual basis. Please see Appendix Page 8 for schedule of payments.

Included in the street furniture price are the 58 additional stations, 2079 bike stands and the initial bike/vehicle fleet with subsequent replacement bikes/vehicles being covered by the annual charge Appendix Page 3 and 4.

The 2013 / 2014 marketing plan for driving subscriptions is attached in the Marketing Appendix. Our offer will include similar appropriate marketing activity each year during the contract duration and updated plans will be drawn up by JCDecaux on an on-going basis in conjunction with Dublin City Council.

JCDecaux intend to issue a tender for the groundworks once a contract is signed with Dublin City Council for the expansion. The construction programme will be operated by JCDecaux with the full visibility of Dublin City Council on the basis of actual cost and a management fee of 17.5 %. Appendix Pages 3,4 and 9. This reduced management fee has been agreed on the basis of Dublin City Council having a Technical Liaison Officer available on a full-time basis and significant involvement from the Project Manager during the construction phase of the project.

It is envisaged that subscriptions and sponsorship will amount to €1.734m which has been estimated on the basis of a €20 long term subscription fee and a €5 short term subscription fee. The projected annual net charge to Dublin City Council is estimated to be €0.2m. The above amounts are stated exclusive of VAT.

Dublin City Council need to make a decision on when the subscription charges will be increased to €20 and €5 for long and short term subscribers. JCDecaux would recommend that this increase is actioned in August or September 2013 in advance of the expansion.

Contract duration

JCDecaux confirm that this offer is based on the expansion of dublinbikes running co-terminus with the original dublinbikes where the contract will expire at the end of September 2027. Our pricing structure for a 10 year co-terminus contract remains the same per annum and would result in the removal of the original bike scheme in conjunction with the removal of this expansion. If Dublin City Council wish to end the contract earlier i.e. after 10 years then 12 months notice of termination is required. This is to ensure that commitments for additional vehicles, replacement bikes and equipment and leases for premises will not be made by JCDecaux.

Rates

Our offer does not make provision for payment of rates. We understand that Dublin City Council are requesting that JCDecaux pay any rates that may be levied. We are willing to do this on the basis that these costs would be in addition to the offer made in this Final Proposal. If this is a requirement of Dublin City Council, we will invoice you with the full amount of the rates.

Minor Works

Please find attached working document covering the minor works variation pricing in Appendix Page 5.

VAT

The prices quoted in our proposal are VAT exclusive. VAT will be charged at the appropriate rate on both the initial construction phase, to include the upfront payment for the acquisition of the bike fleet/additional vehicles, and on a recurring basis on the annual maintenance charges. Dublin City Council are required to account for the VAT on subscription/usage charges and should have the ability to offset any VAT payable on the subscription fees via a VAT input credit on the construction element of the bike scheme expansion. RCT should also apply to the bike scheme expansion contract and both JCDecaux and Dublin City Council will operate within Revenue guidelines in this regard.

Attrition rate

The historical attrition rate on the dublinbikes scheme has been low; less than 1% per annum since the scheme launch. This low rate of attrition has been due to a large number of factors including the use of a security company by JCDecaux at the time of launch, active risk management during times of potential vandalism

(Halloween etc), high levels of bike rotation/regulation which reduces the time each bike spends at a station, and the location of stations in areas of high visibility and footfall. Experience in other cities shows that peripheral stations can lead to a higher level of vandalism as passer-by footfall is lower.

The cost of vandalism in excess of 5% of the fleet will be borne in the ratio of 66.66% / 33.33% Dublin City Council / JCDecaux.

Locations / Design / Planning permission

The identification and provision of locations for bike stations, the detailed design and the health and safety requirements relating to the design aspects of the expanded scheme will be the responsibility of Dublin City Council. As part of the design process Dublin City Council will undertake a three stage road safety audit, where you will be responsible for undertaking Stage 1, Stage 2 and Stage 3 of the road safety audits as required.

Dublin City Council have confirmed that planning permission is not required for the dublinbikes stations.

Reporting

JCDecaux will provide Dublin City Council with bi-monthly/periodic operating reports commencing after the completion of the construction programme for the expansion as per the details outlined below. JCDecaux agree to co-operate with Dublin City Council for the provision of additional reasonable requests for information from time to time. For the purposes of clarity JCDecaux confirm that any reporting requirements agreed to as part of this expansion will apply to and include the original dublinbikes also.

The bi-monthly operating reports will include the following;

- a) Financial Report
- b) Operations Report
- c) Marketing Report
- d) Incident Report

Financial Report

- A breakdown of dublinbikes fees for the period - this information will be provided on a long term subscriber, short term subscriber and usage basis.
- A reconciliation of subscriptions for the period to the amount paid to Dublin City Council for the period
- VAT analysis information
- Asset Register of bike scheme infrastructure and fleet

Operations Report

- Details of standards and service levels attained during the reporting period and any deviations from the agreed performance levels
- Details of any performance related deductions (service credits)
- Details of maintenance of the equipment during the reporting period
- Details of regulation carried out during the reporting period

Marketing Report

- Details of marketing and promotion activity undertaken during the period
- Details of proposed marketing and promotion programme for the following six months

Incident Report

The incident report will include the following information:

- Details of any reported accidents
- Details of the number and type of complaints and status of complaints
- Details of any station closures

Service Level Commitments from JCDecaux

We currently do not have any commitments to service levels for the existing scheme. As part of this expansion proposal we are confirming the following service level standards to cover both this expansion and the existing dublinbikes;

- That 95% of attempted bike rentals are successful
- For average rentals of up to 15,000 per day we will regulate on average 600 bikes a day Monday to Friday (calculated on an annual basis)
- We will have an active fleet of 1,500 bikes (on average calculated on an annual basis)
- We will carry out a minimum of 1,200 station cleans per year
- All bikes remaining in service will have a Major Service every 14 months and a Full Safety Check/Minor Service every 3 months
- Processing of subscriber applications will take place within an average of 14 days from receipt of application to issue of annual subscription card.
- Processing of all valid payments and refunds will take place within an average of 21 days (calculated on an annual basis)

- Revenue will be transferred from JCDecaux to Dublin City Council within 21 days of the bi-monthly transaction period or as agreed (calculated on an annual basis)
- Customer complaints will be dealt with within an average of 14 days (calculated on an annual basis)

JCDecaux confirm that a penalty of 1.5% of the annual operating charge i.e. €28,950 will be charged by Dublin City Council if any two of the service level commitments are broken during a contract year.

JCDecaux confirm that a penalty of 2.0% of the annual operating charge i.e. €38,600 will be charged by Dublin City Council if any combination of three of the service level commitments are broken during a contract year.

JCDecaux confirm that a penalty of 2.5% of the annual operating charge i.e. €48,250 will be charged by Dublin City Council if any combination of four of the service level commitments are broken during a contract year.

JCDecaux confirm that a penalty of 3.0% of the annual operating charge i.e. €57,900 will be charged by Dublin City Council if any combination of five of the service level commitments are broken during a contract year.

Data

Further to our original proposal in which we indicated we would make both 'Portal' and 'Gateway' access available to Dublin City Council for dublinbikes, please find some additional information below which outlines the scope of these options;

The proposed dublinbikes Data Portal is essentially a secure website that Dublin City Council would be able to log into which would allow you to view the following:

- The real time rentals graph
- The real time station availability map
- A daily rentals report (on demand)

The Web Services Gateway allows authorised users to capture real time data from the network of stations. The main components include a secure web connected server that holds live data and a set of protocols or computer programming instructions that can be used and built into an application that extracts the real time data. Once the data is extracted it can be displayed or further analysed in whatever way the user decides to program their application.

While access to both systems is secure, to the end user the main difference is that the Portal presents data in a pre-defined format whereas the Gateway allows you to extract the raw data and then program your own application to present or further analyse that data. The former requires little more than a web browser to access, whereas the latter would require considerable IT and programming skills to develop a bespoke application from scratch, however this gives you the power

to customise the solution to your needs within the constraints of the Gateway and your software (programming) and hardware (computer) environment.

The Gateway is *read only* access to a secure web service which essentially translates into a protocol intended to be used as a programming interface between software components to be developed by Dublin City Council / NTA / Other JCDecaux authorised third party. It allows real-time querying of any station in the network for current bike/stand availability. The Gateway web service is also the same one that serves the back end of AllBikesNow. It is then to the responsibility of the person interacting with the service to store that data if required. The Gateway is probably best suited to integrate with a PID style system similar to the one recently introduced by Dublin Bus or another smartphone app to be developed for one of the government transport agencies.

Proposed sponsorship of dublinbikes

Further to our recent discussions, I would like to confirm the position of JCDecaux in relation to the sponsorship of dublinbikes.

JCDecaux will endeavour to sell sponsorship of dublinbikes. This will involve JCDecaux managing a client who wishes to be associated at a local level in Dublin with dublinbikes and who is willing to develop a strategy to integrate their brand with the community through dublinbikes.

Our offer is based on a 60:40 split on the net revenue after third party professional fees and production costs.

The market value which we intend to propose is €650,000 per annum with net revenue of €520,000 after industry commissions are paid to external agencies and specialists (This does not include fees for JCDecaux). After production this could result in a payment of €300,000 to Dublin City Council each year. We are not in a position to guarantee a confirmed sponsor at a particular price but would endeavour to get the highest possible revenue available for this sponsorship opportunity.

JCDecaux have put together a package for the sponsorship which includes €100,000 ratecard value of Metropole advertising to support the sponsorship, vinyl displays on both sides of the mudguards of the bikes, terminal screen savers, logo opportunities on the dublinbikes website and other ideas in relation to activation and loyalty building schemes to capitalise from the sponsorship for a brand committing to embed itself into the DNA of the Dublin community.

JCDecaux will be responsible for posting of the vinyls on the bikes and all replacement and cleaning. There will be significantly increased costs associated with the management of a sponsorship package for dublinbikes.

Required for agreement;

- a) 60:40 split of net revenues between JCDecaux and Dublin City Council after third party professional fees and production costs.
- b) Agreement that JCDecaux have the right to sell the sponsorship and the right to make a decision on the client, the fee and any other aspects in order to deliver the sponsorship package successfully.
- c) That the sponsorship would rename '**dublinbikes**' as '**XX dublinbikes**' where XX relates to the advertiser or brand taking on the sponsorship.
- d) That the bikes would always be referred to as the '**XX dublinbikes**' in any discussion, interview or press release from any Dublin City Council executive staff member or representative and that Dublin City Council would do their utmost to endeavour that any references made by Councillors, Media or Government officials would also refer to the bikes as the '**XX dublinbikes**'.
- e) Dublin City Council would support a major event in Dublin for the sponsor to utilise the '**XX dublinbikes**' and would participate in the organising and promotion of this event.
- f) The contract would be signed between Dublin City Council, JCDecaux Ireland Limited and the Company sponsoring dublinbikes.

Future expansion

JCDecaux note that Dublin City Council "intend to provide the people of Dublin with a high quality means of transport that is not only environmentally sustainable and healthy but also complementary to the other modes of public transport available in the City".

JCDecaux confirm that we will work with Dublin City Council should the need arise for additional expansions of the dublinbikes network over the coming years.

We hope that you will find this proposal acceptable and look forward to hearing from you in due course.

Yours sincerely



Joanne Grant

Managing Director
JCDecaux Ireland Limited

Appendix B - Detailed Design Documents