

## SCHEDULE 1

### Definitions

In this Agreement the following abbreviations shall have the following meanings:

"Acceptance Testing"	the Testing to be undertaken by the Service Provider in accordance with <b>Schedule 4 (Testing Regime)</b> ;
"Action Plan"	has the meaning given to it in <b>clause 26.3 (Ethical Sourcing Principles)</b> ;
"Active eScooter Rate"	the number of eScooters in use as a percentage of the total eScooter fleet each day;
"Adequacy Decision"	a finding under Article 25(2) of the Data Protection Directive that a country or territory ensures an adequate level of protection within the meaning of Article 25 of the Data Protection Directive or (as applicable) a finding under Article 45(1) of the General Data Protection Regulation that a country, a territory or one or more specified sectors within that country, or the international organisation in question ensures an adequate level of protection within the meaning of Article 45 of the General Data Protection Regulation;
"Additional Services"	<p>the services that WMCA may request the Service Provider to provide from time to time, which are:</p> <ul style="list-style-type: none"><li>(a) the same as or substantially similar to those Services provided by the Service Provider during the Implementation Phase and/or the Operational Phase; and/or</li><li>(b) pursuant to the design, build, installation and operation of the West Midlands eScooter Trial Services, in accordance with the provisions of <b>Schedule 24 (Additional Services)</b>.</li></ul> <p>The indicative Additional Services include those services set out in <b>Schedule 24 (Additional Services)</b> and the Specifications;</p>
"Advertising Protocol"	the WMCA advertising protocol at <b>Part A of Schedule 28 (Protocols)</b> ;

"Affiliate"	in relation to a party, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with, that party from time to time;
"Agreed Daily eScooter Requirements"	WMCA's requirement to have eScooters available for hire each calendar day as outlined in the Specifications, or other such lesser number of eScooters that WMCA may notify the Service Provider in writing;
"Approved"	approved by WMCA in accordance with <b>Schedule 3 (Milestones)</b> and/or the Implementation Plan, and "Approve" and "Approval" shall be construed accordingly;
"Approved Sub-processors"	the persons named as such in <b>Appendix A to Schedule 13 (Information Compliance)</b> ;
"Area of Operation"	means the Core Area and Potential Additional Area individually and collectively;
"Asset Register"	the register of the WMETS Assets to be created, maintained and updated by the Service Provider from time to time, in accordance with the provisions of <b>Schedule 10 (Asset Management)</b> ;
"Audit Methodology"	the internal audit methodology of the Service Provider for checking compliance and fulfilment of this Agreement and used in providing Management Information and reports to WMCA Personnel;
"Build Deliverables"	the Deliverables provided by the Service in respect of the Build Services;
"Build Services"	the Services to be provided by the Service Provider in relation to the manufacture, development, construction and installation of the WMETS Assets and Service Systems and development and creation of the business processes the Service Provider deems necessary to deliver the Services in accordance with this Agreement, to meet the Specification requirements, and any related Works and Testing;
"Business Continuity"	the continued operation of the Services (including the Service Systems and WMETS Assets) and West Midlands eScooter Trial Services;
"Business Continuity Event"	has the meaning set out in <b>paragraph 1.1.1 (Scope) of Schedule 19 (Business Continuity)</b> ;

<b>"Business Continuity Infrastructure"</b>	the WMETS Assets, Service Systems and Premises (including the Business Continuity Premises) and Systems that house and support the Business Continuity Services or relate to the Business Continuity Test Schedule;
<b>"Business Continuity Manager"</b>	the member of Service Provider Personnel that is the single point of contact for WMCA Personnel in relation to all matters concerning the provision of the Business Continuity Services and the Business Continuity Infrastructure and responsible for: <ul style="list-style-type: none"> <li>(a) executing the Business Continuity Services; and</li> <li>(b) providing the Business Continuity Infrastructure;</li> </ul>
<b>"Business Continuity Plan"</b>	the plan to be developed, maintained and updated by the Service Provider in accordance with <b>Schedule 19 (Business Continuity)</b> ;
<b>"Business Continuity Premises"</b>	the alternative premises from which the Service Provider is to provide the Business Continuity Services;
<b>"Business Continuity Services"</b>	the Services to be provided by the Service Provider in the event of a: <ul style="list-style-type: none"> <li>(a) Service Failure;</li> <li>(b) Business Continuity Event; or</li> <li>(c) Disaster Recovery Event,</li> </ul> in accordance with the Business Continuity Plan and <b>Schedule 19 (Business Continuity)</b> ;
<b>"Business Continuity Test Schedule"</b>	a document, to be developed, maintained and updated by the Service Provider in accordance with <b>Schedule 19 (Business Continuity)</b> and detailing the dates and times and criteria, processes and procedures of Business Continuity Testing;
<b>"Business Continuity Testing"</b>	the Testing of each element of the Business Continuity Service, Business Continuity Plan and Business Continuity Infrastructure, in accordance with

	<ul style="list-style-type: none"> <li>(a) Business Continuity Test Schedule;</li> <li>(b) <b>paragraph 3 (Business Continuity Testing) of Schedule 19 (Business Continuity);</b></li> <li>(c) <b>Schedule 4 (Testing Regime);</b></li> </ul>
<b>"CDM Regulations"</b>	the Construction (Design and Management) Regulations 2015;
<b>"Change Authorisation"</b>	a notice issued by WMCA in accordance with <b>Schedule 7 (Change Control Request Procedure)</b> authorising the Service Provider to proceed with a Change Control Request on the basis of the Initial Response and/or Impact Assessment;
<b>"Change"</b>	<p>any change to:</p> <ul style="list-style-type: none"> <li>(a) the Specifications;</li> <li>(b) the Service Provider Solution;</li> <li>(c) the WMETS Assets;</li> <li>(d) the Service Systems;</li> <li>(e) the Sites;</li> <li>(f) the Premises;</li> <li>(g) the Services; or</li> <li>(h) any of the terms of this Agreement,</li> </ul> <p>made in accordance with the Change Control Request Procedure. The term <b>"Change"</b> shall include the following categories of Change, each category as defined in <b>paragraph 3 (Categories of Changes and Additional Services) of Schedule 7 (Change Control Request Procedure)</b>:</p> <ul style="list-style-type: none"> <li>(ii) General Change;</li> <li>(iii) Internal Change;</li> <li>(vi) Mandatory Change; and</li> </ul> <p>an Internal Change and a Playbook Change shall not constitute or be deemed to be a Change;</p>
<b>"Change Control Request" or "CCR"</b>	the procedure for managing Changes and Change Control Requests set out in <b>Schedule 7 (Change</b>

<b>"Change Control Request Procedure"</b>	<p><b>Control Request Procedure);</b></p> <p>a written request, raised by WMCA or the Service Provider in accordance with <b>Schedule 7 (Change Control Request Procedure)</b>, in relation to a proposed Change;</p>
<b>"Change in Law"</b>	<p>any:</p> <ul style="list-style-type: none"> <li data-bbox="703 577 1382 689"><b>(a)</b> amendment, alteration or modification to or repeal of existing Law (or any elements thereof);</li> <li data-bbox="703 719 1382 792"><b>(b)</b> introduction of any new Law (or any elements thereof);</li> <li data-bbox="703 822 1382 934"><b>(c)</b> judgment of a competent court which changes a binding precedent or the interpretation of any relevant Legislation; or</li> <li data-bbox="703 963 1382 1160"><b>(d)</b> the introduction of or amendment to any WMCA Policy, instruction or guidance on any matters relevant to the Services and operation and/or administration of the West Midlands eScooter Trial Services,</li> </ul>
<b>"Change Manager"</b>	<p>which takes effect after the Effective Date;</p> <p>the Service Provider's Representative appointed to manage and act as the single point of contact in relation to Changes and the Change Control Request Procedure;</p>
<b>"Change of Control"</b>	<p>any event where any person, whether acting alone or with others and whether on their own account or for or through one or more Third Parties:</p> <ul style="list-style-type: none"> <li data-bbox="703 1585 1382 1733"><b>(a)</b> acquires control (as defined in section 416 of the Income and Corporation Taxes Act 1988) of the Service Provider or a Guarantor or Shareholder; or</li> <li data-bbox="703 1762 1382 2033"><b>(b)</b> in the case of a Service Provider or Guarantor or Shareholder which is subject to the Take-over Code, increases its or their interest in the relevant share capital (as defined in section 198(2) of the Companies Act 2006) such that that person or group of persons would be obliged to make an offer for the Service</li> </ul>

Provider or Guarantor or Shareholder under rule 9 of the Take-over Code or would be so obliged, but for any "whitewash" carried out pursuant to the notes on Dispensations from rule 9 of the Take-over Code,

and for the purposes of this definition, the "**Service Provider**", "**Guarantor**" and "**Shareholder**" includes the Service Provider, Guarantor or Shareholder (as appropriate) and each body corporate which is from time to time directly or indirectly its holding company (as defined in section 736 of the Companies Act 2006);

**"Change of Ownership"**

any material change to the ownership of any shareholding in the Service Provider or a Guarantor or Shareholder (that carries the right to vote in general meetings of the shareholders of the Service Provider or a Guarantor or Shareholder). A change in the ownership is material if it is either:

- (a) a change of 10% or more of the Service Provider's or Guarantor's issued share capital during the Term; or
- (b) the acquisition or divestment of 10% or more of the Shareholder's issued share capital by any one shareholder, whether undertaken in a single transaction or series of transactions;

**"Civil Works"**

any Works required to produce a suitable Site for the implementation of a Docking Station, including, excavation of surface and subsoil, placing of any ducting or foundation, backfilling and reinstatement to appropriate standard of any surface;

**"Complaint"**

a complaint made by a Customer and received by the Service Provider (or a Sub-Contractor) via any channel;

**"Condition Precedent"**

means each and every condition precedent set out in **clause 3** of the Agreement;

**"Contact Centre"**

the Customer service centre through which the Service Provider interfaces with Customers and handles and/or processes, inter alia, Enquiries, Complaints and Charge Payments;

**"Contact Centre Assets"**

the WMETS Assets located and used at the Contact

	Centre, including the Service Systems;
<b>"Contract Management Meeting"</b>	a meeting for contract management purposes established under <b>Schedule 8 (Contract Management and Reporting Procedure)</b> ;
<b>"Control"</b>	that a person possesses directly or indirectly the power to direct or cause the direction of the management and policies of the other person, whether through the ownership of voting shares, by contract or otherwise and the terms <b>"Controls"</b> and <b>"Controlled"</b> shall be interpreted accordingly;
<b>"Controller"</b>	has the meaning given in the Data Protection Legislation;
<b>"Core Area"</b>	means the Trial Zone area individually and collectively (as applicable);
<b>"COVID 19"</b>	means the coronavirus disease 2019 being an infectious disease caused by severe acute respiratory syndrome coronavirus 2 which has been classified or advised by the World Health Organisation as a pandemic;
<b>"Customer"</b>	any person who: <ul style="list-style-type: none"> <li>(a) is a Subscriber; or</li> <li>(b) is a User;</li> <li>(c) Police; or</li> <li>(d) makes an Enquiry in relation to any aspect of the Service Provider in respect of the West Midlands eScooter Trial Services; or</li> </ul> otherwise interfaces with the West Midlands eScooter Trial Services;
<b>"Daily eScooter Requirements"</b>	the number of eScooter to be Available each day at each Site as agreed by the Parties in writing from time to time;
<b>"Damaged"</b>	the Status of an eScooter when it has been reported, by either a Customer or a member of Service Provider Personnel, as broken or unfit for Hire;
<b>"Data"</b>	data (including Personal Data and Customer Records), text, drawings, diagrams, maps, process models,

forecast volumes, photographic images or sounds (together with any database (including Services Database) made up of any of the foregoing), which are embodied in any electronic or tangible medium which is:

- (a) produced pursuant to this Agreement; and/or
- (b) created, processed and/or used by the Service Systems; and/or
- (c) Mandatory Data.

**"Data Protection Legislation"**

means all applicable data protection and privacy legislation in force from time to time in the UK including the **General Data Protection Regulation ((EU) 2016/679)**, the **Data Protection Act 2018**, the **Privacy and Electronic Communications Directive 2002/58/EC** (as updated by **Directive 2009/136/EC**) and the **Privacy and Electronic Communications Regulations 2003 (SI 2003/2426)** as amended;

**"Data Subject"**

has the meaning given to it in the Data Protection Legislation;

**"Database"**

see Services Database;

**"Date Compliant"**

that:

- (a) use and functionality, and the ability to express and calculate Data in accordance with dates and times, are unaffected by changes in dates, including year changes and leap years; and
- (b) Service Systems shall process and express dates in the format dd/mm/yyyy;

**"Deed of Guarantee"**

the document set out in **Schedule 15 (Agreed Form of Guarantee)**;

**"Delay Plan"**

the plan specified in **clause 12.3 (Delay)**;

**"Deleterious Materials"**

has the meaning set out in **clause 25.1.1.2 (Deleterious Materials)**;

**"Deliverables"**

the:

- (a) Build Deliverables;
- (b) Documentation;



	(c) Service Systems; and
	(d) WMETS Assets,
	supplied in accordance with <b>Schedule 3 (Milestones and Deliverables)</b> and/or the Implementation Plan and any other tangible item and asset that the Service Provider is required to provide as part of the Services or as a result of the Change Control Request Procedure;
<b>"Depot Assets"</b>	the assets used at the Premises and/or at any on-street location to repair, recharge and maintain the Docking Station Assets and eScooter assets;
<b>"Design Services"</b>	the Services to be provided by the Service Provider in relation to the design of the WMETS Assets, Service Systems and the business processes and procedures the Service Provider deems necessary to deliver the Services in accordance with this Agreement, as set out in the Specifications;
<b>"Determination"</b>	has the meaning set out in <b>paragraph 3 (Purpose of Expert Determination) of Schedule 16 (CEDR Model Expert Determination Agreement)</b> ;
<b>"Disaster Recovery Event"</b>	has the meaning set out in <b>paragraph 1.1.2 (Scope) of Schedule 19 (Business Continuity)</b> ;
<b>"Dispute"</b>	has the meaning set out in <b>Schedule 16 (CEDR Model Expert Determination Procedure)</b> ;
<b>"Dispute Notice"</b>	has the meaning set out in <b>clause 69.2.1.1 (Dispute Resolution Procedure)</b> ;
<b>"Dispute Resolution Procedure"</b>	the procedure for settling disputes arising out of, under or in connection with this Agreement set out in <b>clause 69 (Dispute Resolution Procedure)</b> ;
<b>"Dock" and "Docks"</b>	the act of returning and securing a eScooter at a Docking Point;
<b>"Docked"</b>	the Status of an eScooter when it is placed at a Docking Point after having been returned by a Customer or a member of Personnel;
<b>"Docking Point"</b>	means
	(a) the equipment and mechanism within a Docking Station that is used for the storage and retrieval of eScooter;

	(b) another eScooter which is Docked at a Docking Station eScooter; or
	(a) where proximity docking is used, the location,
<b>"Docking Station"</b>	the group of Docking Points at a location from which a Customer can retrieve and return an eScooter;
<b>"Docking Station Assets"</b>	the WMETS Assets comprising each Docking Station, including the Docking Points;
<b>"Docking Station Installation Method Statement"</b>	the processes and procedures for the implementation of:
	(a) Docking Stations and Docking Station Assets; and
	(b) Traffic Management Schemes,
	as set out in <b>Schedule 26 (Docking Station Installation)</b> ;
<b>"Document"</b>	all inbound and outbound postal correspondence including, Registration documents, Payments, emails, web forms and faxes received and sent by the Service Provider;
<b>"Documentation"</b>	(a) the instructional and/or operational manuals relating to the WMETS Assets, Service Systems and Services;
	(b) documents relating to the Build Deliverables;
	(c) Operational Processes and Procedures;
	(d) any other documentation which is:
	i. otherwise necessary for understanding or providing the WMETS Assets, Service Systems and Services; and/or
	ii. developed by the Service Provider in accordance with this Agreement;
<b>"Effective Date"</b>	the date of execution of this Agreement;
<b>"Enquiry"</b>	a Customer request for information or a Data search and retrieval in relation to the West Midlands eScooter Trial Services through any channel;
<b>"Environment"</b>	all Software, Hardware, Premises or other features, functions and facilities and Service Provider Personnel

	necessary or desirable to carry out the relevant Services or other relevant activity (including Testing);
<b>"Error"</b>	<p>a fault or error found the WMETS Assets and/or Service Systems during Testing or provision of the Services, arising:</p> <ul style="list-style-type: none"> <li>(a) from any failure to meet the Specifications;</li> <li>(b) as a result of any mis-instructions, inaccuracy, incompleteness or "out of date" Documentation, Deliverables or other instructions of the Service Provider (or its Sub-Contractors); or</li> <li>(c) because the relevant WMETS Asset and/or Service System is not Fit for Purpose;</li> </ul>
<b>"eScooter"</b>	an eScooter designed and manufactured in accordance with and pursuant to the provisions of this Agreement;
<b>"eScooter Assets"</b>	the eScooter fleet and their components (including stocks and Spare Parts for the eScooter) required for the Services in accordance with the Specification;
<b>"eScooter Charge Payments"</b>	a payment made by a Customer for subscription to and hire of eScooters in accordance with the terms for the West Midlands eScooter Trial Services;
<b>"Exit Plan"</b>	the plan to be provided by the Service Provider in accordance with <b>Schedule 14</b> ;
<b>"Expert"</b>	has the meaning set out in <b>clause 69.2.4 (Dispute Resolution Procedure)</b> ;
<b>"Expert Determination"</b>	has the meaning set out in <b>clause 69.2.2 (Dispute Resolution Procedure)</b> ;
<b>"Expiry Date"</b>	the date on which this Agreement terminates by effluxion of time in accordance with <b>clause 2 (Duration)</b> ;
<b>"Extended Term"</b>	has the meaning set out to it in <b>clause 2.2 (Duration)</b> ;
<b>"Failure"</b>	has the meaning set out in

**clause 44.4 (Representations and Warranties);**

**"Fit for Purpose"**

- (a)** in the case of WMETS Assets, the WMETS Assets deliver the functionality:
  - i. for the intended use specified in the Specifications and Service Provider Solution; and
  - ii. to the performance criteria and Service Levels set out in this Agreement;
- (b)** in the case of Service Systems and Service System Interfaces, the Service Systems and Service System Interfaces deliver the functionality:
  - i. for the intended use specified in the Specifications and Service Provider Solution; and
  - ii. to the performance criteria and Service Levels set out in this Agreement;
- (c)** in the case of Documentation and any other Deliverables not referred to in (a) or (b) above, the relevant Documentation or Deliverables:
  - i. are complete, taking into account during the Implementation Phase, the stage of the implementation of the Service Provider Solution, West Midlands eScooter Trial Services and related WMETS Assets, Service Systems and Services or during the Operational Phase, the stage reached in the implementation of any Change Control Request;
    - (i) meet any criteria or requirements relevant to the Documentation or Deliverables set out in the Agreement;
    - (ii) are comprehensible to someone with the knowledge and skills of the intended audience;
    - (iii) reflect Good Industry Practice;
    - (iv) are consistent with any physical or actual WMETS Assets, Service Systems or processes that they describe; and
    - (v) take account of the reasonable comments of WMCA Personnel

following prior review, unless otherwise agreed between the Parties;

**"FOI Legislation"**

the:

- (a) Freedom of Information Act 2000;
- (b) Environmental Information Regulations 2004;
- (c) Re-Use of Public Sector Information Regulations 2005,

in each case, including any subordinate Legislation, amendments to or successors of such Legislation or guidance; and

- (d) any related guidance given by the:
  - i. Information Commissioner;
  - ii. Department for Constitutional Affairs; and/or
  - iii. the Department for Environment, Food and Rural Affairs, in each case, including their successors or assigns;

**"Force Majeure Event"**

the occurrence, after the Effective Date of:

- (a) war, civil war, armed conflict or terrorism;
- (b) nuclear, chemical or biological contamination (unless the source or cause of the contamination is the result of the actions of the Party seeking to rely on the Force Majeure Event or any of its employees); or
- (c) pressure waves caused by devices travelling at supersonic speeds,

which directly causes either Party to be unable to comply with all or a material part of its obligations under this Agreement;

**"Freedom of Information Act" or "FOIA"**

the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time, any guidance given by the Information Commissioner, the Department for Constitutional Affairs and/or the Department for Environment, Food and Rural Affairs in relation to such legislation, and any amendment to or successor of such legislation or guidance;

<b>"General Change"</b>	has the meaning set out in the table to <b>paragraph 3 (Categories of Changes and Additional Services) of Schedule 7 (Change Control Request Procedure)</b> ;
<b>"General Data Protection Regulation"</b>	Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data;
<b>"Good Industry Practice" or "GIP"</b>	in relation to any undertaking and any circumstances, the or exercise of that degree of skill, diligence, prudence, foresight and practice, that would reasonably and ordinarily be expected from a highly skilled and experienced person engaged in the same type of undertaking as that to which each Service (and each Service Element) relates given the same or similar circumstances to those in which each Service (and each Service Element) is to be provided;
<b>"Group"</b>	in relation to a person other than a natural person, that person and its Affiliates;
<b>"Guarantee"</b>	has the meaning set out in <b>clause 65 (Parent Company Guarantee)</b> ;
<b>"Guarantor"</b>	[INSERT AS APPLICABLE];
<b>"Hardware"</b>	all physical materials associated with electronic processing and the transmission of information and Data, including computer equipment, telecommunications equipment (including wide area and local area network equipment), chips, chipsets, firmware, fixtures, fittings and peripherals;
<b>"Health and Safety" or "Health and Safety Legislation"</b>	Legislation or regulatory codes of practice, circulars, guidance notes and equivalent controls which have as a purpose or effect the protection or prevention of harm to human health, environment or health and safety including but not limited to the Covid19 Pandemic or compensation for such harm which are binding in relation to the West Midlands eScooter Trial Services and/or upon the Service Provider throughout the Term;
<b>"Highway"</b>	a way over which all members of the public have the right to pass and re-pass as of right, which by virtue of section 36 of the Highways Act 1980 or of any other enactment is a highway maintainable at the public expense;
<b>"Highway Authority"</b>	the public authority designated as the highway authority for the relevant highway under section 1 of the

	Highways Act 1980;
<b>"Hire Period"</b>	the time for which a eScooter is hired, calculated from the point a eScooter is Hired until the eScooter is Docked;
<b>"Hired"</b>	the Status of an eScooter when it has been released under a valid Subscription to a Customer;
<b>"Impact Assessment"</b>	the document of that title relating to a Change Control Request that the Service Provider may be required to prepare in accordance with <b>Schedule 7 (Change Control Request Procedure)</b> ;
<b>"Implementation Phase"</b>	the period from the Effective Date until the Operational Commencement Date, during which the Design Services and Build Services are provided by the Service Provider;
<b>"Implementation Plan"</b>	the implementation plan(s) containing the information set out in <b>Schedule 3 (Milestones and Deliverables)</b> ;
<b>"Incident"</b>	<p><b>(a)</b> an event that occurs or is observed during the provision of the Services, which causes, or may cause, an adverse impact on the provision or quality of the WMETS Assets, Service Systems and Services (or any parts thereof), including:</p> <ul style="list-style-type: none"> <li>i. Errors;</li> <li>ii. Service Issues;</li> <li>iii. Security Incidents; and</li> <li>iv. PI Incidents; and</li> </ul> <p><b>(b)</b> in the case of Testing, where the relevant Test Criteria are not met;</p>
<b>"Incident Communication Plan"</b>	<p>a plan outlining the steps to be taken by the Service Provider and WMCA in the aftermath of an Incident, including:</p> <ul style="list-style-type: none"> <li><b>(a)</b> the circumstances in which an Incident should be communicated;</li> <li><b>(b)</b> who should the Incident be communicated to;</li> <li><b>(c)</b> the details to be communicated (e.g. classification, Severity, impact and resolution options, etc.);</li> </ul>

<b>"Incident Log"</b>	such tool as agreed by the Parties used to record all Incidents;
<b>"Information"</b>	all records and information obtained, created, collected or held by WMCA and/or the Service Provider on behalf of WMCA, including WMCA Confidential Information;
<b>"Information Commissioner"</b>	the person appointed to regulate and enforce the Data Protection Legislation and FOI Legislation;
<b>"Information Request"</b>	a request for any Information under the FOI Legislation;
<b>"Infrastructure"</b>	the WMETS Assets and Service Systems required to support the operation of the West Midlands eScooter Trial Services and provision of the Operational Services;
<b>"Initial Response"</b>	the document of that title relating to a proposed Change Control Request that the Service Provider may be required to prepare in accordance with <b>Schedule 7 (Change Control Request Procedure)</b> ;
<b>"Initial Security Plan"</b>	the document set out in Annex A (Initial Security Plan) to <b>Schedule 12 (Security Policy)</b> ;
<b>"Initial Trial Term"</b>	has the meaning set out in <b>clause 2.1 (Duration)</b> ;
<b>"Insolvency Event"</b>	in relation to the Service Provider or a Guarantor: <ul style="list-style-type: none"> <li>(a) the occurrence of any of the following events in respect of the Service Provider, not being events which have received the prior written approval of WMCA: <ul style="list-style-type: none"> <li>(i) any action is taken, or any proceedings are commenced in any court and not withdrawn or struck out within thirty (30) calendar days (provided the Service Provider is taking all necessary steps during such period to have such action or proceedings withdrawn or struck out, as the case may be) for the liquidation, winding up, dissolution or any analogous process of, or for the making of an administration order in relation to, the Service Provider;</li> <li>(ii) proposals are formulated for a</li> </ul> </li> </ul>



moratorium or for any other arrangement with creditors generally or any class of creditors of the Service Provider or for any other proceeding or arrangement by which all or any material part of the assets of the Service Provider would be submitted to the control or supervision of a trustee, supervisor, debtor in possession or creditors or any competent court or governmental authority;

- (iii) a trustee, supervisor, administrator, administrative receiver, receiver, manager or similar officer is appointed in respect of the Service Provider or of all or any material part of its assets (or, in the case of an administrator, a party gives notice of its intention to appoint an administrator);
  - (iv) all or any material part of the assets of the Service Provider are attached or distrained upon or become subject to any order of court or other process;
  - (v) the Service Provider becomes insolvent or is declared insolvent by a competent court or governmental authority or is unable or admits its inability to pay its debts as they fall due or suspends or proposes to suspend payment of its debts; or
  - (vi) any other event occurs in any jurisdiction outside England which has an effect equivalent or as nearly as can be equivalent to any of the events described in paragraphs to (a)(i) to (a)(v) of this definition above inclusive;
- (b)** the occurrence of any of the events set out in paragraph (a) above in relation to a Guarantor save where arrangements acceptable to the WMCA have been put in place for the provision of a replacement guarantee or guarantees in substitution for the Guarantee provided by such

	Guarantor;
<b>"Insurances"</b>	has the meaning set out in <b>clause 41.1 (Insurances)</b> ;
<b>"Intellectual Property Rights" or "IPR"</b>	all intellectual property rights whether registered or not and whether registrable or not including patents, rights (registered or unregistered) in designs, trade marks, service marks, applications for any of the foregoing, copyright (including copyright in databases and computer programs and/or software), database rights, topography rights, utility models, trade or business names, domain names, moral rights, rights protecting brand and goodwill and reputation, know-how, rights to use and/or register domain names, telephone/SMS numbers, and all rights and forms of protection of a similar nature to any of the foregoing subsisting now or in the future having equivalent effect anywhere in the world;
<b>"Interest Rate"</b>	4 per cent above the base rate of the Bank of England from time to time;
<b>"Interested Party"</b>	the: <ul style="list-style-type: none"> <li><b>(a)</b> metropolitan borough councils and or county councils included within the scope of the West Midlands eScooter Trial Services; and</li> <li><b>(b)</b> private landlords of certain Sites;</li> </ul>
<b>"Interface"</b>	those physical or technology interfaces (including associated Software and Hardware), processes, procedures or methods between the Service Provider and Service Systems and: <ul style="list-style-type: none"> <li><b>(a)</b> WMCA and WMCA Systems;</li> <li><b>(b)</b> Interested Parties;</li> <li><b>(c)</b> Other Service Providers and Other Service Provider Systems; and</li> <li><b>(d)</b> Third Parties and Third Party Systems;</li> </ul> <p>in each case as may be required from time to time in order to develop, operate and maintain the West Midlands eScooter Trial Services and deliver and Services in accordance with this Agreement;</p>

<b>"Interface Agreement"</b>	means an interface agreement in the form set out in <b>Schedule 17</b> which is entered into between the Parties and the Other eScooter Service Provider in accordance with the provisions of <b>clause 3.1.2</b>
<b>"Internal Change"</b>	a change made by the Service Provider to the Services, which do not impact: <ul style="list-style-type: none"> <li>(a) the terms and conditions of the Agreement;</li> <li>(b) the WMETS Assets, Service Systems and/or Services;</li> <li>(c) WMCA;</li> <li>(d) any Interested Party, Other Service Provider and/or a Third Party;</li> </ul>
<b>"Joint Controllers"</b>	two or more Controllers who jointly determine the purposes for which and the means by which Personal Data is Processed;
<b>"Key Documents"</b>	<ul style="list-style-type: none"> <li>(a) the Implementation Plans;</li> <li>(b) the Quality Plan;</li> <li>(c) Evidential Strategy;</li> <li>(d) the Infrastructure Design;</li> <li>(e) the Operational Processes and Procedures;</li> <li>(f) the Exit Plan;</li> <li>(g) the Test Strategy;</li> <li>(h) the Service Provider Design;</li> <li>(i) the Business Continuity Plan;</li> <li>(j) the Security Plan</li> <li>(k) the Asset Register;</li> <li>(l) such other documents as WMCA may expressly in writing designate as <b>"Key Documents"</b> from time to time;</li> </ul>
<b>"Key Personnel"</b>	the Service Provider Personnel employed in the roles specified in <b>Schedule 9 (Key Personnel)</b> from time to time;
<b>"Key Sub-Contract"</b>	a Sub-Contract entered into with a Key Sub-Contractor;

**"Key Sub-Contractor"**

- (a) a Sub-Contractor listed in **Schedule 20 (Key Sub-Contractors)**;
- (b) any Sub-Contractor providing Services similar to any person listed in **Schedule 20 (Key Sub-Contractors)**, unless WMCA has agreed otherwise in writing;
- (c) any Sub-Contractor notified to the Service Provider by WMCA Personnel from time to time as being designated as a Key Sub-Contractor in accordance with **clause 30.2 (Key Sub-Contractors and Sub-Contractors)** including persons:
  - (i) whose services cannot be readily and promptly replaced in the relevant market;
  - (ii) whose services, if withheld or terminated, would have a material adverse effect on the provision of the WMETS Assets, Service Systems and/or Services (or any parts thereof); and/or
  - (iii) who has contracted with the Service Provider to provide its services on materially more favourable terms (whether in terms of price or otherwise) than can normally be obtained in the relevant market place;

**"Law"**

any enforceable European Community right and any directive, regulation or any other law, legislation, treaty, enactment, statute, proclamation, decree, by-law, decision, notice, order, rule (including any rule or decision of court), local government rule, statutory instrument or other delegated or subordinate legislation and any directions, codes of practice or guidance issued pursuant to any legislation and/or, in any such case, the equivalent thereof (howsoever described) applicable in any jurisdiction in which or through which the Services are to be performed;

**"Legislation"**

any:

- (a) Act of the UK Parliament or Act of the Scottish Parliament or subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978;
- (b) any exercise of the Royal Prerogative; and
- (c) any enforceable European Community right within the meaning of section 7A of the European (Withdrawal Agreement) Act 2020 ;or
- (d) any law arising from the United Kingdom ceasing to be subject to the transition or implementation arrangements provided for by Part 4 of the withdrawal agreement between the UK and the European Union negotiated under Article 50(2) of the Treaty of the European Union which sets out the arrangements for the UK's withdrawal from the European Union (as such arrangements are extended from time to time)

in each case in the United Kingdom;

**"Management Information" or "MI"**

- (a) the information specified in **Schedule 8 (Contract Management and Reporting)**;
- (b) the information specified throughout this Agreement and schedules; and
- (c) such other information reasonably required by WMCA Personnel from time to time,

relating to the operation and performance of the WMETS Assets, Service Systems and Services. The term **"Management Information"** shall include the Financial Reports, operational metrics reports and Performance Indicator Reports;

**"Mandatory Change"**

has the meaning set out in the table to **paragraph 3 (Categories of Changes and Additional Services) of Schedule 7 (Change Control Request Procedure)**;

**"Mandatory Requirements"**

means such data and eScooter requirements mandated by any central government department, including but not limited to the Department of Transport or such other requirements in accordance with eScooter Legislation

	and or eScooter Licence requirements;
<b>"MaaS"</b>	means mobility as a service;
<b>"Milestone"</b>	a milestone to be achieved pursuant to <b>Schedule 3 (Milestones and Deliverables)</b> by the relevant Milestone Date, including the relevant Deliverables to be delivered by the Service Provider, as specified: <ul style="list-style-type: none"> <li>(a) in <b>Schedule 3 (Milestones and Deliverables)</b>; or</li> <li>(b) as a result of the Change Control Request Procedure, as appropriate;</li> </ul>
<b>"Milestone Achievement Criteria"</b>	the criteria to be met by the Service Provider in order to achieve a Milestone as specified in <b>[INSERT] (Milestones) of Schedule 3</b> or as specified as a result of the Change Control Request Procedure;
<b>"Milestone Dates"</b>	those dates specified in the column headed <b>"Milestone Date"</b> in <b>[INSERT] (Milestones) of Schedule 3</b> for achievement of specified Milestones, or other such date otherwise agreed between the Parties in writing or as part of the Change Control Request Procedure;
<b>"Milestone Notice"</b>	any notice issued by WMCA (having regard to <b>Schedule 3</b> ) which is either a notice confirming: <ul style="list-style-type: none"> <li>(a) Approval of any Milestone Achievement Criteria; or</li> <li>(b) authority to proceed following completion of specific Milestones;</li> </ul>
<b>"Missing"</b>	the Status of a eScooter when it has not been Docked prior to the end of a maximum continuous Hire Period;
<b>"Model Expert Determination Agreement"</b>	has the meaning set out in <b>clause 69.2.7.1 (Dispute Resolution Procedure)</b> ;
<b>"Month"</b>	a calendar month and the term <b>"Monthly"</b> shall be construed accordingly;

<b>"New Service Provider"</b>	<p>WMCA or any person who:</p> <ul style="list-style-type: none"> <li>(a) does, or is appointed by WMCA to provide to WMCA all or any elements of services similar to or the same as the Services which are or have been provided pursuant to this Agreement by the Service Provider; or</li> <li>(b) at any time tenders to WMCA for the provision of services similar (be that enhanced or otherwise) to or the same as the Services or is invited to do so by WMCA;</li> </ul>
<b>"Non-adequate Country"</b>	<p>a country or territory which is outside the European Union and in respect of which there has not been an Adequacy Decision. For the purposes of this Agreement, "Non-adequate Country" includes the United States of America;</p>
<b>"OJEU Notice"</b>	<p>the notice in the Official Journal of the European Union with reference Concession Notice <b>[INSERT]</b> relating to the design, build, operation and maintenance of the West Midlands eScooter Trial Services;</p>
<b>"On-street Assets"</b>	<p>assets comprising the Docking Stations, on-street signage and any CCTV equipment;</p>
<b>"Operational Commencement Date"</b>	<p>the Planned Operational Commencement Date, as the same may be amended in accordance with the provisions of:</p> <ul style="list-style-type: none"> <li>(a) <b>clause 12 (Delay)</b>; and/or</li> <li>(b) <b>clause 49 (Force Majeure)</b>,</li> </ul> <p>and the term "<b>Operational Commencement</b>" shall be construed accordingly;</p>
<b>"Operational Phase"</b>	<p>the period from the Operational Commencement Date until the Expiry Date or Termination Date (as appropriate);</p>
<b>"Operational Reports"</b>	<p>the report(s) to be provided by the Service Provider on the diagnostics of Service Systems;</p>

<b>"Operational Services"</b>	the Services to be provided by the Service Provider relating to operation, support and maintenance of WMETS Assets and Service Systems, as set out in the Specifications;
<b>"Operating Year"</b>	a twelve (12) Month period commencing on the Operational Commencement Date and on each successive anniversary of the Operational Commencement Date and ending on the day before each such successive anniversary of the Operational Commencement Date;
<b>"Other eScooter Service Provider"</b>	means any other service provider that has been appointed by the WMCA to provide eScooter services similar and or identical to the Services provided under this Agreement within the Area of Operation;
<b>"Other Service Provider"</b>	a Third Party providing services to, or having an interface with, the Service Provider in relation to the West Midlands eScooter Trial Services (other than WMCA and the Service Provider's Sub-Contractors);
<b>"Other Service Provider System"</b>	all or any part of any Systems, Hardware or Software used by and/or provided by or on behalf of any Other Service Provider in connection with the West Midlands eScooter Trial Services;
<b>"Parent Company"</b>	the parent company of the Service Provider;
<b>"Partial Termination"</b>	the termination by WMCA of the right and obligation of the Service Provider to provide one or more Service Element(s) of the Services, but not the whole of this Agreement, pursuant to <b>clause 50.3 or clause 50.11 (Termination)</b> , and the terms <b>"Partially Terminate"</b> and <b>"Partially Terminated"</b> shall be construed accordingly;
<b>"Partial Termination Date"</b>	the date on which this Agreement is Partially Terminated, as specified in the Partial Termination Notice;
<b>"Partial Termination Event"</b>	any of the events envisaged under <b>clause 50.11 (Termination)</b> ;
<b>"Partial Termination Notice"</b>	a notice issued by WMCA pursuant to <b>clause 50.4 or clause 50.12 (Termination)</b> ;
<b>"Parties"</b>	WMCA and the Service Provider and the term <b>"Party"</b> shall be construed accordingly;



<b>"Performance Indicator" or "PI"</b>	an indicator of the Service Provider's performance against which Service Levels will be applied in accordance with <b>Schedule 5 (Service Level Agreement)</b> ;
<b>"Performance Indicator Report"</b>	the reports to be prepared by the Service Provider in accordance with <b>paragraph 4 (Performance Indicator Reporting) of Schedule 8 (Contract Management and Reporting Procedure)</b> and which shall include: <ul style="list-style-type: none"> <li>(a) a summary of the Service Provider's performance against the Service Levels; and</li> <li>(b) details of any breach by the Service Provider of the Service Levels or any underperformance;</li> </ul>
<b>"Performance Management Regime"</b>	the regime for the measurement of the Service Provider's performance set out in <b>Schedule 5 (Service Level Agreement)</b> ;
<b>"Persistent Breach"</b>	a breach of this Agreement or of the Guarantee (as appropriate) which has: <ul style="list-style-type: none"> <li>(a) continued beyond the period of twenty (20) Working Days after the date of service of the notice referred to in <b>clause 50.3 (Termination)</b>; or</li> <li>(b) has recurred three (3) or more consecutive occasions during the Month after the date of service of such notice;</li> </ul>
<b>"Personal Data"</b>	has the meaning given in the Data Protection Legislation;
<b>"Personal Data Breach"</b>	an actual or suspected breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data transmitted, stored or otherwise Processed;
<b>"Personnel"</b>	the Service Provider's or WMCA (as the case may be) employees, agents, consultants and sub-contractors and (in the case of any reference to the Personnel of the Service Provider) including any Sub-Contractor's employees, agents, consultants and sub-contractors;
<b>"Planned Operational Commencement Date"</b>	[INSERT];

"Planning Consent"	the permission to be obtained by the Service Provider in order to be allowed to build on land, or change the use of land or building;
"Playbook Change"	means any change made to any Trial Operational Playbook undertaken in accordance with <b>paragraph 2 of Schedule 8 Contract Management and Reporting</b> which does not require a Change Control Request Procedure;
"Police"	means the West Midlands Police and or the British Transport Police;
"Potential Additional Area"	means those geographical areas covering Dudley, Warwick & Leamington, West Birmingham extension also linking to Sandwell area and such other areas within the West Midlands Combined Authority constituent or non-constituent authority areas from time to time;
"Premises"	the premises, property and other accommodation from which the Service Provider conducts provision of the Services from time to time;
"Principal Contractor"	has the meaning set out in regulation 5(1) of the CDM Regulations;
"Privacy Notice"	has the meaning given in <b>paragraph 4.1.1 of Schedule 13 (Information Compliance)</b> ;
"Problem"	a condition identified as a result of a single Incident or multiple Incidents that exhibit common symptoms and which is indicative of a single Error;
"processing"	shall have the meaning given to it under the Data Protection Legislation and shall include both manual and automatic processing and "process" and "processed" shall be interpreted accordingly Act;
"Processing Services"	the services described in <b>Appendix A to Schedule 13 (Information Compliance)</b> ;
"Protocol"	has the meaning given to it at <b>paragraph 3.3 of Schedule 13 (Information Compliance)</b> ;
"Records"	has the meaning set out in <b>clause 36.3 (Audit and Inspection)</b> ;

<b>"Relief Event"</b>	<p>(a) fire, explosion, lightning, storm, tempest, flood, bursting or overflowing of water tanks, apparatus or pipes, ionising radiation (to the extent it does not constitute a Force Majeure Event), earthquakes, riot and civil commotion;</p> <p>(b) failure by any statutory undertaker, utility company, local authority or other like body to carry out works or provide services;</p> <p>(c) any failure or shortage of power, fuel or transport;</p> <p>(d) any blockade or embargo which does not constitute a Force Majeure Event; and</p> <p>(e) any:</p> <ul style="list-style-type: none"> <li>(i) official or unofficial strike;</li> <li>(ii) lockout;</li> <li>(iii) go-slow; or</li> <li>(iv) other dispute;</li> </ul> <p>generally affecting the industry in which the Service Provider operates or a significant sector of it,</p> <p>unless any of the events listed in paragraphs (a) to (e) inclusive arises (directly or indirectly) as a result of any wilful default, act or omission of the Service Provider or any of Service Provider Personnel;</p>
<b>"Remedy Programme"</b>	has the meaning given to it in <b>clause 50.6.2 (Termination)</b> ;
<b>"Report"</b>	the reports to be prepared by the Service Provider and submitted to WMCA in accordance with the provisions of this Agreement;
<b>"Representative"</b>	the representatives nominated by WMCA and the Service Provider from time to time;
<b>"Revenue"</b>	revenue generated from Customers making eScooter Charge Payments;
<b>"Scenario"</b>	has the meaning set out in <b>paragraph 2.8.6 (Business Continuity Plan and Business Continuity Test</b>

	<b>Schedule) in Schedule 19 (Business Continuity);</b>
"Scheme"	the West Midlands eScooter Trial Services;
"Security Incident"	any failure, breach, hacking, penetration, Virus or other Incident in connection with the: <ul style="list-style-type: none"> <li>(a) security of the WMETS Assets, Service Systems or Services (or any parts thereof); and</li> <li>(b) requirements of <b>Schedule 12 (Security Policy)</b>, including the Security Policy and/or the Security Plan,</li> </ul> <p>in each case whether or not caused in whole or in part by an act or omission of the Service Provider (or its Sub-Contractors);</p>
"Security Plan"	has the meaning ascribed to it in <b>paragraph 2.2 (Security Plan Provision) of Schedule 12 (Security Policy)</b> ;
"Security Policy"	the security policy set out in <b>Schedule 12 (Security Policy)</b> , as amended from time to time in accordance with the Change Control Request Procedure;
"Service element"	each component of the Services;
"Service Failure"	the Service Provider not achieving the Service Levels;
"Service Issue"	an Incident which does not constitute an Error or Change to the Specifications, but which will or may adversely affect the quality or efficient functioning of the WMETS Assets, Service Systems and/or the Services (or any parts thereof);
"Service Level"	mean the levels of performance to be achieved by the Service Provider in the provision of the Services, as set out in <b>Schedule 5 (Service Level Agreement)</b> ;
"Service Level Agreement"	the document setting out the Service Levels at <b>Schedule 5 (Service Level Agreement)</b> ;
"Service Provider Confidential Information"	the confidential information of the Service Provider as specifically set out in <b>Schedule 11 (Service Provider Confidential Information)</b> ;
"Service Provider Data"	all Personal Data (excluding Shared Data) obtained by

the Service Provider (or on behalf of the Service Provider by a third party other than the WMCA) which the parties intend will be Processed for the Shared Data Purpose;

**"Service Provider Group"**

the Service Provider and its Affiliates;

**"Service Provider IPR "**

Intellectual Property Rights in:

- (a) the Service Systems Software;
- (b) in the Docking Station Assets and their prototypes, workups and designs, including improvements and amendments to them;
- (c) in the eScooter Assets which are created pursuant to this Agreement or were created prior to the Term for the purpose of the bidding for the award of this Agreement or otherwise in anticipation of this Agreement, including improvements and amendments to them;

**"Service Provider Personnel"**

employees, agents, representatives, consultants and sub-contractors of the Service Provider and/or its Sub-Contractors (as appropriate);

**"Service System "**

all or any part of any:

- (a) Docking Station Systems;
- (b) Management Information system;
- (c) Services Website;
- (d) Interfaces;
- (e) Hardware; or

to be designed, developed, implemented, maintained and used, as applicable, by or on behalf of the Service Provider in connection with the WMETS Assets and/or the Services;

**"Service Systems Software"**

- (a) Service Provider Software;
- (b) the Specially Written Software; and
- (c) Third Party Software,

	which forms part of the Service Systems;
<b>"Services"</b>	the services to be provided by the Service Provider to WMCA under this Agreement, including the: <ul style="list-style-type: none"> <li>(a) Build Services;</li> <li>(b) Operational Services;</li> <li>(c) Business Continuity Services;</li> <li>(d) Exit Management Services; and</li> <li>(e) any Additional Services and any further Services agreed through the Change Control Request Procedure;</li> </ul>
<b>"Services Database"</b>	an integrated collection of logically related Data, records or files (which may include Personal Data, WMCA Personal Data and Customer Records) stored in a computer system (including any of the Service Systems) which consolidates records previously stored in separate files into a common pool of Data records providing data for one or many components of the Service Systems;
<b>"Services Website"</b>	the website(s), including on any medium or in any form (such as the world wide web or mobile internet), and any App to be designed, developed, implemented and maintained by the Service Provider in accordance with the Specifications in order to provide the relevant parts of the Services to Customers;
<b>"Shared Data"</b>	those categories of WMCA Data and Service Provider Data identified as Shared Data in the Protocol;
<b>"Shared Data Purpose"</b>	the purpose(s) set out in the Protocol;
<b>"Shareholder"</b>	a person holding shares in the Service Provider;
<b>"Site"</b>	the location at which a Docking Station is or will be installed within a Trial Zone;
<b>"Site Design"</b>	the process and documentation/drawings required for the Works at a Site;
<b>"Site Specific Method Statement"</b>	the sequence of operations and processes to be followed for the Works at a specific Site;
<b>"Software"</b>	system software, operating systems, applications, programs and procedures, and all updates and

upgrades to any of the foregoing, that enable the Hardware or Systems (including the Service Systems) to perform tasks and/or operations and/or process Data, in each case in object code form unless expressly provided otherwise in this Agreement and excluding any other Data or input or output. The term "**Software**" shall include the term "**Specially Written Software**";

**"Spare Parts"**

parts or components which are retained so as to assist in maintenance, overhaul or replacement of the relevant WMETS Asset that they relate to;

**"Specially Written Software"**

the:

- (a) Software;
- (b) code for Interfaces, configuration and customisation of any part of the Service Provider Software;
- (c) customisation and configuration of the Services Database; and
- (d) enhancements or other alterations thereto,

made in connection with the Services and/or the Service Systems, written specially for the Services and Service Systems by or on behalf of the Service Provider or its Sub-Contractors;

**"Specifications"**

the specifications for the WMETS Assets, Service Systems and Services, which describe WMCA's business requirements for the West Midlands eScooter Trial Services and provision of related assets, service systems and services as set out in **Schedule 2 (Specification)**;

**"Sponsor"**

the party (if any) with whom the Service Provider contracts (subject to WMCA approval) to sponsor the West Midlands eScooter Trial Services from time to time;

**"Sponsorship Protocol"**

the WMCA sponsorship protocol at **Part B of Schedule 28 (Protocols)**;

**"Statutory Codes of Practice"**

the publication, "Safety at Street Works and Road Works; A Code of Practice" published for the Department for Transport by TSO (previously The Stationery Office) ISBN 011551958 0;

<b>"Status"</b>	the condition of a eScooter as either Hired, Docked, Damaged, Missing or Under Repair;
<b>"Sub-Contract"</b>	any contract or agreement (whether or not in writing) between the Service Provider and a sub-Contractor in relation to any activity arising out of or related to the provision of the Services (including such contracts between the Service Provider and a member of the Service Provider Group);
<b>"Sub-Contractor"</b>	a Third Party, including Key Sub-Contractor, with whom the Service Provider enters into a Sub-Contract;
<b>"Subject Access Request" or "SAR"</b>	a request from a Customer for details of all data held on the Customer by the Service Provider under the right of access to Personal Data by the individual who is the subject of that Data, as set out in the Data Protection Legislation;
<b>"Sub-processor"</b>	any third party which Processes Personal Data on behalf of the Service Provider pursuant to this Agreement;
<b>"Subscription"</b>	a right to hire, purchased by Customers, and of varying types which allows them to use the Scheme;
<b>"Subscription Fee"</b>	the fee payable by a Customer for a Subscription;
<b>"Supervisory Authority"</b>	an independent public authority which is established by a member state of the European Union, including without limitation the United Kingdom's Information Commissioner's Office (or any equivalent successor body that may be appointed from time to time);
<b>"Subscriber"</b>	a person who subscribes to the West Midlands eScooter Trial Services;
<b>"Swift"</b>	for the purposes of this Agreement the division of WMCA which operates the transport functions of WMCA (that is, Transport for West Midlands), and which division operates the Swift System;
<b>"Swift System"</b>	the ITSO compliant smart card system operated by WMCA;
<b>"System"</b>	Hardware and Software;



<b>"System Assets"</b>	the Service System related assets;
<b>"System Failure"</b>	any material failure, fault or problem of the: <ul style="list-style-type: none"> <li>(a) WMETS Assets; and/or</li> <li>(b) Service Systems or part of it;</li> </ul>
<b>"System Level Test"</b>	the Tests of each element of the Terminals, Service Systems and Services in respect of the capability and procedures undertaken by the technical and operational Service Provider Personnel to establish whether: <ul style="list-style-type: none"> <li>(a) Security Policy meets the requirements of <b>Schedule 12 (Security Policy)</b>; and</li> <li>(b) Business Continuity Infrastructure meets the requirements of <b>Schedule 19 (Business Continuity)</b>;</li> </ul>
<b>"Temporary Traffic Regulation Order"</b>	an order under section 14(1) of the Road Traffic Regulation Act 1984, (as amended from time to time) that varies the use of the Highway for a temporary period;
<b>"Term"</b>	the duration of this Agreement from the Effective Date up to and including the Expiry Date or the Termination Date (whichever is applicable);
<b>"Terminal"</b>	the computer terminal and associated housing whether forming part of the eScooter which enables a Customer to register and make payment for the hire of an eScooter;
<b>"Terminal Design"</b>	the design for the structure and appearance of the Terminal (but excluding the Services System);
<b>"Termination"</b>	the termination and/or expiry of this Agreement;
<b>"Termination Date"</b>	the date with effect from which this Agreement is terminated in its entirety by either Party in accordance with <b>clause 50 (Termination)</b> ;
<b>"Test"</b>	the tests undertaken or to be undertaken by the Service Provider in accordance with: <ul style="list-style-type: none"> <li>(a) <b>clause 10 (Testing of WMETS Assets and Service Systems)</b>;</li> <li>(b) <b>Schedule 4 (Testing Regime)</b>;</li> </ul>

(c) **Schedule 12 (Security Policy)**; and

(d) **Schedule 19 (Business Continuity)**,

to assess whether the Deliverables meet WMCAs requirements as set out in this Agreement and "Testing" shall have a corresponding meaning;

"Test Data"	any Data in relation to any Testing;
"Test Environment"	an Environment used in relation to the relevant Testing;
"Test Plan"	a detailed document prepared or to be prepared by the Service Provider as envisaged under <b>Schedule 4 (Testing Regime)</b> ;
"Test Report"	a test report prepared or to be prepared by the Service Provider as envisaged under <b>Schedule 4 (Testing Regime)</b> ;
"Test Stage"	each and any stage of Testing as set out in <b>Schedule 4 (Testing Regime)</b> ;
"Test Strategy"	the high level document to be produced by the Service Provider in accordance with <b>Schedule 4 (Testing Regime)</b> ;
"Test Witnessing"	a process by which WMCA Personnel, or a nominated Third Party, witnesses the execution of Tests performed by the Service Provider, as envisaged under <b>paragraph 5 of schedule 4 (Testing Regime)</b> which where reasonably appropriate may be carried out remotely;
"Testing Documents"	all Documentation to be provided by the Service Provider to WMCA in accordance with <b>Schedule 4 (Testing Regime)</b> ;
"Third Parties Act"	the Contracts (Rights of Third Parties) Act 1999;
"Third Party"	any person or entity which is not a party to this Agreement, but excluding Sub-Contractors and Key Sub-Contractors;
"Third Party Service Provider"	has the meaning set out in clause <b>69.3.2.1 (Dispute Resolution Procedure)</b> ;
"Third Party Software"	any Software, code for Interfaces, databases which are included in the Service Systems (including the Services Database), and enhancements thereto, and in respect

	of which in each case the Intellectual Property Rights are owned by one or more Third Parties (including relevant Software which is COTS);
<b>"Third Party System"</b>	all or any party of the Systems, Hardware or Software used by and/or provided by or on behalf of any Third Party in connection with the West Midlands eScooter Trial Services;
<b>"Total Service Test"</b>	the Tests of all Terminals, Service Systems and Services in respect of the capability and procedures undertaken by the technical and operational Service Provider Personnel to establish whether the Service Provider is complying with the: <ul style="list-style-type: none"> <li>(a) Security Policy meets the requirements of <b>Schedule 12 (Security Policy)</b>; and</li> <li>(b) Business Continuity Infrastructure meets the requirements of <b>Schedule 19 (Business Continuity)</b>;</li> </ul>
<b>"Traffic Management Scheme"</b>	has the meaning given to it in <b>paragraph 6.1.3 of Schedule 26 (Docking Station Installation)</b> ;
<b>"Traffic Regulation Order"</b>	an order under the Road Traffic Regulation Act 1984 (as amended from time to time) that regulates the use of the Highway;
<b>"Trial Operational Playbook"</b>	means those matters that relate to the operational manual agreed (from time to time) between the WMCA, the Service Provider and the Interested Party of the applicable Trial Zone;
<b>"Trial Zone"</b>	means each and every <b>Zone 1</b> – Birmingham (1 trial area in Zone 1), <b>Zone 2</b> – Coventry, Kenilworth & Solihull (2 trial areas contained in Zone 2) and <b>Zone 3</b> – Wolverhampton, Walsall & Sandwell (3 trial areas contained in Zone 3) (as applicable);
<b>"TUPE Regulations" or "TUPE"</b>	the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended) or any successor legislation in force from time to time;
<b>"Under Repair"</b>	the Status of a eScooter when it has been confirmed by the Service Provider as requiring repair and has been removed from distribution;
<b>"Virus"</b>	any thing or device, other than a bug or error (insofar as such bug or error is itself a fault in the design or

production of Service Systems Software), which may impair or otherwise adversely affect the operation of any computer, prevent or hinder access to any program or data, impair the operation of any program or the reliability of any data (whether by re-arranging within the computer or any storage medium or device, or altering or erasing, the program or data in whole or part or otherwise), including worms, trojan horses, computer viruses and other similar things;

**"Waste Management Plan"**

a plan setting out how the Service Provider will handle, transport, recycle or otherwise dispose of any waste generated by the Works;

**"week"**

a seven (7) day calendar week and the term **"weekly"** shall be construed accordingly;

**"West Midlands eScooter Trial Services"**

has the meaning set out within (B) Background;

**"WMETS Assets"**

the:

- (a) eScooter Assets;
- (b) Contact Centre Assets;
- (c) Depot Assets (including Spare Parts);
- (d) Service Systems;
- (e) Docking Station Assets; and
- (f) On-street Assets,

listed in the Asset Register, which are used in the provision of the Services, whether or not such assets are leased by, owned or licensed to, or in the possession or control of the Service Provider or its Sub-Contractors;

**"WMCA Confidential Information"**

information and Data relating to the West Midlands eScooter Trial Services and the business or affairs of WMCA and/or its employees which is divulged to, or obtained by, prepared by or created by or for the Service Provider and/or one or more Guarantors and/or Shareholders during the bid process, negotiation of this Agreement and/or provision of the Services and which is either:

- (a) in written form and marked as proprietary and confidential;

	<ul style="list-style-type: none"> <li>(b) is by its very nature confidential; or</li> <li>(c) which may otherwise reasonably be regarded as confidential;</li> </ul>
<b>"WMCA Data"</b>	all Personal Data (excluding Shared Data) obtained by WMCA (or on behalf of WMCA by a third party other than the Service Provider) which the parties intend will be Processed for the Shared Data Purpose;
<b>"WMCA Policies"</b>	<ul style="list-style-type: none"> <li>(a) those policies set out at: <ul style="list-style-type: none"> <li>(i) <b>Schedule 18 (Equality and Diversity)</b>; and</li> <li>(ii) <b>Schedule 25 (WMCA Policies)</b>, as amended from time to time; and</li> </ul> </li> <li>(b) any all of policies, procedures and standards of the WMCA that are relevant to the performance of the Services, including those relating to safety, security, business ethics, drugs and alcohol and any other regulations specified by WMCA;</li> </ul>
<b>"WMCA IPR"</b>	<p>the Intellectual Property Rights of members of the WMCA whether pre-existing or created by or on behalf of a member of the WMCA (other than by or on behalf of the Service Provider) in relation to the West Midlands eScooter Trial Services including:</p> <ul style="list-style-type: none"> <li>(a) trade marks and logos of the WMCA; and</li> <li>(b) static web pages (if any) supplied by WMCA for the Services Website and web designs;</li> </ul>
<b>"WMCA Obligations"</b>	the obligations of WMCA that are specified in this Agreement;
<b>"WMCA Indemnified Parties"</b>	<p>each of:</p> <ul style="list-style-type: none"> <li>(a) WMCA;</li> <li>(b) Each Affiliate of WMCA; and</li> <li>(c) WMCA Personnel;</li> </ul>
<b>"WMCA Personnel"</b>	employees of members of the WMCA and their agents, representatives, consultants and sub-contractors, including WMCA;
<b>"WMCA Premises"</b>	any land or premises (including temporary buildings)

	owned or occupied by or on behalf of any member of the WMCA group;
<b>"WMCA Systems"</b>	all or any part of any Systems, Hardware or Software used by WMCA in connection with the West Midlands eScooter Trial Services;
<b>"Working Day"</b>	any day other than any Saturday, Sunday or public holiday in England;
<b>"Working Hours"</b>	the period from 9:00am to 5:00pm on a Working Day;
<b>"Works"</b>	all of the works (including the works necessary for obtaining access to the Sites) to be undertaken during the Implementation Phase in relation to the construction and installation of the Docking Stations at each of the Sites, in accordance with the terms of this Agreement and <b>Schedule 26 (Docking Station Installation)</b> ; and
<b>"Year"</b>	the twelve (12) month period running from the Operational Commencement Date.

## SCHEDULE 2

### Part 1A

#### Specification

This eScooter Specification includes requirements for the eScooter trial, alongside supplementary technical requirements. It is assumed these requirements won't change during the trial Scheme.

These specifications will apply across all the West Midlands Trial Zones (this includes areas such as Kenilworth that are not part of the West Midlands Combined Authority constituent area, but as a non-constituent area is electing to participate in the West Midlands eScooter Trial Service). Trial Zone-specific geographic features are outlined in the area definition documents attached to this Specification.

Detailed vehicle and data gathering specifications are NOT included in this Specification. These are mandated by the Department for Transport (DfT) ('Mandatory Requirements'). All tenderers seeking to provide a response to this tender need to confirm their vehicle and data standards conform to the developing DfT specifications.

**Please note, that unlike the Trial Operational Playbook (Part 1B) the Specification will not be Trial Zone specific and will apply universally to the Scheme.**

#### Document Revisions

- 1.1 The Specification outlines the rules that Service Providers will need to adhere to from the outset of the trial Scheme. It includes a fixed set of requirements.
- 1.2 Rules for private land included as part of the Trial Zones (such as university campuses) have not been finalised yet (beyond the requirement for full agreement by the land owner) and may have to differ from this Specification.
- 1.3 If, for purposes of a trial Scheme feasibility, trial Scheme safety or other critical function requirements need to be modified, this will be undertaken via the specified change control terms of the Agreement. .

During the Scheme the relevant Interested Party local highway authority will allow the deployment of an electric vehicle sharing system within City's jurisdictional boundaries by the Service Provider, based on satisfaction of the following requirements:

#### 2. Users

- 2.1. With regards to the use of eScooters, Service Providers will ensure that:
  - 2.1.1. the use is limited to those over 16 years old and holding a (minimum) relevant provisional driving licence;
  - 2.1.2 Users shall be strongly encouraged by the Service Provider to wear a helmet and other relevant personal protective equipment (PPE);

- 2.1.3. all Users shall be required to undertake training as deemed appropriate by the Service Provider and local highway authority to ensure the safety of the User and others in the operational environment. This will be done in accordance with any national guidance and/or legislation. As a minimum threshold on training:
  - 2.1.3.1 Users must agree to rules about where to ride, how to ride and how to park at the first time of use with appropriately timed reminders. Service Providers are encouraged to use clear and creative messages to make rules memorable.
  - 2.1.3.2 Service Providers must collaborate with Transport for West Midlands (TfWM) and the Interested Parties (local authorities) in communicating the Trial Zone rules.
  - 2.1.3.3 Service Providers should consider offer one to one training sessions (ensuring that social distancing rules in respect of the Covid19 pandemic that apply are always followed) as part of their engagement with the community.
  - 2.1.3.4 Service Providers are required to inform and train Users about how to safely park eScooters without obstructing other road users, especially people with disabilities. Service Providers are encouraged to specifically inform eScooter Users on the potentially negative impacts of eScooters on people with disabilities and the importance of following parking (and riding) rules.
  - 2.1.3.5 Service Providers should also consider incentivisation to maintain desired behavioural practises, limiting speed levels for new Users and / or extended training programmes.
- 2.1.4 User access to the eScooter shall be controlled and limited to a booking and payment system to which individual hires/uses can be recorded and attributed to a specific User. The length of hire can be governed on a per minute basis through to daily, weekly or monthly hire period (depending on the market requirements);
- 2.1.5 use of the eScooter is monitored to ensure appropriate and responsible behaviour by the User, with the Users behaving irresponsibly being barred from further participation;
- 2.1.6 eScooters are to be ridden only public roads of 30mph speed limits or lower and where available, in bike lanes and bike paths. eScooters should not be ridden on private land unless the land owner has granted explicit permission to the Service Provider and or User (as applicable). eScooters are to stay to the [left] of street lanes and to offer the right of way to bicycles in bike lanes and on bike paths.
- 2.2 Service Providers shall work with local businesses or other organisations to promote the use of helmets by system users through road safety partnerships, promotional credits, and other incentives.
- 2.3 Service Providers will undertake an equalities and inclusion assessment of their Trial Zone activity, which will be maintained and reviewed periodically to ensure currency at all time and shall be published openly.



- 2.4 Service Providers will comply with all national law and guidance pertaining to equalities and inclusion.
- 2.5 Service Providers will also undertake and maintain a robust Data and Privacy Impact Assessment which they will publish and ensure compliance with. The data policies and practices employed will be designed to allow sharing of key operational and performance data with the DfT, TfWM, local Police force, WMCA and/or Interest Parties local highway authority.
- 2.6 Service Providers will provide an information push service to their Users for formal traveller research, travel behaviour change campaigns and road safety information and campaigns as established by the WMCA/TfWM and Interest Parties local highway authority.
- 2.7 Service Providers must have a dedicated local manager for the Trial Zone with whom any urgent issues can be raised.
- 2.8 Service Providers must provide clear public and User information on the terms and conditions and pricing structures (including offers) which they put in place and updates on changes in pricing
- 2.9 In the event on an incident on the highway the Service Provider should be compliant in providing relevant data and information to enforcement bodies. Proof of insurance should be made available at the request of relevant enforcement bodies.

### **3. eScooters**

- 3.1 eScooters deployed by the Service Provider shall only be those which are compliant with the license granted by the DfT for the trial Scheme period and which are compliant with the relevant national regulations and vehicle type approval. Service Providers must not deviate from the specified capability at any point during the trial Scheme. eScooters shall additionally be capable of:
  - 3.1.1 being located at anytime;
  - 3.1.2 being able to be self-standing;
  - 3.1.3 being lit during use by clearly visible forward and rearward facing lighting;
  - 3.1.4 reporting a fallen over status or status of not being parked in accordance with the parking policy set out in the relevant Trial Operational Playbook;
  - 3.1.5 being remotely limited to a speed lower than the e-scooters maximum in accordance with the Trial Operational Playbook and / or experience of the User; and
  - 3.1.6 being appropriately, provisioned, protected and safely maintained by the Operator for use during a Covid19 pandemic.
  - 3.1.7 has a means of, User operated, audible alert (e.g. bell or horn)
- 3.2 There shall be clear visible association with the formal West Midlands eScooter Trial Services so as to be distinctive from other privately owned and/or illegal use of eScooters on the highway.
- 3.3 The Service Provider shall provide easily visible contact information and identification means on each eScooter for Interested Party local highway authority employees

and/or members of the public to make relocation requests or to report other issues with devices. Communications will be facilitated through multiple channels as required to enable access and inclusion for all.

- 3.4 eScooters will be maintained in a good state of repair and cleanliness at all times by the Service Provider. In the event a safety or maintenance issue is reported for a specific device, that eScooter shall be made unavailable to Users (for example designated “maintenance mode”) and shall be removed from service within 24 hours of notification.
- 3.5 In respect to cleaning, each eScooter requires a disinfected clean on all touchpoint areas (handlebars, brake levers, lights) at least once a day by the Service Provider. Provision to enable Users to disinfect before and after use is also desired.
- 3.6 Any inoperable or unsafe eScooter shall be repaired before it is put back into service.
- 3.7 The Service Provider will take full responsibility for managing any issues of eScooter theft, vandalism and recovery of abandoned vehicles or those which have been littered by non-users. Service Providers will accept that the Police do not have the resource to allow them to investigate such issues.

#### **4. Fleet size**

- 4.1 The total Service Provider eScooter fleet size deployed into an individual Trial Zone will be managed so that utilisation rates per eScooter within a weekly rolling average 24 hour period are no less than one ride per day (Active eScooter Rate). This will be supplemented by an additional down time factor allowance of 5 spare eScooters per 100 of deployed fleet per Service Provider which can maintain a lower utilisation rate.
- 4.2 If there are multiple Service Providers each Service Provider will comply with above utilisation requirement, with a period of exemption being granted for the initial two (2) Months from the Operational Commencement Date to allow a period of demand ramp-up. During this first two month operation and demand ramp-up the Service Provider and Interested local highway authority will monitor deployment and utilisation with reference to the above criteria but so as to ensure sufficient availability of eScooters to stimulate demand without prejudice to the management and operation of the public realm.
- 4.3 Whether there is a single Service Provider or Service Providers providing fleet into a Trial Zone, irrespective of utilisation rates, a minimum available total fleet deployment will be maintained at no less than 1 eScooter per 250 head of population of the relevant Trial Zone (Agreed Daily eScooter Requirements). If within this minimum fleet size provision the minimum utilisation rate requirement cannot be met for an extended period of time (minimum of 3 months of operation) the parties shall consider the Scheme viability within the Trial Zone and changes to a Trial Zone or termination of operations in that Trial Zone.
- 4.4 Where multiple Service Providers are operating fleet within a Trial Zone through the relevant governance they shall work together to ensure overall compliance with the fleet size requirements.
- 4.5 Service Providers shall provide prior to commencement of the Trial an estimated initial fleet size requirement and estimated ramp-up period. Service Providers will manage total fleet size per Trial Zone to within +/- 10% of this total fleet size for the duration of the Trial, unless otherwise agreed with the Interested Party local highway

authority and with reference to the utilisation rate which will be the guiding rationale for change.

- 4.6 The Service Provider shall monitor the distribution of eScooters across the Trial Zones ensuring the overall supply / demand balance is maintained through physical redistribution of eScooters such as may be necessary

## **5. Other road users and the public**

- 5.1 The Service Provider will maintain a responsive reporting and public communications channel throughout the Trial for other road users and members of the public to report concerns about eScooter usage.
- 5.2 The Service Provider shall maintain 24-hour customer service for Users to report safety concerns, complaints, or to ask questions via phone, e-mail or chat. This service must be inclusive and accessible to all.
- 5.3 Throughout the trial Scheme the Service Provider will pay special regard to the needs of vulnerable road users, adjusting their operation, fleet management, onboard vehicle technologies and user guidance/training so as to address issues and concerns should these occur.
- 5.4 Service Providers must provide TfWM and the Interested Parties with contact details for the local programme and fleet managers and promptly inform of any changes in the contact details. Service Providers are expected to maintain clear and open communication with TfWM and the Interested Parties as it is essential for a collaborative relationship.

## **6 Parking**

- 6.1 Service Providers shall maintain suitable operational management practices and User incentives (including incentives to non-actively hiring registered Users) to ensure parking of eScooters is managed without detriment to the public realm and is contained to the designated parking areas.
- 6.2 Trial Zone specific requirements will be captured in the Trial Operational Playbook, but all Service Providers will design and operate their service in such a way so as to ensure Users comply with the following parking principles:
  - 6.2.1 Users of eScooters shall park devices upright in designated areas responsibly beside a bicycle rack or in another area specifically designated for bicycle or eScooter parking, where available;
  - 6.2.2 Users shall not park eScooters in such a manner as to block the pedestrian thoroughfare, any emergency facility or utility pole or box;
  - 6.2.3 Users shall not park eScooters in such a manner as to impede or interfere with the reasonable access to or from any building;
  - 6.2.4 Users shall not park eScooters in such a manner as to impede or interfere with the reasonable use of any bicycle rack; and

- 6.2.5 Users shall not park eScooters in the landscape/furniture zone directly adjacent to or within the following areas, such that access is impeded:
- (a) transit zones, including bus stops, shelters, passenger waiting areas, and bus layover and staging zones, except at existing bicycle racks;
  - (b) loading zones;
  - (c) disabled parking zone;
  - (d) street furniture that requires pedestrian access (for example - benches, parking pay stations, bus shelters, transit information signs, etc.);
  - (e) curb ramps;
  - (f) entryways; and
  - (g) driveways.
- 6.3. The Service Provider shall respond to reports of incorrectly parked eScooters, or reports of unsafe/inoperable eScooters by relocating, re-parking, or removing the eScooters, as appropriate, within the timing guidelines below:
- a) If reported between 6am-midnight: 2 hours (1 hour in green zones)
  - b) If reported between midnight- 6am: 4 hours
- Performance and geo-spatial statistics will be recorded by the Service Provider in a system accessible to the TfWM/Interested Party local highway authority shared on incidents and response time.
- 6.4 Persistent poor adherence to the principles set out above will be escalated within the agreed governance mechanisms and if left unaddressed may result in the TfWM requesting the DfT to revoke the Service Providers eScooter Licence.
- 6.5 In order to comply with the region's commitment to decarbonisation, Service Providers must use electric vehicles or cargo bikes to reposition the eScooters.

## **7 Usage guidance**

- 7.1 The Service Provider shall provide notice to all Users through a mobile or web application that sets out clear information on where and how eScooters can and should be used in the Trial Zone so as to be compliant with the law and with any specific Trial Zone requirements.
- 7.2 Service Providers will back this up with appropriate automatic controls such as geo-fencing and speed limitation. The User guidance and minimum requirements for a User training are outlined in this document and the Trial Operational Playbook. Rules surrounding use include but not be limited to the following:
- 7.2.1 eScooters are to be ridden on streets, and where available, in bike lanes and bike paths;
  - 7.2.2 eScooters are to stay to the left of street lanes and to offer the right of way to bicycles on bike lanes and bike paths;
  - 7.2.3 helmets are encouraged for all Users;

7.2.4 parking must be managed;

7.2.5 riding responsibly is encouraged and repeated disregard of the guidance will result in the User being barred from access for the duration of the trial Scheme;

7.2.6 the Service Provider shall provide education to eScooter riders on the Trial Zones existing rules and regulations, safe and courteous riding, and proper parking.

7.2.7 The use of eScooters is not permitted on footways. Additional local restrictions apply in each Trial Zone which are detailed in the area descriptions. Local restrictions apply to ensure the safety of eScooter Users on busy parts of the road network, the safety of other vulnerable road use in busy areas, and to facilitate social distancing.

- 7.3. Temporary riding and parking restrictions may apply in the case of events (such as festivals, football matches) and because of highway works. Service Providers must comply with these restrictions and join Interested Party local authorities in informing the public about them.

## **8 Ticketing and payments integration**

Service Providers will work with TfWM to integrate their booking and payments system with the West Midlands Swift smart-ticketing platform at the earliest feasible opportunity during the trial Scheme. Technical details will be provided to aid Service Providers in this process.

## **9 Equality aspects**

- 9.1 Service Providers are strongly encouraged to familiarise themselves with the demographic and economic profile of the Trial Zone areas and work with Interested Party LAs to develop discounts, training and engagement programmes that focused on deprived areas.
- 9.2 In order for TfWM and Interested Party local authorities to be able to monitor equity and accessibility aspects of the programme, Service Providers must provide them with clear information about the pricing structure of using eScooters and of any changes planned at least a week in advance.
- 9.3 Pricing information, including any surcharges must be clearly explained to Users in the beginning of each journey.
- 9.4 Service Providers are strongly encouraged to provide non-digital rental route, for those who do not have access to a bank account or a smartphone.
- 9.5 Include a clear outline of Discount pricing and programmes for specific groups (e.g. students, low income, at-risk populations)

## **10. Vandalism and Theft**

- 10.1 Service Providers are actively encouraged to fit anti-theft devices to each vehicle, namely wheel locking mechanism, alarms and vehicle location devices.
- 10.2 In the event of any theft or vandalism incident the Service Provider is obliged to inform the local enforcement representative and the Interested Party local highway authority so instances can be monitored.
- 10.3 The cost of replacement and repair shall be covered by the eScooter supplier.

## **11. Rollout**

Elements governing the rollout of eScooters is covered in the Trial Operational Playbook (Part 1B)

## Part 1B

### Operational Playbook

This Trial Operational Playbook includes outline guidelines for the eScooter trial. This document sits alongside the Specification document (Part 1A). Whereas the Specification document contains fixed elements, the Trial Operational Playbook contains guideline details that will have to be updated and matured, reflecting the specific areas they govern.

It includes guidelines will apply across all the West Midlands eScooter Trial Services (this includes areas such as Kenilworth that are not part of the West Midlands Combined Authority constituent area, but as a non-constituent area is electing to participate in the West Midlands trial). Trial Zone-specific geographic features are outlined in the area definition documents attached to this tender.

**Please note that for each Trial Zone of deployment an updated Trial Operational Playbook will need to be created. Reacting to the parameters published in this document area specific Trial Operation Playbooks will be developed between the successful Service Provider(s) and relevant Interested Party Local Highway Authority to outline the detail necessary to enable the trial Scheme to take place safely and efficiently.**

### 3. Document Revisions

- 3.1 The Trial Operational Playbook outlines the headline rules that Service Providers will need to adhere to from the outset of the trial Scheme. However, it will remain a working document throughout the trial Term, so additions and changes can be made and agreed to adapt to trial findings and needs in the different Trial Zones.
- 3.2 Rules for private land included as part of the Trial Zones (such as university campuses) have not been finalised yet (beyond the requirement for full agreement by the land owner) and may have to differ from the general rules.
- 3.3 Updates to this document will be managed through the governance process set out at paragraph 2 of the Contract and Reporting schedule document in the Agreement at either the zonal or regional monthly board meetings. Updates must achieve the backing of the constituent trial stakeholders with updates disseminated to all relevant parties.

During the trial Term the relevant Interested Party local highway authority will allow the deployment of an electric vehicle sharing system within City's jurisdictional boundaries by the Service Provider, based on satisfaction of the following requirements:

### 4. Users

Elements governing the Users is covered in the Specification (Part – 1A)

### 3. eScooters

Elements governing the eScooter vehicles is covered in the Specification (Part – 1A)

#### **4. Fleet size**

- 4.1 Phased rollout and scaling must conform to the requirements detailed in the Specification but specifics that require detailing in the Trial Operational Playbook include:
  - a) Number of eScooters planned at each location and their dates of deployment
  - b) Allocated parking identified for each eScooter
- 4.2 Any new areas, not agreed as part of the initial plan will be assessed against criteria including (but not limited to):
  - a) Market potential (inc. rates of use locally)
  - b) Existing coverage
  - c) Rates of loss/vandalism/complaint or misuse in that area

#### **5. Other road users and the public**

- 5.1 Communications will be facilitated through multiple channels as required to enable access and inclusion for all. Service Providers will provide an immediate response to any enquiry containing acknowledgement and explaining the context of the trial Scheme and will provide a specific individual response to the enquiry within no more than one working week.
- 5.2 The Service Provider will collaborate with any other Other eScooter Service Providers in the relevant Trial Zone to provide a unified and coordinated public information campaign throughout the duration of the trial to promote safe, sustainable and responsible use of eScooters.

#### **6 Parking**

- 6.1 Trial Zone specific requirements will be captured in the relevant Trail Operational Playbook, aligned to the details in the Specification. Each parking location needs to be agreed between the eScooter Service Provider and Interested Party local authorities against the following criteria:
  - a) Specific geolocation (GPS or map reference);
  - b) completed check by relevant highway authority to confirm adherence with required standards (i.e. not in red zone, on pavement etc);
  - c) highlights total capacity of eScooters available to park at that location;
  - d) identifies necessary signage needed at that location including: by who, how and when that will deployed;
  - e) availability of local charging (where necessary);



f) how any location is including in the cleaning and charging schedule.

6.2 In the event a reported eScooter is not relocated, re-parked, or removed within the timeframe specified herein, or any eScooter is parked in one location for more than 36 hours without being returned to a designated parking area, such eScooters may be removed by local crews and taken to a local facility for storage at the expense of the Service Provider, not to exceed £20 per eScooter.

6.3 Service Provider should consider offering some Interested Party local authority staff the option of 'admin unlock' so that they can remove and reposition eScooters if needed.

## **7 Usage guidance**

7.1 Within each area the Service Providers must agree with the Interested Party local highway authority specifically which areas eScooters can be used. This must be in accordance with the Specification. Area specific information must include, but is not limited to the following:

- a) the specific streets (or precise geofenced areas) where eScooters can be used and/or which lanes on specific streets are available.
- b) specified non use/stop areas, streets or lanes
- c) private land use agreements
- d) parking proximity to approved use areas

7.2 Any temporary riding and parking restrictions need to be defined and agreed at least 2 weeks in advance of the event. These must be communicated to the eScooter Customers in that area, 4 hours in advance and during the event via appropriate channels.

## **8 Ticketing and payments integration**

Elements governing the payments integration is covered in the Specification (Part – 1A)

## **9 Equality aspects**

Elements governing the equality aspects of eScooters is covered in the Specification (Part – 1A)

## **10. Vandalism and Theft**

10.1 The Service Provider is to prescribe the anti-theft and anti-vandalism measures available and intended for deployment in each area.

- 10.2 In the event of repeated incidents the Interested Party local highway authority, enforcement authorities and Service Providers will be called to review and implement solutions to mitigate anti-social behaviour against vehicles.

## **11. Rollout**

- 11.1 It is likely the rollout will include several phases. These need to be agreed by the relevant stakeholder group in advance of the deployment and form part of the Trial Operational e Playbook.
- 11.2 Upon nomination and in collaboration with the Interested Party local authority the eScooter provider(s) will have to create a detailed pre-deployment Trial Operational Playbook for each area. This will detail responses to the guidelines in this document. In addition, details should be specified relating to the operational model being deployed, namely:
- a) fleet numbers at specific host locations in an agreed sequence;
  - b) allocated parking locations with agreed schedule of work for demarcation (if required);
  - c) time agreed demonstration to local authority of geofence capability;
  - d) time agreed demonstration to key stakeholders (Interested Party local authorities, enforcement bodies etc) of how vehicles are hired, operated, capabilities etc. These sessions will act as localised education sessions.
  - d) outline of storage location and other necessary facilities (recognition of where support from the local authority is required to support finding appropriate facilities);
  - e) outline of charging schedule to ensure vehicles aren't left for hire with a state of charge less than 10%;
  - f) data transfer route with links enabled and tested.

## SCHEDULE 3

### Milestones and Deliverables

#### 1. General provisions

- 1.1 The Service Provider shall achieve the Milestones by the relevant Milestone Date specified in Table 1 – Milestones below. The Service Provider shall achieve the Milestones by fulfilling the applicable Milestone Achievement Criteria, and obtaining a Milestone Notice from WMCA.
- 1.2 Within five (5) Working Days of the Service Provider fulfilling the Milestone Achievement Criteria for a Milestone, it shall provide to WMCA the supporting evidence necessary to demonstrate such achievement to WMCA's reasonable satisfaction.
- 1.3 Subject to WMCA being satisfied (acting reasonably) that the Milestone Achievement Criteria for the relevant Milestone have been achieved, WMCA shall, within ten (10) Working Days of receipt of the supporting evidence provided in accordance with **paragraph 1.2 of this Schedule 3**, issue the relevant Milestone Notice.
- 1.4 Where WMCA is not satisfied (acting reasonably) that the Milestone Achievement Criteria for the relevant Milestone have been met, it shall, within ten (10) Working Days of receipt of the supporting evidence provided in accordance with **paragraph 1.2 of this Schedule 3**, notify the Service Provider that the Milestone Achievement Criteria have not been met, or that sufficient evidence has not been provided to demonstrate such achievement.
- 1.5 Where WMCA has notified the Service Provider that the Milestone Achievement Criteria have not been met, the Service Provider shall provide additional evidence to WMCA and **paragraph 1.2 of this Schedule 3** shall apply.
- 1.6 A Milestone shall be successfully achieved when WMCA issues a Milestone Notice to the Service Provider in respect of all relevant Milestone Achievement Criteria for that Milestone.

**Table 1 – Milestones**

**[TABLE/APPROPRIATE MILESTONES AND MILESTONE DATES TO BE INSERTED]**

## 2. Implementation Plan

2.1 The Implementation Plan shall include:

- 2.1.1.1 planning details:
- 2.1.1.2 an illustration of the key activity phases during the Implementation Phase, together with their corresponding Milestone Dates.
- 2.1.1.3 a fully resourced Gantt chart covering all detailed activities required to achieve the Milestones in **[INSERT]** (Milestones), including all dependencies on WMCA and the Service Provider and any Third Party and a level of detail that identifies the individual tasks for the successful completion of the Implementation Phase;
- 2.1.1.4 the dates for production of the Operational Processes and Procedures, detailing the business processes and procedures required to implement and operate the Services;
- 2.1.1.5 the processes and requirements for the recruitment of Service Provider Personnel;
- 2.1.1.6 the dates for all training and roll-out activities; and
- 2.1.1.7 the work packages that the Service Provider anticipates will be required to complete the Test Stages and meet the Milestones.

2.1.2 Thereafter, the Service Provider shall keep the Implementation Plan updated on an ongoing basis during the Term.

2.2 Quality Criteria

2.2.1 The Service Provider shall ensure that the Implementation Plan is, without limiting the Service Provider's other obligations under this Schedule and the Agreement, subject to the following quality criteria:

- 2.2.1.1 the Implementation Plan shall be capable of being used in "Microsoft Project 2007" (or equivalent) format with all supporting Documentation as appropriate;
- 2.2.1.2 the Implementation Plan shall contain details of any assumptions on which it is based and/or any other dependencies on WMCA, the Service Provider and/or any Third Party (where applicable); and
- 2.2.1.3 the Service Provider shall ensure that the Implementation Plan allows the Service Provider to achieve the Milestones in

accordance with the provisions of this Agreement, including the relevant Milestone Dates.

### 3. **Quality Plan**

3.1 The Service Provider shall develop and keep updated on an ongoing basis during the Term a quality plan which contains details of the processes, procedures, mechanisms and tools that the Service Provider proposes to use to assure the quality of the Services, including:

3.1.1 the scope of the plan;

3.1.2 the contractual and organisational quality expectations and requirements to be met by the Service Provider in accordance with this Agreement;

3.1.3 references to standards and methods that apply to the Services;

3.1.4 roles and responsibilities for quality assurance;

3.1.5 identification of Deliverables;

3.1.6 acceptance mechanisms and high level acceptance criteria for the Deliverables;

3.1.7 project management and control processes including:

3.1.7.1 communication, reporting and project review mechanisms;

3.1.7.2 risk, Incident, Service Issue and Error management, including an escalation process;

3.1.7.3 the Change Control Request Procedure;

3.1.8 Third Party and Sub-Contractor management; and

3.1.9 quality control processes for:

3.1.9.1 Documentation including version control and review processes;

3.1.9.2 Service Systems design, build, Testing and implementation including configuration, release and Problem management processes for the Service Systems;

3.1.9.3 Services delivery including recruitment, Training, and Operational Phase process development and improvement; and

3.1.9.4 quality audit processes,

(the "**Quality Plan**").

3.2 The Service Provider shall submit the Quality Plan and updates from time to time for Approval in accordance with **Part B (Documentation and Approvals)** of this Schedule.

#### 4. Risk Register and Issues Register

- 4.1 The Service Provider shall develop and keep updated on an ongoing basis during the Term a document recording all perceived risks, together with the:
- 4.1.1 probability of their occurrence (including the categorisation of each risk as low, medium and high level risk (or as otherwise instructed by WMCA) based on the probability of its occurrence);
  - 4.1.2 impact on the programme should they occur; and
  - 4.1.3 all preventative, reactive and mitigating actions to be taken by the Service Provider to prevent their occurrence or minimise the impact should they occur,
- (the “**Risk Register**”).
- 4.2 The Service Provider shall submit the Risk Register and updates to it from time to time (and in any event no less frequently than upon the identification by the Service Provider of each high level risk (or such other category of risk as WMCA may instruct from time to time)) for Approval in accordance with **Part B (Documentation and Approvals)** of this Schedule.

#### 5. Capacity Planning

- 5.1 The Service Provider shall on and at all times following the Operational Commencement Date:
- 5.1.1 ensure that the WMETS Assets and Service Systems have at all times sufficient capacity and process and deal with all Data and other requirements provided to or required of the Service Provider in providing the WMETS Assets, Service Systems and Services in order to enable the Services to be supplied in accordance with the Service Levels; and
  - 5.1.2 carry out capacity planning to identify potential gaps between the capacity available and the capacity required with a view to ensuring that the Service Systems will have capacity (including sufficient processing power, Data storage capacity and network bandwidth) to cope with all foreseeable contingencies and with all expansion of the WMETS Assets, Service Systems and Services (including in connection with the implementation of any Additional Services and further Services agreed through the Change Control Request Procedure).
- 5.2 The Service Provider shall during the Operational Phase prepare and keep updated on an ongoing basis during the Term draft capacity plans supported by spreadsheets (as necessary) (the “**Draft Capacity Plans**”) and shall submit a current version of such plans, to WMCA:
- 5.2.1 every **TBC/INSERT**; and/or

- 5.2.2 with greater regularity, if WMCA requests it or the Service Provider wishes to raise a capacity planning issue of concern with WMCA; and
  - 5.2.3 as part of the Change Control Request Procedure and promptly following the issue of a Change Authorisation where such Change requires an amendment to the Draft Capacity Plan(s).
- 5.3 WMCA:
- 5.3.1 shall inform the Service Provider of any likely significant increases in the demand for Capacity of which it is aware during the Operational Phase; and
  - 5.3.2 may consult with the Service Provider regarding the Draft Capacity Plans and shall have the right, by notice to the Service Provider, to Approve the Draft Capacity Plans (the “**Agreed Capacity Plans**”) or (where WMCA reasonably believes that the Draft Capacity Plans do not make allowances for likely significant increases in the demand for capacity) to require the Service Provider to make amendments to the Draft Capacity Plans (“**Requested Amendments**”).
- 5.4 On receipt of the Requested Amendments, the Service Provider shall promptly (and in any event within five (5) Working Days of having received them, or such other timeframe as may be agreed between the Parties in writing) amend the Draft Capacity Plans to include the Requested Amendments and re-submit the Draft Capacity Plans to WMCA for review. The procedure for Approving the Draft Capacity Plans set out in **paragraph 5.2** above shall apply to the re-submitted Draft Capacity Plans.
- 5.5 Where **paragraph 5.4** above applies, if the Agreed Capacity Plans are not in place within fifteen (15) Working Days of the Draft Capacity Plans having been submitted to WMCA, WMCA may by notice to the Service Provider require the Service Provider to comply with the Requested Amendments and/or the Draft Capacity Plans (again the “**Agreed Capacity Plans**”).
- 5.6 The Service Provider shall comply with the Agreed Capacity Plans in providing the Operational Services and/or any further Services agreed through the Change Control Request Procedure.
- 5.7 The Parties shall meet to discuss capacity planning:
- 5.7.1 on a **[TBC/INSERT]** basis; or
  - 5.7.2 with greater regularity on the request of WMCA or Service Provider if that Party wishes to raise a capacity planning issue of concern with the other Party.
- 5.8 The Service Provider shall track and report to WMCA once per **[TBC/INSERT]** the actual consumption of capacity against projections from prior capacity plans.



## 6. **Operational Processes and Procedures**

- 6.1 The Service Provider shall develop and keep updated on an ongoing basis during the Term detailed processes and procedures which document the working methods which shall be utilised by all Service Provider Personnel providing the Operational Services and/or any support to the WMETS Assets and Service Systems` and including the operational processes and procedures described in the Specifications (the “**Operational Processes and Procedures**”).
- 6.2 The Service Provider shall submit the Operational Processes and Procedures for Approval in accordance with **Part B (Documentation and Approvals)** of this Schedule.

## 7. **Infrastructure Design**

- 7.1 The Service Provider shall develop and keep updated on an ongoing basis during the Term a document which expands on the Service Provider Solution to specify the design and maintenance of the Infrastructure for the WMETS Assets and Service Systems, which shall include:
- 7.1.1 identification of the WMETS Assets, Hardware and Software items, and their mapping to the logical sub-divisions of the Service Systems including plans in respect of the Area of Operation;
  - 7.1.2 detailed specifications for all elements of the Infrastructure including the WMETS Assets and Service Systems;
  - 7.1.3 local, inter-site and external network diagrams;
  - 7.1.4 capacity planning calculations, including all assumptions made in determining the required capacity for the provision of the WMETS Assets, Service Systems and Services in accordance with the Specification requirements;
  - 7.1.5 details of the predicted performance based on the planned capacity of the WMETS Assets, Service Systems and Services in accordance with the Specification requirements; and
  - 7.1.6 specifications of the Parameters and other settings required to configure the WMETS Assets and Service Systems,
- (together and individually the “**Infrastructure Design**”).
- 7.2 The Service Provider shall submit the Infrastructure Design for Approval in accordance with **Part B (Documentation and Approvals)** of this Schedule.

## 8. **Deliverables**

- 8.1 Without prejudice to WMCA's other rights and remedies under this Agreement, common law, statute or in equity, and without limitation to the Service Provider's other obligations under this Agreement, the Service Provider shall ensure that:
- 8.1.1 the structure and outline content of all Deliverables shall be in accordance with WMCA's requirements, as notified to the Service Provider from time to time;
  - 8.1.2 the Service Provider employs a recognised Systems development methodology in accordance with Good Industry Practice be in accordance with WMCA's requirements, as notified to the Service Provider from time to time;
  - 8.1.3 all Deliverables shall be produced in accordance with Good Industry Practice and shall be Fit for Purpose;
  - 8.1.4 the Service Provider produces Documentation in respect of the design of the Service Systems, including Functional Requirements where applicable, for all elements of the Service Systems and maintains that Documentation in line with changes to the Service Systems throughout the Term; and
  - 8.1.5 any changes proposed by the Service Provider from time to time to the Deliverables described in this Schedule as necessary to update such Deliverables shall only be made pursuant to the Change Control Request Procedure.
- 8.2 The Service Provider shall provide all Deliverables to WMCA a reasonable period before each Milestone Date, having regard to the following:
- 8.2.1 the number of Deliverables in respect of which WMCA is conducting a review at any time; and
  - 8.2.2 the volume and complexity of each of the Deliverables,
- and, without limiting the foregoing, in any event not less than ten (10) Working Days before the relevant Milestone Date.
- 8.3 Unless expressly provided to the contrary elsewhere in this Agreement, and subject to the Milestone Dates, WMCA shall use reasonable endeavours to complete a review of each Deliverable within ten (10) Working Days from its delivery to WMCA or within such other period as WMCA may agree. Where re-work is required following review, the Service Provider shall complete such re-work and re-issue the Deliverable within five (5) Working Days of receipt of WMCA's review comments on the basis of which the re-work is required, or within such other period as WMCA may agree.

## **Part B: Documentation and Approvals**

### **9. Key Documents and Approval of Key Documents**

- 9.1 The Service Provider shall, in accordance with the applicable Milestone Dates and the Implementation Plan (as appropriate):

- 9.1.1 provide the Design Services such that the Service Provider creates the Key Documents, in each case to reflect the requirements of this agreement;
  - 9.1.2 perform any other tasks allocated to it in the Implementation Plan in relation to the Key Documents; and
  - 9.1.3 provide WMCA with a copy of the Key Documents.
- 9.2 WMCA shall:
- 9.2.1 where reasonably practicable supply the Service Provider on reasonable notice with information the Service Provider reasonably requires so that the Service Provider is not delayed in performing its obligations under **paragraph 9.1** of this Schedule;
  - 9.2.2 within such period as is specified in the agreement or the Implementation Plan and in any event by any applicable Milestone Dates (or as the Parties otherwise agree in writing) following WMCA's receipt of the Key Documents:
    - 9.2.2.1 review the Key Documents; and
    - 9.2.2.2 notify the Service Provider that WMCA:
      - (a) accepts the Key Documents; or
      - (b) if the Key Documents:
        - (i) fail to provide for the functions and the performance criteria specified in the Specifications; or
        - (ii) are not Fit for Purpose;
- rejects the Key Documents.
- 9.3 If WMCA rejects any Key Documents under **paragraph 9.2.2.2(b)** of this Schedule:
- 9.3.1 the Service Provider shall, at its own cost, promptly undertake a revision or amendment of the relevant Key Documents and re-submit them to WMCA for review;
  - 9.3.2 the Parties shall repeat the procedure set out in **paragraph 9.2** and this **paragraph 9.3** of this Schedule until acceptance of the Key Documents by WMCA or referral to the Dispute Resolution Procedure;

## 10. Testing Documents and Other Documents

- 10.1 The Service Provider shall, in accordance with the applicable Milestone Dates, the Implementation Plan, the Specifications and **Schedule 4 (Testing Regime)** and so as to achieve all relevant Milestones:
  - 10.1.1 prepare:

- 10.1.1.1 the Testing Documents for the Implementation Phase to reflect the Specifications and the Test Strategy;
- 10.1.1.2 the following other Documentation required during the Implementation Phase:
  - (a) Service Provider Solution;
  - (b) Delay Plan;
  - (c) Maintenance Plans;
  - (d) training plan in respect of WMCA Personnel;
  - (e) a timetable detailing any downtime of the whole or part of the WMETS Assets, Service Systems and/or Services or any training details referred to in **clause 18 (Training)**; and
  - (f) any other Documentation or Deliverables (other than Software) requiring Approval under the agreement,

(all Documentation in this **paragraph 10.1.1.2** is hereinafter collectively referred to as the “**Other Documents**”); and
- 10.1.1.3 an updated version of each of the Testing Documents for the Implementation Phase following a Change so as to incorporate the effects of that Change in the relevant document in accordance with the Change Control Request Procedure;
- 10.1.1.4 an updated version of each of the Other Documents following a Change so as to incorporate the effects of that Change in the relevant document in accordance with the Change Control Request Procedure;
- 10.1.2 if requested by WMCA, consult and work in conjunction with WMCA (or any Third Party nominated by WMCA) in relation to the preparation of the Documentation referred to in **paragraph 10.1.1** of this Schedule; and
- 10.1.3 submit a copy of that Documentation to WMCA for Approval pursuant to **paragraphs 11.1.2 and 11.2** of this Schedule.
- 10.2 The Service Provider shall, in accordance with the agreement, the applicable Milestone Dates, the Change Control Request Procedure, the Specifications and **Schedule 4 (Testing Regime)** and so as to achieve all relevant Milestones:
  - 10.2.1 promptly upon request by WMCA, prepare:
    - 10.2.1.1 the Testing Documents for the Operational Phase as required from time to time to reflect the Test Strategy and the Specifications and to deal with the Testing of:

- (a) Changes (including Additional Services);
  - (b) work undertaken to correct Errors or Service Issues; and
  - (c) work undertaken as a result of Security Incidents where there is a System impact; and
- 10.2.1.2 the Other Documents as required from time to time to reflect the Test Strategy and the Specifications and to deal with the Testing of:
  - (a) Changes (including Additional Services);
  - (b) work undertaken to correct Service Issues and/or Errors; and
  - (c) work undertaken as a result of Security Incidents; and
- 10.2.1.3 an updated version of each of the Testing Documents for the Operational Phase following a Change so as to incorporate the effects of that Change in the relevant document in accordance with the Change Control Request Procedure; and
- 10.2.1.4 an updated version of each of the Other Documents following a Change so as to incorporate the effects of that Change in the relevant document in accordance with the Change Control Request Procedure;
- 10.2.2 if requested by WMCA, consult and work in conjunction with WMCA (or any Third Party nominated by WMCA) in relation to the preparation of the Documentation referred to in **paragraph 10.2.1** of this Schedule;
- 10.2.3 promptly upon request by WMCA, submit a copy of that Documentation to WMCA for Approval pursuant to **paragraphs 11.1.2 and 11.2** of this Schedule.
- 10.3 The Service Provider shall ensure that all Documentation submitted to WMCA is Fit for Purpose.

## 11. **Approval of Documentation**

- 11.1 In relation to Documentation, WMCA shall:
  - 11.1.1 where reasonably practicable supply the Service Provider on reasonable notice with information the Service Provider reasonably requires so that the Service Provider is not delayed in performing its obligations under **paragraphs 10.1 and 10.2** of this Schedule;
  - 11.1.2 within such period as is specified in the Implementation Plan (if applicable) and in any event so as to comply with any applicable Milestone Dates (or as the parties otherwise agree in writing including pursuant to the Change

Control Request Procedure) following WMCA's receipt of any Documentation envisaged under **paragraphs 10.1 and 10.2** of this Schedule:

11.1.2.1 review that Documentation; and

11.1.2.2 at WMCA's absolute discretion:

- (a) issue to the Service Provider a notice confirming that WMCA approves Documentation to be reviewed by WMCA during the Implementation Phase;
- (b) issue to the Service Provider a notice confirming that WMCA approves Documentation to be reviewed by WMCA during the Operational Phase;
- (c) agree the Change subject to the Change Control Request Procedure; or
- (d) issue to the Service Provider notice of rejection of that Documentation.

11.2 If WMCA rejects any Documentation under **paragraph 11.1.2.2(d)** of this Schedule:

11.2.1 the Service Provider shall, at the Service Provider's cost, promptly undertake a revision or amendment of that Documentation and re-submit it to WMCA for review within such period as WMCA may reasonably require;

11.2.2 the Service Provider shall promptly escalate the matter to such level of seniority within the Service Provider's Personnel as WMCA may require; and/or

11.2.3 the Parties shall repeat the procedure set out in **paragraph 11.1 and this paragraph 11.2** of this Schedule until a notice confirming that WMCA has approved that Documentation, or agreement subject to the Change Control Request Procedure (as applicable) is issued pursuant to **paragraph 11.1** of this Schedule;

11.3 The Service Provider agrees that the provisions of **clause 11 (Responsibility for achievement of Milestones and Milestone Dates)** apply in respect of **Part B** of this Schedule.

## **SCHEDULE 4**

### **Testing Regime**

#### **1. Introduction**

This **Schedule 4** describes the procedures to be followed by the Service Provider for the Testing of the WMETS Assets, Service Systems and Services.

#### **2. Testing Regime General Provisions**

2.1 The Service Provider shall, in accordance with this **Schedule 4**, and as may otherwise be required pursuant to this Agreement, perform Testing so as to ensure that the relevant parts of the WMETS Assets, Service Systems and Services provide the features, functions and facilities and meet the performance criteria set out in the:

2.1.1 Specifications; and

2.1.2 Service Provider Solution.

2.2 The Service Provider shall:

2.2.1 inform WMCA in writing of the Tests it undertakes in reasonable time prior to carrying out those Tests;

2.2.2 enable WMCA to have a Test Witness present at those Tests (to the extent that WMCA requests the same); and

2.2.3 inform WMCA in writing of the outcomes of those Tests as soon as practicable thereafter.

#### **3. Test Strategy**

3.1 The Service Provider shall, in accordance with **Schedule 3 (Milestones and Deliverables)**, prepare and submit to WMCA a Test Strategy. It is recognised that at any time the specific requirements of the Test Strategy may need to be further calibrated or potentially materially amended so as to reflect the position and development of the WMETS Assets and Services Systems at any point in time, but in any event any revision shall be undertaken so as to ensure the WMETS Assets and Services Systems will comply and conform with the requirements of this Agreement. The Service Provider shall promptly submit an updated Test Strategy to WMCA following revision of the Test Strategy. As a minimum, the Test Strategy shall include:

3.1.1 a high level plan for the Testing of the WMETS Assets and Service Systems, including the scheduling of all Tests to be completed during the Implementation Phase, and which will include (on a non-exhaustive basis) Testing on:

3.1.1.1 for Docking Station Assets:

(a) power supply (solar or battery);

- (b) GPS, bluetooth or alternative location devices;
  - (c) ensuring the stations meet risk assessed design;
- 3.1.1.2 for eScooter Assets:
- (a) checking all mechanical aspects of the eScooter, including ensuring any aspect that may have been disturbed in transit are safe eg steering, battery, brakes, tyres, lights, power supply units, electronic motors ; and
  - (b) all partnership branding is in place;
  - (c) registration and payment functions;
  - (d) eScooter release and return functions;
- 3.1.1.3 for the Service System (including apps and the Services Website) the inclusion of:
- (a) location specific references – Dock and eScooter locations;
  - (b) approved Third Party partner logos;
  - (c) terms and conditions of use (and any variations);
  - (d) English translation of all pages;
  - (e) Registration and payment functions.
- 3.1.1.4 in respect of Personnel and Operational Systems:
- (a) training of local based Service Provider Personnel;
  - (b) [Call Centre] briefed on new location(s);
  - (c) vehicles in place for the Operational Services support;
  - (d) reporting systems in place; and
  - (e) local police and on-street council staff briefed;
- 3.1.1.5 the names and contact details of WMCA's and the Service Provider's Representatives responsible for Testing.
- 3.1.2 the roles and responsibilities of all those involved with the Testing programme, including, Service Provider Personnel and/or personnel of Interested Parties, Other Service Providers, the Insurance Provider and Third Parties where applicable;
- 3.1.3 an outline of the resource requirements, including, Service Provider Personnel and/or personnel of Interested Parties, Other Service Providers, the Insurance Provider and Third Parties, training of such personnel, Test



- Environments, and Testing tools and how such resources will be used during each Test Stage;
- 3.1.4 the location of the Testing at each Test Stage;
- 3.1.5 the sources and mechanisms for creation of Test Data for use at each Test Stage;
- 3.1.6 a description of the steps that will be taken to:
  - 3.1.6.1 secure the Test Data;
  - 3.1.6.2 process Test Data in compliance with Data Protection Legislation; and
  - 3.1.6.3 to delete Test Data securely;
- 3.1.7 a proposed process for acceptance of:
  - 3.1.7.1 relevant WMETS Assets; and
  - 3.1.7.2 new versions and/or releases of Service Systems for production use;during the Operational Phase;
- 3.1.8 the quality management tools and processes to be used in Testing, including:
  - 3.1.8.1 the standards to be applied to Testing;
  - 3.1.8.2 Incident and Problem management processes;
  - 3.1.8.3 configuration management;
  - 3.1.8.4 release management;
  - 3.1.8.5 capture, logging, and tracking of Test results; and
  - 3.1.8.6 Test progress and completion reporting; and
- 3.1.9 each of the foregoing in respect of the:
  - 3.1.9.1 Business Continuity Test Schedule and Testing of the Business Continuity Plan; and
  - 3.1.9.2 Business Continuity Infrastructure and Business Continuity Services.
- 3.2 The Testing approaches defined before and during the Implementation Phase, shall be evaluated and adjusted (having regard to the outcomes of Testing) after the conclusion of the implementation (but provided that any adjustments that may be made shall not lessen the requirements that the WMETS Assets, Service Systems and Services provide the features, functions and facilities and meet the performance criteria set out in the Specifications and Service Provider Solution and/or otherwise

comply with the Design Documents (if applicable) and any other requirements that are determined to be applicable in connection with each Test. It is recognised that the Test Plans:

- 3.2.1 during the Implementation Phase, will in general terms be set at a high level; and
- 3.2.2 during the Operational Phase, will be set at a more discrete operational and functional unit level.

#### 4. **Documentation**

- 4.1 The Service Provider shall provide to WMCA as soon as practicable the Implementation Phase Testing Documents and any revisions thereto during the Implementation Phase (such documents to include Test Plan, relating to designs, systems and acceptance process, systems integration, technical and ready for use sign off processes, including processes for dealing with Errors and Service Issues).
- 4.2 The Service Provider shall provide to WMCA in reasonable time prior to the Operational Phase the Operational Phase Testing Documents and thereafter as soon as reasonably practicable any revisions thereto together with the Test Plans during the Operational Phase (such documents to include commissioning and systems integration, unit and acceptance testing processes,

#### 5. **Test Witnessing**

- 5.1 The Service Provider shall, during Test Witnessing:
  - 5.1.1 follow the reasonable instructions of WMCA Personnel in relation to the form of Test Witnessing and the way in which Test Witnessing is to be carried out; and
  - 5.1.2 demonstrate to the reasonable satisfaction of WMCA that adequate modifications and Testing have been performed leading to closure of any Service Issue, Error or the successful completion of Testing.

#### 6. **Documentation**

- 6.1 At the completion of each Test Stage, the Service Provider's will submit a Test Report for that Test Stage to WMCA, which provides the following information (together with such other information as the Service Provider reasonably considers appropriate to the specific Tests):
  - 6.1.1 the relevant Testing carried out;
  - 6.1.2 the results of the Testing conducted;
  - 6.1.3 any deviation from the Test Strategy or applicable Test Plan;
  - 6.1.4 if the Testing failed in any way, the extent and cause of the failure;
  - 6.1.5 summary metrics on Service Issues and Errors raised during the Testing;

- 6.1.6 the detail of any outstanding Errors or unresolved Service Issues;
- 6.1.7 the detail of any workarounds required as a result of any outstanding Errors or unresolved Service Issues, where these workarounds have been agreed with WMCA.

## SCHEDULE 5

### Service Levels

#### 1. Performance Management Regime Objectives

The objective of the Performance Management Regime is to encourage the Service Provider to meet the defined Service Levels during the Operational Phase.

#### 2. Performance Management Regime Overview

2.1 The Performance Management Regime consists of:

2.1.1 the PIs;

2.1.2 the required Service Levels; and

2.1.3 the procedure which applies if the Acceptable Service Levels are not met.

#### 2.2 Performance Indicator Table

2.2.1 The table in **appendix 1 (Performance Indicator Table)** to this **Schedule 5** sets out the Performance Management Regime parameters for the Operational Services (the "**Performance Indicator Table**"). The Performance Indicator Table sets out the following details in respect of the Performance Indicators:

2.2.1.1 the "**Performance Indicator Title**" column in the Performance Indicator Table gives the name of the various Performance Indicators on which the performance of the Service Provider shall be measured and tracked;

2.2.1.2 the "**Description**" column in the Performance Indicator Table gives detail of the Performance Indicator and how it is measured and tracked;

2.2.1.3 the "**Acceptable Service Level**" column in the Performance Indicator Table specifies the range of operational performance for the Performance Indicator that is expected of the Service Provider (each an "**Acceptable Service Level**"); and

2.2.1.4 the "**Criticality Levels**" column in the Performance Indicator Table specifies the Criticality Level in respect of a failure to achieve the Acceptable Service Level;

#### **Bands of Criticality Level**

2.3 Each Performance Indicator has a Criticality Level, as shown in the Performance Indicator Table. A Criticality Level of:

2.3.1 **'Band 1'** indicates a high priority or high concern deliverable that applies when one or more critical elements of the Services are not being performed

or met, when there is a severe impact on Customers or the public or the reputation of the Scheme;

2.3.2 **'Band 2'** indicates a medium priority that applies where there is an impact on Customers but there may be ways to work around the issue; and

2.3.3 **'Band 3'** indicates a low priority or low concern deliverable that applies where there is a breach of the Agreement which has an impact on performance of the Services.

## 2.4 **Liability**

For the avoidance of doubt, the Service Provider shall not be liable for any failure to achieve any Acceptable Service Level where and to the extent that such failure arises as a result of an Excusing Event, Relief Event or Force Majeure Event, provided that in each case the Service Provider complies with the provisions of **Part 17** of this Agreement (**Supervening Events**) in connection with any such events.

## 3. **Performance Monitoring**

3.1 The Service Provider shall accurately document all processes for the identification of performance against the PIs in accordance with **Schedule 8 (Contract Management and Reporting)**.

3.2 The Service Provider's performance in meeting the Service Levels in respect of each PI shall be reported, monitored and assessed every **[INSERT-TBC]** in accordance with **Schedule 8 (Contract Management and Reporting)**.

3.3 In addition to providing Performance Indicator Reports, the Service Provider shall measure and provide such Data as is reasonably required by WMCA Personnel for the purposes of monitoring the Service Provider's performance in meeting the Service Levels and PIs.

3.4 The Service Provider shall be responsible for ensuring that all Performance Indicator Reports are accurately prepared, using up to date and accurate Data.

3.5 If, as part of a quality monitoring exercise carried out in accordance with this agreement it is found that the Service Provider's performance is lower than that reported in the relevant Performance Indicator Report, and on the basis of the sample used in such exercise, the Service Provider has not met one or more of the Acceptable Service Levels, the performance level for the Month shall be adjusted accordingly, the failure to accurately report shall be treated as a Performance Indicator with a Criticality Level of Band 1 and the provisions of **paragraph 4** shall apply;

## 4. **Escalation Procedure**

4.1 Without prejudice to any other rights or remedies arising under this Agreement, if the Service Provider fails to achieve any of the Acceptable Service Levels for any of the Performance Indicator(s), WMCA shall have the right to serve notice on the Service

Provider to require the Service Provider to prepare an improvement plan (an "**Improvement Plan**") within:

- 4.1.1 two (2) Working Days of a written request by WMCA in the case of a Performance Indicator with a Criticality Level of Band 1;
  - 4.1.2 three (3) Working Days of a written request by WMCA in the case of a Performance Indicator with a Criticality Level of Band 2;
  - 4.1.3 five (5) Working Days of a written request by WMCA in the case of a Performance Indicator with a Criticality Level of Band 3.
- 4.2 The Improvement Plan shall set out:
- 4.2.1 the reasons for the failure;
  - 4.2.2 the impact the Service Provider reasonably expects such failure to have on the Scheme's programme;
  - 4.2.3 the impact the Service Provider reasonably expects such failure to have on Customers; and
  - 4.2.4 the Service Provider's proposed remedy or remedies for the failure, together with a proposed programme for implementation.
- 4.3 Following receipt of the Improvement Plan, WMCA shall notify the Service Provider in writing within:
- 4.3.1 two (2) Working Days in the case of a Performance Indicator with a Criticality Level of Band 1;
  - 4.3.2 three (3) Working Days in the case of a Performance Indicator with a Criticality Level of Band 2;
  - 4.3.3 five (5) Working Days in the case of a Performance Indicator with a Criticality Level of Band 3;
- whether or not it agrees with the Service Provider's proposed remedies and proposed programme for implementation ("**Response**").
- 4.4 If, pursuant to **paragraph 4.3**, WMCA confirms it agrees with the proposals, the Service Provider shall implement its proposed remedies and programme for implementation as set out in the Improvement Plan.
- 4.5 If, pursuant to **paragraph 4.3**, WMCA advises that it does not agree with the proposals, the Parties shall seek to resolve the issue(s) at a meeting between the Service Provider and,:
- 4.5.1 in the case of a Performance Indicator with a Criticality Level of Band 1 and 2, the WMCA Scheme Lead; and
  - 4.5.2 in the case of a Performance Indicator with a Criticality Level of Band 3, the Project Team

such meeting to be convened within three (3) Working Days of the Response.

4.6 If, following the meeting referred to in **paragraph 4.5**, the Parties cannot agree the remedies and/or the programme for implementation, or in the event that a meeting has not been convened within three (3) Working Days pursuant to **paragraph 4.5**, then the Parties shall seek to resolve the issue(s) at a meeting between the Service Provider and:

4.6.1 in the case of a Performance Indicator with a Criticality Level of Band 1 or 2, the Managing Director of Transport for West Midlands; or ,

4.6.2 in the case of a Performance Indicator with a Criticality Level Band 3, the WMCA Scheme Lead,

such meeting to be convened within three (3) Working Days of the meeting held pursuant to **paragraph 4.5** or, where no such meeting was held, within five (5) Working Days of the Response.

4.7 If, following the meeting referred to in **paragraph 4.6.2**, the Parties cannot agree the remedies and/or the programme for implementation, or in the event that a meeting has not been convened within the relevant timescale set out in **paragraph 4.6**, then the Parties shall seek to resolve the issue(s) at a meeting between the Service Provider and the Managing Director of Transport for West Midlands, such meeting to be convened within (3) Working Days of the meeting held pursuant to **paragraph 4.6.2** or, where no such meeting was held, within five (5) Working Days of the Response;

4.8 If, following the meeting referred to in **paragraph 4.6.1** or **4.7** the Parties cannot agree the remedies and/or the programme for implementation, or in the event that a meeting has not been convened within the relevant timescales, then **clause 51 (Step In Rights)** and **clause 52 (Termination)** shall apply.

## 5. Remedies for Failure to Achieve Acceptable Service Levels

5.1 If:

5.1.1 the Service Provider fails to implement an Improvement Plan approved by WMCA pursuant to **paragraph 4.4**;

5.1.2 the Service Provider fails to provide an Improvement Plan;

5.1.3 performance of any one or more Performance Indicator(s) with a Criticality Level of Band 1 falls below the Acceptable Service Level in two (2) or more Months in any two (2) Month period;

5.1.4 performance of a Performance Indicator with a Criticality Level of Band 2 falls below the Acceptable Service Level for that same Performance Indicator in two (2) or more Months in any two (2) Month period;

5.1.5 performance of a Performance Indicator with a Criticality Level of Band 3 falls below the Acceptable Service Level for that same Performance Indicator in two (2) or more Months in any three (3) Month period;

then the provisions of **clauses 51 (Step In Rights)** and **52 (Termination)** shall apply.

**6. Changes to Performance Indicators**

6.1 WMCA and the Service Provider may at any time request a Change to any part or all of the Performance Management Regime set out in this **Schedule 5**.

6.2 Any such Changes to the Performance Management Regime shall be implemented in accordance with the Change Control Request Procedure.



**APPENDIX 1**

**Performance Indicator Table**

<b>Ref</b>	<b>Performance Indicator Title</b>	<b>Description</b>	<b>Acceptable Service Level</b>	<b>Criticality Level</b>
[INSERT]	[INSERT]	[INSERT]	[INSERT]	[INSERT]
		[TABLE TO BE EXPANDED/POPULATED AS REQUIRED]		

**SCHEDULE 6**

**NOT USED**

## SCHEDULE 7

### Change Control Request Procedure

#### 1. Introduction

- 1.1 This **Schedule 7** sets out the:
- 1.1.1 resources to be provided by the Service Provider to support the Change Control Request Procedure;
  - 1.1.2 process to be followed by the Parties for proposing, reviewing and approving Changes;
  - 1.1.3 categories of Changes;
  - 1.1.4 basis of funding Changes made as a result of a Change in Law;
  - 1.1.5 process for requesting Additional Services; and
  - 1.1.6 principles to be adopted by the Service Provider when pricing Changes.
- 1.2 The principles for pricing of the Service Provider's charges for Additional Services are set out in **Schedule 24 (Additional Services)**.
- 1.3 All Changes shall be categorised as one of the categories of Changes set out in **paragraph 3 (Categories of Change and Additional Services)** below.

#### 2. Change Manager and Resources

- 2.1 The Service Provider shall nominate a Change Manager to manage and act as the single point of contact for WMCA in relation to:
- 2.1.1 Changes; and
  - 2.1.2 the Change Control Request Procedure.
- 2.2 The Service Provider shall, and shall procure that its Sub-Contractors shall, make available sufficient Service Provider Personnel and resources in order to respond promptly to Change Control Requests raised in accordance with this Agreement.
- 2.3 Changes to the Trial Operational Playbook shall be managed under **paragraph 2 of Schedule 8 of Contract Management and Reporting Procedure**.

#### 3. Categories of Changes and Additional Services

- 3.1 All Changes shall be categorised as one of the following:

Category of Change	Definition	Party entitled to raise the Change
General Change	Any Change other than:	WMCA or the Service

Category of Change	Definition	Party entitled to raise the Change
	<p><b>(d)</b> a Mandatory Change; or</p> <p><b>(e)</b> an Internal Change.</p>	Provider
<b>Internal Change</b>	<p>Any Changes proposed by the Service Provider which do not impact:</p> <p><b>(f)</b> the terms and conditions of this Agreement;</p> <p><b>(g)</b> the Planned Operational Commencement Date;</p> <p><b>(h)</b> the WMETS Assets;</p> <p><b>(i)</b> the Service Systems;</p> <p><b>(j)</b> the Interfaces;</p> <p><b>(k)</b> the provision and availability of the of the Services;</p> <p><b>(l)</b> the provision and availability of the West Midlands eScooter Trial Services;</p> <p><b>(m)</b> WMCA;</p> <p><b>(n)</b> an Interested Party;</p> <p><b>(o)</b> Other eScooter Service Provider;</p> <p><b>(p)</b> an Other Service Provider; or</p> <p><b>(q)</b> a Third Party.</p>	Service Provider
<b>Mandatory Change</b>	<p>Any Change that either Party is required to implement as part of the Agreement and which is necessitated by, or results directly from:</p> <p><b>(a)</b> a Change in Law, except if and to the extent that the actions to be undertaken by the Service Provider as a result constitute or relate to Additional Services;</p> <p><b>(b)</b> a change or changes to:</p> <p>(i) one or more of the Other Service Provider Systems, and/or Third Party Systems; and/or</p> <p>(ii) service delivery processes of Other Service Providers, and/or Third Parties; and/or</p> <p><b>(c)</b> the Partial Termination of this Agreement, which takes effect after</p>	WMCA or the Service Provider

Category of Change	Definition	Party entitled to raise the Change
	<p>the Effective Date and which impacts on:</p> <ul style="list-style-type: none"> <li>(i) the design or functionality of the WMETS Assets and/or Service Systems;</li> <li>(ii) the provision of the Services;</li> <li>(iii) the operation or administration of the West Midlands eScooter Trial Services; or</li> <li>(iv) otherwise on the terms of this Agreement.</li> </ul>	

3.2 WMCA shall be entitled acting reasonably to require the Service Provider to provide Additional Services from time to time in accordance with the procedure for a General Change set out in this **Schedule 7**.

#### 4. Change Request Process — General Principles

4.1 At all times, the Service Provider and WMCA shall conduct discussions relating to any proposed Changes in good faith.

4.2 The Parties shall submit all Change Control Requests in writing, including in each case reasonable detail on:

4.2.1 a description of the requested change;

4.2.2 the basis and drivers for the change;

4.2.3 potential impacts of the change (on the West Midlands eScooter Trial Services or otherwise) that may need consideration;

4.2.4 the possible implementation process (and any Milestones related to that implementation) and sign-off procedure.

4.3 The Service Provider will undertake a more detailed impact assessment of changes including in terms of cost, Scheme build and timescales for implementation.

4.4 Until such time as a Change is approved by WMCA the Service Provider and WMCA shall, unless otherwise required under this **Schedule 7** or agreed in writing, continue to perform their respective obligations under the Agreement as if the Change had not been requested.

4.5 In the event of a dispute between the Parties in respect of a Change Control Request, the Parties shall resolve the matter in accordance with the Dispute Resolution Procedure.

## 5. Testing

5.1 All work performed pursuant to a Change Authorisation shall be subject to Testing, which shall be conducted in accordance with and subject to the provisions of:

5.1.1 **clause 10** (Testing of WMETS Assets and Service Systems);

5.1.2 **Schedule 3** (Milestones and Deliverables); and

5.1.3 **Schedule 4** (Testing Regime).

## 6. General Changes Proposed by WMCA

6.1 If WMCA wishes to request a General Change, it shall serve on the Service Provider a Change Control Request setting out:

6.1.1 WMCA's reasons for proposing the General Change;

6.1.2 sufficient details of the General Change to enable the Service Provider to calculate and assess cost and impact;

6.1.3 the proposed date by which WMCA wishes the General Change to be implemented and the proposed Milestone Dates (if any); and

6.1.4 if there are any dates by which a decision or response is critical.

6.2 As soon as reasonably practicable and in any event within the periods expressly agreed upon in writing between the Parties, the Service Provider shall at its own cost deliver to WMCA:

6.2.1 an Initial Response in writing (providing an estimate of resource requirement and cost and timing of implementation of the General Change);

6.2.2 an Impact Assessment (providing further and more substantive detail on the impact of the General Change, resource requirement, timescale and cost, impact on the WMETS Assets, the Specifications and other changes that may be needed in order to implement the General Change).

6.3 The parties will in good faith meet to discuss and agree the details of an Impact Assessment as soon as reasonably practicable following the delivery of the same to WMCA. If the Service Provider and WMCA cannot agree on the contents of the Impact Assessment after a period of ten (10) Working Days following the date of the first meeting to discuss the Impact Assessment the matters in dispute shall be determined in accordance with the Dispute Resolution Procedure (unless, and subject to WMCA's right to withdraw the Change Control Request at any time).

- 6.4 Within ten (10) Working Days of an Impact Assessment being agreed or determined pursuant to **paragraph 6.3** above, WMCA shall either:
- 6.4.1 issue to the Service Provider, a Change Authorisation requiring the Service Provider to implement the General Change in accordance with the agreed or determined Impact Assessment; or
  - 6.4.2 notify the Service Provider that it is rejects the Change Control Request.
- 6.5 Subject to agreement on the scope and implementation of a General Change, the Service Provider shall implement the relevant General Change in accordance with the terms of the agreed or determined Impact Assessment.

## 7. **General Changes Proposed by the Service Provider**

- 7.1 If the Service Provider wishes to propose a General Change, the Service Provider shall provide to WMCA a Change Control Request together with an Impact Assessment relating to such requested General Change.
- 7.2 Such Impact Assessment shall contain the detail set out in **paragraph 6 (General Changes Proposed by WMCA)** above.
- 7.3 Upon receipt of a Change Control Request and Impact Assessment from the Service Provider, the provisions of **paragraph 6 (General Changes Proposed by WMCA)** shall apply (mutatis mutandis).
- 7.4 Within (ten) 10 Working Days of an Impact Assessment being agreed or determined pursuant to **paragraph 7.3** above, WMCA shall either:
- 7.4.1 issue to the Service Provider, a Change Authorisation requiring the Service Provider to implement the General Change in accordance with the agreed or determined Impact Assessment; or
  - 7.4.2 notify the Service Provider that it is rejects the Change Control Request.
- 7.5 Upon notice of a Change Authorisation being issued by WMCA the provisions of **paragraph 6 (General Changes Proposed by WMCA)** above shall apply in respect of the General Change.

## 8. **Mandatory Changes**

- 8.1 Subject to **paragraph 8.2** below:
- 8.1.1 the provisions of **paragraphs 6 of this Schedule 7** shall apply in respect of any Mandatory Change required as a result of a Change in Law (mutatis mutandis), provided always that: where a Mandatory Change is required as a result of a Change in Law, the provisions of paragraph 9 (Costs of Changes in Law) shall apply in addition to the provisions of this **paragraph 8**; and

8.1.2 the provisions of **paragraph 6 of this Schedule 7** shall apply in respect of any other Mandatory Change (mutatis mutandis).

8.2 The Service Provider shall at all times, where possible, carry out the implementation of a Mandatory Change in accordance with WMCA's directions, notwithstanding that any details contained in the relevant Initial Response and/or Impact Assessment have not been agreed or determined pursuant to **paragraph 8.1**.

9. **Costs of Changes in Law**

Each Party shall be responsible for its own costs in complying with their respective obligations under this Agreement incurred as a result of, or in relation to, a Change in Law.



## SCHEDULE 8

### Contract Management and Reporting Procedure

#### 1. Introduction

1.1 This **Schedule 8** sets out the:

1.1.1 contract management procedures that will be used by the Parties to manage the relationship between:

1.1.1.1 WMCA and WMCA Personnel;

1.1.1.2 relevant members of the:

(a) WMCA;

(b) Interested Parties;

(c) Other eScooter Service Providers; and

(d) Other Service Providers;

1.1.1.3 the Service Provider;

1.1.2 Management Information and reporting requirements, with which the Service Provider shall comply during the Term.

1.2 The objective of this **Schedule 8** is to ensure that a successful working relationship is maintained between the Parties during both the Implementation Phase and Operational Phase, so as to enable:

1.2.1 the implementation of the WMETS Assets, Service Systems and Services in a timely manner and, in any event, in accordance with the:

1.2.1.1 Milestones and Milestone Dates;

1.2.1.2 the Implementation Plan; and

1.2.1.3 Trial Operational Playbook.

1.2.2 WMCA to monitor the Service Provider's performance of the Services throughout the Term.

#### 2. Type and Conduct of Meetings

2.1 Both Parties shall ensure that the following meetings are held or otherwise undertaken for Contract Management and Reporting:

- 2.1.1 **Programme Board:-** To be held monthly (and at such other times as either party may reasonably request in writing) covering such matters as the parties consider applicable and or relevant as relate to **paragraph 1.2 of this Schedule 8**;
  - 2.1.2 **Project boards:-** To be held monthly (and at such other times as either party may reasonably request in writing) covering such matters as the parties consider applicable and or relevant as relate to **paragraph 1.2 of this Schedule 8** in regards to the matter relating to each of the various Trial Zones;
  - 2.1.3 **Stakeholder Advisory Board:-** To be held on a schedule agreed prior to the Operational Commencement Date (and at such other times as either party may reasonably request in writing) covering such matters as the parties consider applicable and or relevant as relate to **paragraph 1.2 of this Schedule 8**;
  - 2.1.4 **Stakeholder Liaison Group:-** To be held on a schedule agreed prior to the Operational Commencement Date (and such other times as either party may reasonably request in writing) covering such matters as the parties consider applicable and or relevant as relate to **paragraph 1.2 of this Schedule 8** in regards to the matter relating to each of the various Trial Zones; and
  - 2.1.5 are attended by appropriate Representatives of the relevant Party having regard to the agenda for the same.
- 2.2 At its sole discretion, WMCA or relevant members of WMCA Personnel, shall have the right to invite members of:
- 2.2.1 WMCA;
  - 2.2.2 Interested Parties;
  - 2.2.3 Other eScooter Service Providers;
  - 2.2.4 Other Service Providers;
  - 2.2.5 the Insurance Provider; and
  - 2.2.6 the Sponsor,
- to any of the Contract Management Meetings set out in this **Schedule 8**.
- 2.3 All Contract Management Meetings shall be held in the West Midlands at such venue as agreed or otherwise virtually using online virtual meeting software as may be agreed between the Parties prior to the relevant meeting or through any agreed medium of communication,
- 2.4 A member of WMCA Personnel shall:

- 2.4.1 record minutes of each meeting;
- 2.4.2 circulate the minutes to the attendees (including the Service Provider's Representatives) for review; and
- 2.4.3 create, update and maintain an action log detailing actions and key decisions agreed at each meeting. Such actions shall only be deemed closed when the Parties have agreed them to be closed:
  - 2.4.3.1 at a relevant meeting; or
  - 2.4.3.2 expressly in writing.

### 3. **Contract Management Meetings scope**

- 3.1 Contract Management Meetings may cover:
  - 3.1.1 reviewing and agreeing and change amendments and or additions to the Trial Operational Playbook;
  - 3.1.2 maintaining, reviewing and agreeing the Incidents to be recorded in the incident log detailing Incidents arising during the Implementation Phase;
  - 3.1.3 resolving incidents affecting the West Midlands eScooter Trial Services, that have not been resolved at an operational level;
  - 3.1.4 resolving and mitigating Risks affecting the West Midlands eScooter Trial Services;
  - 3.1.5 monitoring progress of the provision of Design Services (and Design Deliverables) and Build Services (and Build Deliverables) against the Milestones, Milestone Dates and the Implementation Plan;
  - 3.1.6 reviewing the level of the Service Provider's resources (including Service Provider Personnel) assigned to the provision of the Services and to meet the Implementation Plan;
  - 3.1.7 reviewing preparations for Milestones;
  - 3.1.8 reviewing unresolved Risks and Incidents;
  - 3.1.9 reviewing Performance Indicator Reports;
  - 3.1.10 reviewing and agreeing Changes raised in accordance with the Change Control Request Procedure;
  - 3.1.11 reviewing significant commercial, legal and media issues affecting the provision of the Operational Services and West Midlands eScooter Trial Services;
  - 3.1.12 identifying opportunities for improvement to the delivery of the Services;

3.1.13 prioritising Change Control Requests and Internal Changes, as WMCA may require (WMCA acting reasonably),

and such other matters that either Party may notify to the other in the advance of such meeting.

3.2 Notwithstanding any other obligations of the Service Provider to supply reports to WMCA, the Service Provider shall provide copies of any:

3.2.1 Incident Reports; and

3.2.2 other reports relating to:

3.2.2.1 Excusing Events;

3.2.2.2 Relief Events; and

3.2.2.3 Force Majeure Events,

at each Contract Management Meeting.

#### 4. **Performance Indicator Reporting**

4.1 The Service Provider shall provide Performance Indicator Reports each Month to WMCA (in a standard format approved by WMCA acting reasonably) on or before the Performance Indicator Report Date to WMCA Personnel.

4.2 As a minimum, the Performance Indicator Reports shall report on the following the Service Provider's performance in respect of:

4.2.1 the Performance Indicators set out in Schedule 5 (Service Level Agreement); and

4.2.2 any additional Performance Indicators as may be required from time to time pursuant to:

4.2.2.1 **Schedule 5 (Service Level Agreement); and/or**

4.2.2.2 **Schedule 7 (Change Control Request Procedure).**

4.3 If WMCA or the Service Provider identifies any errors, omissions or discrepancies in the Performance Indicator Reports, the Service Provider shall:

4.3.1 promptly correct such errors, omissions or discrepancies; and

4.3.2 republish the Performance Indicator Reports within two (2) Working Days of such errors, omissions or discrepancies being identified, or such other period as the Parties may agree in writing.

5. **Financial reporting**

- 5.1 The Service Provider shall provide Financial Reports to WMCA no later than five (5) Working Days in advance of the relevant Contract Management Meeting.
- 5.2 The financial reports shall include such information on financial aspects of the provision of the Services as WMCA reasonably requires from time to time, including:
  - 5.2.1 the details where and to the extent required under:
    - 5.2.1.1 the Specification,
    - 5.2.1.2 eScooter Legislation; and
    - 5.2.1.3 **Schedule 3 (Milestones and Deliverables);**
- (the "**Financial Reports**");
- 5.3 All Financial Reports provided by the Service Provider shall comply with standards, working practice and principles required under the Specifications.

6. **Incident reporting**

- 6.1 The Service Provider shall promptly:
  - 6.1.1 identify all Incidents that come to the Service Provider's attention, whether raised by Service Provider Personnel, its Sub-Contractors, an Interested Party, an Other Service Provider, the Insurance Provider, Third Parties (including Customers) or by WMCA, as a result of or in connection with Testing and/or during the provision of the Services;
  - 6.1.2 record the Incident in the Joint Incident Log (which, in the case of a Security Incident, shall be no later than four (4) hours after it came to the Service Provider's attention);
  - 6.1.3 prepare an Incident Report in relation thereto in such format as WMCA may require from time to time;
  - 6.1.4 notify the relevant WMCA Personnel of the Incident; and
  - 6.1.5 notify any relevant Interested Party, Other Service Provider, Insurance Provider and/or Third Party of any Incident which may affect, or of any Errors or problems arising from the Interface with such party and the action being taken by the Service Provider to mitigate and/or resolve such Incident and/or Error in accordance with the Incident Communication Plan.
- 6.2 At any time during the Term, WMCA shall be entitled to call, and the Service Provider shall be required to attend, any additional meetings to discuss each new Incident and any other outstanding Incidents on such notice as WMCA deems appropriate.

- 6.3 The Service Provider shall, and shall procure that its Sub-Contractors shall, as soon as possible record each Incident arising from time to time in the Joint Incident Log.
- 6.4 The Service Provider shall comply with its obligations under schedule 3 (Milestones and Deliverables) which shall apply mutatis mutandis in respect of each Error and Service Issue which arises in connection with the Testing and/or the provision of the Services.
- 6.5 The Service Provider shall follow the instructions of WMCA Personnel in relation to the identification and resolution of Incidents and the recording of Incidents.

7. **Other reporting obligations**

- 7.1 The Service Provider shall provide:
  - 7.1.1 all reports; and
  - 7.1.2 all Management Information,in accordance with the provisions and timeframes set out in the Specifications and Service Level Agreement and as otherwise set out in this Agreement.
- 7.2 Without limiting the Service Provider's obligations to provide any other reports and Management Information under this Agreement, the Service Provider shall provide to WMCA:
  - 7.2.1 all information required pursuant to the Data Protection Legislation and/or the FOI Legislation in accordance with:
    - 7.2.1.1 **clause 42 (Information Compliance);** and
    - 7.2.1.2 **Schedule 13 (Information Compliance);**
  - 7.2.2 an up to date Asset Register in accordance with **Schedule 10 (Asset Management);** and
  - 7.2.3 all plans required under this Agreement, in accordance with the relevant provisions of this Agreement.

## SCHEDULE 9

### Key Personnel

#### 1. Introduction

This **Schedule 9** sets out the role and description of the Key Personnel and relevant member of the Service Provider Personnel assigned to such role for the:

1.1 Implementation Phase; and

1.2 Operational Phase.

#### 2. Implementation Phase

During the Implementation Phase, the Service Provider shall provide the following Key Personnel:

Table 1: Implementation Phase

Role	Description	Name of Service Provider Personnel
[INSERT]	[INSERT]	[INSERT]

#### 3. Operational Phase

During the Operational Phase, the Service Provider shall provide the following Key Personnel:

Table 2: Operational Phase

Role	Description	Name of Service Provider Personnel
[INSERT]	[INSERT]	[INSERT]

## SCHEDULE 10

### Asset Management

#### 1. Items to be included in the Asset Register

- 1.1 The Service Provider shall create, maintain and update the Asset Register in accordance with **paragraph 4 (Updates to Asset Register)** below.
- 1.2 For each WMETS Asset, the Asset Register shall include the details set out in **paragraph 2 (Details to be included)** below.
- 1.3 In addition, the Asset Register shall contain details of:
  - 1.3.1 all security devices and security keys used by the Service Provider;
  - 1.3.2 any communications or connectivity infrastructure provided as part of, or in relation to, the WMETS Assets, Service Systems and Services; and
  - 1.3.3 any other items identified in the Service Provider Solution to be provided by the Service Provider for the purpose of the provision of the WMETS Assets, Service Systems and Services.

#### 2. Details to be included

- 2.1 The Asset Register shall include such details as WMCA and the Service Provider may agree from time to time.
- 2.2 The Service Provider shall ensure that a unique identity number is allocated to each WMETS Asset and that, as a minimum, the Asset Register includes the following details:
  - 2.2.1 the Service element that the WMETS Asset is used for;
  - 2.2.2 the physical location of each WMETS Asset;
  - 2.2.3 a full description of the WMETS Asset;
  - 2.2.4 the purchase date of the WMETS Asset;
  - 2.2.5 the supplier of the WMETS Asset;
  - 2.2.6 the anticipated life expectancy of the WMETS Asset;
  - 2.2.7 the condition of the WMETS Asset, e.g.:
    - 2.2.7.1 new; or
    - 2.2.7.2 used;
  - 2.2.8 details of:



- 2.2.8.1 the maintenance and support arrangements in place in respect of the WMETS Asset, such details shall include:
  - (a) name of Sub-Contractor providing such support; and
  - (b) expiry date of Sub-Contract;
- 2.2.8.2 maintenance and refurbishment history of each WMETS Asset;
- 2.2.9 the warranty details for each WMETS Asset (and its associated components);
- 2.2.10 the manufacturer's serial number for each WMETS Asset;
- 2.2.11 the current status/usage, e.g.:
  - 2.2.11.1 stock item;
  - 2.2.11.2 live;
  - 2.2.11.3 test systems;
  - 2.2.11.4 disposed;
  - 2.2.11.5 missing;
  - 2.2.11.6 out of service; and
  - 2.2.11.7 in maintenance.
- 2.3 In terms of the Service Systems, the Asset Register shall also include the following:
  - 2.3.1 type of Service System:
    - 2.3.1.1 Software application used to develop Service System;
    - 2.3.1.2 Specially Written Software contained within the Service System; and
  - 2.3.2 installation date;
  - 2.3.3 version number;
  - 2.3.4 release number and release date;
  - 2.3.5 owner of the Intellectual Property Rights in such Service System;
  - 2.3.6 if Intellectual Property Rights are licensed, details of the licensor, cost of licence and date of expiry;

### 3. **Compliance with Specifications and Service Provider Solution**

- 3.1 At all times, the Service Provider shall ensure that all WMETS Assets used comply with the provisions of the:

3.1.1 Specifications; and

3.1.2 Service Provider Solution.

**4. Updates to Asset Register**

The Service Provider shall:

4.1 provide the initial Asset Register within one (1) Month following the Effective Date; and thereafter

4.2 update the Asset Register:

4.2.1 each Month; and

4.2.2 otherwise as soon as reasonably practicable (being no greater than ten (10) Working Days) after WMCA's written request; and

4.3 promptly send a copy of the updated Asset Register to WMCA.

## SCHEDULE 11

### Service Provider Confidential Information

The Service Provider Confidential Information is limited to the following information confidential to the Service Provider contained within this Agreement, comprising:

1. [INSERT – TBC]

## SCHEDULE 12

### Security Policy

This **Schedule 12** describes the Service Provider's obligations in respect of the preparation and maintenance of and compliance with the Security Policy and Security Plan.

The Security Policy and Security Plan set out the Service Provider's obligations in respect of ensuring the security of the Terminals, Service Systems and the Services.

The Security Policy covers the security requirements for all Service Systems used in the West Midlands eScooter Trial Services, and includes, as appropriate, physical security where compliance is necessary to meet specific requirements of certain standards such as PCI DSS.

#### 1. Security Principles

- 1.1 The Service Provider agrees that security and Data confidentiality in connection with the Terminals and Services Website, Service Systems and the Services are of key importance and fundamental to the evidential and financial security requirements necessary to administer and operate the West Midlands eScooter Trial Services and to retain public confidence.
- 1.2 The Service Provider shall, and shall procure that its Sub-Contractors shall, at all times ensure that the Terminals, Service Systems and Services:
  - 1.2.1 avoid the security threats to the Terminals, Service Systems and Services in accordance with the Specifications; and
  - 1.2.2 comply with the requirements of the latest version of PCI DSS, including application for (if applicable) and maintenance of PCI DSS accreditation and certification;
  - 1.2.3 comply with ISO/ IEC 27001:2013 (Security Techniques - Information Security Management Systems - Requirements);
  - 1.2.4 ensure that:
    - 1.2.4.1 the Security Policy and Security Plan are approved, in accordance with **Schedule 3 (Milestones and Deliverables)**; and
    - 1.2.4.2 Testing of the Security Plan is carried out in accordance with:
      - (a) **Schedule 4 (Testing Regime)**;
      - (b) **Schedule 3 (Milestones and Deliverables)** during the Implementation Phase; and

(c) **paragraph 5 (Testing of the Security Plan during the Operational Phase) of this Schedule 12;**

- 1.2.5 keep all Data, Information, Premises, Terminals and Service Systems used by the Service Provider (and/or its Sub-Contractors) in connection with the Service Systems and Services secure and protected against all loss, damage, corruption, unavailability and unauthorised use, access or disclosure in accordance with standards not to fall below those:
  - 1.2.5.1 set out in this **Schedule 12**; and
  - 1.2.5.2 dictated by Good Industry Practice;
- 1.2.6 ensure that the Security Plan allows WMCA Confidential Information and all Personal Data to be protected in accordance with the provisions of this Agreement;
- 1.2.7 to reasonably support and assist WMCA Personnel with material security initiatives of WMCA from time to time relating to significant risk issues, to the extent the same have been communicated by WMCA in writing to the Service Provider;
- 1.2.8 both parties shall be reasonably required to notify each other as soon as possible once aware of any actual or threatened breach in connection with the security of the Terminals, Service Systems and the Services;

2. Security Plan Provision

- 2.1 The Initial Security Plan shall be set out in **Annex A (Initial Security Plan)** to this **Schedule 12**.
- 2.2 The Initial Security Plan shall be:
  - 2.2.1 refined, expanded and amended by the Service Provider; and
  - 2.2.2 delivered to WMCA for approval, andthe document so approved shall be the "**Security Plan**".
- 2.3 The Service Provider shall ensure that the Security Plan deals as a minimum with:
  - 2.3.1 the security requirements set out in:
    - 2.3.1.1 this **Schedule 12**; and
    - 2.3.1.2 the Specifications; and
  - 2.3.2 provisions that the Service Provider deems necessary or WMCA may reasonably request from time to time.

### 3. Security Incidents

- 3.1 The Service Provider shall, and if applicable shall procure that its Sub-Contractors shall:
  - 3.1.1 as soon as possible identify all Security Incidents relating to, or otherwise having an impact on, the Terminals, Service Systems and the Services;
  - 3.1.2 immediately record each Security Incident in the Incident Log;
  - 3.1.3 comply with its obligations under **clause 39 (Security Policy)** in connection with each Security Incident; and
  - 3.1.4 without limitation to the other provisions of this Agreement, follow WMCA's instructions in relation to the:
    - 3.1.4.1 identification and resolution of each Security Incident;
    - 3.1.4.2 Terminals, Service Systems and Services; and
    - 3.1.4.3 recording of Incidents, Errors and Service Issues on the Incident Log, as applicable.

### 4. Testing of the Security Plan during the Operational Phase

- 4.1 The Service Provider shall, in relation to the Security Plan and at no additional cost to WMCA conduct the following Tests no less frequently than every six (6) Months from the Operational Commencement Date:
  - 4.1.1 System Level Tests, which shall Test each component of the:
    - 4.1.1.1 Security Plan; and
    - 4.1.1.2 Service Systems,and the capabilities and procedures undertaken by the Service Provider's technical and operational Service Provider Personnel; and
  - 4.1.2 Total Service Tests, which shall Test the Service Provider's compliance with the Security Policy.
- 4.2 The Service Provider shall:
  - 4.2.1 produce Test Plans and Test Specifications for each Test required by **paragraph 4.1.1** above; and
  - 4.2.2 make copies of such Test Plans and Test Specifications available to WMCA upon request,
  - 4.2.3 provide WMCA with ten (10) Working Days' notice of its intention to carry out the Tests;

- 4.2.4 entitle WMCA, at its sole discretion, to require WMCA Personnel to participate in Test Witnessing of Tests performed in accordance with this **Schedule 12**; and
- 4.2.5 provide WMCA with a copy of the results of each Test performed in accordance with this **Schedule 12**.
- 4.3 Where Tests require downtime of the whole or part of the Service Systems and/or Services, the date and timing of such Tests shall be subject to the prior agreement of WMCA (such agreement not to be unreasonably withheld or delayed).
- 4.4 The Service Provider shall liaise with WMCA in respect of the planning, performance and review of each Test.

## ANNEX A

### Initial Security Plan

#### Security Policy

##### 1. Purpose

- 1.1. The purpose of this Security Policy sets out the Service Provider's obligations in respect of ensuring the security of the Terminals, Service Systems and the Services.
- 1.2. The confidentiality, integrity and availability of information, in all its forms, are critical to the on-going functioning of the Service Provider. Failure to adequately secure information increases the risk of financial and reputational losses.
- 1.3. This Security Policy outlines the Service Provider's approach to information security management. It provides the guiding principles and responsibilities necessary to safeguard the security of the Terminals, Service systems and Services.
- 1.4. The Service Provider is specifically committed to preserving the confidentiality, integrity and availability of documentation and data supplied by, generated by and held on behalf of third parties pursuant to the fulfilment of its obligations as agreed upon accordance with the requirements of data security standard ISO 27001.

##### 2. Policy

- 2.1. The following information security principles provide overarching governance for the security and management of information by the Service Provider:
  - 2.1.1. information should be classified according to an appropriate level of confidentiality, integrity and availability and in accordance with relevant legislative, regulatory and contractual requirements;
  - 2.1.2. All users covered by the scope of this policy must handle information appropriately and in accordance with its classification level
  - 2.1.3. information should be both secure and available to those with a legitimate need for access in accordance with its classification level. Access to information will be on the basis of *need to know* and granted the authority to view such information;
  - 2.1.4. information will be protected against unauthorised access and processing in accordance with its classification level;
  - 2.1.5. breaches of this Security Policy shall be reported to the relevant department of the Service Provider.



### 3. Security Compliance

3.1. The Service Provider hereunder states its compliance with the following standards and security policies:

3.1.1. PCI DSS - Self-signed Attestation of Compliance for PCI-DSS-v3\_2-SAQ-A (for Worldpay Corporate IFRAME, Redirect payments);

3.1.2. PCI-DSS-v3\_2-SAQ-A\_EP (in case of payments that need to use Front-side-encryption) and results from approved scanning vendor (though we comply with A-EP, we need to attest only a more loose level (A), when we do not process card data anyways);

3.1.3. ISO 27001 - no certificate required, self-assessment and self-certification is sufficient;

3.1.4. AFAIK no documentation as described is currently present.

### 4. Suppliers

4.1. All the suppliers of the Service Provider will abide by the Service Provider's Security Policy, or otherwise be able to demonstrate corporate security policies providing equivalent assurance. This includes:

4.1.1. Compliance with EU legislation; and

4.1.2. EU standards on information security policies.

4.2. The Service Provider maintains and enforces commercially reasonable information security and physical security policies, procedures and standards, that are designed to:

4.2.1. ensure the security and confidentiality of client records and information;

4.2.2. protect against any anticipated threats or hazards to the security or integrity of such records; and

4.2.3. protect against unauthorised access to or use of such records or information which could result in substantial harm.

4.1 Any security breach will be handled in accordance with the relevant Service Provider's policies on data breaches.



## SCHEDULE 13

### Information Compliance

#### 1. Information

This **Schedule 13** sets out the parties obligations in respect of compliance with:

- 1.1 Data Protection Legalisation; and
- 1.2 FOI Legislation.

#### 2. Interpretation

References to Articles are to articles of the General Data Protection Regulation.

#### 3. Data protection - General

- 3.1 The parties acknowledge and agree that for the purposes of this Agreement:
  - 3.1.1 The Service Provider and WMCA are Data Controllers for data they process.  
and
  - 3.1.2 the Service Provider and WMCA are Joint Controllers of any Shared Data.
- 3.2 Each party shall comply with its obligations under Data Protection Legislation in respect of all Personal Data (including for the avoidance of doubt the Shared Data) Processed pursuant to this Agreement.
- 3.3 Each Party shall comply with its obligations under the data sharing protocol set out in (or to be developed by the parties in accordance with) **Appendix B** to this **Schedule 13** (the "**Protocol**").
- 3.4 Nothing in the Protocol shall restrict either party's ability to review and revise its own protocols regarding its own compliance with Data Protection Legislation.
- 3.5 The parties agree to review and (where necessary) revise the provisions of this **Schedule 13** to reflect any changes in Data Protection Legislation, updated guidance, codes of practice or similar issued by the Information Commissioner's Office or any other relevant Supervisory Authority. At the request of either party to revise the provisions of this **Schedule 13** in accordance with this **paragraph 3.5**, the parties shall set up a committee (involving appropriately experienced representatives of both parties) to discuss and agree the changes that are required in accordance with the Change Control Request Procedure.

#### 4. Shared Data

Each party agrees to comply with the obligations set out in this **paragraph 4** in respect of the Shared Data.

#### 4.1 **Information and Access to Personal Data**

4.1.1 The parties shall agree, as soon as reasonably practicable following the signing of this Agreement, the wording of the Privacy Notices which will be provided to Data Subjects before their Personal Data which will constitute Shared Data is collected (the "**Privacy Notice**"). The Privacy Notice shall:

- 4.1.1.1 be accurate and complete;
- 4.1.1.2 be sufficient in order for the Data Subject's Personal Data to be Processed in the manner set out in the Protocol;
- 4.1.1.3 identify the data controller and provide contact details;
- 4.1.1.4 set out the legal basis on which, and the purposes for which, data will be processed;
- 4.1.1.5 set out the categories of personal data that will be processed;
- 4.1.1.6 explain how rights under the Data Protection Act 2018 can be exercised;
- 4.1.1.7 provide any other information needed to secure that the personal data is processed fairly and transparently; and
- 4.1.1.8 comply with Data Protection Legislation and all guidance issued by a relevant Supervisory Authority.

4.1.2 The party who initially obtains the Shared Data from a Data Subject shall be responsible for:

- 4.1.2.1 the provision of the Privacy Notice to the Data Subject; and
- 4.1.2.2 obtaining any consents that may be required from the Data Subject (in each case to the extent necessary to comply with Data Protection Legislation).

#### 4.2 **Processing Shared Data**

Each party shall only Process the Shared Data for the Shared Data Purpose (or as otherwise agreed between the parties in writing from time to time) and always in accordance with their respective obligations under this **Schedule 13** and in compliance with Data Protection Legislation and the Protocol.

#### 4.3 **Retention and Deletion of Shared Data**

4.3.1 Each party shall only retain the Shared Data provided by the other party in accordance with Data Protection Legislation and in accordance with any retention periods stated in the Protocol.

4.3.2 When Data Protection Legislation or the Protocol require either party to delete any Shared Data, that party shall promptly securely delete or destroy such Shared Data (in the absence of any supervening legal requirement to do otherwise).

#### 4.4 **Shared Data - Data Subject Rights and Personal Data Breaches**

Each party shall perform its obligations under the Protocol in respect of:

4.4.1 any Enquiry; and

4.4.2 any Personal Data Breach.

### 5. **WMCA Data and Service Provider Data**

5.1 Each party shall without undue delay (and in any event within 24 hours) notify the other on becoming aware of:

5.1.1 any request or query from a Data Subject in respect of Service Data or WMCA Data which is his/her Personal Data, including notice of the exercise by a Data Subject of his/her rights under Data Protection Legislation;

5.1.2 a Personal Data Breach;

5.1.3 a claim, complaint or allegation by a Data Subject which relates to the Processing of Service Provider Data or WMCA Data which is his/her Personal Data in connection with this Agreement;

5.1.4 an investigation by any Supervisory Authority or other regulatory body which relates to the Processing of WMCA Data and/or Service Provider Data in connection with this Agreement;

(each an "**Enquiry**") and in each case the party becoming aware of an Enquiry (the "**Notifying Party**") shall provide the other party with all information about the Enquiry including any correspondence to or from the Data Subject, Supervisory Authority, regulatory body, court or otherwise.

5.2 Save to the extent otherwise agreed as part of the Protocol, the Notifying Party shall:

5.2.1 keep the other party fully informed and updated about the progress of each Enquiry (including by providing the other party with copies of all relevant correspondence, and information about actions or measures taken in response to the Enquiry);

5.2.2 where appropriate having regard to its obligations under Data Protection Legislation, cease all Processing of the WMCA Data or the Service Provider Data (except storage) pending the outcome of such Enquiry;

- 5.2.3 ensure that the Enquiry is responded to and otherwise dealt with in accordance with Data Protection Legislation and any codes of conduct, guidance or other instructions provided by any relevant Supervisory Authority and/or the European Union's Article 29 Working Party; and
  - 5.2.4 take into account any reasonable advice or requests made by the other party when responding to and otherwise dealing with the Enquiry.
- 5.3 Save to the extent otherwise agreed as part of the Protocol, in the event of a Personal Data Breach, the Notifying Party shall also:
- 5.3.1 ensure that the original notification to the other party includes:
    - 5.3.1.1 a description of the Personal Data Breach;
    - 5.3.1.2 an explanation of how the Personal Data Breach occurred;
    - 5.3.1.3 the date and time of the Personal Data Breach;
    - 5.3.1.4 the data and time when the Notifying Party became aware of the Personal Data Breach;
    - 5.3.1.5 a description of how the Notifying Party became aware of the Personal Data Breach;
    - 5.3.1.6 the categories of Personal Data affected by the Personal Data Breach; and
    - 5.3.1.7 the categories and approximate number of Data Subjects concerned;
  - 5.3.2 provide:
    - 5.3.2.1 a description of the likely consequences of the Personal Data Breach;
    - 5.3.2.2 an outline of the measures that the Notifying Party intends to take to address the Personal Data Breach including, where appropriate, to mitigate its possible adverse effects; and
    - 5.3.2.3 the steps it intends to take to mitigate the risk of any similar Personal Data Breach occurring in the future;
  - 5.3.3 take all reasonable steps (including those requested by WMCA) to mitigate the risk of any similar Personal Data Breach occurring in the future; and
  - 5.3.4 set up a working group which will be responsible for handling all elements of the Personal Data Breach and invite the other party to appoint its own representatives to such working group.

- 5.4 For the purpose of **paragraph 5.3.1** any notification by the Notifying Party shall be addressed to the following individual (or such other individual as the other party may notify the Notifying Party from time to time):

WMCA: The Data Protection Officer,  
West Midlands Combined Authority,  
16 Summer Lane  
Birmingham,  
B19 3SD.  
Information.officer@wmca.org.uk

5.4.1 Service Provider: **[INSERT]**

- 5.5 Save as provided in **paragraph 5.6**, each party shall bear its own costs associated or in connection with an Enquiry.

- 5.6 The Notifying Party reserves the right (at its own cost) to take control of the handling of an Enquiry where in its absolute discretion it considers that the other party fails to meet its obligations under this **paragraph 5** or in any event where it deems such action necessary to protect its own commercial interests. In the event that the Notifying Party exercises its right under this **paragraph 5.6**, the other party shall provide the Notifying Party with all reasonable assistance in its handling of the Enquiry.

## 6. Processor Obligations

- 6.1 This paragraph does not apply where the parties act as a Data Controller, and in connection with Shared Data.

- 6.2 If the Service Provider Processes the WMCA Data as Processor for the purpose of performing its obligations under this Agreement, the Service Provider warrants that it shall, and shall procure that its Personnel shall:

6.2.1 process the WMCA Data only for the purposes specified in this agreement during the Term and/or on documented instructions that WMCA may give to the Service Provider from time to time and in compliance with Data Protection Legislation;

6.2.2 not do anything that would put WMCA in breach of Data Protection Legislation;

6.2.3 put in place before undertaking any Processing and maintain appropriate technical and organisational measures in accordance with Articles 5 and 32;

6.2.4 provide WMCA with such assistance as WMCA requires to ensure compliance with Articles 32 to 36 (inclusive), taking into account the nature of the processing and the information available to the Service Provider;

- 6.2.5 maintain a record of all of its processing activities under or in connection with this Agreement and of the measures implemented under this **Schedule 13** (Information Compliance) in accordance with the requirements of Article 30 and make such record available to the relevant Supervisory Authority;
- 6.2.6 provide WMCA with such information as WMCA requests from time to time to enable the Controller to satisfy itself that Service Provider is complying with its obligations under this **Schedule 13** (Information Compliance);
- 6.2.7 allow WMCA, its agents, representatives and external auditors access (on reasonable notice and during normal business hours) to its premises and/or any other location where WMCA is processed under this Agreement to allow WMCA to audit the Service Provider's compliance with this **Schedule 13** (Information Compliance). For the purposes of any such audit, the Service Provider shall permit and/or shall procure that WMCA shall be permitted access to such premises and/or locations, facilities, personnel, systems, records, books, accounts and information as may reasonably be required by WMCA for the purpose of such audit;
- 6.2.8 not cause or allow WMCA Data to be transferred to and/or otherwise Processed in a Non-adequate Country without WMCA's prior written approval;
- 6.2.9 not transfer Personal Data to, or permit the Processing of Personal Data by, any third party (including in respect of the Service Provider its Affiliates) save to the Service Provider's employees, except:
  - 6.2.9.1 with WMCA's prior written consent in each case (such consent to be given or withheld at WMCA's absolute discretion); and
  - 6.2.9.2 where WMCA has given such consent, the Service Provider has entered into a written contract with that third party under which that third party agrees to obligations that are equivalent to the Service Provider's obligations set out in this **Schedule 13** (Information Compliance),  
  
unless required to do so by applicable Law, in which case the Service Provider shall (to the extent permitted by applicable Law) give WMCA prior written notice of such requirement;
- 6.2.10 at any time upon request, and in any event upon termination or expiry of this Agreement, deliver up to WMCA or (at the WMCA's choice) securely delete or destroy all Personal Data in the Service Provider's possession (except for such Personal Data which the Service Provider is required to keep in compliance with Data Protection Legislation);



- 6.2.11 provide reasonable assistance requested by WMCA from time to time in undertaking any data protection impact assessments and consultation with a Supervisory Authority that WMCA may reasonably decide to undertake; and
  - 6.2.12 ensure the Service Provider's Personnel are subject to binding obligations of confidentiality in respect of Service Provider Data or (as applicable) Service Provider Data processed under this Agreement.
- 6.3 Both Parties shall assist each other by appropriate technical and organisational measures to comply with their obligations to fulfil Data Subjects' rights under Data Protection Legislation, including:
  - 6.3.1 responding to requests or queries from Data Subjects in respect of their Personal Data (including the provision of Portable Copies);
  - 6.3.2 cooperating with an investigation in connection with the Personal Data by a regulatory body (including a Supervisory Authority); or
  - 6.3.3 reconstructing and/or otherwise safeguarding the Personal Data, within agreed reasonable timescales specified by WMCA.
- 6.4 If the Processor becomes aware of or suspects a Personal Data Breach it shall notify WMCA without undue delay and in any event within twenty four (24) hours, providing all the information set out in Article 33 and/or as requested by WMCA. The Service Provider shall at its own cost provide all assistance reasonably requested by WMCA to ensure that WMCA complies with its obligations under Articles 33 and 34. The Service Provider shall take all reasonable steps to mitigate any risks of a Personal Data Breach occurring in the future.
- 6.5 If for any reason the Service Provider is unable to provide any of the information set out in Article 33 within the timescale referred to in **paragraph 6.4**, it shall provide a written explanation to WMCA and use all reasonable endeavours to provide all such information as soon as possible.
- 6.6 Both Parties shall not disclose any information about or in connection with any unauthorised or unlawful Processing or accidental loss or destruction of, or damage to, Personal Data, other than:
  - 6.6.1 to each other
  - 6.6.2 with the express prior written approval of the other party ; or
  - 6.6.3 as required to be disclosed by applicable Law.
- 6.7 The Service Provider shall procure that all its personnel, Affiliates and any Sub-processors who have access to Personal Data in connection with this Agreement comply with the terms of this **Schedule 13** (Information Compliance) and the Service

Provider shall be liable for all acts and omissions of such personnel, Affiliates and Sub-processors.

- 6.8 The Service Provider shall not engage a Sub-processor unless the Service Provider has entered into a written contract with that Sub-processor under which that Sub-processor agrees to obligations which are equivalent to the Service Provider's obligations set out in this **paragraph 6** and the Processor shall be liable for all acts and omissions of such Sub-processors in relation to the Processing of such Personal Data.

## 7. Indemnity

- 7.1 Without prejudice to any other right or remedy WMCA may have, the Service Provider shall indemnify, keep indemnified and hold harmless on a continuing basis WMCA, and each of its officers, employees and agents in full from and against all claims, liabilities, costs, expenses, damages and losses (whether arising in tort (including negligence), in contract or otherwise and including all interest, penalties and legal costs (on a full indemnity basis) and all other reasonable professional costs and expenses), suffered or incurred by WMCA arising out of or in connection with any breach of the terms of this **Schedule 13** (Information Compliance) by the Service Provider, its personnel and/or any third party to whom the Service Provider has transferred Personal Data, including any negligent or reckless act, omission or default in the provision of the Data Processing Services.
- 7.2 WMCA shall as soon as reasonably practicable give the Service Provider written notice of a claim under the indemnity in **paragraph 7.1**, specifying the nature of the claim in a reasonable amount of detail.
- 7.3 If WMCA gives notice of an indemnity claim under **paragraph 7.1** in respect of a claim made against WMCA by a third party (a "**WMCA Third Party Claim**"), WMCA shall not make any admission of liability, agreement or compromise in relation to the Third Party Claim without the Service Provider's prior written consent (such consent not to be unreasonably withheld, delayed or conditioned), provided that WMCA may settle the Third Party Claim (after giving prior written notice of the terms of settlement (to the extent legally possible) to the Service Provider, but without obtaining the Service Provider's consent if WMCA reasonably believes that failure to settle or delay in settling WMCA Third Party Claim would be prejudicial to it in any material respect.
- 7.4 Save only where such instructions arise that give rise for such an indemnity to arise under this **paragraph 7.4**, the WMCA shall indemnify the Service Provider against all reasonable liabilities, costs, expenses, damages and losses suffered or incurred by the Service Provider as a direct result of complying with WMCA's instructions in relation to the Data Processing Services.
- 7.5 If the Service Provider wishes to claim under an indemnity set out in **paragraph 7.4**, it shall:

- 7.5.1 as soon as reasonably practicable and in any event within one (1) week of being aware of the circumstances giving rise to the claim, give written notice of such claim to WMCA, specifying the nature of the claim in reasonable detail; and
- 7.5.2 if the claim relates to a claim or action made against the Service Provider by a third party (a "**Service Provider Third Party Claim**"), the Service Provider shall give WMCA conduct and control of all negotiations and litigation in connection with the Service Provider Third Party Claim and shall, at WMCA's request and reasonable expense, provide WMCA and its advisers with all information and assistance that WMCA may reasonably require for the purpose of conducting, defending, negotiating and/or settling the Service Provider Third Party Claim.

## 8. **FOI Legislation**

- 8.1 The Service Provider acknowledges and accepts that, and shall undertake that each Sub-Contractor shall acknowledge and accept that:
  - 8.1.1 WMCA are subject to the FOI Legislation;
  - 8.1.2 it shall assist and co-operate with WMCA Personnel to enable WMCA to comply with its obligations under the FOI Legislation; and
  - 8.1.3 it may be obliged under the FOI Legislation to disclose Information without consulting or obtaining consent from the Service Provider (and its Sub-Contractors).
- 8.2 The Service Provider shall, and shall procure that its Sub-Contractors (if any) shall:
  - 8.2.1 transfer to the relevant WMCA Representative each Information Request relevant to the Agreement or the Services that it or they (as the case may be) receive as soon as practicable and in any event within five Working Days of receiving such Information Request;
  - 8.2.2 in relation to Information held by the Service Provider on behalf of WMCA, provide WMCA Personnel with details about and/or copies of all such Information that WMCA Personnel request and such details and/or copies shall be provided within five Working Days of a request from WMCA Personnel (or such other period as WMCA may reasonably specify), and in such forms as WMCA may reasonably specify;
  - 8.2.3 ensure that it has document and information management systems in place that allow it or they (as the case may be) to locate and retrieve information within the timescales required by WMCA or the relevant member of WMCA to meet its obligations under the FOI legislation; and

- 8.2.4 ensure that the document and information management system that it or they (as the case may be) use(s) provides for a full audit trail of all documentation and changes thereto.
- 8.3 WMCA shall be responsible for determining:
  - 8.3.1 whether Information is exempt information under the FOI Legislation; and
  - 8.3.2 what Information will be disclosed in response to an Information Request in accordance with the FOI Legislation.
- 8.4 For the avoidance of doubt, the Service Provider shall not itself respond to any person making an Information Request, save to acknowledge receipt, unless expressly authorised to do so by WMCA.

## **APPENDIX A**

### **The Processing Services**

1. The Parties agree to process Customer Personal Data only in accordance with applicable law:
  - 1.1. to provide their respective services;
  - 1.2. to assist each other in delivering the service;
  - 1.3. to enable a Party to keep Customers updated and informed;
  - 1.4. to resolve any disputes or claims between a Party and Customer;
  - 1.5. as further specified via Customer terms and conditions of service;
  - 1.6. as documented in this Agreement; and
  - 1.7. as further documented in any other written instructions given to a Data Subject and acknowledged by the Parties as constituting instructions for purposes of customer terms and conditions of service.
2. In accordance with the above, the detail and scope of the Processing Services will be developed beyond the headline elements that are set in this Schedule during the Implementation Phase.

### **3. The subject-matter and duration of the Processing**

- 3.1. The Parties will process Customer Personal Data for the purposes of providing the West Midlands eScooter Trial Services.
- 3.2. Personal data may be further processed, in accordance with Data Protection Legislation, management research and analysis.
- 3.3. Appropriate security and controls to protect Customer privacy will be put in place to ensure secure processing.
- 3.4. The duration of processing will be for no longer than is necessary for the purpose for which it is processed. Appropriate time limits will be established for the periodic review of the need for the continued storage of personal data.

### **4. The nature and purpose of the Processing**

- 4.1. The Parties will process data for the following lawful purposes:

- 4.1.1. for the performance of a contract entered into between the Parties and Data Subject;
- 4.1.2. If the parties have a Legal obligation to process the Data;
- 4.1.3. If WMCA is performing a public task in the public interest or for official functions, and the task or function has a clear basis in law; and
- 4.1.4. where a Customer's consent is obtained.

4.2. The Parties agree that Personal Data processed will be adequate, relevant and not excessive in relation to the purpose for which it is processed.

## 5. The type and categories of Personal Data

5.1. The types of Personal Data the Parties may share include:

5.1.1. names;

5.1.2. postal address, e-mail address, telephone number(s);

5.1.3. date of birth;

5.1.4. bank or building society details;

5.1.5. Customer transaction information;

5.1.6. Customer service usage information; and

5.1.7. Customer journey information.

5.2. Notwithstanding the rights of the Parties to share the types of Personal Data in **paragraph 5.1**, such Personal Data can only be shared for lawful and legitimate purposes in accordance with **paragraph 4.1**. In particular, the Parties agree that the Personal Data in **paragraphs 5.1.1 and 5.1.2** may be shared for the purposes of the prevention of crime and recovery of eScooters (in the event that a eScooter is stolen).

5.3. The following special category information may be processed only with the consent of the Data Subject:

5.3.1. gender;

5.3.2. racial or ethnic origin;

5.3.3.religion; and

5.3.4.sexual orientation.

## **6. Categories of Data Subject**

6.1. The Data Subjects will be:

6.1.1.Service Provider Customers using the West Midlands eScooter Trial Service .

## APPENDIX B

### Data Sharing Protocol

1. In addition to Appendix A, this Protocol sets out the principles that the Parties will follow to govern the sharing of personal information/ Personal Data in a secure, confidential and legal manner.
2. **Details of the organisations involved in the data sharing**

<b>WMCA</b>	
<b>Data Protection Officer</b>	<b>[INSERT]</b>
<b>Contact details</b>	Data Protection Officer, West Midlands Combined Authority, 16 Summer Lane Birmingham, B19 3SD. Information.officer@wmca.org.uk
<b>Service Provider</b>	
<b>Data Protection Officer</b>	
<b>Contact details</b>	

### 3. Data items to be collected and shared

#### 3.1. The Parties agree:

- 3.1.1. to share information with each other where it is lawful to do so;
- 3.1.2. to comply with the requirements of the Data Protection Act 2018 and General Data Protection Regulation (GDPR);
- 3.1.3. to inform Data Subjects when and how information is recorded about them, and how their information may be used;
- 3.1.4. to ensure that adequate security measures are applied to the Personal Data held and shared;
- 3.1.5. to have due regard to guidance published by the Information Commissioner; and
- 3.1.6. to promote staff awareness of the protocol and to train staff in the principles of lawful information sharing.
- 3.1.7. Rental reports:
  - 3.1.7.1. Raw (anonymised) rental report data which includes but is not limited to Origin station, date and time of 'origin' journey, destination station, date and time of return (destination), distance of journey in metres, membership method, time lapse in park mode.



3.1.8. The Service Provider shall make available anonymised GPS data to the WMCA in order to establish key movements and support future eScooter network planning.

3.1.9. Customer and Rental reports relating to:

	Data source	ID	Existing data source	Required from Operator for DfT	Required from Operator for TfWM	Notes
ONE TIME ONLY DATA	User demographics	1	No	✓	✓	
	User ID	1a	No	✓	✓	
	Email address	1b	No	✓		
	Phone number	1c	No	✓		
	Name	1d	No	✓		
	Age-band	1e	No	✓		
	1st part postcode	1f	No	✓		
	Gender	1g	No	✓		
	Disability	1h	No	✓		
	Ethnicity	1i	No	✓		
	Time (band) of trip	2	No	✓	✓	Linked to user ID
	Distance	3	No	✓	✓	Linked to user ID
	Length (hrs/mins)	4	No	✓	✓	Linked to user ID
	Origin-destination data	5	No	✓	✓	Aggregated
Survey	Mode shift question (not every ride)	6	No	✓	✓	Linked to user ID
	Safety perception (in app survey)	7	No	✓	✓	Linked to user ID
	Number of hires per scooter per day in all locations	8	No	✓	✓	
	Number of hours of operation	9	No		✓	Per location
	% of escooter utilisation	10	No		✓	Per location
	Number of registered users in trial locations	15	No		✓	Aggregated
	Compliance with parking locations	21	No		✓	Per location
	Frequency and location of escooters lying on their sides	22	No		✓	Per location
	Number/ type of compliants to operators	23	No		✓	
	Number, type, location and times of accidents and near misses	25	No		✓	Information from operator to suppliment that from local enforcement bodies
Hours till removal of faulty scooter	29	No		✓	Per location	
Levels of escooter loss/theft and vandalism	30	No		✓		
Average and max speeds by location	31	No		✓		

#### 4. The purpose and basis for sharing

4.1. The Parties must clearly identify the specific purposes for which they share information and the legal basis. Data sharing between the Parties may take place to meet the following shared objectives:

- 4.1.1. To assist in the delivery of services;
- 4.1.2. To improve service delivery performance;
- 4.1.3. Managing and planning services;
- 4.1.4. Research and analysis; and
- 4.1.5. Developing strategies and improvements to services.

- 4.2. Each Party must ensure compliance with Data Protection Legislation at all times.
- 4.3. Each Party must maintain a valid registration with the Information Commissioner.
- 4.4. Each Party shall ensure that it processes the Shared Personal Data fairly and lawfully in accordance with one of the following legal grounds:
  - 4.4.1. Processing is necessary for the performance of a contract with the Data Subject;
  - 4.4.2. processing is necessary for the purposes of the legitimate interests pursued by the Parties except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the Data Subject; and
  - 4.4.3. processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller.
- 4.5. Where Sensitive Personal Data or Special Category Data is shared this will be on the additional ground of consent.
- 4.6. Both Parties shall, in respect of Shared Personal Data, ensure that their privacy notices are clear and provide sufficient information to Data Subjects in order for them to understand what Personal Data the Parties are sharing, the circumstances in which it will be shared, and the purposes for the data sharing.
- 4.7. Both Parties undertake to inform Data Subjects of the purposes for which it will process their Personal Data and provide all of the information that it must provide in accordance with Data Protection Legislation.

## **5. Access to data and individuals' rights**

- 5.1. The Parties shall maintain a record of Subject Access Requests, the decisions made and any information that was exchanged. Records must include copies of the request for information, details of the data accessed and shared and where relevant, notes of any meeting, correspondence or phone calls relating to the request.
- 5.2. The Parties agree that the responsibility for complying with a Subject Access Request falls to the Party receiving the Subject Access Request in respect of the Personal Data held by that Party.
- 5.3. The Parties agree to provide reasonable and prompt assistance (within 5 Business Days of such a request for assistance) as is necessary to each other to enable them to comply with Subject Access Requests and to respond to any other queries or complaints from Data Subjects.
- 5.4. Each party will bare its own costs for complying with a Subject Access Request.

## **6. Information governance**

### **6.1. Responsibilities**

- 6.1.1. The Parties have a responsibility to keep Personal Data/ information secure from unauthorised disclosure, and ensure its staff understand:
  - 6.1.1.1. What information can be shared and under what circumstances;
  - 6.1.1.2. What information cannot be shared and under what circumstances; and

6.1.1.3. Who to go to for advice if they are not sure what to do.

## 6.2. Data sharing rules

6.2.1. The Parties will share information taking into account the following rules:

6.2.1.1. acknowledging that the Data Protection Act is not a barrier to sharing information but provides a framework to ensure that personal information about living persons is shared appropriately;

6.2.1.2. Being open and honest with the data subjects about why, what, how and with whom information will, or could be shared;

6.2.1.3. Only sharing information if there is a legitimate purpose and legal basis to share;

6.2.1.4. Considering the rights and privacy of data subjects and ensuring these are not infringed;

6.2.1.5. Only sharing necessary, proportionate, relevant, accurate, timely and secure: Ensuring that the information shared is necessary for the purpose for which you are sharing it, is shared only with those people who need to have it, is accurate and up-to-date, is shared in a timely fashion, and is shared securely;

6.2.1.6. Keep a record of sharing decisions and the reasons for it – whether it is to share information or not;

6.2.2. Additionally to inform sharing decisions the following key questions will be addressed:

6.2.2.1. Is there a clear and legitimate purpose for you or your agency to share the information?

6.2.2.2. Does the information enable a living person to be identified?

6.2.2.3. Is the information confidential?

6.2.2.4. If the information is confidential, do you have consent to share?

6.2.2.5. If consent is refused, or there are good reasons not to seek consent to share confidential information.

6.2.2.6. Is there a sufficient public interest to share the information?

6.2.2.7. If the decision is to share, are you sharing information appropriately and securely?

6.2.2.8. Has the information sharing decision been properly recorded?

## 6.3. Use of anonymised information

6.3.1. Personal Information will be anonymised before it is shared wherever that is possible and practicable.

6.3.2. It is important that care is taken to ensure that anonymised data, especially when combined with other information, does not identify an individual either directly or

indirectly and the data cannot be combined with any data sources held by a partner to produce personal identifiable data.

#### 6.4. Data quality

6.4.1. Shared data needs to be of sufficient quality for its intended purpose.

6.4.2. The Data Discloser shall ensure that Shared Personal Data is accurate.

6.4.3. Where either Party becomes aware of inaccuracies in Shared Personal Data, they will notify the other Party.

6.4.4. The parties will work towards the following characteristics of good data quality:

6.4.4.1. **Accuracy** – Data should be accurate so as to present a fair picture of circumstances and enable informed decision-making at all appropriate levels. Definitions for data should be specific and unambiguous.

6.4.4.2. **Validity** – Data should represent clearly and appropriately the intended result and should be used in accordance with the correct application of any rules or definitions.

6.4.4.3. **Reliability** – Data should reflect stable and consistent data collection processes that need to be fit for purpose and incorporate controls and verification procedures.

6.4.4.4. **Timeliness** – Data input should occur on a regular ongoing basis rather than being stored to be input later. Verification procedures should be as close to the point of input as possible. Data must not be retained for longer than is necessary.

6.4.4.5. **Relevance** – Data collected should comprise the specific items of interest only.

6.4.4.6. **Completeness** – All the relevant data must be recorded. Missing or invalid data can lead to incorrect judgement and poor decision-making.

6.4.4.7. **Data sharing method** - The Parties to this Agreement are responsible for ensuring that appropriate security and confidentiality procedures are in place to protect the sharing, storage and use of the shared, person data. Each party will make sure that personal data shall be processed in a manner that ensures appropriate security of the personal data including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage using appropriate technical or organisational measures in accordance with data protection legislation, and ensure procedures are in place to prevent:

6.4.4.7.1. Accidental compromise or damage during storage, handling, use, processing, transmission or transport;

6.4.4.7.2. Deliberate compromise or opportunist attack;

6.4.4.7.3. Unauthorised disposal or destruction of the data;

6.4.4.7.4. Unauthorised access;

## 7. Transfers

- 7.1. For the purposes of this Protocol, Protocol, transfers of personal data shall mean any sharing of Personal Data by the Data Receiver with a third party, and shall include, but is not limited to, the following:
- 7.1.1. sharing of the shared personal data with any other third party;
  - 7.1.2. publication of the shared personal data via any medium, including, but not limited to; social media, websites, publicly available communications;
  - 7.1.3. storing shared personal data on servers outside the European Economic Area (EEA).
  - 7.1.4. subcontracting the processing of shared personal data to data processors located outside the EEA.
  - 7.1.5. granting third parties located outside the EEA access rights to the shared personal data.
- 7.2. The Data Receiver shall not share the Shared Personal Data with a third party without the express written permission of the Data Discloser.
- 7.3. Where express written permission has been granted, the Data Receiver shall not disclose or transfer Shared Personal Data outside the EEA without ensuring that adequate and equivalent protections will be afforded to the Shared Personal Data.

## 8. Retention

- 8.1. The Data Receiver shall not retain or process shared personal data for longer than is necessary to carry out the Agreed Purposes, and any applicable statutory or professional retention periods.
- 8.2. The Data Receiver shall ensure that any shared personal data are returned to the Data Discloser or destroyed in the following circumstances:
- 8.2.1. on termination of the Agreement for whatever reason;
  - 8.2.2. on reaching the prescribed retention period has been;
  - 8.2.3. once processing of the shared personal data is no longer necessary for the purposes it were originally shared for; and
  - 8.2.4. Data security breaches and reporting procedures.

## 9. Data security breaches and reporting procedures

- 9.1. The Parties are under a strict obligation to notify any potential or actual losses of the shared personal data to the other Party as soon as possible and, in any event, within 1 **Business Day** of identification of any potential or actual loss to enable the Parties to consider what action is required in order to resolve the issue.
- 9.2. The Parties agree to provide reasonable assistance as is necessary to each other to facilitate the handling of any Data Security Breach in an expeditious and compliant manner. To comply with Subject Access Requests and to respond to any other queries or complaints from Data Subjects.

9.3. Where not already in place, processes will be set up in each party to adopt a risk management approach to breaches/problems in relation to the implementation of this Agreement

#### **10. Review**

10.1. This sharing protocol will be subject to review to ensure its compliance with Data Protection Legislation.

## SCHEDULE 14

### Exit Plan

#### 1. Scope

- 1.1 This **Schedule 14** sets out the strategy to be followed by the Parties on the termination (including Partial Termination) or expiry of this Agreement, and
- 1.2 requires the Service Provider to support an orderly, controlled transition of responsibility for the provision of the Services from the Service Provider to any New Service Provider with the minimum of disruption and so as to prevent or mitigate any inconvenience to WMCA by means of the implementation of the terms of this **Schedule 14** and the Exit Plan.

#### 2. Exit Plan

- 2.1 The Service Provider shall prepare an Exit Plan during the Implementation Phase and submit it to WMCA for Approval in accordance with **Schedule 3 (Milestones and Deliverables)**.
- 2.2 As a minimum, the Service Provider shall ensure that the Exit Plan includes:
  - 2.2.1 those areas set out in:
    - 2.2.1.1 the Exit Strategy; and
    - 2.2.1.2 **paragraph 5** (Contents of the Exit Plan) of this **Schedule 14**,
  - 2.2.2 to the maximum level of detail as it is reasonably possible to determine at the time of preparation of the Exit Plan; and
  - 2.2.3 such other provisions as the Service Provider deems necessary or WMCA may request from time to time in relation to expiry or termination of this Agreement (including Partial Termination).
- 2.3 Without prejudice to the review pursuant to **paragraph 3.1** (Enhanced Exit Plan), and subject to **paragraph 3.3** (Enhanced Exit Plan), the Service Provider shall, [on a six-monthly basis starting at the Effective Date] and at any other time WMCA or the Service Provider deems necessary throughout the Term:
  - 2.3.1 review and revise the Exit Plan to take into account changing technologies and any changes to the scope or nature of the Services, including any Changes; and,
  - 2.3.2 agree with WMCA the scope and detail of any necessary revisions to the Exit Plan and promptly submit such revised Exit Plan to WMCA for Approval.

2.4 Without limitation to the generality of the foregoing, the Service Provider shall make such amendments to the Exit Plan as agreed upon between WMCA and the service provider from time to time.

### 3. **Enhanced Exit Plan**

3.1 The Service Provider shall:

3.1.1 if requested by WMCA from time to time;

3.1.2 if a notice of termination or a Partial Termination Notice is served by either Party in respect of this Agreement; or

3.1.3 at the point where there is three (3) months of the Initial Term or Extended Term, as appropriate, remaining,

(each of the events and/or dates referred to in **paragraphs 3.1.1, 3.1.2 and 3.1.3** being referred to, as appropriate, in this **Schedule 14** as the “**Trigger Date**”),

3.1.4 promptly produce a detailed Enhanced Exit Plan (the “**Enhanced Exit Plan**”) by developing and refining the Exit Plan as necessary to envisage the winding-down of the Services; and

3.1.5 deliver such Enhanced Exit Plan to WMCA for its review and Approval within ten (10) Working Days of the relevant Trigger Date (or, where **paragraph 3.1.2** above applies, such earlier date as WMCA may specify (acting reasonably)).

3.2 The Service Provider shall:

3.2.1 ensure that the Enhanced Exit Plan deals as a minimum with:

3.2.1.1 developing in more detail those areas set out in the Exit Plan; and

3.2.1.2 such other provisions as the Service Provider deems necessary in accordance with Good Industry Practice or WMCA may require from time to time; and

3.2.2 revise and update the Enhanced Exit Plan in accordance with any reasonable instructions of WMCA from time to time,

in each case so as to establish a detailed plan and management structure for all activities required for exit of the Service Provider under the specific conditions applying at the time.

3.3 Production, revision and updating of both the Exit Plan and the Enhanced Exit Plan shall be at the Service Provider’s sole cost and expense.



#### 4. Disclosure of Exit Documents

4.1 The Service Provider acknowledges that, notwithstanding any of WMCA's obligations of confidentiality under this Agreement, WMCA may at any time disclose the:

4.1.1 Exit Strategy;

4.1.2 Exit Plan; and/or

4.1.3 Enhanced Exit Plan,

to Third Parties who are tendering or involved in the tendering process for the re-letting of the Services or substantially similar services on termination or expiry of this Agreement or Partial Termination to a New Service Provider.

#### 5. Contents of the Exit Plan

5.1 The Service Provider shall ensure that together the Exit Plan and Enhanced Exit Plan contain all detail necessary to effect the smooth and orderly termination of the Services (or any part thereof, in the event of Partial Termination) and shall, without limitation to the generality of the foregoing:

5.1.1 set out the respective obligations of the Parties and applicable timescales;

5.1.2 document:

5.1.2.1 specifications of any and all Interfaces (whether technical, administrative or otherwise) between the relevant Service Systems and any Third Party Systems and/or Data sources;

5.1.2.2 definitions of the responsibilities of the various Service Systems owners and records of the past performance of such Third Party Systems and/or Data sources;

5.1.3 document each Party's responsibilities for the provision of the Services commencing on the Trigger Date:

5.1.3.1 up to the Termination Date, Partial Termination Date or Expiry Date; and

5.1.3.2 on the Termination Date, Partial Termination Date or Expiry Date;

5.1.4 when the Service Provider shall provide:

5.1.4.1 Data; and

5.1.4.2 Documentation ;

5.1.5 the timing as to when WMCA and New Service Provider shall review Data (if relevant);

- 5.1.6 the obligations and related timings of Third Parties who will need to be involved in the exit process; and
- 5.1.7 document the key activities to be undertaken during exit, including: arrangements for continuing provision of the Services , subject to any winding-down of the Services, as instructed to the Service Provider in accordance with **paragraph 3.1** (Enhanced Exit Plan) of this **Schedule 14** or this Agreement;
- 5.1.8 handing-over of:
  - 5.1.8.1 Customer Records, Data and other records in compliance with Data Protection Legislation;
  - 5.1.8.2 Documentation ;
  - 5.1.8.3 Databases in compliance with Data Protection Legislation,
  - 5.1.8.4 any other similar items used or produced during the course of the provision of the Services by the Service Provider;
  - 5.1.8.5 in relation to the obligation's set out in this section 5, the costs so associated shall be borne by the party seeking to take over such processes and services from the service provider;
- 5.1.9 the means by which no interruption of the provision of the Services and Service Systems or reduction in Service Levels will occur during the from the Trigger Date to the Expiry Date, Termination Date or Partial Termination Date;
- 5.1.10 an outline of the procedures for the transfer and/or removal of Data from the Service Systems (including Data cleansing, correction, checking, quality assessment, verifying or other processing as required in preparation for Data migration to WMCA or the New Service Provider);
- 5.1.11 procedures and timeframe for the hand back or destruction of documents containing each Party's Intellectual Property Rights;
- 5.1.12 the arrangements for hand-over of the Premises to the extent such Premises have been provided by WMCA;
- 5.1.13 the arrangements for transfer of Service Provider Personnel (where this is relevant) including communications, briefing and negotiation;
- 5.1.14 preparation and testing of Data checking, verification, cleansing, review, quality analysis and assurance, integrity and migration programs;
- 5.1.15 arrangements for sharing Data to enable parallel running and/or testing by the New Service Provider;

5.1.16 an outline of the procedures for the removal by the Service Provider of WMETS Assets and (or relevant parts thereof), the general principles for which include as follows;

5.1.16.1 all Docking Station Assets and On-street Assets are removed using appropriate qualified contractors and electrical engineers (where electric eScooter stations are installed) in accordance with all regulatory requirements (including where relevant the submission of traffic management plans) returning the site to its original environment making good any damage to the site (including the filling in of, or replacing drill holes with, the suitable substrate) to WMCA's reasonable satisfaction. Electrical engineers will be used to safely remove electrical equipment. Removal and making good each site shall be done in a timely manner, and at the Service Provider's cost;

5.1.16.2 the Service Provider shall create a photographic record of each site at which Docking Station Assets and/or On-street Assets are to be installed immediately prior to installation, providing a copy of the same to WMCA, which record may be used (not exclusively) as a basis for assessing performance against the make good obligation in **paragraph 5.1.16.1**; and

5.1.16.3 quick and efficient removal of all eScooter Assets from the street. The Service Provider commits to remove 95% of the eScooter Assets within seven (7) days and the final 5% within a further two (2) weeks, within a timeframe that enables continued full provision of the Services until the Expiry Date or Termination Date (as appropriate);

5.1.17 detail the Documentation to be prepared and made available by the Service Provider during exit, including:

5.1.18 Data on Service Provider Personnel as defined by, and constrained by, the TUPE Regulations and other employment legislation;

5.1.19 Services documentation covering any information or action pertaining to the Enhanced Exit Plan reasonably required by WMCA to ensure a smooth exit.

## 6. **Implementation of Enhanced Exit Plan**

6.1 Upon Approval of the Enhanced Exit Plan by WMCA (or determination of the Enhanced Exit Plan in accordance with the Dispute Resolution Procedure, as appropriate), following a Trigger Date, the Service Provider shall implement the Enhanced Exit Plan in accordance with its terms.

6.2 The Service Provider shall promptly comply with all reasonable instructions from WMCA with regard to the implementation and execution of the Enhanced Exit Plan including co-operating with any New Service Provider, Third Party and Sponsor, including in relation to the transfer of Data.

7. **Transfer of Data to WMCA and/or New Service Provider**

7.1 The Service Provider shall carry out Data checking, verification, cleansing, review, quality analysis and assurance, integrity testing and migration as set out in the Enhanced Exit Plan or as otherwise directed in writing by WMCA (acting reasonably) from time to time (at the sole cost and expense of the Service Provider) so as to ensure that to the extent within the control of the Service Provider:

7.1.1 Data or Data extracts are received by the New Service Provider (or WMCA if applicable) and/or any Third Parties nominated by WMCA or the New Service Provider;

7.1.2 all Data being migrated to the New Service Provider (or WMCA if applicable) remain available to and useable by WMCA and Third Parties during such migration;

7.1.3 all Data is provided in compliance with Data Protection Legislation;

7.1.4 the migration of Data to the New Service Provider (or WMCA if applicable) envisaged under this **paragraph 7.1** does not result in Data loss, corruption or impairment;

7.1.5 all Data migrated to the New Service Provider (or WMCA if applicable) is accurate, up to date as far as is reasonably possible (within six (6) hours at the time of transfer) and complete, exported as a general file format with complete customer account data, rental history and payment/transaction history;

7.1.6 all Data migrated to the New Service Provider (or WMCA if applicable) is reconciled, which shall include carrying out referential integrity checks between each part of the Service Systems to ensure that Data stored in each part of the Service Systems are consistent and correct; and

7.1.7 all Data is fit for the purposes of their use and processing in connection with the Services or services materially similar to the Services (provided that such services involve the use and processing of Data in a materially similar format to the Services).

7.2 The Service Provider shall promptly at its own expense remedy any breach by the Service Provider of **paragraph 7** of this **Schedule 14**.

7.2.1 The requirements above shall all be carried out in compliance with Data Protection Legislation;

7.2.2 If any disparity exists between the above sections and relevant data legislation the parties agree to be bound by all relevant data laws in place.

8. **Continued Performance**

Except as otherwise expressly specified in the Enhanced Exit Plan or this **Schedule 14**, the Service Provider shall at all times during exit continue to perform its other obligations, including in respect of the achievement of the Service Levels, pursuant to the provisions of this Agreement.

9. **Scope of Exit Strategy**

9.1 The Service Provider shall ensure that the Exit Strategy deals as a minimum with those areas set out in this **paragraph 9**, together with such other provisions as the Service Provider deems necessary or WMCA may reasonably request from time to time:

9.1.1 the name and contact details of each party's Representative who will act as the primary point of contact for all exit related matters;

9.1.2 the timing and process for jointly establishing an exit team of suitably skilled Representatives of the Parties to manage the implementation of the Exit Plan ("**Exit Team**"), and replacements thereof including details of name and contact details for each member of the Exit Team and his role, reporting and liaising lines between the parties and any Third Parties, approval and escalation processes:

9.1.3 unless the Parties agree otherwise, the Exit Plan shall cover the period commencing on the Trigger Date and ending on the Partial Termination Date, Termination Date or Expiry Date (as appropriate);

9.1.4 details of the management processes and controls to be used in the implementation of the Exit Plan;

9.1.5 unless agreed otherwise in writing between the Parties, the Exit Team shall meet at least once a week from the Trigger Date;

9.1.6 information on:

(a) an outline of the procedures for the transfer and/or removal of Data from the Service Systems and any other Systems of the Service Provider;

(b) the procedure and timeframe for the hand back or destruction of documents or other materials containing the other Party's

Intellectual Property Rights or Confidential Information as expressly required by this Agreement;

- (c) a full list of the information relevant to the Service Provider's provision of the Services including, but not limited to, volumes processed, Data volumes stored, performance against the Service Level Agreement, maintenance statistics and fault statistics; and
- (d) any other information or action pertaining to the Exit Plan required by WMCA to ensure a smooth exit and appointment (if relevant) by WMCA of a New Service Provider as the case may be.

9.1.7 There shall be a communications strategy that as a minimum shall deal with the following:

- 9.1.7.1 any communications strategy around the Termination or Expiry of the Services (including communications with Users and potential Users, and addressing refunds against annual or other periodic subscriptions) shall be discussed jointly and subject to Approval by WMCA;
- 9.1.7.2 the Service Provider shall not act contrary to the Approved strategy;
- 9.1.7.3 the Service Provider will have sole ownership of its relationship with any Sponsor. WMCA will not be required to enter into communications with any Sponsor;
- 9.1.7.4 the Service Provider will be required to withdraw Services offerings (and any other retail/merchandising offerings) to Users from its Systems, and WMCA shall manage the removal of any Services offering from its own Systems.

**SCHEDULE 15**

**Agreed Form of Guarantee**

**2021**

(1) **[INSERT]**

and

(2) **WEST MIDLANDS COMBINED AUTHORITY**

**DEED OF GUARANTEE**

relating to an agreement between **[INSERT]** and West Midlands Combined Authority for the provision of services for the West Midlands eScooter Trial Services

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THIS DEED is dated

2020

**BETWEEN**

- (1) **[INSERT]** (the "**Guarantor**");
- (2) **WEST MIDLANDS COMBINED AUTHORITY** of 16 Summer Lane, Birmingham, B19 3SD ("**WMCA**").

**BACKGROUND**

- (A) WMCA and **[INSERT]** (the "**Service Provider**") have entered into an Agreement relating to the provision of services for the West Midlands eScooter Trial Services dated (the "**Agreement**").
- (B) The Guarantor is a shareholder of the Service Provider.
- (C) The Guarantor has agreed to enter into this Guarantee in favour of WMCA, and has agreed to guarantee the Service Provider's obligations under the Agreement in accordance with the terms and conditions contained in this Guarantee.

**TERMS AGREED**

**1. Definitions and interpretation**

1.1 In this Deed:

"**Guarantee**" this Deed; and

"**Third Parties Act**" the Contracts (Rights of Third Parties) Act 1999.

1.2 The Guarantor agrees that in this Guarantee:

1.2.1 references to clauses are, unless otherwise stated, references to clauses of this Guarantee;

1.2.2 references to this Guarantee and any provisions of this Guarantee or to any other document or Agreement are to be construed as references to this Guarantee, those provisions or that document or Agreement as is in force for the time being and as amended, varied or supplemented, from time to time;

1.2.3 references to any person are to be construed to include that person's assigns, transferees or successors-in-title; and

1.2.4 terms the meaning of which are not defined in this Guarantee shall have the meanings ascribed to them in the Agreement.

**2. Guarantee and indemnity**

2.1 The Guarantor hereby irrevocably and unconditionally guarantees to WMCA to procure the due and punctual performance and observance by the Service Provider of all its performance and other obligations in, under and arising from the Agreement and any other agreements entered into by WMCA and the Service Provider pursuant to the Agreement (the "**Guaranteed Obligations**")

- 2.2 As a separate and independent obligation, the Guarantor hereby irrevocably and unconditionally agrees, as a primary obligation, to indemnify and keep indemnified WMCA in full and on demand from all losses, claims, liabilities, damages, costs and expenses which may be incurred or suffered by WMCA as a result of or in connection with (whether directly or indirectly) any failure by the Service Provider (whether or not caused by or connected with any invalidity, unenforceability or ineffectiveness), fully to perform or discharge the Guaranteed Obligations as and when the same shall respectively become (or, but for any such invalidity, unenforceability or ineffectiveness, would have become) due for performance or discharge.
- 2.3 The Guarantor agrees to indemnify WMCA and keep it indemnified on demand from and against all liabilities, losses, costs and expenses incurred or suffered by WMCA in connection with or as a result of:
- 2.3.1 any provision in the Agreement being or becoming void, voidable, invalid or unenforceable;
- 2.3.2 the enforcement of the provisions of this Guarantee; and
- 2.3.3 WMCA entering into or being a party to this Guarantee (including in the event that any of the obligations or undertakings expressed to be assumed by the Guarantor in this Guarantee are not performed or observed fully and punctually).
- 2.4 Notwithstanding any other provision of this Guarantee, this Guarantee shall not be construed so as to impose on the Guarantor any greater obligations or liabilities in scope or in value than those assumed by the Service Provider under the Agreement.
- 2.5 The obligations of the Guarantor under each of **clauses 2.1, 2.2, 2.3,** and **2.4** above of this Guarantee shall be separate and independent from each other.

### 3. **Beneficiary protections**

- 3.1 The Guarantor acknowledges and agrees that the provisions of this Guarantee are and at all times shall be a continuing security and shall continue in effect until the performance demanded and due at any time from the Service Provider to WMCA under the Agreement has been finally satisfied in full, and all obligations of the Service Provider under the Agreement have been fully performed, notwithstanding any intermediate payment, partial settlement or partial performance or other matter.
- 3.2 The Guarantor acknowledges and agrees that none of its liabilities or obligations under this Guarantee shall be reduced, discharged, released or otherwise adversely affected by:
- 3.2.1 any provision of the Agreement (however fundamental and whether or not more onerous), including any or replacement of any provision of the Agreement;
- 3.2.2 any variation, novation, restatement, extension, discharge, compromise, dealing with, exchange or renewal of any right or remedy which WMCA may

now or hereafter have from or against the Service Provider and any other person in respect of any of the Service Provider's obligations under the Agreement;

3.2.3 any of the administration, receivership, insolvency, liquidation, winding-up, incapacity or any change in the constitution of the Service Provider; or

3.2.4 any act, omission, matter or thing which would not have discharged or affected the liability of the Guarantor had it been a principal debtor instead of guarantor or indemnitor or by anything done or omitted by any person which but for this provision might operate to exonerate or discharge the Guarantor or otherwise reduce, release, prejudice or extinguish its liability under this Guarantee (without limitation and whether or not known to it or WMCA) including but not limited to:

3.2.4.1 any time, waiver or consent granted to, or composition with, the Service Provider or any other person in relation to any of the matters set out in **clause 3.2.3** above;

3.2.4.2 the release of the Service Provider or any other person under the terms of any composition or arrangement with any creditor in relation to any of the matters set out in **clause 3.2.3** above;

3.2.4.3 the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, the Service Provider or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;

3.2.4.4 any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of the Service Provider; or

3.2.4.5 any unenforceability, illegality or invalidity of any obligation of any person under the Agreement, any document setting out the terms of a liability or any other document or security.

3.3 The obligations and liabilities expressed to be undertaken by the Guarantor under this Guarantee are those of primary obligor and not merely as a surety.

3.4 WMCA may enforce this Guarantee without first making demand on, or taking any proceeding against, the Service Provider or resorting to any other security, guarantee of performance. No action (or inaction) by WMCA in respect of any such security, guarantee or other means of payment shall prejudice or affect the liability of the Guarantor under this Guarantee.

#### 4. Interest

4.1 Intentionally left blank

5. **Appropriation**

The Guarantor shall not direct the application by WMCA of any sums received by WMCA from the Guarantor under this Guarantee.

6. **Discharge to be conditional**

6.1 Any release, discharge or settlement between the Guarantor and WMCA in relation to this Guarantee shall be conditional upon no right, security, disposition to WMCA by any of the Guarantor, the Service Provider and any other person being void, set aside or ordered to be refunded pursuant to any enactment or law relating to breach of duty of any person, bankruptcy, liquidation, administration, the protection of creditors or insolvency or for any other reason.

6.2 If any such right, security, disposition is void or at any time so set aside or ordered to be refunded, WMCA shall be entitled subsequently to enforce this Guarantee against the Guarantor as if such release, discharge had not occurred and any such security, disposition had not been made.

7. **Payment and taxes**

7.1 All sums payable by the Guarantor under this Guarantee shall be paid to WMCA in full without:

7.1.1 any right it may have by way of set-off, condition or counterclaim or otherwise; and

7.1.2 free and clear of any deductions or withholding whatsoever save only as may be required by law which in either case is binding on it, in which case the sum due from the Guarantor in respect of such payment shall be increased to the extent necessary to ensure that, after the making of such deduction or withholding, WMCA receives on the due date and retains (free of any liability in respect of such deduction or withholding) a net sum equal to the sum which it would have received had no such deduction or withholding been required to be made.

7.2 WMCA may apply any credit balance to which the Guarantor is entitled from WMCA in or towards satisfaction of any sum then due and payable from the Guarantor under this Guarantee.

7.3 All sums payable by the Guarantor under or pursuant to this Guarantee are exclusive of any Value Added Tax.

8. **Waiver of Guarantors rights**

8.1 Subject to **clause 3** (Beneficiary Protections) above, until the date on which WMCA notifies the Guarantor that the Guaranteed Obligations have been discharged in full by the Service Provider in accordance with the Agreement, the Guarantor agrees that it will not:

- 8.1.1 exercise any rights of subrogation, contribution or indemnity against the Service Provider;
  - 8.1.2 take the benefit of share in or enforce any security or guarantee or indemnity for the Service Providers obligations against the Service Provider;
  - 8.1.3 take any step to enforce any right against the Service Provider in respect of any of the Service Provider's obligations;
  - 8.1.4 exercise any right of set-off or counterclaim against the Service Provider or have the benefit of, or share in, any payment from or composition with, the Service Provider or any security or right now or hereafter held by WMCA;
  - 8.1.5 sell, negotiate, endorse, assign, charge or otherwise deal with any liability or obligation to the Guarantor of the Service Provider or any other surety (whether arising from any payment made by the Guarantor under or in respect of this Guarantee or on any other account whatsoever); or
  - 8.1.6 in the event of any bankruptcy, liquidation, winding-up or dissolution of the Service Provider or any other surety claim or prove, or accept any direct or indirect payment or distribution,
- 8.2 Any amount recovered as a result of the exercise of the rights listed in clause 8.1 above shall be paid to WMCA on demand.

**9. Benefit of Guarantee**

- 9.1 The terms of this Guarantee shall be binding upon the Guarantor and its successors in title and shall ensure for the benefit of WMCA.
- 9.2 The terms of this Guarantee shall remain binding on the Guarantor notwithstanding any change in the constitution of WMCA or its absorption in, or amalgamation with, or the acquisition of all or part of its undertaking or assets by any other person, or any reconstruction or reorganisation of any kind, to the intent that this Guarantee shall remain valid and effective in all respects in favour of any assignee, transferee or other successor in title of WMCA in the same manner as if such assignee, transferee or other successor in title had been named in this Guarantee as a party instead of, or in addition to WMCA.

**10. Variation of the Agreement**

The Guarantor agrees that any variation or amendment to the Agreement agreed by the Service Provider shall in all cases be deemed agreed by the Guarantor and that WMCA and the Service Provider shall not be required to consult with or notify the Guarantor in relation to any such variations or amendments.

**11. Information**

- 11.1 The Guarantor will provide promptly WMCA with any information about the Guarantor and/or any of its subsidiaries, associates or affiliates (including information about its and/or any such subsidiary's, associate's or affiliate's assets, liabilities and financial

affairs) which WMCA reasonably requests to the extent that such information is within the public domain and where not the Guarantor shall make such reasonable disclosures as are possible, provided that, subject to **clause 11.2** below, any Service Provider Confidential Information disclosed is held and used by WMCA in accordance with **clause 61 (Confidentiality) of the Agreement**.

11.2 Without prejudice to any right or duty of disclosure conferred or imposed by law, WMCA shall be entitled to disclose any information about the Guarantor and/or any of its subsidiaries, associates or affiliates obtained in accordance with **clause 11.1** above to:

11.2.1 any person connected or associated with WMCA; and/or

11.2.2 any actual or potential assignee or transferee of the whole or any part of the benefit of this Guarantee and/or any of the Service Provider's obligations under the Agreement; and/or

11.2.3 any other successor or proposed successor of WMCA; and/or

11.2.4 any person who has otherwise entered into or may otherwise enter into any contractual relations with WMCA in relation to this Guarantee and/or any of the Service Providers obligations under the Agreement (including any sub-participation arrangement); and/or

11.2.5 any person for the purpose of or in connection with any exercise by WMCA of any of its rights under this Guarantee and/or in relation to any of the Service Provider's obligations under the Agreement; and/or

11.2.6 whomsoever, and to the extent that, information is required to be disposed by any applicable law or regulation.

## 12. **Representations and warranties**

12.1 Without limitation to the Guarantor's other obligations under this Guarantee, the Guarantor hereby warrants, represents and undertakes to WMCA that:

12.1.1 it is duly incorporated and is a validly existing company under the laws of its place of incorporation, has the capacity to sue or be sued in its own name and has the power to carry on its business as now being conducted and to own its own property and other assets;

12.1.2 the execution, delivery and performance by the Guarantor of this Guarantee and the performance of its obligations under this Guarantee do not contravene or conflict with:

12.1.2.1 the Guarantor's memorandum and articles of association or other equivalent constitutional documents; or

12.1.2.2 any existing law, statute, rule or regulation or any judgement, decree or permit to which the Guarantor is a party or which is binding upon it or any of its assets; or

- 12.1.2.3 the terms of any agreement or other document to which the Guarantor is a party or which is binding upon it or any of its assets;
- 12.1.3 this Guarantee is the legal, valid and binding obligation of the Guarantor and is enforceable against the Guarantor in accordance with its terms;
- 12.1.4 it has full capacity and authority and all authorisations, consents, approvals and permits necessary for it to discharge its obligations under this Guarantee and that this Guarantee has been executed by a duly authorised representative of the Guarantor;
- 12.1.5 it is entering into this Guarantee as principal and not as agent for any person and it will act as an independent contractor in carrying out its obligations under this Guarantee;
- 12.1.6 it has not, prior to or on the date of execution of this Guarantee, committed any of the acts referred to in **clauses 14 (Ethics)** below;
- 12.1.7 the detail set out in the accounts, annual return and list of shareholders provided to WMCA on the Effective Date (as such term is defined in the Agreement) was, to the extent relevant to the Guarantor, at the Effective Date, to the best of the Guarantor's knowledge, information and belief, true and accurate and it shall advise WMCA of any fact, matter or circumstance of which it may become aware which would render any material statement or representation to be false or misleading; and
- 12.1.8 the execution of this Guarantee does not contravene the terms of any licence, regulation or other restrictions applicable to the Guarantor.
- 12.2 Following the taking of any step in connection with any voluntary arrangement or any other compromise or arrangement for the benefit of any creditor of the Service Provider, the Guarantor shall not exercise any right or remedy that it may have against the Service Provider in respect of any amount paid or other obligation performed by the Guarantor under this Guarantee.
- 12.3 The Guarantor acknowledges that WMCA has accepted this Guarantee in full reliance on the representations and warranties set out in this **clause 12**.

### 13. **Confidentiality**

- 13.1 The Guarantor acknowledges that in connection with the Agreement and/or with this Guarantee it may receive and/or obtain WMCA Confidential Information (as such term is defined in the Agreement). The Guarantor undertakes that:
  - 13.1.1 it shall receive and/or maintain the WMCA Confidential Information in strictest confidence and it acknowledges that such information is of a proprietary and confidential nature;
  - 13.1.2 it shall not use the WMCA Confidential Information for any purposes whatsoever (and in particular shall not use the WMCA Confidential

Information to the detriment of WMCA) other than for the purpose of compliance with its obligations under this Guarantee;

- 13.1.3 it shall not disclose the WMCA Confidential Information to any Third Party (as such term is defined in the Agreement) without the prior written consent of WMCA except that it is entitled to the extent strictly necessary to disclose the WMCA Confidential Information to its auditors and any other person or body having a legal right or duty to know the WMCA Confidential Information in connection with the Guarantor's business provided that prior to such disclosure the Guarantor consults with WMCA as to the proposed form of such disclosure and what, if any, confidentiality undertakings each such Third Party should enter into before WMCA Confidential Information is disclosed;
  - 13.1.4 it shall inform each of the persons referred to in **clause 13.1.1** above to whom WMCA Confidential Information is disclosed of the restrictions as to use and disclosure of the WMCA Confidential Information and shall use its best endeavours to ensure that each of them observe such restrictions and enter into any written undertakings required by WMCA;
  - 13.1.5 it shall, at WMCA's request, deliver to WMCA or destroy all documents and other materials in its possession, custody or control (or the relevant parts of such materials) that bear or incorporate any part of the WMCA Confidential Information and if instructed by WMCA in writing, remove all electronically held WMCA Confidential Information, including (without limitation) the purging of all disk-based WMCA Confidential Information and the reformatting of all disks; and
  - 13.1.6 it shall not, except where provided in **clause 13.1.1** above, or without the prior written consent of WMCA, disclose to any Third Party the nature or content of any discussions or negotiations between the parties relating to the WMCA Confidential Information.
- 13.2 The obligations set out in **clause 13.1** above do not apply to any WMCA Confidential Information which:
- 13.2.1 the Guarantor can show by documentary evidence was already in its lawful possession and at its free disposal before the disclosure to the Guarantor by WMCA;
  - 13.2.2 the Guarantor can show by documentary evidence was created independently by the Guarantor;
  - 13.2.3 is lawfully disclosed to the Guarantor otherwise than in breach of the obligation of confidentiality owed to WMCA;
  - 13.2.4 is or has come into the public domain through no fault of the Guarantor or its employees or agents; or
  - 13.2.5 is required by law or by order of a court of competent jurisdiction to be disclosed.



- 13.3 The Guarantor acknowledges that damages may not be an adequate remedy for any breach of **clause 13.1** above and that (without prejudice to all other remedies which WMCA may be entitled to as a matter of law) WMCA shall be entitled to seek the remedies of injunction, specific performance and other equitable relief to enforce the provisions of this **clause 13** and no proof of special damages shall be necessary for the enforcement of the provisions of this **clause 13**.
- 13.4 The Guarantor acknowledges and agrees that WMCA Confidential Information shall be and shall remain the property of WMCA.
- 13.5 The obligations of confidentiality set out in this **clause 13** shall remain in effect indefinitely, or until the relevant information is no longer confidential in accordance with the provisions of this **clause 13**.

#### 14. **Ethics**

- 14.1 The Guarantor shall:
- 14.1.1 comply with all applicable Law relating to anti-bribery, anti-slavery and anti-facilitation of tax evasion including the Bribery Act 2010, the Modern Slavery Act 2015 and the Criminal Finances Act 2017 ("**Relevant Requirements**");
  - 14.1.2 not engage in any activity, practice or conduct which would constitute an offence under the Bribery Act 2010 or the Modern Slavery Act 2015 if such activity, practice or conduct had been carried out in England and Wales.
- 14.2 The Guarantor shall: promptly report to WMCA any:
- 14.2.1 breach, or potential breach, of the Relevant Requirements;
  - 14.2.2 actual or suspected slavery or human trafficking in a supply chain which has any connection with this Agreement;
  - 14.2.3 request or demand for any undue or suspicious financial or other advantage of any kind received by the Service Provider or the Guarantor in connection with the performance of the Services under the Agreement or in connection with this Guarantee;
  - 14.2.4 request or demand from a third party to facilitate the evasion of tax within the meaning of Part 3 of the Criminal Finance Act 2017 in connection with the performance of the Services under the Agreement or in connection with this Guarantee.
- 14.3 The Guarantor acknowledges and agrees that any breach by the Guarantor of the foregoing provision of this **clause 14** shall entitle WMCA to terminate the Agreement in accordance with **clause 52 (Termination) of the Agreement**.
- 14.4 **Fraud**
- 14.4.1 If any fraudulent activity comes to the attention of the Guarantor in relation to the West Midlands eScooter Trial Services, the Guarantor shall notify WMCA by the most expeditious means available. The Guarantor shall then co-

operate in the investigation of such fraudulent activity and shall procure that the Service Provider implements any necessary changes to the procedures or working practices employed in the provision of the Services as may be necessary to ensure that the likelihood or opportunity for a recurrence of such fraud is minimised.

14.4.2 In the event of any fraudulent activity on the part of the Guarantor, its agents or employees, the Guarantor agrees and acknowledges that WMCA shall have the right to terminate the Agreement in accordance with **clause 52 (Termination) of the Agreement**.

15. **Change of Control and Change of Ownership**

The Guarantor shall promptly and in an event within five (5) Working Days inform WMCA of the public announcement of any event that may give rise to a Change of Control or a Change of Ownership (both terms, as defined in the Agreement) affecting it and/or a future Change of Control or a Change of Ownership and provide such information, to the extent in the public domain, as WMCA requires in relation to such a Change of Control or a Change of Ownership.

16. **Cumulative rights**

WMCA's rights under this Guarantee are cumulative and not exclusive of any rights provided by law and may be exercised from time to time and as often as WMCA deems expedient.

17. **Notices**

17.1 Any notice (which term shall in this **clause 17** include any other communication) required to be given under this Guarantee or in connection with the matters contemplated by it shall, except where otherwise specifically provided, be in writing in the English language.

17.2 Any such notice shall be addressed as provided in **clause 17.4** below and may be:

17.2.1 personally delivered, in which case it shall be deemed to have been given upon delivery at the relevant address if it is delivered not later than 17:00 hours on a Working Day (as such term is defined in the Agreement), or, if it is delivered later than 17:00 hours on a Working Day or at any time on a day which is not a Working Day, at 08:00 hours on the next Working Day;

17.2.2 if within the United Kingdom, sent by first class pre-paid post, in which case it shall be deemed to have been given two Working Days after the date of posting;

17.2.3 if from or to any place outside the United Kingdom, sent by pre-paid airmail, or by air courier in which case it shall be deemed to have been given seven Working Days after the date of posting in the case of airmail or two Working Days after delivery to the courier, in the case of air courier;

- 17.2.4 sent by facsimile, in which case it shall be deemed to have been given when despatched, subject to confirmation of uninterrupted transmission by a transmission report provided that any notice despatched by facsimile after 17:00 hours on any Working Day or at any time on a day which is not a Working Day shall be deemed to have been given at 08:00 on the next Working Day; or
- 17.2.5 subject to **clause 17.3** below, sent by electronic mail, in which case, it shall be deemed to be given when actually received but subject to the same provisions regarding receipt after 17:00 hours as apply to notices sent by facsimile.
- 17.3 The following provisions shall apply in respect of any notice sent by electronic mail:
- 17.3.1 notices sent by electronic mail shall:
- 17.3.1.1 be in a form and context calculated to come to the recipient's immediate attention, including by being classified as "urgent";
  - 17.3.1.2 be set up such that the sender is able to check whether they have been received and opened by the recipient;
  - 17.3.1.3 be in immediately intelligible form and saveable to the relevant information systems; and
  - 17.3.1.4 comply with any other requirements specified in writing by WMCA from time to time;
- 17.3.2 if any notice is received in an unintelligible or unrecognisable form, the recipient shall immediately notify the sender (if identifiable from such notice) and the sender shall re-send the notice and simultaneously serve a copy of the notice by one or other of the methods referred to in **clause 17.2** above.
- 17.4 The addresses and other details of the parties referred to in **clause 17.2** above are, subject to **clause 17.5** below:
- 17.4.1 Name: West Midlands Combined Authority
- For the attention of: [INSERT]
- Address: 16 Summer Lane, Birmingham, B13 9QT
- Facsimile number: 0121 214 [INSERT]
- E-mail address: [INSERT]
- 17.4.2 Name: [INSERT]
- For the attention of: [INSERT]
- Address: [INSERT]
- Facsimile number: [INSERT]

E-mail address: [INSERT]

17.5 Either party to this Guarantee may notify the other party of any change to the address or any of the other details specified in **clause 17.4** above, provided that such notification shall only be effective on the date specified in such notice or five Working Days after the notice is given, whichever is later and provided also that any new address shall be in the United Kingdom.

18. **Certificate**

18.1 Intentionally left blank

19. **Entire Agreement**

19.1 Subject to **clause 12.1.6** (Representations and Warranties) above, the Guarantor:

19.1.1 agrees that this Guarantee, together with any documents referred to in it, constitutes the whole agreement between the parties relating to its subject matter and supersedes and extinguishes any prior drafts, agreements, undertakings, representations, warranties and arrangements of any nature, whether in writing or oral, relating to such subject matter; and

19.1.2 acknowledges that it has not been induced to enter into this Guarantee by any representation or warranty other than those contained in this Guarantee and, having understood and freely entered into this Guarantee, agrees that it shall have no remedy in respect of any other such representation or warranty except in the case of fraud.

19.2 No variation to this Guarantee shall be effective unless made in writing and duly executed on behalf of the parties.

20. **Assignment**

20.1 WMCA is entitled to assign the benefit of this Guarantee in whole or in part provided that such assignment is in connection with a corresponding assignment of the Agreement to the same person.

20.2 The Guarantor may not assign the benefit and/or delegate the burden of this Guarantee in whole or in part or enter into any transaction which would result in any of those benefits and/or burdens passing to another person.

20.3 In the event of a breach by the Guarantor of **clause 20.2** above, the Guarantor acknowledges and agrees that WMCA shall be entitled to terminate the Agreement immediately pursuant to **clause 52 (Termination) of the Agreement**.

21. **Relationship**

21.1 Nothing in this Guarantee shall constitute, or be deemed to constitute, a partnership between the parties nor, except as expressly provided to the contrary in this Guarantee, shall it constitute or be deemed to constitute any party the agent of any other party for any purpose.

21.2 The Guarantor shall have no right or authority to and shall not do any act, enter into any contract, make any representation, give any warranty, incur any liability, assume any obligation, whether express or implied, of any kind on behalf of WMCA or bind WMCA in any way.

22. **Severability**

If any provision of this Guarantee shall be held to be illegal, void, invalid or unenforceable under the laws of any jurisdiction, the legality, validity and enforceability of the remainder of this Guarantee in that jurisdiction shall not be affected, and the legality, validity and enforceability of the whole of this Guarantee in any other jurisdiction shall not be affected.

23. **Third Parties**

The parties do not intend that any of the terms of this Guarantee will be enforceable by virtue of the Third Parties Act by any person not a party to it.

24. **Law and Jurisdiction**

24.1 This Guarantee, executed and delivered as a Deed, is governed by and shall be construed in accordance with the law of England and Wales.

24.2 The courts of England shall have exclusive jurisdiction to settle any dispute which may arise out of or in connection with this Guarantee except that WMCA has the right in its absolute discretion to enforce a judgment and/or to take proceedings in any other jurisdiction in which the Guarantor is incorporated or in which any of its assets may be situated. WMCA and the Guarantor agree to submit to that jurisdiction.

Executed as a Deed and delivered the day and year written above.

**SIGNATURE PAGE**

**EXECUTED** (but not delivered until the date hereof) as a **DEED** by affixing the common seal of **WEST MIDLANDS COMBINED AUTHORITY** in the presence of:

.....

**Authorised Signatory**

**EXECUTED** (but not delivered until the date hereof) as a **DEED** by affixing the common seal of **[INSERT]** in the presence of:

**DIRECTOR**

Signature: .....

Name (in block capitals): .....

**DIRECTOR**

Signature: .....

Name (in block capitals): .....

## SCHEDULE 16

### CEDR Model Determination Agreement

THIS AGREEMENT is dated

#### BETWEEN

(1) **WEST MIDLANDS COMBINED AUTHORITY** of 16 Summer Lane, Birmingham, B19 3SD ("**Party A**");

(2) **[INSERT]** whose registered office is **[INSERT]** ("**Party B**");

(jointly the "**Parties**");

#### 1. Definitions

"Assistant" [ ];

"CEDR Solve" Centre for Effective Dispute Resolution Limited of IDRC, 70 Fleet Street, London EC4Y 1EU;

"Dispute" any dispute arising under out of or in connection with the agreement relating to the provision of services for the West Midlands eScooter Trial Services dated [ ] (the "**Agreement**") that has been referred to Expert Determination in accordance with the Agreement (referred to in this CEDR Model Determination Agreement as the "**Dispute(s)**");

"Expert" [ ] appointed on [ ], by [ ].

#### 2. Appointment of Expert

The Expert has been appointed to resolve the Disputes. The Parties agree that the Expert shall resolve the Disputes by Expert Determination. The Expert shall act as an expert and not as an arbitrator.

#### 3. Purpose of Expert Determination

Unless the Parties subsequently agree otherwise, each Expert Determination (whether interim or final) shall lead to a decision being issued by the Expert (the "**Determination**"). Subject to **paragraphs 7 and 15** of this CEDR Model Determination Agreement, and save in the case of fraud or manifest error, the Determination shall be final and binding on the Parties.

#### 4. Confidentiality

Each Expert Determination process shall be private and confidential. The Parties, the Expert (and any expert and/or professional adviser appointed by him under **paragraph 6.4** below) shall keep the existence and subject matter of each Expert Determination process and each Determination private and confidential, except to the extent that it is necessary in order to implement or enforce a Determination or is required by law.

5. **Independence**

The Expert, CEDR Solve and any expert and/or professional adviser appointed by the Expert are and shall remain independent of the Parties, neutral and impartial, and do not and shall not act as advisers to the Parties.

6. **Conduct of Expert Determination**

6.1 The Expert shall conduct each Expert Determination in accordance with procedural directions which the Expert shall seek to agree with the Parties. If procedural directions cannot be agreed, the Expert's directions will prevail. The Parties have already agreed that in respect of each Dispute, either Party may request the Expert to issue declaratory relief or to issue an interim determination, which if issued by the Expert shall be binding on the Parties until the Expert issues his final Determination, subject to the right to appeal to the courts in respect of any declaratory relief or interim determination which either:

6.1.1 is of a non-financial nature and made in relation to ownership or use of Intellectual Property Rights; or

6.1.2 which expressly prevents the relevant Party from conducting business other than in relation to the West Midlands eScooter Trial Services;

and provided that, pending the final decision of such courts, the Parties shall comply with such declaratory relief or interim determination (as appropriate). The Parties have also agreed that if the Expert's Determination is rejected pursuant to paragraph 15 of this CEDR Model Determination Agreement, the Determination shall nevertheless be binding on the Parties until a court orders otherwise.

6.2 In respect of each Dispute (and particularly in respect of a Dispute which is in any way concerned with the exercise of Step-in Rights or termination of the Agreement, or the implementation of the Exit Plan or otherwise relating to a New Service Provider being appointed for the supply of services similar or the same as the Services), when considering whether to issue:

6.2.1 declaratory relief; or

6.2.2 an interim determination;

the Expert shall be requested by the Parties to take into account the fact that the West Midlands eScooter Trial Services is a service provided to the public and, as such, each should where possible continue to operate in an efficient and reliable manner.

6.3 The Parties have agreed that, in respect of any Dispute arising under the Agreement:

6.3.1 either Party may make an application to the Expert requesting that Third Party Service Providers (as defined in the Agreement) be joined to proceedings before the Expert, provided that the Party making the application has a direct contractual relationship with such Third Party Service Provider;

6.3.2 the Expert shall, on an application by either Party, be entitled to join Third Party Service Providers to proceedings between the Parties in the event that he



considers in his sole discretion that it is appropriate to do so and provided that such Third Party Service Providers consent to be joined to such proceedings;

6.3.3 the Parties shall amend this CEDR Model Determination Agreement to take account of a decision by the Expert to join a Third Party Service Provider to proceedings before the Expert;

6.3.4 without prejudice to the foregoing provisions of this **paragraph 6.3.4**, Third Party Service Providers may be joined to proceedings before the Expert by mutual consent of the Parties which shall be communicated in writing to the Expert and which shall enclose a document signed for and on behalf of such Third Party Service Providers confirming their consent to be joined to such proceedings. In the event that the Parties agree to join Third Party Service Providers to proceedings before the Expert, the Parties and the Expert shall amend this CEDR Model Determination Agreement accordingly; and

6.3.5 where a Third Party Service Provider is joined to the proceedings, this shall not prejudice the assessment of the rights and obligations as between WMCA and the Service Provider under the Agreement.

6.4 The Expert shall be entitled to appoint experts or other professional advisers to assist him in reaching his Determination. The fees of such experts or professional advisers shall be treated as part of the fees and expenses of the Expert Determination process.

7. **Challenge to the Procedure**

Subject to the right to appeal to the courts as set out in **paragraph 6.1** above, the Parties agree that they are not permitted to challenge the Expert's rulings on issues arising relating to the procedure including those on the Expert's own jurisdiction.

8. **Mediation Option**

At any time before the issue of the Determination by the Expert, the Parties may agree to refer the relevant Dispute to mediation, in accordance with CEDR's Model Mediation Procedure. In that case, each of the Parties shall notify the Expert and CEDR Solve, and the Expert Determination shall be suspended. If the Dispute is settled by mediation, the Expert Determination comes to an end and the Parties settle the fees and expenses of the Expert and of CEDR Solve. If the Dispute is not settled by mediation, the Expert Determination resumes, and if he has been acting as mediator the Expert may take up his previous role.

9. **Reasons in the Determination**

Each Determination of the Expert shall include the Expert's reasons for arriving at such Determination.

10. **Interest**

The Expert is empowered to award interest as part of each Determination.

11. **Costs, Fees and Expenses**

- 11.1 Unless the Parties agree, or the Expert directs upon an application by any Party, otherwise, the costs, fees and expenses of each Expert Determination shall be borne by the Parties in equal shares.
- 11.2 Where a Party makes an application in respect of costs, fees and expenses, the Expert may make a determination in respect of what proportion of costs, fees and expenses (including those of the Expert and the legal and related expenses of each party) are to be met by each Party.
- 11.3 The fees and expenses (see appendix 1 (Fees and Expenses)) shall be estimated by the Expert and paid to the Expert as a condition precedent for each Expert Determination to start. The Expert shall be paid fees and expenses. Interim bills may be raised to cover the Expert's fees at the Expert's option. A final account of the fees and expenses shall be sent to the Parties by the Expert when the relevant Determination is ready for issue to the Parties and the Determination shall be released on payment by the Parties of any further amounts due. If the Parties agree not to proceed with Expert Determination, the Expert will refund a proportionate amount of the fees and expenses advanced, depending on the amount of work done by the Expert.
- 11.4 If any Third Party Service Providers are joined to the Dispute, the costs and expenses referred to in **paragraph 11.1** above shall, if directed by the Expert upon an application by any Party, be allocated equitably by the Expert between the separate Disputes that are being determined through the same process and then apportioned for each dispute between each party thereto as the Expert deems appropriate.

## 12. **Implementation of the Determination**

The Parties agree to implement each Determination within seven (7) days of its being published to them. The Determination shall be enforceable as a matter of contract between the Parties, not an arbitral award.

## 13. **No Liability**

The Expert (and any expert and/or professional adviser appointed by him) shall not be liable for anything done or omitted to be done in the discharge or purported discharge of their appointment, unless the act or omission is shown to be fraudulent or in bad faith. However, nothing in this forgoing exclusion shall relieve the Expert (or any expert and/or professional adviser appointed by him) of their duty to provide their Determination as soon as reasonably possible.

## 14. **Role of CEDR Solve**

Subject to the provisions of **clause 71.2.4 (Dispute Resolution Procedure) of the Agreement**, CEDR Solve shall appoint the Expert. The Expert is responsible for the procedure from the time when he has been appointed. CEDR Solve may be consulted by any of the Parties to this CEDR Model Determination Agreement in case of difficulty. Should the Expert refuse to complete, or be or become incapable of completing the task, CEDR Solve will appoint a substitute Expert within a reasonable time.

## 15. **After the Determination**

- 15.1 Where the Expert's Determination relates to:

- 15.1.1 a Dispute with a value in excess of [INSERT] (£[INSERT]) (as certified by the Expert in his Determination); or
- 15.1.2 a Dispute arising out of or in connection with or in relation to the termination, actual or threatened repudiation or abandonment of the Agreement by either of the Parties; or
- 15.1.3 where the Determination relates principally to the grant of relief of a non-financial nature made in relation to ownership or use of Intellectual Property Rights;

the Parties reserve their rights to reject the Determination pursuant to **clause 71.2.10 (Dispute Resolution Procedure) of the Agreement** and to apply instead to the English courts in order to resolve the Dispute.

- 15.2 None of the Parties shall call the Expert, or any expert and/or professional adviser appointed by him, or CEDR Solve (or any employee, consultant, officer or representative of CEDR Solve) as a witness, consultant, arbitrator or expert in any litigation or arbitration in relation to any Dispute the subject of a Determination under this CEDR Model Determination Agreement and the Expert and any expert and/or professional adviser appointed by him, and CEDR Solve will not act voluntarily in any such capacity without the written agreement of the Parties.

16. **Law and Jurisdiction**

This CEDR Model Determination Agreement shall be governed by and construed in accordance with English law and shall be subject to the exclusive jurisdiction of the English courts.

Signed

On behalf of Party A

On behalf of Party B

Signed by the Expert

Signed on behalf of CEDR Solve

## Appendix 1

### Fees and Expenses

[Note: To be completed by the Expert and CEDR Solve in respect of each Dispute]

CEDR Solve appointment fee	£	
CEDR Solve professional support fee	£	
Expert's fees	£	per hour
Payment to be made on account by each Party	£	by [date]

**SCHEDULE 17**  
**Interface Agreement**

**dated**

**2020**

**West Midlands Combined WMCA**

and

**[eScooter Service Provider 1]**

and

**[eScooter Service Provider 2]**

**Interface Agreement**

in relation to the West Midlands eScooter Trial Services



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dated

2020

## Parties

- (1) **West Midlands Combined Authority** of 16 Summer Lane, Birmingham, B19 3SD (the **WMCA**);
- (2) **[eScooter Service Provider 1]** (Company No [ ] ) whose registered office is at [ADDRESS] (**Service Provider 1**); and
- (3) **[eScooter Service Provider 2]** (Company No [ ] ) whose registered office is at [ADDRESS] (**Service Provider 2**).

## Introduction

- (A) The WMCA has entered into a [supply and services agreement] with each of the Service Providers on or around the date of this Deed for the provision of West Midlands eScooter Trial Services.
- (B) Each of the Contracts are interdependent with each other and each of the Service Providers, in order to perform the obligations under and comply with the terms of each their respective Contracts, is reliant upon the other performing their obligations under and complying with the terms of their Contract.
- (C) So as to recognise that fact the Service Providers have agreed the terms set out in this Agreement.
- (D) Accordingly, the WMCA and the Service Providers have agreed to enter into this Deed so as to give effect to their agreement.

## Agreed terms

### 1 Definitions and interpretation

- 1.1 In this Agreement, the following words have the following meanings and effect unless otherwise stated:
- 1.2 Contracts means together the Service Provider 1 Agreement and the Service Provider 2 Agreement;
- 1.3 Early Warning Notice means a notice issued in accordance with clause 5.6 (Early Warning);
- 1.4 Mitigation Meeting means a meeting convened in accordance with clause 5.7 (Mitigation Meeting);
- 1.5 Scheme means the Scheme to deliver and e-scooters trial in the West Midlands as more particularly described in the Contracts;
- 1.6 Scheme Coordination Group means the group convened and operated in accordance with clause 5.1 (Scheme Coordination Group) and Schedule 1 (Scheme Coordination Group);
- 1.7 Services means the services to be delivered pursuant to the Contracts;

- 1.8 Service Provider 1 Agreement means the [supply and services agreement] between the WMCA and Service Provider 1 for the delivery of an e-scooter trial in the West Midlands;
- 1.9 Service Provider 2 Agreement means the [supply and services agreement] between the WMCA and Service Provider 2 for the delivery of an e-scooter trial in the West Midlands;
- 1.10 Service Providers means together Service Provider 1 and Service Provider 2.
- 1.11 Word and phrases used in each of the Contracts will have the same meaning and effect when used in this Agreement unless the context otherwise requires.
- 1.12 Any obligation on a Party to this Agreement to do any act includes an obligation to procure that it is done.
- 1.13 The clause and paragraph headings in this Agreement are for ease of reference only and are not to be taken into account in the construction or interpretation of any provisions to which they refer.
- 1.14 Unless the contra-intention appears, references to numbered clauses are references to the relevant clause in this Agreement.
- 1.15 Words in this Agreement denoting the singular include the plural meaning and vice versa.
- 1.16 Reference to Parties means two or more of the parties to this Agreement and references to a Party means one of the Parties.
- 1.17 References to any Agreement or document include a reference to such Agreement or document as amended, supplemented, substituted, novated or assigned.
- 1.18 References in this Agreement to any statutes or statutory instruments include any statute or statutory instrument amending consolidating or replacing them respectively from time to time in force and references to a statute include statutory instruments and regulations made pursuant to it.
- 1.19 Words in this Agreement importing one gender include both other genders and may be used interchangeably and words denoting natural persons, where the context allows, include corporations and vice versa.
- 1.20 Capitalised terms not defined in this Agreement shall have the same meanings as set out in the relevant Contract.
- 1.21 References to any one of the WMCA, Service Provider 1 and Service Provider 2 include a reference to their employees subcontractors agents and successors.

## **2 Commencement and duration**

This Agreement shall have effect from the date of this Agreement and shall terminate on the date on which both Contracts have expired or been terminated.

## **3 Interaction with the Contracts**

- 3.1 The Parties agree that it is a principle of this Agreement that if there is any ambiguity or inconsistency in respect of the rights and obligations contained in this Agreement and



those in the Contracts then the rights and obligations contained in this Agreement shall be additional to and not in substitution for those contained in the Contracts.

- 3.2 Nothing in this Agreement shall derogate from or limit performance of the obligations by and liabilities of the Contractors for and to the WMCA under each Contract nor shall it make or cause the WMCA to be liable to Service Provider 1 and/ or Service Provider 2 for the failure of one or either to perform their obligations under and / or comply with the terms of their respective Contract

#### 4 **Mutual covenants and acknowledgments**

- 4.1 Each of Service Provider 1 and Service Provider 2 covenant with each other and separately with the WMCA to observe and perform the terms of its respective Contract and to observe and perform such terms so as not to cause Service Provider 1 and Service Provider 2 as the case may be any loss or damage under or to be in breach of their respective Contract.

- 4.2 Each of Service Provider 1 and Service Provider 2 shall cooperate with the other in order to facilitate the performance of their respective obligations under the Service Provider 1 Agreement and the Service Provider 2 Agreement.

- 4.3 Without prejudice to the generality of **clauses 4.1 and 4.2** or to the express obligations of the Service Providers under their respective Contracts, each Service Provider agrees that it shall carry out its respective obligations under this Agreement and each Contract in a constructive and collaborative manner in order to deliver the overall success of the Scheme provided always that no Service Provider shall be obliged to perform tasks or duties which should properly be performed by any other Service Provider under their respective Contracts

#### 5 **Coordination**

##### 5.1 **Interface Activities**

Each Service Provider shall carry out the interface activities ascribed to it in **Schedule 2 (Interface Activities)** as if they form part of the Services as defined in each Service Provider's respective Contract.

##### 5.2 **Scheme coordination group**

The Parties shall form a Scheme coordination group in accordance with the provisions of **Schedule 1 (Scheme Coordination Group)**.

##### 5.3 **Appointment of Interface Coordinators**

Each Service Provider shall appoint and through the term of this Agreement maintain an interface coordinator to work with the interface coordinators of the other Service Provider to fully carry out the requirements of this Agreement. Each Party may replace its interface coordinator and should it do so, it shall promptly (and in any case within seven (7) days) inform the other Parties of the identity of the replacement interface coordinator.

#### 5.4 **No Slow Downs or Work Stop**

Each Service Provider shall use its best efforts to avoid delaying or stopping the performance of its obligations under its Contract as a result of a dispute with the other Service Provider, and any disputes shall be resolved as specified in **clause 7 (Dispute Resolution)**.

#### 5.5 **Programme**

A programme for the Scheme has been notified to the Service Providers who each hereby acknowledge that it describes the main activities of the Service Providers in relation to the Scheme. Revised programmes for the Scheme may be issued by the WMCA from time to time which the Parties will refer to for the purposes of this Agreement. Each party will use all reasonable endeavours to coordinate its activities to meet the requirements of the programme as may apply from time to time and to avoid causing delay or disruption to the sequence of activities and deliverables provided for in the programme.

#### 5.6 **Early Warning**

Each Service Provider shall as soon as possible give notice (an **Early Warning Notice**) to the other Parties of any circumstances that has caused (or that could reasonably be expected to cause) delay to the fulfilment by such Service Provider or of another party of its obligations in this Agreement or the Contract to which it is a party. Such notice shall include a description of the circumstances hindering or likely to hinder timely fulfilment of that Service Provider's obligations, the steps being taken or which it considers require to be taken to mitigate such delay and a reasoned estimate of the extent of delay.

#### 5.7 **Mitigation Meeting**

5.7.1 On receiving an Early Warning Notice, any Party, on giving reasonable notice in the circumstances, may instruct the other Parties to attend a meeting (a **Mitigation Meeting**) and the other Parties shall comply with such instruction, such meetings to be held face to face or as virtual meetings as appropriate.

5.7.2 At a Risk Reduction Meeting, whilst always having the utmost consideration for the health and safety of the public and those working on the Scheme, each and any other Parties in attendance shall co-operate:

- (a) to make and consider proposals for how the effect of the circumstances stated in an Early Warning Notice can be avoided or reduced;
- (b) to seek solutions that will bring advantage to all parties who will be affected by the circumstances in the Early Warning Notice;
- (c) to identify health and safety risks of any proposed solutions and actions; and
- (d) to decide on the actions to be taken (if any) and who, in accordance with the relevant Contract, shall take such actions.

5.7.3 Each Service Provider shall be responsible for implementing such measures as have been agreed to apply to it and shall cover its own costs in doing so. A

Party may agree to contribute to the costs of another Party of implementing such measures.

## 5.8 Information Sharing

A Service Provider (the **Requester**) may at any time make a written request to the other Service Provider (the **Provider**) for any information that is necessarily required for the performance of its obligations under this Agreement and the relevant Contract. Unless the Provider and the Requester agree otherwise the information shall be provided free of charge and in a format reasonably requested.

## 6 Indemnities

Each of Service Provider 1 and Service Provider 2 shall indemnify and keep fully indemnified the other and the WMCA at all times from and against all loss, damage, liabilities, claims, proceedings, costs and expenses suffered or incurred in respect of or in connection with:

- 6.1 any injury to or the death of any employee of or person engaged howsoever arising and notwithstanding any act or omission of the other; and/or
- 6.2 in respect of or in connection with any damage to property real or personal; and/or
- 6.3 any injury to or death of any person whosoever (excluding employees of each),

where such damage, injury or death arises from any breach of this Agreement by that Party or from any negligence or other act, omission or default on the part of its employees, agents or subcontractors, in each such case save to the extent that any such damage, injury or death was due to any act, omission or default of the other Service Provider, its or their employees, agents or subcontractors.

## 7 Dispute resolution

If any dispute arises in connection with this Agreement, representatives of the senior management of each of the Service Providers shall meet and negotiate in good faith in an attempt to resolve the dispute. If the senior management of the respective Parties fail to resolve such dispute, the matter shall be referred to the WMCA for a decision taking into account the rights and obligations of each party under the Contracts. Where any such decision is disputed by one of the Service Providers the matter shall be referred to the dispute resolution procedure in that Service Provider's Contract.

## 8 Confidentiality

The Parties shall treat any information provided by any Party or Parties as private and confidential and shall not disclose any such information to any other person or make use of any such information other than for the purposes of this Agreement and the performance of the Contracts without the prior written consent of the Party to whom such information relates.

## 9 Miscellaneous provisions

- 9.1 Nothing contained or implied in this Agreement or any consent, acceptance or approval granted pursuant to it shall prejudice or affect the statutory rights, powers, duties and

- obligations of the WMCA in the exercise of its statutory or public functions (whether directly or under authorisation/ delegation) as a statutory body or WMCA.
- 9.2 If any provision of this Agreement is held to be illegal or unenforceable the validity or enforceability of the remaining provisions shall not be affected.
- 9.3 This Agreement may not be varied or amended except in writing signed by duly authorised representatives of all the Parties.
- 9.4 This Agreement supersedes any prior agreement or understanding concerning its subject matter between Service Provider 1 and Service Provider 2 who each confirm to the other and to the WMCA that it constitutes the entire agreement between them on its subject matter.
- 9.5 Save as otherwise provided in this Agreement none of the Service Providers shall be deemed to be an agent of the other nor of the WMCA and each shall not hold itself out as having WMCA or power to bind the other or the WMCA in any way.
- 9.6 The WMCA may (without the consent of either Service Provider 1 or Service Provider 2) assign its rights under this Agreement.
- 9.7 The Service Providers may not assign their respective rights under this agreement without the consent of the other Parties.
- 9.8 A person who is not a Party shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.
- 9.9 This Agreement may be executed in any number of counterparts and by the different Parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.
- 9.10 This Agreement is governed by the laws of England. The Parties agree that the English Courts shall have exclusive jurisdiction to hear and settle any action, suit, proceeding or dispute in connection with this Agreement and irrevocably submit to the jurisdiction of such Courts.

This Deed has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

## Schedule 1

### Scheme Coordination Group

#### 1 **Nomination of members**

Within one (1) week of the execution of this Agreement each Party will nominate one representative (and notify the other Parties of it nominated individual) to serve as the initial core members of the Scheme Coordination Group and the Parties shall procure that those nominated representatives attend the first meeting of the Scheme Coordination Group at a time, date and place specified by the WMCA. Such meetings to be held in face to face or as virtual meetings as appropriate.

#### 2 **Meetings**

2.1 The Scheme Coordination Group shall meet at least monthly (or such longer period as the Parties shall agree) in order for the Scheme Coordination Group to discharge its functions as set out in this Agreement and as notified by the WMCA to the other Parties.

2.2 Each Party shall ensure that its nominated representatives attend all meetings of the Scheme Coordination Group.

2.3 The Scheme Coordination Group shall constitute a working group which shall serve as a forum for the use of the Parties to comply with their obligations under this Agreement and the Parties shall procure that the Scheme Coordination Group co-ordinate, analyse, and determine procedures, explore solutions and make recommendations, provided that this shall not limit the WMCA's rights to make determinations or give consent (as applicable) as contemplated by this Agreement and the respective Contracts or in the exercise of the WMCA's statutory functions.

2.4 The Scheme Coordination Group shall not have any power to make decisions or determinations with binding contractual effect unless all Parties attending agree and such agreement is documented in writing and signed by all Parties.

#### 3 **Membership and operation**

3.1 Each Party may:

3.1.1 where a nominated representative of the Party is unable to attend a meeting of the Scheme Coordination Group, substitute such nominated representative with a temporary alternate; and

3.1.2 (from time to time) replace its nominated representative(s) on the Scheme Coordination Group,

by giving written notice of such substitution or replacement to the other Parties.

- 3.2 One of the Parties (as determined by the WMCA from time to time) shall act as secretary in relation to the overall operation of the Scheme Coordination Group and shall arrange for minutes to be recorded for each meeting of the Scheme Coordination Group and promptly distributed to the attendees.
- 3.3 A quorum for meetings of the Scheme Coordination Group shall consist of the nominated representative of each Party (subject to any substitutions pursuant to **paragraph 3.1** of this **Schedule 1** (Scheme Coordination Group)).
- 3.4 Meetings of the Scheme Coordination Group shall be chaired by the WMCA's nominated representative, as determined by the WMCA from time to time.
- 3.5 The Scheme Coordination Group shall agree the manner in which its functions shall be carried out, provided that, in default of agreement, the WMCA shall determine the manner in which its functions shall be carried out.
- 3.6 Where a Party other than the WMCA wishes to invite any additional person(s) to attend a meeting of the Scheme Coordination Group, it must give prior notice to the other Parties and must obtain the other Parties' consent (such consent not to be unreasonably withheld or delayed).
- 3.7 The Service Providers shall at their own cost afford all such assistance and provide to the Scheme Coordination Group such documents, data and information as may reasonably be requested in connection with the conduct of the Scheme Coordination Group (but provided that no Party shall be obliged to disclose any document which would be privileged from production in civil proceedings between the Parties).
- 3.8 The Parties agree that:
- 3.8.1 the existence of the Scheme Coordination Group and its deliberations shall not derogate from the rights and obligations of the Parties under their respective Contract;
- 3.8.2 all communications of attendees and information provided at any meeting of the Scheme Coordination Group shall be without prejudice and shall not be capable of being adduced or relied upon in any dispute among any of the Parties and, subject to the WMCA's power to make determinations or give consent (as applicable) as provided in this Agreement, shall be non-binding.

## Schedule 2

### Interface Activities

*[Drafting note: specific details of collaboration may be required. This could include a responsibility matrix, co-location of e-scooters, compatibility of eScooters, access arrangements and reconciliation of payments collected for each other].*

#### 1 Service Provider 1 Interface Activities

Service Provider 1 shall perform the following interface activities:

#### 2 Service Provider 2 Interface Activities

Service Provider 2 shall perform the following interface activities:

executed as a deed by affixing the common seal )  
of **West Midlands Combined WMCA** in the )  
presence of: )  
)

.....  
Authorised Signatory

executed as a deed by )  
**[Service Provider 1]** )  
acting by ....., a director )  
)

.....  
Director's Signature

in the presence of:

witness signature:

name:

address:

occupation:

executed as a deed by )  
**[Service Provider 2]** )  
acting by ..... a director )  
)

.....  
Director's Signature

in the presence of:

witness signature:

name:

address:

occupation:



## SCHEDULE 18

### Equality and Diversity

The equality and diversity policies contained within this **Schedule 18**, shall be WMCA Policies, as referred to in **clause 29.1 (Compliance with WMCA Policies)**.

#### 1. Compliance

- 1.1 Without limiting any other provision of this Agreement, the Service Provider shall, in relation to the Services:
  - 1.1.1 not unlawfully discriminate; and
  - 1.1.2 procure that the Service Provider Personnel do not unlawfully discriminate, within the meaning and scope of the Equality Act 2010 and any other relevant enactments in force from time to time relating to discrimination in employment.
- 1.2 The Service Provider acknowledges that in the performance of its obligations under this Agreement, the Service Provider shall, and shall use reasonable endeavours to procure that its Sub-Contractors shall, assist and cooperate with WMCA where possible in satisfying WMCA duties under section 149 of the Equality Act 2010 to:
  - 1.2.1 eliminate unlawful discrimination, harassment, victimisation and any other conduct prohibited by the Act;
  - 1.2.2 advance equality of opportunity between people who share a protected characteristic and people who do not share it; and
  - 1.2.3 foster good relations between people who share a protected characteristic and people who do not share it.
- 1.3 In terms of the Design Services and Build Services, the Service Provider shall, wherever practicable and without jeopardising the achievement of the Milestones and Deliverables, design, manufacture and install [Terminals and Docking Points] that comply with relevant design standards so as to ensure that where possible WMCA promotes equality and fulfil its duties under the Equality Act 2010.
- 1.4 The Service Provider shall develop and provide to WMCA (to the extent not already provided to WMCA prior to the Effective Date) an equality policy (strategic plan), training plan, diversity plan and communications plan submitted within fifteen (15) Working Days of the Effective Date.
- 1.5 If the equality policy (strategic plan), training plan, diversity plan or communications plans submitted (as applicable) is:
  - 1.5.1 Approved, it shall be adopted immediately by the Service Provider; or
  - 1.5.2 not Approved, the Service Provider shall amend the drafts (as applicable) and re-submit the relevant document to WMCA for Approval within the time period agreed in writing between the Parties.

## 2. Equality and Diversity Audit

- 2.1 WMCA may from time to time undertake any audit or check of any and all information regarding the Service Provider's compliance with **paragraph 1** of this Schedule 18. WMCA's rights pursuant to this **paragraph 2** shall include any and all documents and records of the Service Provider and its Sub-Contractors.
- 2.2 WMCA shall use reasonable endeavours to co-ordinate such audits and to manage the number, scope, timing and method of undertaking audits so as to ensure that the Service Provider and each Sub-Contractor is not, without due cause, disrupted or delayed in the performance of the Service Provider's and/or Sub-Contractor's obligations under this Agreement and/or the relevant Sub-Contract (as the case may be).
- 2.3 The Service Provider shall promptly provide, and shall procure that its Sub-Contractors promptly provide, all reasonable co-operation in relation to any audit or check including, to the extent reasonably possible in each particular circumstance:
- 2.3.1 granting or procuring the grant of access to any premises used in the Service Provider's performance of this Agreement or in the relevant Sub-Contractor's performance of its Sub-Contract, whether the Service Provider's own premises or otherwise;
  - 2.3.2 granting or procuring the grant of access to any equipment (including all computer hardware and software and databases) used (whether exclusively or non-exclusively) in the performance of the Service Provider's or the relevant Sub-Contractor's obligations specified in **paragraph 1**, wherever situated and whether the Service Provider's own equipment or otherwise; and
  - 2.3.3 complying with WMCA's reasonable requests for access to senior personnel engaged in the Service Provider's performance of this Agreement or the relevant Sub-Contractor's performance of its Sub-Contract.

## SCHEDULE 19

### Business Continuity

#### 1. Scope

1.1 This **Schedule 19** sets out WMCA'S requirements in respect of any circumstance or event which renders, or is likely (in WMCA'S absolute discretion (subject to **paragraph 6.2 (General)**) to render:

1.1.1 it necessary or desirable for alternative, additional or replacement WMETS Assets, Service Systems, Premises, Service Provider Personnel, processing, methods, processes or procedures as set out in the Business Continuity Plan instead of or as well as the WMETS Assets, Service Systems, Premises or Service Provider Personnel (or any parts thereof) otherwise used to provide the Services in accordance with the provisions of this Agreement (a "**Business Continuity Event**"); or

1.1.2 the WMETS Assets, Service Systems, Premises or Service Provider Personnel (or any parts thereof) unavailable, inaccessible, inoperable or in need of any other restoration, reinstallation, repair, removal, retrieval, re-entering, recovery or replacement (a "**Disaster Recovery Event**"),

whether resulting from an act or omission of the Service Provider or otherwise, including System Failures, Service Failures, Viruses, a Change in Law, fire, flood, water, wind, lightning and any other adverse weather conditions, explosions and any other catastrophe or Force Majeure Event.

1.2 All development of the Business Continuity Plan and the Business Continuity Services, and execution of the Business Continuity Services, shall be undertaken by the Service Provider having regard to and taking account of:

1.2.1 [the impact on the SWIFT System (and in any event complying with the requirements of the operator of the SWIFT System so as to ensure the operation to that system is not impacted)];

1.2.2 the wider operation, and impact on other activities of, WMCA and Third Parties (and so that Business Continuity Services shall not be undertaken by the Service Provider in isolation).

1.3 The Service Provider acknowledges and agrees that the Services require:

1.3.1 a high availability, resilient Service Systems that operate continuously (24 hours per day, seven days a week, three hundred and 365 days of year), whilst at the same allowing for maintenance and backups of the Service Systems to be carried out without disruption to Services;

1.3.2 duplication of Hardware that may be housed in a separate premises to provide for Business Continuity. Such duplication is only required for servers not for business Premises, e.g. Contact Centres.

- 1.4 The Service Provider acknowledges and agrees that:
- 1.4.1 Business Continuity in respect of the WMETS Assets, Service Systems and Services and the overall provision of the West Midlands eScooter Trial Services is fully dependent upon the:
    - 1.4.1.1 Business Continuity Plan;
    - 1.4.1.2 Business Continuity Infrastructure;
    - 1.4.1.3 Business Continuity Premises for continued provision of the Services, Service Systems and WMETS Assets; and
    - 1.4.1.4 Business Continuity Services; and
  - 1.4.2 it is necessary for the Service Provider to ensure Business Continuity at all times and the continued provision of the Services in accordance with the provisions of this Agreement in all circumstances, events and scenarios including in respect of and following a:
    - 1.4.2.1 Business Continuity Event; or
    - 1.4.2.2 Disaster Recovery Event.

Nothing in this **Schedule 19** will, subject to the provisions of **clause 50 (Force Majeure)**, oblige the Service Provider to provide:

    - 1.4.2.3 the Business Continuity Infrastructure (including Business Continuity Premises); or
    - 1.4.2.4 the Business Continuity Services,

if and to the extent that its ability to provide the Business Continuity Infrastructure (including Business Continuity Premises) or the Business Continuity Services is affected by a Force Majeure Event.
- 1.5 Without limiting **paragraph 1.4** above, the Service Provider shall:
- 1.5.1 develop the:
    - 1.5.1.1 Business Continuity Plan; and
    - 1.5.1.2 Business Continuity Test Schedule,

in accordance with **paragraph 2.1 (Business Continuity Plan and Business Continuity Test Schedule)**;
  - 1.5.2 throughout the Term, review and keep up to date the Business Continuity Plan and the Business Continuity Test Schedule and submit them to WMCA for Approval and in any event in accordance with **paragraph 2.3 (Business Continuity Plan and Business Continuity Test Schedule)**;
  - 1.5.3 provide the Business Continuity Infrastructure and other actions or measures specified in the Business Continuity Plan to prevent or limit the effects of any:

- 1.5.3.1 Business Continuity Event; or
- 1.5.3.2 Disaster Recovery Event;
- 1.5.4 test the:
  - 1.5.4.1 Business Continuity Plan;
  - 1.5.4.2 Business Continuity Services; and
  - 1.5.4.3 Business Continuity Infrastructure,in accordance with **paragraph 3 (Business Continuity Testing)**;
- 1.5.5 provide the Business Continuity Services and implement the applicable provisions of the Business Continuity Plan and comply with its other obligations in this **Schedule 19**.

## 2. **Business Continuity Plan and Business Continuity Test Schedule**

- 2.1 The Service Provider shall:
  - 2.1.1 ensure that a draft:
    - 2.1.1.1 Business Continuity Plan (which shall include the requirements set out in **paragraph 2.8** below); and
    - 2.1.1.2 Business Continuity Test Schedule (which shall include the Business Continuity Testing),are prepared and submitted to WMCA as soon as practicable and in any event not later than twenty (20) Working Days following the Effective Date for approval;
  - 2.1.2 throughout the Term, maintain the:
    - 2.1.2.1 Business Continuity Plan; and
    - 2.1.2.2 Business Continuity Test Schedule,including pursuant to **paragraph 2.3** below.
- 2.2 WMCA shall use all reasonable endeavours to ensure that:
  - 2.2.1 the Interested Parties and Other Service Providers will provide the appropriate services to the Service Provider; and
  - 2.2.2 the Interested Parties' and Other Service Providers' business continuity plans shall be made available to the Service Provider so that they can be taken into account by the Service Provider in the development of the Business Continuity Plan and the Business Continuity Test Schedule.

2.3 The Service Provider shall review (including in accordance with **paragraph 2.5** below) and resubmit the Business Continuity Plan and the Business Continuity Test Schedule to WMCA for approval:

2.3.1 at least annually following the Operational Commencement Date; or

2.3.2 at other intervals if requested as part of any Change or as may be required by WMCA or the Service Provider,

(and the Service Provider shall, at its sole cost and expense, promptly following such Approval implement the latest Business Continuity Plan and the Business Continuity Test Schedule), in each case without prejudice to the Service Provider's obligations to comply with Good Industry Practice.

2.4 Notwithstanding anything in **paragraph 2.3** above, the Service Provider shall not change the Business Continuity Plan or the Business Continuity Test Schedule without WMCA's prior written agreement.

2.5 The Service Provider shall ensure that the reviews conducted in accordance with **paragraph 2.3** above:

2.5.1 examine the procedures and methodologies set out in the Business Continuity Plan and the Business Continuity Test Schedule; and

2.5.2 assess their suitability in light of any amendments to the WMETS Assets, Service Systems and Services that have occurred since the original Business Continuity Plan or Business Continuity Test Schedule respectively or the most recent review (whichever is later).

Within ten (10) Working Days of conclusion of such review, the Service Provider shall provide to WMCA a report regarding specifying:

2.5.2.1 the findings of the review;

2.5.2.2 any resulting changes to the risk profile of the WMETS Assets, Service Systems and/or Services; and

2.5.2.3 the recommendations for addressing the new risk profile and any other findings of the review, as the Service Provider deems necessary.

2.6 WMCA may from time to time issue a notice to the Service Provider requiring the Service Provider to amend the Business Continuity Plan or the Business Continuity Test Schedule. WMCA may also require the Service Provider to:

2.6.1 liaise, assist and co-operate with other Interested Parties, Other eScooter Service Providers and Other Service Providers (both when developing and when integrating the amendments to the Business Continuity Plan and the Business Continuity Test Schedule) in order to ensure consistency and interoperability between the various business continuity and disaster recovery

plans of the Service Provider, Interested Parties, Other eScooter Service Providers and Other Service Providers; and

- 2.6.2 produce the updated Business Continuity Plan and Business Continuity Test Schedule on the basis of any amendments identified in accordance with **paragraph 2.6.1** above.

Any disputes arising pursuant to this **paragraph 2.6** shall be dealt with in accordance with the Dispute Resolution Procedure.

- 2.7 The Service Provider may request additional payment or changes to the Service Charges only in respect of material amendments to the:

- 2.7.1 Business Continuity Plan; or

- 2.7.2 Business Continuity Test Schedule,

where such amendments arise as a result of a decision by WMCA to change its requirements pursuant to **paragraph 2.6** above in accordance with the Change Control Request Procedure, other than as a result of any act or omission of the Service Provider (or any of its Sub-Contractors).

- 2.8 Without limitation to the generality of **clause 38 (Business Continuity)**, the Service Provider shall ensure that the Business Continuity Plan includes:

- 2.8.1 a master plan describing the overall strategy for ensuring Business Continuity (and for responding to a Business Continuity Event or Disaster Recovery Event) in respect of all WMETS Assets and Service Systems, including the interrelationships and dependencies of each of the parts of the Business Continuity Plan in **paragraph 2.8.2** below;

- 2.8.2 plans in order to ensure Business Continuity (and to respond to a Business Continuity Event or Disaster Recovery Event) in respect of the relevant parts of the WMETS Assets and Service Systems, including:

- 2.8.2.1 a risk and issue assessment;

- 2.8.2.2 Business Continuity planning and all actions or measures to prevent or limit the effect of any Business Continuity Event or Disaster Recovery Event such as hot, warm, cold or mobile backup sites, locations or arrangements with Sub-Contractors;

- 2.8.2.3 a description of all methods, processes and procedures and other actions and sequences to be followed for Business Continuity and to respond to a Business Continuity Event or Disaster Recovery Event (all such processes, procedures, actions and sequences to be at the sole cost and expense of the Service Provider), including:

- (a) notifying WMCA Personnel, Customers, Interested Parties, Other Service Providers, Third Parties and Service Provider Personnel and Sub-Contractors;
  - (b) assignment of Service Provider Personnel and tasks;
  - (c) using backups or storage, recovering, re-entering or correcting Data;
- 2.8.2.4 using additional Service Provider Personnel or other resources to be deployed, or additional, alternative or replacement Systems, premises (including the Business Continuity Premises), processing, processes or procedures;
- 2.8.3 all steps to be taken (such steps to be at Service Provider's sole cost and expense) for the WMETS Assets, Service Systems, Data, Premises, Service Provider Personnel or Services (or any parts thereof) to be provided in accordance with this Agreement (such that the Business Continuity Plan can be ended pursuant to **paragraphs 6.4 and 6.5 (General)**);
- 2.8.4 management and review activities;
- 2.8.5 the relevant parts of the Business Continuity Test Schedule;
- 2.8.6 a description of how the relevant part of the Business Continuity Plan should be applied to potential Business Continuity Event or Disaster Recovery Event scenarios, including:
  - 2.8.6.1 loss of access to Premises;
  - 2.8.6.2 sickness of Service Provider Personnel;
  - 2.8.6.3 corruption of Data; and
  - 2.8.6.4 loss of power at, or communications with, or operation of a Docking Station, such that more than 25% of the total population of Docking Stations which should be in service are, due to such events, out of service;

(each a "**Scenario**") and action maps for each different Scenario;
- 2.8.7 a description of the capability of the WMETS Assets, Service Systems and/or Services to be delivered under each Scenario as a proportion of the capability required under the provisions of the Agreement, including the Service Levels;
- 2.8.8 a description of the Business Continuity Infrastructure;
- 2.8.9 proposed Service Levels to apply in relation to the alternative, additional or replacement WMETS Assets, Service Systems, Premises (including the Business Continuity Premises), Service Provider Personnel, processing, methods, processes or procedures or other actions or measures in relation to



- restoration, reinstallation, repair, removal, retrieval, re-entering, recovery or replacement set out in the Business Continuity Plan, but only to the extent that the existing Service Levels under **Schedule 5 (Service Level Agreement)** or otherwise agreed using the Change Control Request Procedure or in respect of Additional Services cannot in any way be applied;
- 2.8.10 provision for an extended Business Continuity Event or Disaster Recovery Event, such as permanent loss of the Premises; and
  - 2.8.11 separate detailed plans in respect of responding to a:
    - 2.8.11.1 Business Continuity Event; and
    - 2.8.11.2 Disaster Recovery Event (and including all WMETS Assets and Service Systems for responding to a Disaster Recovery Event);
  - 2.8.12 measures to ensure continuity of Services in the event of:
    - 2.8.12.1 Back Office or Business Continuity loss;
    - 2.8.12.2 Docking Station functionality loss;
    - 2.8.12.3 Data loss or Data corruption which prevents operation of the West Midlands eScooter Trial Services;
    - 2.8.12.4 Systems failure; and
    - 2.8.12.5 failure of the communication links between Docking Station and the Service Systems;
  - 2.8.13 provision for the availability of the Contact Centre / Services Website including:
    - 2.8.13.1 how availability and Business Continuity will be maintained; and
    - 2.8.13.2 how the required infrastructure will be used for System maintenance and backup to support Business Continuity;
  - 2.8.14 provision for availability of Terminals and smartcard readers; and
  - 2.8.15 details on how loss of communications or power will impact:
    - 2.8.15.1 Charges in progress;
    - 2.8.15.2 Charges during loss of communications or power; and
    - 2.8.15.3 the availability of eScooter for hire.
- 2.9 The Service Provider shall ensure that the Business Continuity Plan is designed in such a way to ensure that:
- 2.9.1 the Business Continuity Plan does not depend on any Interested Party or Other Service Provider adjusting its Hardware, Software or Systems as a result of any Business Continuity Event or Disaster Recovery Event;

- 2.9.2 in the event of a Business Continuity Event or Disaster Recovery Event:
  - 2.9.2.1 the security of the WMETS Assets, Service Systems and Services (or any part thereof) is not compromised in any way by the Business Continuity Event or Disaster Recovery Event;
  - 2.9.2.2 the Service Provider will still be able to make available Data so that the Services will be able to perform the Data synchronisations required in order to ensure consistent Data across the Services and Service Systems;
- 2.9.3 it allows the Services to be provided by the Service Provider in accordance with the Service Levels and that the Business Continuity Plan mitigates the adverse impact of a Business Continuity Event or Disaster Recovery Event on such Service Levels;
- 2.9.4 the Business Continuity Plan is upgradeable and sufficiently flexible to support any changes to the business functionality and changes to the business processes facilitated and supported by the WMETS Assets and Service Systems in the future;
- 2.9.5 the Service Provider is able to respond to, and comply with, the instructions or directions of any civil and/or military authority (including the fire, police or army services) attending any premises (including the Premises) affected by a Business Continuity Event or Disaster Recovery Event, without affecting the Service Provider's compliance with **Schedule 12 (Security Policy)** and the Security Plan; and
- 2.9.6 it otherwise complies with the provisions of:
  - 2.9.6.1 **clause 39 (Security Policy)**;
  - 2.9.6.2 the Security Plan; and
  - 2.9.6.3 **Schedule 12 (Security Policy)**.

### 3. **Business Continuity Testing**

- 3.1 Subject to **paragraph 3.3** below, the Service Provider shall, at its own cost and expense, conduct Business Continuity Testing of all aspects of the Business Continuity Plan (including the Business Continuity Services and the Business Continuity Infrastructure) in accordance with the Business Continuity Test Schedule and as a minimum:
  - 3.1.1 during Ready for Service Testing;
  - 3.1.2 once in each six (6) Month period taken from the Operational Commencement Date,

in each case at a time agreed in writing with WMCA in advance.

- 3.2 Subject to WMCA's prior written consent, the Service Provider may conduct the Tests described above, at its own cost and expense, more frequently than is specified in **paragraph 3.1** above, if the Service Provider, acting in accordance with Good Industry Practice, deems it necessary.
- 3.3 WMCA shall be entitled to require the Service Provider to conduct Business Continuity Testing (in whole or part), more frequently than as set out in **paragraph 3.1** above, in the event that either:
- 3.3.1 WMCA agrees to pay the Service Provider's reasonable costs in carrying out such Tests; or
- 3.3.2 WMCA reasonably believes that the Service Provider is not complying with its obligations under this **Schedule 19**; or
- 3.3.3 there is a loss of service or failure to meet all Service Levels due to an event that WMCA reasonably believes to have been a:
- 3.3.3.1 Business Continuity Event; or
- 3.3.3.2 Disaster Recovery Event,
- in which cases such Tests shall be conducted at the Service Provider's sole cost and expense.
- 3.4 The Service Provider shall:
- 3.4.1 produce a Test Plan and Test Specifications for each Test required for Business Continuity Testing;
- 3.4.2 make copies of such Test Plans and Test Specifications available to WMCA upon request;
- 3.4.3 provide WMCA with ten (10) Working Days' notice of its intention to carry out Business Continuity Testing;
- 3.4.4 entitle WMCA, at its sole discretion, to require WMCA Personnel to participate in Test Witnessing of any Tests performed as part of the Business Continuity Testing; and
- 3.4.5 provide WMCA with a copy of the results of each Test performed as part of the Business Continuity Testing.
- 3.5 Where Tests require downtime of the whole or part of the WMETS Assets, Service Systems and/or Services, the date and timing of such Tests shall be subject to prior agreement with WMCA. Any downtime approved by WMCA in writing and in advance of such Tests being performed shall be excluded from any measurement of Service Levels for the purposes of **Schedule 5 (Service Level Agreement)** in respect of the relevant Performance Indicators affected by such Tests.
- 3.6 The Service Provider shall:

- 3.6.1 undertake and manage the Business Continuity Testing in full consultation with WMCA and any Interested Party, Other Service Provider and/or any Third Party nominated by WMCA;
  - 3.6.2 liaise with WMCA in respect of the planning, performance and review of each Test; and
  - 3.6.3 participate in the Business Continuity Testing with Interested Parties, Other Service Providers and/or any Third Party, as WMCA may require from time to time.
- 3.7 Any participation by WMCA in relation to the Testing of the Business Continuity Plan will be without prejudice to and will not be deemed in any way to:
- 3.7.1 restrict:
  - 3.7.2 the steps required to be taken by the Service Provider pursuant to this **Schedule 19**; or
  - 3.7.3 the Service Provider obligations under **clause 50 (Force Majeure)**; or
  - 3.7.4 be acceptance or Approval by WMCA that the Business Continuity Plan is adequate.
- 3.8 If any aspect of the Business Continuity Testing fail to meet the criteria in the Business Continuity Plan, the Service Provider shall take such action, at its own expense, as is necessary, and repeat such tests until all the relevant criteria are met.

#### 4. **Business Continuity Services and Business Continuity Infrastructure**

- 4.1 The Service Provider shall:
- 4.1.1 provide the Business Continuity Services and Business Continuity Infrastructure in accordance with the:
    - 4.1.1.1 Specifications; and
    - 4.1.1.2 Design Documents;
  - 4.1.2 ensure that the Business Continuity Services and Business Continuity Infrastructure comply with:
    - 4.1.2.1 **clause 39 (Security Policy)**;
    - 4.1.2.2 the Security Plan; and
    - 4.1.2.3 **Schedule 12 (Security Policy)**.
- 4.2 Notwithstanding **paragraph 4.1.1** above, the Service Provider shall ensure that:
- 4.2.1 appropriate Business Continuity Services and Business Continuity Infrastructure shall be provided by it (or to it by its Sub-Contractors) in accordance with the Business Continuity Plan and the requirements of this **Schedule 19**; and

- 4.2.2 its Sub-Contractors':
  - 4.2.2.1 business continuity plans and disaster recovery plans shall be integrated into and comply with the Business Continuity Plan; and
  - 4.2.2.2 business continuity services and business continuity infrastructure are fully integrated into the Business Continuity Infrastructure.
- 4.3 WMCA shall use reasonable endeavours to ensure that appropriate services are provided by Interested Parties and Other Service Providers to enable the Service Provider to provide the Business Continuity Services and the Business Continuity Infrastructure, in accordance with this Agreement.
- 4.4 The Service Provider shall ensure that spares, maintenance equipment and Test equipment are available for use at the Premises (including the Business Continuity Premises) in order to support and maintain provision of the:
  - 4.4.1 Business Continuity Services; and
  - 4.4.2 Business Continuity Infrastructure.
- 4.5 In the event that:
  - 4.5.1 the Premises are unavailable or inaccessible due to a Disaster Recovery Event; or
  - 4.5.2 a Business Continuity Event affects any WMETS Assets, Service Systems or Services,

the Service Provider shall ensure that all of the Services that would otherwise be provided from or via those Premises (including all Operational Services envisaged under this Agreement and contact information and methods identified in the Communication Plan) continue to be provided through the Business Continuity Infrastructure independent of the Premises by redirecting the provision of such Services to the Business Continuity Premises.
- 4.6 The Service Provider shall ensure that:
  - 4.6.1 for all Business Continuity Premises, there is a Business Continuity Manager at the Business Continuity Premises;
  - 4.6.2 the Business Continuity Manager shall:
    - 4.6.2.1 act as a single point of contact for WMCA in relation to all matters concerning the provision of the Business Continuity Services and the Business Continuity Infrastructure; and
    - 4.6.2.2 be responsible for:
      - (a) executing the Business Continuity Services; and

(b) providing the Business Continuity Infrastructure;

4.6.3 there is an emergency management team comprising Service Provider Personnel, which shall act as a point of contact for WMCA and be available 24 hours a day, seven (7) days a week, 365 days of the year, including in the event of a Business Continuity Event or a Disaster Recovery Event;

4.6.4 the Service Systems, including the Business Continuity Infrastructure, permit remote access, monitoring and control of elements of the Service Systems sited or situated at the Premises. The Service Provider shall ensure that these remote facilities are usable from the Business Continuity Premises and permit management of and access to Data in order to ensure that there is no loss of Data in the event that the Premises are unavailable or evacuated; and

4.6.5 the Business Continuity Infrastructure is at all times equipped with:

4.6.5.1 appropriate WMETS Assets; and

4.6.5.2 the version and release of the Service Systems that are in the same version and release used in the rest of the Service Systems,

in order to ensure that the Business Continuity Services can be provided effectively and that there is no or minimal disruption to the West Midlands eScooter Trial Services.

## 5. **WMCA's Right to Inspect**

5.1 Without prejudice to any other rights of WMCA under **clause 36 (Audit and Inspection)** or any other provisions of the Agreement, WMCA Personnel may (at WMCA's absolute discretion) inspect any:

5.1.1 Premises (including the Business Continuity Premises);

5.1.2 WMETS Assets;

5.1.3 Service Systems,

in order to identify any circumstances which caused or may cause the Business Continuity Plan to be invoked.

5.2 The Service Provider shall:

5.2.1 make available all relevant information, Data, assistance and facilities; and

5.2.2 provide access to such Premises (including Business Continuity Premises) and Service Provider Personnel,

in order to WMCA Personnel to such conduct such inspection and as otherwise requested by WMCA.

6. **General**

6.1 The Service Provider shall ensure that the:

6.1.1 Business Continuity Plan;

6.1.2 Business Continuity Services; and

6.1.3 Business Continuity Infrastructure,

each comply, as a minimum, with:

6.1.3.1 Good Industry Practice; and

6.1.3.2 **Schedule 21 (Service Provider's Solution).**

6.2 The Service Provider shall implement the relevant provisions of the Business Continuity Plan in accordance with the applicable timescales specified in the Business Continuity Plan (or, if no such timescales are specified, as soon as possible) following the occurrence of a Business Continuity Event or Disaster Recovery Event.

6.3 Subject to **paragraph 3.5 (Business Continuity Testing)** above, the Service Provider agrees that the Service Levels shall continue to apply in the event that a Business Continuity Event or Disaster Recovery Event occurs.

6.4 Without limiting **paragraph 6.3** above, the Service Provider shall ensure that the WMETS Assets, Service Systems, Services, Services Data, Premises or Service Provider Personnel (or any parts thereof) used to provide the Services are resumed as soon as possible (and, in any event, within the time frames set out in the Business Continuity Plan) following a Business Continuity Event or Disaster Recovery Event (as applicable) in place of the Business Continuity Infrastructure or Business Continuity Services or any other alternative, additional or replacement Hardware, Software, assets, Systems, Business Continuity Premises, Service Provider Personnel, processing, methods, processes or procedures as set out in the Business Continuity Plan.

6.5 The Service Provider shall only cease to:

6.5.1 follow the Business Continuity Plan;

6.5.2 use the Business Continuity Infrastructure; and/or

6.5.3 provide the Business Continuity Services,

following a Business Continuity Event or a Disaster Recovery Event, once WMCA has agreed in writing that the Service Provider may do so, provided that WMCA shall not withhold its agreement if the Service Provider can demonstrate to the satisfaction of WMCA (WMCA acting reasonably) that:

6.5.4 the Service Provider is able to provide the Services at the level of performance required under the Service Level Agreement otherwise than through the implementation of the Business Continuity Plan; and

6.5.5 either:

6.5.5.1 there is only a remote risk that the relevant Business Continuity Event or Disaster Recovery Event will affect the WMETS Assets, Service Systems, Services, Services Data, Premises, Service Provider Personnel, WMCA Personnel, members of the public (including Customers) and overall provision of the West Midlands eScooter Trial Services;

6.5.5.2 only a negligible portion of the WMETS Assets, Service Systems, Services, Services Data, Premises, Service Provider Personnel or WMCA Personnel would be affected by the relevant Business Continuity Event or Disaster Recovery Event.



**SCHEDULE 20**

**Key Sub-Contractors**

**[INSERT]**

**SCHEDULE 21**

**Service Provider Solution**

**[TO BE INSERTED]**

**SCHEDULE 22**

**Escrow Software**

**[INSERT AS APPLICABLE]**

## SCHEDULE 23

### Customer Use and Revenue Collection

1. Scope

1.1 This **Schedule 23** sets out:

1.1.1 how Customers may subscribe to the West Midlands eScooter Trial Services and hire an eScooter in accordance with the Scheme; and

1.1.2 the charging methodology for the West Midlands eScooter Trial Services.

**[INSERT DETAILS IN LINE WITH THE SERVICE PROVIDERS SOLUTION]**

## SCHEDULE 24

### Additional Services

#### 1. Additional Services

1.1 WMCA may, pursuant to the Change Control Request Procedure, require the Service Provider to provide any services which are:

1.1.1 the same as or substantially similar to those Services provided by the Service Provider during the Implementation Phase and/or the Operational Phase; and/or

1.1.2 pursuant to the design, build, installation and operation of the West Midlands eScooter Trial Services,

in accordance with the provisions of this **Schedule 24**.

1.2 The Additional Services shall be provided and subject to the terms and conditions of this Agreement.

1.3 Additional Services may include:

1.3.1 Services within the Potential Additional Area including related Trial Operational Playbook;

1.3.2 increasing the number of Docking Stations and eScooter within the Area of Operation;

1.3.3 providing additional functional capabilities to:

1.3.3.1 support the operation of the West Midlands eScooter Trial Services; and/or

1.3.3.2 improve the Customer experience and acceptance of the West Midlands eScooter Trial Services ; and/or

1.3.4 extending the Service Systems and Terminals to support new charging methods.

The list above is not exhaustive.

#### 2. Procurement

The Parties hereby acknowledge that unless WMCA elects (at its sole discretion) to do otherwise, the Additional Services will be requested of [INSERT NAME OF BIDDER WITH HIGHEST SCORE WHERE 2 BIDDERS APPOINTED] by WMCA in the first instance and the parties shall adhere to the process set out in the Change Control Request Procedure.

Where WMCA and [INSERT NAME OF BIDDER WITH HIGHEST SCORE WHERE 2 BIDDERS APPOINTED] are unable to reach agreement with regard to the Additional Services in accordance with the Change Control Request Procedure, WMCA shall request [INSERT NAME OF BIDDER WITH SECOND HIGHEST SCORE WHERE 2 BIDDERS APPOINTED]

to undertake such Additional Services in accordance with the Change Control Request Procedure.

## **SCHEDULE 25**

### **WMCA Policies**

This **Schedule 25** sets out the WMCA Policies that are applicable to the provision of the Services.

In accordance with **clause 29 (Compliance with WMCA Policies)**, the Service Provider shall comply with provisions set out in WMCA Policies, unless and to the extent that such provisions are contrary to the Service Provider's obligations under this Agreement.

1. Health and Safety Policy;
2. Information Risk Management Policy;
3. Information Security Policy;
4. Information Security Classification Policy;
5. Document Retention Policy;
6. Social Value Policy;
7. Data Protection Policy;
8. Modern Slavery Policy

Copies of the Policies listed above can be obtained from WMCA upon request.

## SCHEDULE 26

### Docking Station Installation

#### 1. Docking Station Installation

1.1 The Service Provider shall comply with the provisions of:

1.1.1 **Clause 43** (Health and Safety); and

1.1.2 the Docking Station Installation Method Statement, as set out in this **Schedule 26**,

as the same may be amended in accordance with the Change Control Request Procedure.

#### 2. Undertaking Works

2.1 The Service Provider shall:

2.1.1 where and to the extent that the CDM Regulations apply to the Works, act as Principal Contractor;

2.1.2 comply with all obligations of the Principal Contractor under the CDM Regulations;

2.1.3 perform its obligations in accordance with the reasonable decisions, instructions and orders of WMCA (including any such decisions, instructions and orders as to the Civil Works, Docking Station Assets to be installed and the location of such Docking Station Assets in relation to any Docking Station); and

2.1.4 perform its obligations in accordance with Good Industry Practice and in compliance with, and with the standards required by, all consents and approvals required by the Service Provider to perform its obligations (whether generally or as may be required separately by each Interested Party local authority or respective planning, highways or other authority in respect of their areas of jurisdiction).

2.2 Whilst WMCA shall assist and support the Service Provider in facilitating the planning process with Interested Party local authority or respective planning, highways or other authority, the Service Provider shall remain responsible for obtaining all consents and approvals required by the Service Provider to perform its obligations under this Agreement.

#### 3. Implementation

3.1 The details of the Sites at the Effective Date (subject to the provision outlined in **paragraph 3.2** below) are set out in **Annex A (Site Details)** to this **Schedule 26**. As at the Effective Date these are "macro-Sites", being identified as either:

3.1.1 sites within the proximity of a specified location; or



3.1.2 sites of a certain number to be achieved within a specified area,

and the Service Provider and WMCA and the Interested Party local authority shall as soon as reasonably practicable agree as part of the Trial Operational Playbook on specific Site locations for the macro-Sites, having regard to the phasing for installation of the Docking Stations in accordance with, and to meet the timescales of the Implementation Plan, provided that in the absence of agreement on any Site location WMCA may determine the location in consultation with the Interested Party authorities (such determination not to be unreasonably made), subject to any necessary requirements to modify such location in accordance with the later provisions of this **Schedule 26** (including the requirement to obtain appropriate planning permission for such Site).

3.2 The Service Provider shall notify WMCA promptly with confirmation of the actual individual Sites on grant of the relevant planning permission in respect of each Site.

3.3 As part of the Implementation Plan, the Service Provider shall:

3.3.1 prepare an installation plan and Sites design plan to be approved by WMCA promptly following the Effective Date;

3.3.2 prepare a further more detailed installation plan and Site Design plan for each individual Site when identified in accordance with **paragraph 3.2**, where such Site Design plan ensures that the Site is designed such that it:

3.3.2.1 allows for the installation of Terminals and Docking Points of an agreed size and design, in the quantities specified by WMCA at each Site at which a Docking Station is to be installed;

3.3.2.2 includes:

(a) the necessary traffic management plans to be approved by the relevant Highway Authority;

(b) a Site Specific Method Statement;

(c) a structural design including:

(i) such checks and calculations by a suitably qualified and competent structural engineer to ensure the sufficiency of the foundation;

(ii) sufficient resource to drill/excavate the Site and determine the appropriate base design for the Terminals and Docking Points, based on the ground conditions and services encountered;

(iii) avoidance of damage to any trees by implementing best practice arboricultural standards; and

which shall otherwise not breach any of the provisions of any lease, licence or permission granted by an Interested Party in respect of a Site;

3.3.2.3 does not:

- (a) obstruct access to gullies, service covers, manhole covers, grates or other access covers or access points to any equipment, or otherwise have a significant impact on pedestrian access or movement;
- (b) breach the provisions of any:
  - (i) Planning Consent; and/or
  - (ii) lease, licence or permission granted by an Interested Party,in respect of such Site; or
- (c) constitute a safety hazard; and

3.3.3 resource the implementation of Docking Stations and Docking Station Assets at the Sites,

to ensure that the Docking Stations and Docking Station Assets are in full serviceable use and ready for the West Midlands eScooter Trial Services from the relevant phase go-live date.

- 3.4 In preparing the Implementation Plan, the Service Provider shall take account of any prioritisation required by WMCA (which may be in order to ensure certain Docking Stations are operational early in the Implementation Plan, and in order to meet each phase requirements).
- 3.5 Prior to commencing any Works at the Site, the Service Provider shall inspect the physical conditions and other conditions of or affecting the Sites (including any existing structures and sub-surface conditions and services) and shall be deemed to have fully acquainted itself with the same and to have obtained all necessary information as to risks, contingencies and all other circumstances which may influence or affect any construction and installation of the Docking Stations and Docking Station Assets at the Sites. No failure on the part of the Service Provider to discover or foresee any such condition, risk, contingency or circumstance, whether the same ought reasonably to have been discovered or foreseen or not, shall entitle the Service Provider to an extension of time.
- 3.6 If the Service Provider (acting reasonably) considers that the ground conditions are unacceptable for the Civil Works and implementation of the Docking Stations and Docking Station Assets at a particular Site, the Service Provider shall promptly notify WMCA in writing, detailing the Service Provider's reasons why the Site is subject to unacceptable ground conditions and provide copies of supporting documentation.

Following receipt of such notice and supporting documentation, if WMCA agrees, then:

- 3.6.1 the Site shall be deferred and further Sites rescheduled; and
- 3.6.2 an alternative Site shall be identified and a Change Control Request raised in accordance with the Change Control Request Procedure (but provided that the approval of Interested Party local authority for the geographic area in question to such alternative Site shall also be sought).
- 3.7 Any other Changes (including additions and/or deletions of Sites) to the location of Sites shall be made in accordance with the Change Control Request Procedure (but provided that the approval of Interested Party local authority for the geographic area in question to such alternative Site shall also be sought).
- 3.8 In terms of the installation plan, the Service Provider shall:
  - 3.8.1 ensure that this plan provides for the steady delivery of Sites meeting phase requirements, which shall pass all acceptance testing in accordance with **Schedule 4 (Testing Regime)**;
  - 3.8.2 use these plans as a basis of co-ordination at any meetings with any Interested Parties, Other Service Providers, Third Parties and/or Sub-Contractors during the course of the Civil Works and implementation of the Docking Stations and Docking Station Assets; and
  - 3.8.3 update this plan regularly during the Implementation Phase.
- 3.9 The Service Provider shall submit weekly reports and updates to WMCA with respect to the status of the implementation of Docking Stations at each Site against the installation plan and scheduled programme of Testing and Milestones, covering status of the Works, phase of Testing and status against the plan.
- 3.10 If it becomes apparent that there is or is likely to be a shortfall in the number of Docking Stations implemented or Sites completed by any relevant delivery Milestone Date (as identified in the Implementation Plan), the Service Provider shall submit a Change Control Request to modify the installation plan (if required), including providing any additional resources required, to ensure that any such shortfall is rectified (and at no cost to WMCA), in accordance with the Change Control Request Procedure.

#### **4. Provision of Documentation and Other Information**

- 4.1 WMCA shall have the right at all reasonable times to inspect all Documentation relating to the Civil Works and implementation of the Docking Stations and Docking Station Assets.
- 4.2 The Service Provider shall be responsible for, and shall pay the extra costs, charges and expenses, including costs of rectifying, removing or making good any works carried out in accordance with such inaccurate documentation, as a result of any discrepancies, errors or omissions in any Documentation (and by way of example

only, and without prejudice to the general performance requirement in **paragraph 2.1**, "making good" hole drilled slabs may include filling with colour matching grout).

## **5. Service Provider Equipment and Labour**

- 5.1 The Service Provider shall, unless otherwise specified in this Agreement, at its own expense:
- 5.1.1 provide all equipment (including any health and safety equipment) and all materials, labour, haulage and power necessary to execute and complete the Works at each Site;
  - 5.1.2 be responsible for the proper provision of:
    - 5.1.2.1 fencing, lighting and security of all Docking Station Assets and the Works at each Site;
    - 5.1.2.2 temporary roadways, footways, guards and fences, as far as the same may be rendered necessary by reason of the Works; and
    - 5.1.2.3 accommodation and protection of the owners and occupiers of adjacent property, members of the public and other Third Parties;
  - 5.1.3 ensure that any Docking Station Assets installed at the Site are suitably protected and covered until the immediate preparation for the Operational Commencement Date;
  - 5.1.4 engage competent Service Provider Personnel in each field (and having regard to the location for the Civil Works, such as on Network Rail or other rail organisation-owned land), including project managers, electrical, structural and safety engineers and an engineer competent for the delivery of the requirements of the CDM Regulations, in addition to engineers in all fields relevant to the implementation of Civil Works, Docking Stations and Docking Station Assets, in the number required for the implementation of the Works;
  - 5.1.5 engage all competent Sub-Contractors in the number required to perform the Works;
  - 5.1.6 provide suitable Service Provider Personnel welfare services where appropriate prior to and throughout the duration of the Works;
  - 5.1.7 ensure that any structure intended for use as a workplace for the Works complies with the requirements of the Workplace (Health, Safety and Welfare) Regulations 1992; and
  - 5.1.8 provide a Waste Management Plan relevant to all Sites (subject to the provision outlined in **paragraph 3.2 (Implementation)** above) prior to implementation of the Works.

## **6. Site Management and Traffic Management**

- 6.1 Service Provider shall:

- 6.1.1 be responsible for obtaining permission to undertake civil engineering works on roads and streets under the Highways Act 1980 and the New Roads and Street Works Act 1991 as appropriate; and
  - 6.1.2 in respect of land owned by Interested Parties, be responsible for obtaining an appropriate lease or licence for installation, maintenance and use of Docking Stations and Docking Station Assets at the relevant Site (including in respect of Network Rail land or other rail organisation-owned land);
  - 6.1.3 be responsible for all Site and traffic management for the duration of all Works at each Site in accordance with Legislation and shall, without prejudice to the foregoing, provide traffic management schemes for all Works that affect the Highways (the “**Traffic Management Scheme**”), including seeking any necessary Traffic Regulation Orders and or Temporary Traffic Regulation Order (as applicable);
  - 6.1.4 comply with the provisions of **clause 43 (Health and Safety)** in respect of the management of each Site whilst the Service Provider is Principal Contractor;
  - 6.1.5 obtain all the permits/licenses necessary for the implementation of the Works;
  - 6.1.6 refrain from performing any excavation or infrastructure work, to the Highway, underground systems, sewage pipes, water pipes, underground and above ground electric works, as well as underground control systems and communication systems, without receiving the appropriate licenses and/or permits and/or written approval; and
  - 6.1.7 not breach the provisions of any lease, licence or permission granted by an Interested Party.
- 6.2 Any delay in obtaining access to the Sites shall not entitle the Service Provider to seek any reimbursement of costs or other compensation in connection with such delay. If any such delay occurs, and subject to agreement by WMCA, the delayed Sites shall be rescheduled to coincide with the access dates and such adjustments shall be made to the prioritisation of Sites within the agreed construction and Installation Plan.
- 6.3 The Service Provider shall comply with the New Roads and Street Works Act 1991 and the Traffic Management Act 2004 and associated regulations, and Statutory Codes of Practice and notice requirements
- 6.4 The Service Provider shall:
- 6.4.1 issue to the appropriate Highway Authorities all notices required for the Works in sufficient time; and
  - 6.4.2 ensure that all notices are submitted and approved before undertaking any opening of the Highway.
- 6.5 The Service Provider shall:

- 6.5.1 be responsible for all traffic safety and management and associated work;  
and
- 6.5.2 as appropriate, erect, alter, cover, uncover and take down signs on the existing Highways in order to be compatible with the state of the Works.
- 6.6 The Service Provider's Traffic Management Schemes shall:
  - 6.6.1 conform to Chapter 8 of the Traffic Signs Manual published by HMSO, or any amendment thereof; and
  - 6.6.2 be subject to the approval of the police and the relevant Highway Authority (and be notified in sufficient time to allow for the approval process).
- 6.7 The Service Provider shall ensure that:
  - 6.7.1 traffic signs, road markings, lamps, barriers and traffic control signals are erected in accordance with the requirements of the Traffic Signs Regulations and General Directions current at the date of execution of the Works or as specially authorised by or on behalf of the Secretary of State for Transport;
  - 6.7.2 all traffic safety measures necessitated by the Works are fully operational.
- 6.8 The Service Provider shall appoint a Traffic Safety Officer, who is:
  - 6.8.1 contactable at all times; and
  - 6.8.2 able to make safe any Traffic Management Scheme at any time.

## **7. Inspection and Testing**

The Service Provider shall, be responsible for, and shall perform all Acceptance Testing in accordance with **Schedule 4 (Testing Regime)**.

## **8. Environmental Management Plan**

The Service Provider shall submit to WMCA a concise environmental management plan covering the Works and which includes among other things the identification of significant environmental impacts and mitigation measures and requisite environmental consents and other associated documentation.

## **ANNEX A**

### **Site Details**

**[INSERT -TAKEN FROM WMCA SPECIFICATION AND AS AGREED AS PART OF THE TRIAL OPERATIONAL PLAYBOOK]**

## SCHEDULE 27

### Service Provider Personnel

#### 1. Introduction

This **Schedule 27** sets out the Service Provider's obligations in respect of Service Provider Personnel.

#### 2. Service Provider Personnel

2.1 In terms of the Service Provider Personnel, the Service Provider shall:

2.1.1 use sufficient, suitable, appropriately qualified, experienced and competent Service Provider Personnel to provide the Services (or any part thereof);

2.1.2 use all reasonable efforts to ensure continuity of Service Provider Personnel engaged in the provision of the Services (or any part thereof);

2.1.3 ensure that there are sufficient Service Provider Personnel available with an appropriate level of knowledge and skill and who have been involved in the Design Services and the Build Services during the period from the Effective Date, to resolve any problems arising from the:

2.1.3.1 function, operation and maintenance of the:

(a) WMETS Assets; and

(b) Service Systems;

2.1.3.2 provision of the Operational Services; and

2.1.4 [ensure that all Service Provider Personnel having access to Personal Data, in respect of which WMCA is the Data Controller, are fully aware of the measures to be taken in accordance with:

2.1.4.1 **clause 42 (Information Compliance)**; and

2.1.4.2 **Schedule 13 (Information Compliance)**,

when Processing Personal Data on behalf of WMCA.]

#### 3. Removal/Replacement of Service Provider Personnel

3.1 In the event that WMCA, acting reasonably, considers that any member of the Service Provider Personnel is:

3.1.1 unsatisfactory (WMCA acting reasonably);

3.1.2 not performing their role properly, efficiently or effectively; or

3.1.3 in any way disruptive to the business or activities of WMCA,



WMCA may, by written notice to the Service Provider, request the Service Provider to take remedial action in relation to such member of the Service Provider Personnel. If within ten (10) Working Days of such notice, WMCA reasonably considers that the matter has not been resolved to the satisfaction of WMCA, WMCA shall have the right, by written notice to the Service Provider, to require the removal of such member of the Service Provider Personnel with immediate effect. The exercise of WMCA's rights under this **paragraph 3.1** shall not relieve the Service Provider of any of its obligations under this Agreement.

- 3.2 In the event that the Service Provider replaces any member of the Service Provider Personnel for whatever reason, the cost of effecting such replacement shall be borne solely by the Service Provider (including, any costs associated with training, induction or other efforts involved in bringing the replacement member of the Service Provider Personnel up to the same level of knowledge as his predecessor).

#### 4. **Non-solicitation**

- 4.1 During the Term and for a period of twelve (12) Months following Termination, neither Party shall, without the prior written consent of the other Party:

4.1.1 make any offer of employment or enter into any discussion or negotiations with a view to making any offer of employment to any person employed by the other Party at any time during the period of six Months prior to the Effective Date of this Agreement and with whom it has had personal contact or dealing; or

4.1.2 solicit or attempt to solicit services from any employee of the other Party on their own account or entice or attempt to entice any such employee away from the other Party.

- 4.2 The provisions of **paragraph 4.1** above shall not apply if such employee is employed as a result of:

4.2.1 a response by the employee to a public advertisement placed by the other Party; or

4.2.2 the operation of the TUPE Regulations.

#### 5. **Key Personnel**

- 5.1 The Service Provider acknowledges and accepts that the Key Personnel set out in **Schedule 9 (Key Personnel)** are essential to the provision of the Services. Accordingly, the Service Provider shall:

5.1.1 provide job descriptions for all Key Personnel positions set out in **Schedule 9 (Key Personnel)** to WMCA for its approval, including, as a minimum the:

5.1.1.1 scope of each Key Personnel position;

5.1.1.2 minimum qualifications and experience required to fulfil the Key Personnel position;

- 5.1.1.3 key accountabilities and responsibilities of the Key Personnel position; and
- 5.1.1.4 core skills and competencies required for the Key Personnel position,  
(the "**Job Description**");
- 5.1.2 notify WMCA Personnel of the identity of each member of the Key Personnel and make them available for the provision of the Services. WMCA shall have the right to:
  - 5.1.2.1 request the curriculum vitae of; and/or
  - 5.1.2.2 interview and/or accept or reject,  
any member of Service Provider Personnel proposed to fulfil the position of Key Personnel;
- 5.1.3 ensure that all Key Personnel devote their time and effort exclusively to the performance of the Services;
- 5.1.4 ensure that the role of any Key Personnel is not vacant for longer than twenty (20) Working Days save to the extent that the role is vital for the proper provision of the Services in which circumstances the Service Provider shall ensure that the role is not vacant for longer than five (5) Working Days; and
- 5.1.5 ensure that any replacement member of Key Personnel will be fully competent to carry out the tasks assigned to the Key Personnel, which he has replaced within fifteen (15) Working Days of his commencing work on the Services. Nothing in this **paragraph 5.1.5** shall prevent the Service Provider from using temporary staff in the role of Key Personnel whilst it is recruiting a permanent replacement, provided that the Service Provider complies with the provisions of **paragraph 5.3** below in respect of such temporary staff;
- 5.1.6 take all reasonable steps to retain the services of the Key Personnel;
- 5.1.7 not remove, change or replace any member of the Key Personnel without the prior written consent of WMCA. Such consent shall not be required in respect of the removal of Key Personnel due to dismissal, resignation, illness or other significant circumstances; and
- 5.1.8 promptly notify WMCA in writing in the event that a member of Key Personnel leaves the employment of the Service Provider (including, where such member is a secondee to the Service Provider and the period of their secondment expires) and provide details of their proposed replacement.
- 5.2 WMCA may, at its reasonable discretion, require the Service Provider to remove any member of Key Personnel that WMCA considers is:
  - 5.2.1 unsatisfactory (WMCA acting reasonably);

- 5.2.2 not performing their role properly, efficiently or effectively; or
  - 5.2.3 in any way disruptive to the business or activities of WMCA,
- and the terms of **paragraph 3** (Removal/Replacement of Service Provider Personnel) above shall apply in respect of the replacement of that member of Key Personnel.
- 5.3 Prior to assigning a replacement Key Personnel, the Service Provider shall:
    - 5.3.1 propose an individual to replace such Key Personnel and supply to WMCA the curriculum vitae of any proposed replacement;
    - 5.3.2 such individual shall have (in the opinion of WMCA) the status, skills and experience at least equal to that of such Key Personnel that he is proposed to replace;
    - 5.3.3 WMCA shall have the right to interview and/or accept or reject any proposed replacement; and
  - 5.4 in the event of an agreed redeployment or the resignation of any of the Key Personnel, the Service Provider shall:
    - 5.4.1 use their reasonable endeavours to ensure that such Key Personnel shall work such part of his or her notice period as is necessary to ensure appropriate knowledge transfer to his or her replacement; and
    - 5.4.2 demonstrate to WMCA that an appropriate knowledge transfer plan has been implemented by such Key Personnel and his replacement.

## 6. **Indemnities**

- 6.1 The Service Provider shall be liable for, and shall indemnify the WMCA Indemnified Parties and/or any New Service Provider against, any Employment Liabilities incurred by the WMCA Indemnified Parties and/or any New Service Provider, which arise out of or in connection with:
  - 6.1.1 the employment or termination of employment of any person engaged in connection with the provision of the Services up to and including the Expiry Date, Termination Date or Partial Termination Date (as applicable); and
  - 6.1.2 any Service Provider Personnel (other than any employee who immediately before the Expiry Date, Termination Date or Partial Termination Date (as applicable) is an Exit Transferring Employee and whose name is included on the final list of Exit Transferring Employees provided in accordance with the provisions of **paragraph 7.2 (Termination)** below) whose employment or claims or liabilities arising out of their employment or its termination transfers to WMCA or a New Service Provider following the Expiry Date, Termination Date or Partial Termination Date (as applicable) pursuant to or by virtue of the TUPE Regulations or who claim that their employment or such claims or liabilities so transfer save where such person continues to be employed by WMCA or a New Service Provider six (6) months after WMCA or the New

Service Provider becomes aware of the claim that their employment has transferred in which case the relevant Employment Liabilities shall be those relating to the period on or before the Expiry Date, Termination Date or Partial Termination Date (as applicable).

## 7. Termination

7.1 At least thirty (30) calendar days prior to the Expiry Date or Termination Date, or in the case of Partial Termination the Partial Termination Date, the Service Provider shall provide to WMCA, or at its request a New Service Provider, a final list of the names of all Exit Transferring Employees, which shall be complete, accurate and up to date and the Service Provider shall immediately notify WMCA of:

7.1.1 any changes to such list prior to the Expiry Date, Termination Date or Partial Termination Date (as applicable); and

7.1.2 any Exit Transferring Employee who has:

7.1.2.1 objected to a transfer pursuant to Regulation 4(7) of the TUPE Regulations; and

7.1.2.2 given or been given notice of termination of his employment,

prior to the Expiry Date, Termination Date or Partial Termination Date (as applicable).

7.2 The Service Provider shall, and shall procure that its Sub-Contractors shall:

7.2.1 comply with their duties to provide employee liability information in accordance with Regulation 11 of the TUPE Regulations, but in addition will provide the information specified in that Regulation 11 no later than thirty (30) calendar days before the, Expiry Date, Termination Date or Partial Termination Date (as applicable); and

7.2.2 indemnify WMCA Indemnified Parties and any New Service Provider against any Employment Liabilities arising from such breach.

7.3 In accordance with and subject to clause **64.2 (Contract (Rights of Third Parties) Act)**, a New Service Provider or contractor of WMCA shall be entitled to enforce the provisions of this **Schedule 27**.

## 8. Assistance with Employment Claims

8.1 In the event that any of the Service Provider Personnel or any other person who is or has been, or purports to be or have been, employed in connection with all or any of the Services (or any part thereof), makes a claim against a WMCA Indemnified Party or a New Service Provider arising out of or in connection with the provision of the Services, the WMCA and the Service Provider shall:

8.1.1 notify the other Party that such claim has been made; and

8.1.2 give to the other as soon as practicable after such request all co-operation, assistance and information which may be reasonably required by the other party in relation to the claim.

8.2 The Service Provider shall procure that, whenever WMCA so requires on reasonable notice at any time during the Term and for the period of six (6) years following the Expiry Date, Termination Date or Partial Termination Date (as applicable), WMCA will be given access to and be allowed to consult with any person, consultant or employee who:

8.2.1 at that time is still an employee or sub-contractor of the Service Provider or any Affiliate of the Service Provider; and

8.2.2 was at any time employed or engaged by the Service Provider to provide the Services under this Agreement,

and such access and consultation will be provided free of charge and, thereafter, be charged at reasonable rates for the time spent by the Service Provider and/or its Sub-Contractors on such consultation. The Service Provider will further procure that all such persons co-operate with the requests of WMCA from time to time.

## 9. Pensions

9.1 The Service Provider shall make available a Service Provider Pension Plan for the provision of relevant benefits to the Service Provider Personnel in accordance with applicable Laws.

9.2 The terms of the Service Provider Pension Plan (including the benefits provided under it) shall be made available to WMCA on request.

9.3 For the purposes of this paragraph 9, "**relevant benefits**" has the meaning given to it in section 612 of the Income and Corporation Taxes Act 1988.

## **SCHEDULE 28**

### **Protocols**

- A. WMCA Advertising Protocol
- B. WMCA Sponsorship Protocol