

FUNDING AGREEMENT

1 January 2024 to 31 December 2026

between the Minister for Economic Development, Tourism, Sport and Culture and

the Jersey Competition Regulatory Authority

SECTION ONE

1. Introduction

- 1.1. This Funding Agreement (**Agreement**) is between the Minister for Economic Development, Tourism, Sport and Culture (the **Minister**) and the Jersey Competition Regulatory Authority (the **Authority**).
- 1.2. The Agreement comes into force with effect from the 1st of January 2024.
- 1.3. Section 1 of the Agreement establishes the contractual terms between the two parties, their roles and their respective obligations throughout its term.
- 1.4. Section 2 establishes the amount of the annual or top up grants, specific conditions attached to the grant, and criteria for measurement of how the grant's conditions have been fulfilled. This section sets out a table of the annual grants and forms part of this Agreement. The annual grants are to be approved on an annual basis as set out in paragraph 6.3. It is acknowledged and agreed that the Authority will seek funding on a three-year basis for 2024 to 2026, to coincide with the Government Plan over the same period.
- 1.5. References in this Agreement to the Authority's business plan are to those parts of its published plan which relate to its role as set out in paragraph 3 of Section 1 of this Agreement.

2. Purpose

- 2.1. The purpose of this Agreement is to put in place an agreed framework, which is primarily intended to meet the requirements of the Public Finances Manual (the **PFM**), under which the Department for the Economy (the **Department**) can provide an annual or top up grant to the Authority and records the obligations of both parties.

3. Role of the Authority during the term of the Agreement

- 3.1. Throughout the term of the Agreement the Authority's role is to progress objectives that are related to its competition functions in line with its annually published business plan.
- 3.2. Subject to paragraph 3.1, the Authority's main aim is to ensure that consumers and the economy benefit from competitive markets.
- 3.3. In support of its key purpose, the Authority aims to:
 - i. Administer the Competition (Jersey) Law 2005 (the **Competition Law**) seeking to promote competition in the supply of goods and services in Jersey;
 - ii. Investigate possible breaches of the Competition Law;
 - iii. Carry out market studies to evaluate whether markets are working well for Jersey consumers;
 - iv. Promote and support competitive markets in Jersey through the provision of information and guidance; and
 - v. Assist the Government to develop the Competition Framework.

4. Obligations of the Authority during the term of the Agreement

- 4.1. Treasury and Exchequer has confirmed that the Authority may be treated as a grant receiving body for the purposes of the PFM. However, any change in Treasury's position regarding the status of the Authority may result in the Authority being treated as an Arm's

Length Organisation (**ALO**) and, as a result, the requirements of the PFM section on ALOs will apply (as compared to the Grants section in the PFM).

4.2. Throughout the term of this Agreement the Authority agrees to:

- i. Maintain sound corporate governance principles across all of its activities which, as a minimum, must include a proper system of internal controls designed to safeguard its interests and assets.
- ii. Adopt an approach to assurance, governance and the oversight of operational and financial performance (including achieving efficiencies wherever possible) appropriate to the size and funding of the Authority as far as possible complying with the PFM and relevant recommendations and guidance of the Comptroller and Auditor General.
- iii. In accordance with Articles 13 and 14 of the Comptroller and Auditor General (Jersey) Law 2014 allow appropriate rights of access for the Comptroller and Auditor General, including access to the Authority's external auditors, for the specific purpose of reviewing how the annual or top up grants have been applied.
- iv. Permit access to the Authority or its external auditors by the Chief Internal Auditor of the States for the purpose of reviewing how the annual or top up grants have been applied.
- v. Hold at least two meetings a year with the Minister, at the end of Q2 and Q4, which the Chair will attend. These meetings will specifically discuss:
 - (a) Performance reports in relation to a summary of activities carried out against the purpose of the grant and outputs against the objectives set out in paragraph 3;
 - (b) Notification of any breaches of internal controls or compliance with relevant laws and regulations unless the matters concerned are clearly immaterial; and
 - (c) Any other relevant information required to enable the Department to fulfil its responsibility to ensure effective oversight of the use of public funds.
- vi. In October each year submit for Department approval a grant application pack including:
 - (a) The Authority's draft business plan and budget for the following year; with the final document to be supplied as soon as possible;
 - (b) Any other relevant information to enable the Department to approve future grant payments in compliance with the PFM and the law.
- vii. In accordance with the Competition Regulatory Authority (Jersey) Law 2001 (the **2001 Law**) to provide an annual report and audited signed financial accounts within four months of the Authority's year end. Noting that the Law requires the Minister to have these presented to the States Assembly.

4.3. In addition, the Authority will half yearly submit to the Department the following reports, in relation to its activities funded by the relevant annual grant, in order to inform progress and comply with the Government of Jersey's financial and audit requirements:

- i. Review of progress against the budget and annual business plan (including budget variance, if applicable, and reasons for the variance);
- ii. Income and expenditure on competition areas broken down by:
 - (a) activities covered by the annual grant; and
 - (b) M&A activity; and

- ii. Competition reserves held.
- 4.4. The Authority will provide reasonable further information or documentation in relation to the Authority's activities to the Department on request within reasonable time.
- 4.5. The Authority shall annually complete and supply a Grant Assurance Statement setting out how the grant was spent in Jersey and the outcomes achieved in comparison with the original terms of the grant. The statement must be submitted within six months of the Authority's financial year end within which the grant was made or at the time of a further application for grant funding if sooner.
- 4.6. The Authority shall require its auditors to provide an ISA 260 Letter and a Management Representation Letter to those charged with governance of the Authority alongside the audited accounts. The Authority shall supply a copy of these letters to the Minister on submission of the audited accounts as required by the 2001 Law.

5. Duration of the Agreement

- 5.1. The Agreement is effective from the 1st of January 2024 and ends on the 31st of December 2026.

6. Grants

- 6.1. The Agreement provides the framework under which the Department will lawfully provide annual and / or top up grants to the Authority as defined below.

Annual Grant

- 6.2. The purpose of the annual grant is to contribute towards the Authority's costs of meeting its obligations and fulfilling its role as set out in paragraph 3 of this Agreement.
- 6.3. Outline funding for the Authority forms part of the Government Plan and is recorded in the table in Section 2 of this Agreement. However, the grant is subject to the confirmation by the States of the Department's annual update to such plan and to the approval by the Department of the application submitted pursuant to paragraph 4.2vi above. The Authority accepts that the States may, in approving the annual update to the Government Plan, determine to reduce the annual grant to the Authority or to reduce the total funding under such update such that the Department's budget for grants is reduced. In the latter circumstances, if the Department proposes that the annual grant to the Authority be reduced as a consequence, the following would apply:
 - i. the Department would immediately notify the Authority in writing of the proposed reduction in the annual grant and enter into discussions with the Authority as to how to minimise the effect of such reduction, taking into account:
 - (a) the fixed costs and existing commitments of the Authority;
 - (b) the planned activities of the Authority as set out in the then current annual business plan; and
 - (c) the importance to Jersey of having an effective competition regulator; and
 - ii. in making his or her final determination of such reduction, the Minister would act in accordance with Article 13(5) of the 2001 Law.
- 6.4. It is acceptable for the Authority to carry forward £100,000 of its Annual Grant to ensure the orderly running of the Authority. Above that figure, any surplus Annual Grant monies remaining at the end of each financial year must be repaid to the Department if requested.
- 6.5. In the event that the grant confirmed by the Department should require a consequential

revision of the budget, the Authority shall be responsible for submitting it to the Minister after the next scheduled Board meeting or within one calendar month at the latest.

- 6.6. The annual grant will be paid in one instalment in advance by the 31st of January (subject to Public Finance rules on the payment of grants whilst holding reserves).
- 6.7. Payment of the annual grant is conditional on the Authority fulfilling its prior year obligations, performance measures and standards within the Agreement, which will be formally reviewed by the Department on an annual basis.

Top up Grants

- 6.8. The Agreement makes no provision for top up grants to the Authority. However, further grant funding may be agreed between the Department and the Authority on a case by case basis.

7. General grant conditions

- 7.1. Neither the Authority Board nor its officers may:
 - i. authorise expenditure materially in excess of that set out in the budget, nor act in such a way as to compromise the Authority's capacity to operate within its budget;
 - ii. authorise expenditure on activities covered by the grant in excess of the sum provided by the Government through this Agreement;
 - iii. enter into any other long-term non-employment agreements exceeding £75,000 per annum in value without the approval of the Minister.
- 7.2. The Authority and the Department will follow the procedures to be set out in the PFM should the Authority require additional funding for court and case costs, as referred to in paragraph 6 of Section 2.
- 7.3. The Authority will inform the Department if it becomes apparent at any time that an overspend of revenue or capital expenditure is likely to occur.
- 7.4. If the Authority disposes of assets purchased using the grant to a value greater than £1000 in any calendar year, additional proceeds arising from such a disposal shall be repaid to the Government of Jersey.

8. Updating of the Agreement

- 8.1. The terms of this Agreement may only be varied by agreement in writing and signed by the Minister and the Authority

9. Dispute resolution

- 9.1. In the event of a dispute arising from this Agreement, designated officers from the Authority and the Department will seek to resolve the problem. Either party may call a meeting of the parties, by service of not less than 14 days written notice and each party agrees to procure that at least two of its designated representatives from its senior management team shall attend all meetings called in accordance with this clause.
- 9.2. If the designated officers fail to resolve the dispute within 14 days of the meeting then the dispute shall be escalated to the Minister and the Chair of the Authority. If the dispute is not resolved within 14 days of such escalation, then the dispute resolution procedure shall be deemed exhausted, OR the parties shall, within that period, on the written request of either party, enter into an alternative dispute resolution procedure, with the assistance of a mediator agreed by the parties.

10. Termination

- 10.1. Without prejudice to any right or remedy a party may have against the other for breach or non-performance of this Agreement, each party shall have the right by notice in writing to the other to terminate this Agreement if the other commits a material breach of any of the terms and conditions set out in this Agreement provided that where such breach is capable of remedy the other has been advised in writing of the breach and has not rectified it within 28 days of receipt of such advice (and for these purposes a breach shall be considered capable of remedy if time is not of the essence in performance of the obligation and if the other can comply with the obligation within the 28 day period).
- 10.2. Termination shall not affect any rights which the party terminating the Agreement may have against the other party in consequence of the breach.
- 10.3. If the Agreement is terminated all unspent annual grant monies, where not contractually committed or reasonably required by the Authority to ensure an orderly winding up of the Authority or an adjustment of the Authority's business to accommodate the resultant decrease in funding must be repaid to the Department with 30 days of termination.

11. General terms

Notices

- 11.1. Any notice or other communication required to be served under or in connection with this Agreement shall be in writing and / or via email to the Department, or the Chief Executive of the Authority.

Compliance with Legislation

- 11.2. In carrying out this Agreement and the services in particular both parties shall comply in all respects with all relevant statutes, rules, regulations, orders, codes of practice and guidelines in force and as amended.

Whole Agreement

- 11.3. This Agreement including the Schedules hereto and the terms herein contain the whole agreement between the parties.

Supersedes prior agreement

- 11.4. This Agreement supersedes any prior agreement between the parties whether written or oral and any such prior agreements are cancelled as at the signing of this Agreement but without prejudice to any rights which have accrued to either of the parties.

Law and Jurisdiction

- 11.5. This Agreement shall be governed by Jersey Law in every particular including formation and interpretation and shall be deemed and construed as having been made in Jersey.

Data Protection

- 11.6. Any data gathered during the term of this Agreement must be managed in accordance with the Data Protection (Jersey) Law 2018.

Survival of Terms

- 11.7. No terms shall survive expiry or termination of this Agreement unless expressly provided herein and / or as necessary by implication.

12. Confidentiality


- 12.1. Each party shall keep secret and treat as confidential all information obtained from the other which is either stated to be confidential or could reasonably be regarded as confidential and shall not disclose such information to any person other than its employees, agents or sub partners where such disclosure is required for the performance of the party's obligations under this Agreement. This clause shall not extend to information which was already in the lawful possession of a party prior to this Agreement or which is already public knowledge or becomes so subsequently (other than as a result of a breach of this clause) or which is trivial or obvious. The obligation of confidentiality under this clause shall survive any termination of this Agreement.
- 12.2. Obligations related to confidentiality do not extend to disclosure of information which is necessary under the Freedom of Information (Jersey) Law 2011 or otherwise by operation of law.

13. Liability

- 13.1. Nothing in this Agreement shall be construed as restricting or excluding the liability of either party for death or personal injury resulting from its negligence or for fraud or fraudulent misrepresentation. In no event shall either party be liable to the other for any indirect or consequential loss of any nature and howsoever caused.

Funding Agreement

Signed by:



Deputy Kirsten Morel, Minister for Economic Development, Tourism, Sport and Culture

PO Box 140, 19-21 Broad Street, St Helier, JE4 8QT

Date: 17 August 2023

Signed by:



Stephanie Liston, Chair Jersey Competition Regulatory Authority

2nd Floor Salisbury House, 1-9 Union Street, St Helier, JE2 3RF

Date: 15 September 2023

SECTION TWO

Funding Agreement

1. The Authority was established by the States as Jersey's independent competition and regulatory authority in 2001 under the 2001 Law. The Competition Law subsequently settled a duty on the Authority to promote competition in the supply of goods and services in Jersey.
2. The States provides a grant as a contribution towards the competition functions of the Authority, which cannot be funded from other sources. For example, activity under the antitrust provisions of the Competition Law, market studies, advocacy, developing guidelines and work on the competition framework.
3. The Authority is also responsible for the regulation of telecommunications in Jersey under the Telecommunications (Jersey) Law 2002, for regulating postal operators under the Postal Services (Jersey) Law 2004 and for regulating port operations under the Air and Sea Ports (Incorporation) (Jersey) Law 2015, although regulatory work under the three laws does not form part of this Agreement.
4. The Authority raises fees under the Competition Law and merger fee income is used insofar as it is possible to offset the merger and acquisition functions of the Authority;
5. The PFM requires Departments to be satisfied that awarding a grant is the most appropriate route to achieve States' objectives compared to direct expenditure. The Minister, therefore, recognises that it is the appropriate body to deal with matters concerning competition, monopolies, utilities or any matter connected with the provision of goods or services to which the Authority's functions relate.
6. It is acknowledged that expenditure on court and case costs is highly variable and may be driven by demand that is outside of the control of the Authority. Treasury and Exchequer intends to publish an additional chapter in the PFM that will cover the relationship between the Authority and the Government of Jersey in relation to court and case costs.
7. This Agreement is intended to support the objectives of the Government of Jersey as established in the following strategic documents.

- **Common Strategic Policy 2023-2026**

- Economy and Skills*

- Jobs and Growth*

- Competition policy can support the objective to improve Jersey's economic performance, bring about improvements in productivity and innovation in product and service markets and can help to maintain downward pressure on prices. The competition system helps to ensure that behaviours harmful to competition and consumers are avoided or eliminated and where possible consumer choice and competition is protected. Businesses can benefit too because they are less likely to be subject to harmful trading practices by competitors or suppliers.

- The Authority notes that in small-island economies, such as Jersey, it is just as important that markets work well as it is in larger economies and that conducting competition and regulatory policy well in smaller jurisdictions was hard but could bring substantial economic benefits.

- An independent and familiar competition framework supports Jersey's external image. Free trade agreements that Jersey may wish to be included in often contain provisions on competition and parties are expected to maintain laws that combat anti-competitive business activities and establish an independent competition authority.

- **2022 Outline Economic Strategy for Jersey – A Vision for 2040**

Business environment

The general objective of competition policy is about applying rules to make sure companies compete fairly with each other. This encourages enterprise and efficiency, creates a wider choice for consumers and helps reduce prices and improve quality. The Authority, by promoting and enforcing competition in the Island, contributes to these objectives and, by doing so, makes Jersey a more attractive place to invest and do business.

The Authority will primarily support the States of Jersey by maintaining a regulatory environment in which business can prosper, with improved competitiveness and innovation, resulting in a downward effect on prices, resulting in reduced inflationary pressure.

- **Inflation Strategy Group: Report January 2020**

The introduction of formal competition rules in Jersey coincided with the end of a sustained period in which Jersey's inflation rate was considerably higher than the UK's. There is a significant body of research from around the globe that shows a similar relationship – that more competitive markets result in lower prices and better outcomes for consumers.

At a time when Islanders' household budgets are under significant pressure as a result of the high levels of inflation in Jersey, it is more important than ever than competition works well in the market. Rising prices disproportionately affect those Islands already on lower income.

Annual Grants for years 2024 to 2026

	2024	2025	2026
Competition grant	£ 747,000	£ 747,000	£ 747,000