

**[INSERT DATE] AUGUST 2020**

**(1) WEST MIDLANDS COMBINED AUTHORITY**

and

**(2) [INSERT]**

**NOTE TO BIDDERS:** THIS AGREEMENT IS PREDICATED ON AN OPERATING SOLUTION WHICH MAY NOT COMPLY WITH THE OPERATION SOLUTION ADOPTED BY THE EVENTUAL SERVICE PROVIDER(S). WHILST IT IS A CONDITION THAT THIS AGREEMENT IS ACCEPTED WITHOUT AMENDMENT, THE WMCA MAY MAKE AMENDMENTS TO THIS AGREEMENT TO REFLECT THE OPERATING SOLUTION OF THE RELEVANT SERVICE PROVIDER, PROVIDED THAT THE RISK PROFILE OF THIS AGREEMENT WILL NOT ALTER AS CONSEQUENCE OF SUCH CHANGES.

WHERE TWO SERVICE PROVIDERS ARE APPOINTED, ANY ADDITIONAL SERVICES WILL BE REQUESTED OF THE TOP SCORING BIDDER IN THE FIRST INSTANCE.

**AGREEMENT**

**relating to provision of eScooter services for the West Midlands**



**WEST MIDLANDS**  
COMBINED AUTHORITY

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THIS AGREEMENT is dated

2020

**BETWEEN**

- (1) **WEST MIDLANDS COMBINED AUTHORITY** of 16 Summer Lane, Birmingham, B19 3SD ("**WMCA**"); and
- (2) **[INSERT DETAILS]** whose registered office is **[INSERT AS APPLICABLE]** (the "**Service Provider**").

**BACKGROUND**

- (A) In a wider initiative to promote walking and cycling as part of a green and healthy recovery from COVID 19 the Secretary of State for Transport announced the acceleration of eScooter trials which were originally planned for 2021. Consequent to which eScooter Legislation (defined below) has been enacted to facilitate the accelerated role out of eScooter trials.
- (B) As part of the eScooter trials referred to in paragraph A (above) the WMCA has published an OJEU Notice inviting bidders to submit proposals for the design, build, operation and maintenance of eScooter Scheme comprising a fleet of eScooters, docking and geo-fencing/station facilities and supporting infrastructure, business processes and services to operate in the West Midlands (the "**West Midlands eScooter Trial Services**").
- (C) Following a comprehensive procurement exercise, WMCA selected the Service Provider to design, build, test, operate and maintain a system and supporting business processes for the provision of services in relation to the West Midlands eScooter Trial Services, subject to the terms and conditions of this Agreement.
- (D) Transport for West Midlands ("**TfWM**") being a constituent body of the WMCA is tasked with progressing issues in regards to those matters set out in paragraph C (above). This includes the engagement of the Service Provider to provide the Services (defined below) in accordance with the terms of this Agreement.
- (E) The Parties have agreed to contract with each other in accordance with the terms and conditions set out below.

**TERMS AGREED**

**PART 1: PROVISIONS RELATING TO THIS AGREEMENT**

**1. Definitions and interpretation**

- 1.1 In this Agreement, unless the context dictates otherwise, the definitions set out in **Schedule 1** will apply.
- 1.2 In this Agreement, unless the context dictates otherwise:
  - 1.2.1 references to any statute or statutory provisions include reference to those provisions as amended or re-enacted or as their application is modified by other provisions from time to time and any reference to a statutory provision will include any subordinate legislation made from time to time under that provision;

- 1.2.2 references to "**this Agreement**" or to any other agreement or document referred to in this Agreement mean this Agreement or such other agreement or document as amended, varied, supplemented, modified or novated from time to time;
- 1.2.3 references to clauses, schedules, annexes and appendices are references to clauses, schedules, annexes and appendices of and to this Agreement, and references to paragraphs are, unless otherwise stated, references to paragraphs of the schedule in which the reference appears;
- 1.2.4 references to the singular includes the plural and vice versa;
- 1.2.5 references to any gender includes all genders;
- 1.2.6 references to a "**person**" include any individual, company, body corporate, corporation sole or aggregate, government, state or agency of a state, supranational body, firm, partnership, joint venture, association, organisation or trust (in each case, whether or not having separate legal personality and irrespective of the jurisdiction in or under the law of which it was incorporated or exists) and a reference to any of them shall include a reference to the others;
- 1.2.7 references to WMCA include its successors and permitted assigns which will include any person who at any time is entitled, by assignment, novation, merger, division, reconstruction, reorganisation or otherwise, to WMCA's rights under this Agreement or any interest in those rights, or who, as an insolvency practitioner or otherwise, is entitled to exercise those rights (and, in the case of a novation or similar event, references in this Agreement to WMCA's rights will include the novated rights to which another person is entitled as a result of that event);
- 1.2.8 any reference to "**writing**" will include typewriting, printing, lithography, photography, telex, facsimile and the printed out version of a communication by electronic mail and other modes of representing and reproducing words in a legible form;
- 1.2.9 where a general obligation in this Agreement is followed by more specific obligations, the general obligation shall not be construed restrictively by reference to the specific obligations or deemed to be fully performed by reason only that the specific obligations have been performed; and
- 1.2.10 references to the words "**including**", "**includes**" and "**included**" will be construed without limitation.

### 1.3 **Headings**

The headings and sub-headings are inserted for convenience only and will not affect the interpretation or construction of this Agreement.

#### 1.4 Schedules

The schedules form part of this Agreement and will have full force and effect as if expressly set out in the body of this Agreement.

#### 1.5 eScooter Licence Payments and Gross up

The Service Provider shall make the eScooter Licence Payments Monthly in arrears to the WMCA on the **[INSERT]** of each Month for each new eScooters provided or otherwise engaged for the provision of Services during the preceding Month.

#### 1.6 Precedence

In the event of any conflict or inconsistency between any provision contained in the clauses of this Agreement and any of the schedules, annexes or appendices or any other documents incorporated herein by reference, the following order of precedence will apply (starting with the highest precedence and then descending), but only in so far as is necessary to resolve that conflict or inconsistency:

1.6.1 the clauses to this Agreement;

1.6.2 **Schedule 1 (Definitions);**

1.6.3 the other schedules to this Agreement, except for **Schedule 21 (Service Provider Solution);**

1.6.4 an annex or an appendix to a schedule, except for an annex or appendix to **Schedule 21 (Service Provider Solution);**

1.6.5 **Schedule 21 (Service Provider Solution);**

1.6.6 an annex or an appendix to **Schedule 21 (Service Provider Solution);**  
and

1.6.7 any other documents incorporated into this Agreement by reference.

#### 1.7 Obligation on WMCA or WMCA Personnel to act reasonably

Any reference to WMCA or WMCA Personnel being required to act reasonably or to exercise its discretion acting reasonably shall be construed as if the terms "**reasonably**" and "**reasonable**" were an objective test of the reasonableness on WMCA or WMCA Personnel, but subject always to the following exception, namely that WMCA or WMCA Personnel shall be entitled to take into account, and to give such weight as it shall in good faith consider proper as to the requirement to discharge the statutory functions of WMCA and deliver safe, integrated, reliable, efficient and economic transport facilities and services to, from and within the West Midlands, provided that such exception shall not be used by WMCA or WMCA Personnel to unreasonably impose on the Service Provider any additional obligations that are not set out in this Agreement.



## PART 2: DURATION AND SERVICE PROVISION

### 2. Duration

- 2.1 This Agreement will come into force on the Effective Date and shall, subject to:
- 2.1.1 extension pursuant to **clause 2.2**; or
  - 2.1.2 termination in accordance with **clause 50 (Termination)**,  
continue until midnight on the date twelve (12) Months following the Operational Commencement Date (the "**Initial Trial Term**").
- 2.2 WMCA shall be entitled, at its sole option:
- 2.2.1 by giving notice to the Service Provider of at least two (2) Months prior to the expiry of the Initial Trial Term, to extend this Agreement in whole or part in respect of the Service elements (as specified in such notice) for a period of up to three (3) Months following the date of expiry of the Initial Trial Term (as specified in such notice); and
  - 2.2.2 thereafter, on one or more occasions to further extend the term of this Agreement in whole or part in respect of the Service elements (as specified in such notice) by giving further notice of at least two (2) Months prior to expiry of such Extended Term,  
provided that the total period of extension shall not exceed **[INSERT]** from the date of expiry of the Initial Trial Term (such period being the "**Extended Term**").

### 3. Conditions Precedent

- 3.1 It is a Condition Precedent to the terms of this Agreement that the Service Provider shall no later than the Operational Commencement Date have:
- 3.1.1 an eScooter Licence for the provision of the Services; and
  - 3.1.2 enter into an Interface Agreement between WMCA, Service Provider and Other eScooter Service provider.

### 4. Scope of Services, WMETS Assets and Service Systems

- 4.1 WMCA appoints the Service Provider to provide, and the Service Provider shall provide the Services, WMETS Assets and Service Systems to WMCA as follows:
- 4.1.1 from the Effective Date, the Service Provider shall provide the Design Services, the Build Services and WMETS Assets in accordance with:
    - 4.1.1.1 the Specifications;
    - 4.1.1.2 **Schedule 3 (Milestones and Deliverables)**;
    - 4.1.1.3 **Schedule 4 (Testing Regime)**; and
    - 4.1.1.4 **Schedule 26 (Docking Station Installation)**;

- 4.1.2 from the Operational Commencement Date (or such earlier date as expressly stated in the Specifications), the Service Provider shall provide the Operational Services in accordance with:
    - 4.1.2.1 Specifications;
    - 4.1.2.2 the Mandatory Requirements; and
    - 4.1.2.3 the terms of the eScooter Licence.
  - 4.1.3 Additional Services from time to time in accordance with:
    - 4.1.3.1 **Schedule 3 (Milestones and Deliverables);**
    - 4.1.3.2 **Schedule 4 (Testing Regime);**
    - 4.1.3.3 Change Control Request Procedure; and
    - 4.1.3.4 **Schedule 24 (Additional Services);**
  - 4.1.4 further Services as may be agreed from time to time in accordance with the Change Control Request Procedure;
  - 4.1.5 in the event of a Business Continuity Event, the Business Continuity Services; and
  - 4.1.6 in the event of expiry or termination of this Agreement or Partial Termination, the Exit Management Services.
- 4.2 The Service Provider acknowledges that the WMETS Assets (including the eScooter Assets) shall be used during the Term in the provision of the West Midlands eScooter Trial Services, and the Service Provider agrees to procure the rental of eScooter Assets to Customers as part of the West Midlands eScooter Trial Services.
- 4.3 The Parties agree that for the duration of the Term that the Services shall be undertaken and or otherwise provided on a non-exclusive basis and the WMCA will be free to appoint any Other eScooter Service Provider to undertake services equivalent to the Services within the geographic Area of Operation, of the West Midlands eScooter Trial Services.

## 5. **Standard of Services and quality of WMETS Assets**

- 5.1 The Service Provider shall provide:
  - 5.1.1 the Design Services and Build Services, and conduct all related Tests, in accordance with:
    - 5.1.1.1 **Schedule 3 (Milestones and Deliverables);** and
    - 5.1.1.2 **Schedule 4 (Testing Regime);**
  - 5.1.2 the Services, WMETS Assets and Service Systems:
    - 5.1.2.1 in accordance with the:

- (a) Specifications; and
  - (b) terms and conditions of this Agreement;
- 5.1.2.2 in a manner that is not, or is not likely to be, injurious to health or cause damage to property (unless such damage is contemplated by the Specifications and/or **Schedule 26 (Docking Installation)** (for example, arising from Docking Station installation) and is necessary in order for the Service Provider to fulfil the Specifications and/or its obligations under **Schedule 26 (Docking Station Installation)**;
- 5.1.3 without prejudice to **clause 5.1.1** above, the Services, WMETS Assets and Service Systems so as to ensure that:
  - 5.1.3.1 the Milestones are achieved by the Milestone Dates;
  - 5.1.3.2 the provision of Operational Services commences on the Planned Operational Commencement Date; and
  - 5.1.3.3 Operational Services achieve no less than the Service Levels.
- 5.2 In the event that WMCA requires the Service Provider to provide any Additional Services and/or further Services and/or WMETS Assets (in accordance with the Change Control Request Procedure), the Service Provider shall:
  - 5.2.1 provide the Design Services and Build Services (or any required parts thereof as dictated by the scope of the Additional Services or such further Services and/or WMETS Assets requested by WMCA);
  - 5.2.2 conduct all related Tests in order to meet the relevant Milestones and Milestone Dates agreed in accordance with the Change Control Request Procedure; and
  - 5.2.3 provide the Operational Services (or any required parts thereof as dictated by the scope of the Additional Services or such further Services and/or WMETS Assets requested by WMCA).
- 5.3 In the event that the Service Provider fails to achieve the Service Levels:
  - 5.3.1 whether resulting from greater or lesser demand for service or greater or lesser volumes of transactions than the Service Provider anticipated or otherwise, notwithstanding any other provision in this Agreement, the Service Provider shall promptly:
    - 5.3.1.1 arrange and/or provide all such additional resources as are necessary; and
    - 5.3.1.2 take all necessary remedial actions to correct such failure to meet any of the Service Levels,

at no additional charge to WMCA;

5.4 The Service Provider shall, subject to the terms and scope of this Agreement and obligations of WMCA and Third Parties outside the control of the Service Provider:

5.4.1 undertake all necessary actions; and

5.4.2 provide all incidental and ancillary services, so as to ensure that the:

5.4.2.1 WMETS Assets and Operational Services are, and remain, fully operational at all times in accordance with the Agreement; and

5.4.2.2 reputation of the West Midlands eScooter Trial Services and Customers are not adversely affected by the provision of the Operational Services.

### **PART 3: DESIGN MATTERS**

#### **6. Service Provider Solution**

6.1 The Service Provider's solution for the West Midlands eScooter Trial Services and provision of Services, WMETS Assets and Service Systems (including the Terminal Design) is set out in the documents comprising **Schedule 21** (the "**Service Provider Solution**").

6.2 The Service Provider acknowledges and accepts that, notwithstanding that WMCA has provided the Specifications:

6.2.1 the Service Provider Solution and any other ideas, methods, concepts or theories (including any "**proof of concept**" synopsis, Milestone or feasibility demonstration in connection with the Services):

6.2.1.1 will be verifiable, verified, demonstrable, demonstrated and capable of use and used for the purposes of this Agreement; and

6.2.1.2 satisfy WMCA's requirements **Schedule 2 (Specifications)**, including any principles set out therein in connection with the scope of the Terminal Design;

6.2.2 the WMETS Assets and Service Systems provided under this Agreement will be Fit for Purpose for the provision of the West Midlands eScooter Trial Services and related Services.

6.3 The Service Provider acknowledges and accepts that, notwithstanding that WMCA has provided the Specifications:

6.3.1 the Service Provider has full knowledge and understanding of the Specifications and warrants that the Specifications and Terminal Design as provided in the Service Provider Solution (each as may be varied pursuant to the Change Control Request Procedure from time to time) are Fit for Purpose for the provision of the:

- 6.3.1.1 successful design, build and operation of the West Midlands eScooter Trial Services;
  - 6.3.1.2 WMETS Assets required for provision of the West Midlands eScooter Trial Services;
  - 6.3.1.3 Works relating to the installation and commissioning of the Docking Station Assets and On-street Assets; and
  - 6.3.1.4 Services required under this Agreement;
- 6.3.2 no fault, error or defect in the Specifications shall absolve the Service Provider from its obligations to provide the Services, WMETS Assets and Service Systems in accordance with the provisions of this Agreement and so as to design, build and operate the West Midlands eScooter Trial Services.

#### **PART 4: IMPLEMENTATION**

#### **7. Implementation Plan**

- 7.1 Without prejudice to **clauses 5.1 or 5.2 (Standard of Services and Quality of WMETS Assets)**, the Service Provider shall:
- 7.1.1 submit a draft Implementation Plan for Approval by the WMCA within 10 days of the Effective Date; and
  - 7.1.2 comply with the provisions of the Implementation Plan (including any Milestones and Milestone Dates), once it has been Approved.
- 7.2 The Service Provider shall ensure that:
- 7.2.1 all Design deliverables are submitted to WMCA and Approved in accordance with the Implementation Plan; and
  - 7.2.2 all Build Deliverables and work (which, for the avoidance of doubt, shall include the development, manufacture, installation and Testing of the WMETS Assets) are completed, tested and fully operational in accordance with the Implementation Plan; and
  - 7.2.3 in terms of the Premises, that the:
    - 7.2.3.1 Depot Assets are installed and fully operational;
    - 7.2.3.2 Contact Centre Assets are installed and fully operational; and
    - 7.2.3.3 System Assets are implemented, tested and fully operational;
  - 7.2.4 eScooter Assets are built and available for use;
  - 7.2.5 Docking Station Assets are installed and commissioned; and

- 7.2.6 On-street Assets are installed and operational;
- 7.2.7 the Service Systems are developed, implemented, tested and Approved, including:
  - 7.2.7.1 performing Testing of Service Systems and Data processing; and
  - 7.2.7.2 carrying out Data input, checking, verification, review, quality analysis and assurance and integrity testing to ensure that:
    - (a) all Data entered into the Service Systems is accurate, up to date and complete; and
    - (b) all Data is Fit for Purpose for its use and processing in connection with the Services and West Midlands eScooter Trial Services by:
      - (i) Customers;
      - (ii) WMCA Personnel;
      - (iii) Interested Parties;
      - (iv) Other Service Providers;
      - (v) Other eScooter Service Providers; and
      - (vi) Third Parties;
  - 7.2.7.3 carrying out all development work in respect of the Interfaces, including completing all design, build, development, delivery, installation, Testing and Approval.

**8. Progress Monitoring of the Implementation Phase**

Each Party shall have the relevant rights and shall comply with the obligations set out in **Schedule 8 (Contract Management and Reporting)** in relation to progress monitoring of the Implementation Phase.

**PART 5: DOCUMENT APPROVAL, TESTING, ACHIEVEMENT OF MILESTONES AND DELAY**

**9. Documentation**

- 9.1 In this Agreement, where there is a reference to Documentation, the Service Provider shall at all times (subject to any specific requirements under this Agreement in respect of the periodic updating of specific Documentation) ensure that:
  - 9.1.1 each such Documentation is accurate, up to date and complete; and
  - 9.1.2 all Changes to Documentation are submitted to WMCA for Approval in accordance with the Change Control Request Procedure.

9.2 The Service Provider shall comply with the terms of all Documentation once it has been Approved and/or amended in accordance with the Change Control Request Procedure.

## 10. Testing of WMETS Assets and Service Systems

10.1 Each Party shall have the relevant rights and shall comply with the obligations set out in **Schedule 4 (Testing Regime)** in respect of Testing of the:

10.1.1 WMETS Assets; and

10.1.2 Service Systems.

10.2 The Service Provider shall perform Testing of the WMETS Assets and Service Systems to ensure that the WMETS Assets and Service Systems (and relevant parts thereof) deliver the features, functions and required performance criteria and Service Levels set out in the Specifications, in accordance with:

10.2.1 **Schedule 4 (Testing Regime);**

10.2.2 the relevant Testing Documents; and

10.2.3 the Implementation Plan,

as amended by the Change Control Request Procedure.

## 11. Responsibility for achievement of Milestones and Milestone Dates

11.1 Each Party shall have the relevant rights and shall comply with the obligations set out in **Schedule 3 (Milestones and Deliverables)** in relation to the achievement of Milestones and Milestone Dates subject to the provisions of this Agreement.

11.2 The Service Provider agrees that:

11.2.1 all Testing shall be the responsibility of, and carried out at the cost and expense of, the Service Provider;

11.2.2 without limiting **clause 54.4 (Waiver and Approvals)**:

11.2.2.1 there shall be no transfer of risk by the Service Provider to WMCA in connection with the Services, WMETS Assets and Service Systems (or any parts thereof) or other fulfilment of this Agreement, arising from:

(a) Terminal Design;

(b) any Testing and/or Test Witnessing; or

(c) issue by WMCA of a:

(i) notice that WMCA Approves any Documentation; and/or

(ii) issue of any Milestone Notice;

and all risk in the Services, WMETS Assets and Service Systems shall remain with the Service Provider at all times;

11.2.2.2 the issue of a notice that WMCA Approves any Documentation and/or a Milestone Notice shall not affect WMCA's right to later withdraw any such notice (in circumstances where WMCA Personnel subsequently become aware of facts or circumstances that would have entitled WMCA to withhold the relevant Approval or Milestone Notice) and the Service Provider shall at its own cost promptly take all steps necessary to rectify the applicable Services, WMETS Assets or Service Systems or Documentation and, where applicable, seek the Approval of WMCA and/or achieve the Milestone;

11.2.2.3 Milestones and Milestone Dates must be achieved in sequence unless:

(a) expressly provided to the contrary in **Schedule 3 (Milestones and Deliverables)**; or

(b) otherwise agreed pursuant to the Change Control Request Procedure;

11.2.2.4 failure by the Service Provider to meet any Milestone Achievement Criteria which permits WMCA to terminate this Agreement pursuant to **Clause 12 (Delay)** and **Schedule 3 (Milestones and Deliverables)** shall be deemed to be a material breach of this Agreement by the Service Provider.

11.3 If the Service Provider fails to achieve a Milestone by the relevant Milestone Date, the provisions of **clause 12 (Delay)** shall apply.

## 12. **Delay**

12.1 Notwithstanding that the following provisions may apply:

12.1.1 **clause 48 (Relief Events)**; and/or

12.1.2 **clause 49 (Force Majeure)**,

the Service Provider shall comply with its obligations under this **clause 12**.

12.2 In the event of any actual, likely or unavoidable delay:

12.2.1 in the Milestones being achieved by the relevant Milestone Dates; or

12.2.2 in meeting the Planned Operational Commencement Date,

the Service Provider shall:

(a) notify WMCA as soon as practicable of such circumstances; and



- (b) take all practicable steps to mitigate its losses (if any), expenditure and costs, pending development and Approval of a Delay Plan in accordance with the following provisions of this **clause 12**.

12.3 Subject to **clause 12.9**, if a delay arises in respect of the achievement of one or more Milestones or the Planned Operational Commencement Date, the Service Provider shall promptly (and in any event within ten (10) Working Days of (i) receipt of notice from WMCA stating that such a delay has occurred or will occur or (ii) the Service Provider first becoming aware of the delay, whichever is the earlier) provide a delay plan to WMCA (the "**Delay Plan**"). The Delay Plan shall set out:

12.3.1 the Milestone Date(s) that have been or are likely to be missed;

12.3.2 the cause of the delay;

12.3.3 the steps that the Service Provider:

12.3.3.1 has taken to remedy the delay; and

12.3.3.2 intends to take to mitigate its and WMCA's losses (including, in the case of WMCA, any losses or likely losses notified by WMCA to the Service Provider), expenditure and costs;

12.3.4 how the delay is to be remedied (if applicable) and the timescales for such remediation so that the relevant Milestones can be achieved by their respective Milestone Dates;

12.3.5 revised Milestone Dates (if necessary);

12.3.6 where Customers have been or are likely to be adversely affected by the delay:

12.3.6.1 the steps the Service Provider has taken and/or intends to take to mitigate any such adverse effect; and

12.3.6.2 a plan for communicating the delay to Customers and stakeholders;

12.3.7 evidence (if necessary) that the Service Provider has sufficient additional resources to implement the steps set out in **clauses 12.3.3, 12.3.4 and 12.3.6**; and

12.3.8 how a failure to achieve the relevant Milestone(s) is expected to impact other Milestones and the Service Provider's proposed steps to mitigate and/or prevent any such impact.

12.4 Within five (5) Working Days of receipt of a Delay Plan, WMCA shall notify the Service Provider whether it Approves or (acting reasonably) requires changes to, the Delay Plan provided that it shall be reasonable for WMCA to require changes that are aimed at preserving the Milestone Dates or the Planned Operational Commencement Date in preference to minimising cost to the Service Provider. The Service Provider shall incorporate the changes proposed by WMCA in accordance

with this **clause 12.4** in the Delay Plan within five (5) Working Days (or such other period as may be expressly agreed in writing between the Parties) of WMCA notifying such changes to the Service Provider.

12.5 Unless otherwise expressly agreed in writing by WMCA, the cost of preparing and implementing the Delay Plan shall be borne by the Service Provider at its sole expense.

12.6 Once Approved by WMCA, the Service Provider shall:

12.6.1 carry out its obligations in the Delay Plan promptly (including such changes as WMCA may require in accordance with **clause 12.5**) and in any event commence the implementation of the Delay Plan such work within one (1) Working Day of such Approval by WMCA, unless otherwise set out in the Delay Plan or otherwise agreed in writing between the Parties; and

12.6.2 keep a record, supported by relevant documentation, of the steps the Service Provider has taken to mitigate losses pursuant to the Delay Plan and such Records and documentation shall be supplied to WMCA promptly upon demand.

12.7 Save as provided for in:

12.7.1 **clause 48 (Relief Events)**; and

12.7.2 **clause 49 (Force Majeure)**,

WMCA shall be under no obligation to give any extension of time in respect of any delay which affects:

- (a) the Operational Commencement Date;
- (b) the Services;
- (c) one or more Milestone Dates; or
- (d) any of the Service Providers other obligations under this Agreement.

12.8 Where the Service Provider has submitted a Delay Plan pursuant to **clause 12.3**, the Service Provider shall:

12.8.1 provide WMCA with updates on the Service Provider's progress against the Delay Plan on a weekly basis (or such longer period as may be agreed between the Service Provider and WMCA); and

12.8.2 update the Risk Register to reflect the delay.

12.9 Any delays caused due to the Service Provider's failure to achieve a Milestone in accordance with **Schedule 3 (Milestones and Deliverables)** shall be dealt with in accordance with and subject to the provisions of that **Schedule 3 (Milestones and Deliverables)**.

13. **Failure to Achieve Milestones**

- 12.1 Where the Service Provider has failed to achieve a Major Milestone and/or a Minor Milestone, the provisions of **clause 50.3 (Termination by WMCA of the Agreement)** shall apply.

**PART 6: CO-OPERATION AND COLLABORATION**

14. **Co-operation with WMCA, Interested Parties, Other eScooter Service Providers, Other Service Providers and Third Parties**

- 14.1 Without prejudice to **clauses 37 (Intellectual Property Rights), 42 (Information Compliance) and 59 (Confidentiality)**, the Service Provider shall (and shall procure that its Sub-Contractors shall) co-operate promptly with WMCA, WMCA Personnel and, where requested by WMCA Personnel, Interested Parties, Other eScooter Service Providers, Other Service Providers and Third Parties to the extent it is within the scope of this Agreement in relation to all activities relating to the West Midlands eScooter Trial Services and any points of integration, interoperability or interface between:

14.1.1 the Services, WMETS Assets and/or Service Systems; and

- 14.1.2 the services, assets or resources to be provided to WMCA by Interested Parties and Other Service Providers,

in each case, including:

14.1.2.1 during the development of the Documentation;

14.1.2.2 during the design, build, operation and maintenance of any Interfaces with any Interested Party, Other Service Provider or Sponsor;

14.1.2.3 during Testing or any other testing by any Other Service Provider; or

14.1.2.4 communicating notice and resolution of Service Failures or other errors, issues, faults, support or maintenance;

14.1.2.5 measuring and monitoring performance of the Services in accordance with the Service Levels; and

14.1.2.6 delivering and Testing of the Business Continuity Plan and any other business continuity or disaster recovery services and business continuity or disaster recovery plans of any Other Service Provider and/or Insurance Provider.

- 14.2 The Service Provider shall, in addition to the co-operation referred to in **clause 14.1**, also promptly provide (and in respect of Sub-Contractors, procuring the prompt provision of) WMCA, WMCA Personnel and, where applicable, Interested Parties, Other Service Providers and/or Third Parties with:

- 14.2.1 information reasonably requested by WMCA Personnel;
  - 14.2.2 reasonable access to the Service Provider Personnel (or personnel of relevant Sub-Contractors) with operational and technical expertise to answer any questions arising;
  - 14.2.3 participation in any joint-testing initiatives which are within the scope of this Agreement; and
  - 14.2.4 the provision of such information and assistance in relation to the Service Provider's elements of any the Interfaces (or parts thereof).
- 14.3 Subject to **clauses 37 (Intellectual Property Rights), 42 (Information Compliance) and 59 (Confidentiality)**, the Service Provider shall (and shall procure that its Sub-Contractors shall) promptly co-operate with all reasonable requests of WMCA and WMCA Personnel and, where applicable, Interested Parties, Other eScooter Service Providers, Other Service Providers and/or Third Parties in relation to:
- 14.3.1 the Testing of any Interfaces, interactions and Data flows between:
    - 14.3.1.1 the Services and/or Service Systems provided by the Service Provider (if applicable) and services to be provided by one or more Interested Party, Other Service Provider or Third Party (as appropriate) **including the Swift System and or MaaS** (where this is requested by WMCA during the Initial Trial Term); and
    - 14.3.1.2 all services provided by or for any Interested Party, Other Service Provider or Third Party (as appropriate), which interface with or are directly impacted by the Services and/or Service Systems, including, promptly and accurately providing all Data and information required by the Interested Party, Other Service Provider or Third Party (as appropriate), for:
      - (a) the Interested Party, Other Service Provider or Third Party (as appropriate) to comply with any obligations to WMCA; or
      - (b) WMCA to comply with its obligations to the Interested Party, Other Service Provider or Third Party (as appropriate),
- in each case to the extent that provision of such Data and information is within the Service Provider's control or possession;
- 14.3.2 compliance by WMCA, and, where applicable, Interested Parties, Other Service Providers and Third Parties with all applicable Laws, standards, codes of practice, guidance, policies and procedures from time to time; and

- 14.3.3 fulfilment by WMCA of contractual agreements between WMCA and Interested Parties, Other Service Providers or Third Parties which the Service Provider has been notified of prior to the Effective Date.
- 14.3.4 matters set out in the Interface Agreement.
- 14.4 In performing the Services, the Service Provider shall (and shall procure that its Sub-Contractors shall) take all reasonable steps to avoid prejudicing WMCA's relationship with any Interested Party, Other eScooter Service Providers, Other Service Provider or Third Party.
- 14.5 Without limiting the Service Provider's obligations to provide the Services, WMCA shall, use reasonable endeavours to procure that Interested Parties, Other Service Providers or Third Parties shall, co-operate with the Service Provider to the extent necessary for the Service Provider to provide the Services and or adhere to the terms of the Interface Agreement.
- 14.6 The Parties shall work together to identify additional products to be delivered through the Swift System and or MaaS with a view to integrating such products in the West Midlands eScooter Trial Services. Where the Parties identify a Swift provisions and or MaaS provisions which could be so integrated, the Service Provider shall use reasonable endeavours to develop such product and to integrate such product into the West Midlands eScooter Trial Services. Where the introduction of such products requires a change to this Agreement, this shall be done in accordance with the terms of **Schedule 7 (Change Control Request Procedure)**.

## **PART 7: OPERATIONAL PHASE: WMETS ASSETS AND SERVICE SYSTEMS**

### **15. Service Systems and Other Service Provider Systems**

- 15.1 The Service Provider shall provide all elements of the Service Systems, including the:
  - 15.1.1 Hardware;
  - 15.1.2 Software; or
  - 15.1.3 Systems,for use in the Service Systems.
- 15.2 In relation to any Other Service Provider Systems, the Service Provider shall:
  - 15.2.1 provide Other Service Provider with physical access to the Premises from time to time on reasonable notice in order to enable the Other Service Provider to install, support, maintain and remove the relevant Other Service Provider System at the Premises;
  - 15.2.2 at its own cost and expense, provide a suitable operating environment (including air temperature and humidity, heat extraction, electricity and other features, functions and facilities reasonably required by Other Service Provider) at the Premises for the Other Service Provider Systems; and

- 15.2.3 at all times, ensure that it does not do, omit to do, or permit any Sub-Contractor and/or Third Party to do or omit to do, anything which:
  - 15.2.3.1 prevents any Other Service Provider from logically accessing (by way of connectivity) the relevant Other Service Provider Systems (including by electronic remote management) or otherwise; or
  - 15.2.3.2 otherwise terminates or disrupts the connectivity of the Other Service Provider Systems with the Service Systems.

**16. WMETS Assets and Service Systems**

The Parties shall have the relevant rights, and shall comply with the obligations, set out in the Specifications in relation to the support and maintenance of WMETS Assets and Service Systems.

**17. System Failure**

- 17.1 The Service Provider shall notify WMCA without delay on it becoming aware of any event of or the likely event of a System Failure, whether or not it constitutes a failure to meet the Service Levels.
- 17.2 In the event of a System Failure, the Service Provider shall:
  - 17.2.1 immediately comply with the provisions of the Service Provider's escalation procedure produced in accordance with the:
    - 17.2.1.1 Specifications; and
    - 17.2.1.2 Service Provider Solution.
  - 17.2.2 in the event that such System Failure causes, or is likely to cause, the Service Provider to fail to meet the Service Levels on any calendar day on which such Service Levels apply:
    - 17.2.2.1 invoke the Business Continuity Plan; and
    - 17.2.2.2 provide Business Continuity Services to minimise disruption of such failure to WMCA and the Customers;
  - 17.2.3 immediately conduct a comprehensive examination of the WMETS Assets and Service Systems (or part(s) thereof) in order to locate the cause of the System Failure;
  - 17.2.4 at its own cost, devote such additional time, effort and resources to:
    - 17.2.4.1 resolve the System Failure as soon as possible; and
    - 17.2.4.2 avoid the recurrence of such System Failure;
  - 17.2.5 at its own cost and at the request of WMCA Personnel, promptly provide WMCA Personnel with:

17.2.5.1 all relevant Data and information in connection with the:

(a) WMETS Assets; and

(b) Service Systems, including failure reports, Test Data, Hardware, Software and System performance reports and such other information as may be required by WMCA; and

17.2.5.2 all volumetric information and Operational Reports (both historical and current) as may be required by WMCA,

to facilitate WMCA's understanding of the steps taken by the Service Provider to resolve the Service Failure and how to prevent such failure from recurring.

17.3 Where the relevant System Failure is caused by an Interested Party, Other Service Provider or Third Party, the Service Provider shall co-operate fully and expeditiously with the relevant Interested Party, Other Service Provider or Third Party (as appropriate) to resolve the relevant System Failure.

17.4 A material failure by the Service Provider to provide the Data and information requested in accordance with this **clause 17** within five (5) Working Days (or such other period as the Parties may expressly in writing agree) of such request, will give rise to a right for WMCA to:

17.4.1 exercise its rights under **clause 36 (Audit and Inspection)**,

in each case amended as necessary to account for this **clause 17.4**; and/or

17.4.2 where such Data or information is:

17.4.2.1 in the control of the Service Provider or its Sub-Contractors (or would be reasonably anticipated by WMCA to be in the control of the Service Provider or its Sub-Contractors) terminate this Agreement or Partially Terminate by notice to the Service Provider; or

17.4.2.2 not in the control of the Service Provider or its Sub-Contractors, the Service Provider shall use its reasonable endeavours to obtain such Data or information within five (5) Working Days and, failing that, as soon as possible.

## 18. **Training**

18.1 The Service Provider shall provide introductory and ongoing training as WMCA may reasonably require for WMCA Personnel, Interested Parties, Other Service Providers and Third Parties, in the use and operation of the WMETS Assets and Service Systems so as to enable those personnel and parties to use or operate such WMETS Assets and Service Systems in the manner contemplated by this Agreement and to

ensure the delivery of the West Midlands eScooter Trial Services in accordance with this Agreement. The Service Provider shall ensure that it provides:

- 18.1.1 introductory and ongoing training for Service Provider Personnel (and personnel of its Sub-Contractors, where appropriate), in order to ensure that all Service Provider Personnel (and relevant Sub-Contractors) are trained as applicable to their respective roles in the provision of the Services in accordance with this Agreement.

## **PART 8: ADDITIONAL SERVICES**

### **19. Additional Services**

19.1 WMCA shall have the right to require the Service Provider to provide Additional Services in accordance with:

- 19.1.1 the Specifications;
- 19.1.2 Schedule 24 (Additional Services); and
- 19.1.3 the terms and conditions of this Agreement.

## **PART 9: FINANCIAL MATTERS**

### **20. No Charges**

20.1 WMCA has appointed the Service Provider under this Agreement as a concession arrangement and in respect of which there shall be no charges payable by WMCA to the Service Provider in connection with the performance of the Services, or any of them unless (in respect of Additional Services only) such charges are agreed through the Change Control Request Procedure, and in which event, subject to **clause 22 (Interest)**, the terms for payment of such charges shall be agreed at that time.

### **20.2 VAT**

The Parties agree:

- 20.2.1 all sums payable under or pursuant to this Agreement are exclusive of VAT (if any). Accordingly, where any taxable supply for VAT purposes is made under or in connection with this Agreement by one Party to another, the recipient of that supply shall, in addition to any payment due for that supply, pay to the supplier such VAT as is chargeable in respect of the supply at the same time as payment is made or in any other case when demanded by the supplier. The payee shall provide the payer with a valid VAT Invoice in respect of any payment of VAT; and
- 20.2.2 if any payment in respect of VAT is made under this Agreement in circumstances where VAT was not properly chargeable, then, where the supplier has accounted for such VAT to HM Revenue and Customs, the supplier's obligation to repay any amount to the payer shall be limited to such



amount as the supplier is entitled to recover (by way of credit, repayment or otherwise) from HM Revenue and Customs in respect of the VAT wrongly paid.

21. **Commercial exploitation in connection with the West Midlands eScooter Trial Services**

21.1 The Service Provider and WMCA shall from time to time discuss opportunities for commercial exploitation of the Docking Station Assets and eScooter Assets, and generally the West Midlands eScooter Trial Services.

21.2 The Service Provider shall not enter into any agreements in relation to, or otherwise exploit, any such opportunities envisaged by **clause 21.1** above unless and until it has agreed in writing with WMCA:

21.2.1 the basis on which such opportunities shall be exploited; and

21.2.2 WMCA's rights in relation to those opportunities,

and provided that the Service Provider shall at all times have regard to and comply with the Advertising Protocol and the Sponsorship Protocol when seeking to engage with any Sponsor and in the negotiation of the terms of sponsorship.

21.3 The Service Provider shall not enter into any agreement with a Sponsor (or any other agreement in connection with an opportunity identified in **clause 21.1** above unless the Service Provider has complied with **clause 21.2**, and WMCA has approved the terms of the agreement (approval not to be unreasonably withheld or delayed). These provisions shall apply equally to any material revision or change to an already approved agreement.

21.4 In terms of all aspects of branding, irrespective of whether in connection with:

21.4.1 the eScooter Assets or other WMETS Assets or otherwise in connection with the West Midlands eScooter Trial Services; or

21.4.2 the provision of the Services,

such branding shall be subject to approval by WMCA (approval not to be unreasonably withheld or delayed), and shall comply with the Advertising Protocol and (where relevant) the Sponsorship Protocol.

22. **Interest**

Interest shall accrue at the Interest Rate on all sums due and payable under this Agreement from the due date until the date of actual payment (both before and after judgment). All such interest shall be calculated on the basis of the actual number of days elapsed, over a 365 day year and compounded at Monthly intervals.

23. **Revenue**

23.1 WMCA agrees that all Revenue belongs to the Service Provider, subject to the eScooter Licence Payment.

## PART 10: RESPONSIBLE PROCUREMENT

### 24. Timber standards

24.1 The Service Provider shall ensure, so far as reasonably practicable, that any timber used in the delivery of the Services is:

24.1.1 recycled;

24.1.2 reclaimed; or

24.1.3 certified as having come from a sustainable source by the:

24.1.3.1 Forest Stewardship Council;

24.1.3.2 Canadian Standards Association;

24.1.3.3 Programme for the Endorsement of Forest Certification; and

24.1.3.4 Sustainable Forestry Initiative, or equivalent.

24.2 For the purposes of this **clause 24**, timber shall not include products derived from timber where the manufacturing process has obscured the wood element, such as paper.

24.3 The Service Provider shall retain in accordance with **clause 36 (Audit and Inspection)** documentary evidence of the source of any timber used.

### 25. Deleterious Materials

25.1 The Service Provider shall not:

25.1.1 specify for use or use or permit to be used in the Works any products or materials which:

25.1.1.1 do not conform with British Standards or Codes of Practice or good building practice; and/or

25.1.1.2 are generally known to be deleterious, in the particular circumstances in which they are specified for use, to:

(a) health and safety; and/or

(b) the durability of buildings or structures,

(the "**Deleterious Materials**");

25.1.2 use Deleterious Materials in the design, construction and implementation of any WMETS Assets provided under this Agreement.

### 26. Ethical Sourcing Principles

26.1 WMCA is committed to ensuring that workers employed in its supply chains throughout the world are treated fairly, humanely and equitably. In the course of complying with this Agreement, the Service Provider shall comply with, and shall

procure that its Sub-Contractors comply with the principles of the Ethical Trading Initiative ("ETI") Base Code or an equivalent code of conduct (the "**Ethical Sourcing Principles**") in relation to the provision of the goods and services under this Agreement. For the avoidance of doubt such code includes a requirement to pay employees not less than the national minimum wage applicable to the West Midlands region.

26.2 As soon as practicable following the Effective Date, the Service Provider shall, and shall ensure that its Sub-Contractors are, be registered with an ethical supplier database, such as SEDEX (Supplier Ethical Data Exchange). The Service Provider agrees that for the Term, it shall permit, and shall procure that its Sub-Contractors permit, and enable WMCA Personnel to have access to the information relating to the Service Provider and its Sub-Contractors that subsists in such ethical supplier database.

26.3 Throughout the Term, if WMCA has reasonable cause to believe that the Service Provider is not complying with any of the Ethical Sourcing Principles:

26.3.1 WMCA shall notify the Service Provider; and

26.3.2 the Parties shall agree an action plan with appropriate timeframes for compliance by the Service Provider,

(the "**Action Plan**"). Such Action Plan to be agreed by the Parties no later than fifteen (15) Working Days from the date of WMCA notifying the Service Provider that remedial action is required, or such other period as the Parties may otherwise agree in writing. The costs of the creation and implementation of the Action Plan shall be borne by the Service Provider.

26.4 Following the agreement of the Action Plan, WMCA reserves the right to conduct one or more audits (either by itself or Third Party auditor appointed by WMCA) in accordance with **clause 36 (Audit and Inspection)**, in relation to compliance by the Service Provider with the Action Plan. The costs of any such audits and any subsequent follow-up audits required shall be borne equally by the Parties, unless otherwise agreed in writing.

26.5 For the avoidance of doubt, the right of audit contained in this **clause 26** shall include the right of WMCA (or Third Party auditor appointed by WMCA) acting reasonably to undertake physical inspections of relevant Service Provider Premises and other locations and factories used by the Service Provider and its Sub-Contractors, to conduct interviews with relevant personnel and to inspect relevant documents. The Service Provider shall co-operate, and shall procure that its Sub-Contractors shall co-operate, with WMCA Personnel (or Third Party auditor appointed by WMCA) in relation to all aspects of any audit.

## 27. **Equality and diversity**

The Service Provider shall, and shall procure that all the Service Provider's Personnel and its Sub-Contractors shall, at no additional cost to WMCA, comply with the provisions of **Schedule 18 (Equality and Diversity)**.

## PART 11: SERVICE PROVIDER PERSONNEL AND SUB-CONTRACTORS

### 28. Service Provider Personnel

Each Party shall have the relevant rights and shall comply with the obligations set out in **Schedule 27 (Service Provider Personnel)** in relation to Service Provider Personnel.

### 29. Compliance with WMCA Policies

29.1 The Service Provider shall procure that all the Service Provider's Personnel and its Sub-Contractors shall comply with:

29.1.1 at no additional cost to WMCA, the WMCA Policies provided to the Service Provider by the Effective Date;

29.1.2 the WMCA Policies provided to the Service Provider after the Effective Date and/or amended after the Effective Date (save that where, following the issuance of a new or amended WMCA Policy there are cost, scope, timetable or other implications, these shall be dealt with in accordance with the Change Control Request Procedure); and

29.1.3 without limiting the generality of this **clause 29**, all relevant enactments in force from time to time relating to discrimination in employment and the promotion of equal opportunities.

29.2 The costs of compliance with this **clause 29** shall be borne solely by the Service Provider.

29.3 WMCA shall provide the Service Provider with copies of the policies, procedures and standards referred to in this **clause 29** on request.

29.4 In providing the Services (which include the Design Services and Build Services in respect of the WMETS Assets), the Service Provider shall, taking into account best available techniques not entailing excessive cost, have appropriate regard (insofar as the Service Provider's activities may impact on the environment) of the need to:

29.4.1 preserve and protect the environment and to the need to avoid, remedy and mitigate any adverse effects on the environment;

29.4.2 enhance the environment and have regard to the desirability of achieving sustainable development;

29.4.3 conserve and safeguard flora, fauna and geological or physiological features of special interest; and

29.4.4 sustain the potential of natural and physical resources and the need to safeguard the life-supporting capacity of air, water, soil and ecosystems.

30. **Key Sub-Contractors and Sub-Contractors**

30.1 **Key Sub-Contractors**

The initial list of Key Sub-Contractors is set out in **Schedule 20 (Key Sub-Contractors)**.

30.2 From time to time, WMCA shall be entitled to designate Sub-Contractors as being Key Sub-Contractors in accordance with the Change Control Request Procedure, provided that if the person to be added as a Key Sub-Contractor was a Sub-Contractor as at the Effective Date but is either:

30.2.1 not referred to in **Schedule 21 (Service Provider Solution)**; or

30.2.2 the scope of their role is not set out in sufficient detail in **Schedule 21 (Service Provider Solution)** to enable WMCA, acting reasonably, to determine whether they should be a Key Sub-Contractor,

and the identity of the Sub-Contractor or the nature of the goods or services supplied by the Sub-Contractor would reasonably be considered by WMCA to be material, the costs associated with designating the Sub-Contractor as a Key Sub-Contractor shall be borne solely by the Service Provider. The Service Provider shall promptly thereafter comply with this **clause 30** in respect of such Key Sub-Contractor.

30.3 WMCA shall have the right to approve the:

30.3.1 material terms of any Key Sub-Contract before the Service Provider enters into any legally binding contracts with the Key Sub-Contractors; and

30.3.2 terms of any material amendments to Key Sub-Contracts.

For the purposes of this **clause 30.3**, "**material terms**" and "**material amendments**" shall include:

30.3.3 financial terms of the Key Sub-Contract;

30.3.4 terms relating to liability of either party under such Key Sub-Contract; and

30.3.5 terms that are expressly required, pursuant to this Agreement, to be included in such Key Sub-Contract.

30.4 The Service Provider undertakes to WMCA that it shall ensure that:

30.4.1 a certified copy of any Key Sub-Contract (excluding any contract of employment) entered into by the Service Provider is provided to WMCA fourteen (14) calendar days after the Key Sub-Contract is entered into; and

30.4.2 the certified copy will be accompanied by a collateral deed by the party or parties contracting with the Service Provider, which:

30.4.2.1 is directly enforceable by WMCA (or its nominee);

30.4.2.2 provides for:

- (a) a right to require novation of the Key Sub-Contract (whether to WMCA or any New Service Provider); and
- (b) does not contain any terms which would conflict with the principles in the earlier provisions of this clause 30.4.2.

### 30.5 **Sub-Contractors**

The Service Provider shall not assign or sub-contract all or any part of the Services without the prior written consent of WMCA, such request for consent to identify the relevant sub-contractor, which may be refused or granted subject to such conditions as WMCA reasonably requires and the Service Provider's compliance with **clauses 30.6 and 30.7**.

30.6 When placing Sub-Contracts, the Service Provider shall:

30.6.1 carry out, and be responsible for, the placing of Sub-Contracts to:

30.6.1.1 meet the requirements of the:

- (a) Specifications; and
- (b) Service Provider Solution;

30.6.1.2 provide the Services;

30.6.2 create and maintain an accurate and up-to-date log of all Sub-Contracts, which the Service Provider shall make available to WMCA Personnel on request from time to time;

30.6.3 ensure that all contracts entered into with Sub-Contractors provide that payment by the Service Provider to the Sub-Contractor shall be made no later than twenty (20) calendar days from receipt of a valid and undisputed invoice;

30.6.4 ensure that WMCA is protected from any Sub-Contractor:

30.6.4.1 defaulting under the relevant Sub-Contract; or

30.6.4.2 causing the Service Provider to default under this Agreement, including by introducing appropriate measures and, where appropriate, but without limitation to the generality of the foregoing, obtaining a parent company guarantee.

30.7 For each Sub-Contract, the Service Provider shall:

30.7.1 regularly monitor the measures referred to in **clause 30.6.4**; and

30.7.2 report and discuss its findings to WMCA at each Strategic Review Meeting or as otherwise required in accordance with **Schedule 8 (Contract Management and Reporting)**.

30.8 For each Key Sub-Contractor and Sub-Contractor, the Service Provider shall notify WMCA in writing within ten (10) Working Days of the appointment of such Key Sub-Contractor and/or Sub-Contractor of the scope and nature of the Services to be performed by the relevant Key Sub-Contractor and/or Sub-Contractor and the country or countries from which such Services are to be carried out or performed.

## **PART 12: ADDITIONAL OBLIGATIONS**

### **31. Additional Service Provider obligations**

31.1 Without limitation and in addition to the Service Provider's other obligations set out in this Agreement, the Service Provider shall (and shall procure that its Sub-Contractors shall) at all times:

31.1.1 in performing its obligations under this Agreement, not do or omit to do or permit or suffer to be done anything which might be or become a danger to any persons or cause damage to any WMCA Premises or Third-Party property;

31.1.2 provide WMCA Personnel with such co-operation, information, advice and assistance in connection with:

31.1.2.1 the West Midlands eScooter Trial Services, WMETS Assets, Service Systems, Interfaces and the Services; and

31.1.2.2 carrying out its obligations under this Agreement,

as expressly within the scope of the Agreement and as WMCA may reasonably require;

31.1.3 act with good faith in its dealings with WMCA Personnel, Interested Parties, Other eScooter Service Providers, Other Service Providers, Sponsor, Customers, Third Parties and its Sub-Contractors;

31.1.4 ensure that Service Provider Personnel and its Sub-Contractors act in such a way that the name and good reputation of WMCA is not brought into disrepute or otherwise becomes adversely affected; and

31.1.5 ensure that all:

31.1.5.1 Sub-Contracts; and

31.1.5.2 all other non-employment contracts, which are necessary for the performance of the Services,

are assignable to WMCA (without any transfer charge).

## 32. WMCA obligations

### 32.1 WMCA shall:

- 32.1.1 comply with its obligations expressly set out in this Agreement;
- 32.1.2 use its reasonable endeavours to respond within a commercially reasonable timescale to all reasonable requests by the Service Provider for:
  - 32.1.2.1 information; and/or
  - 32.1.2.2 access to WMCA Personnel,as specifically required in this Agreement but only insofar as required for the Service Provider to perform its obligations under this Agreement;
- 32.1.3 use its reasonable endeavours to facilitate communications between the Service Provider and:
  - 32.1.3.1 Interested Parties; and
  - 32.1.3.2 Other Service Providers,relevant to this Agreement and the provision of the West Midlands eScooter Trial Services, where such communications are necessary in order for the Service Provider to be able to perform its obligations under this Agreement; and
- 32.1.4 comply with all Laws which apply to WMCA's responsibilities under this Agreement.
- 32.1.5 use its reasonable endeavours to comply with the eScooter Legislation and or eScooter Licence provisions (as applicable) insofar as it relates to actions steps or requirements on its part in regards to such eScooter Legislation and or eScooter Licence provisions (as applicable) to allow the Service Provider to satisfy the Condition Precedent.
- 32.1.6 shall enter into an agreement on similar terms to those set out in this Agreement with the Service Provider and Other eScooter Service Providers in the form of the Interface Agreement.

## PART 13: CHANGES AND CHANGE MANAGEMENT

### 33. Change Control Request Procedure

- 33.1 Each Party shall have the relevant rights and shall comply with the obligations set out in **Schedule 7 (Change Control Request Procedure)** in respect of the Change Control Request Procedure.
- 33.2 The Service Provider acknowledges that WMCA may at its sole discretion at any time (but, unless otherwise expressly provided in this Agreement, subject to any Changes to the Agreement arising as a result being effected through the Change Control



Request Procedure) amend the details of the West Midlands eScooter Trial Services, including the:

- 33.2.1 geographical extent of the West Midlands eScooter Trial Services;
- 33.2.2 times and days of operation of the West Midlands eScooter Trial Services; and
- 33.2.3 updates and upgrades that may be required to ensure continued integrated operation with the Swift System where there are updates or upgrades to the Swift System; and

33.3 The Service Provider shall, subject to the Change Control Request Procedure, be obliged to change the scope and extent of the:

- 33.3.1 WMETS Assets;
- 33.3.2 Service Systems; and
- 33.3.3 Services,

in the event of a change to the West Midlands eScooter Trial Services agreed in accordance with the Change Control Request Procedure.

#### **PART 14: CONTRACT MANAGEMENT, MONITORING AND AUDIT**

##### **34. Contract Management and Incident Management**

The Parties shall have the relevant rights and shall comply with the obligations of **Schedule 8 (Contract Management and Reporting)** in respect of management of each Party's obligations under this Agreement and any Incidents arising.

##### **35. WMCA Monitoring Staff**

35.1 Without prejudice to the provisions of the Specifications and **clause 8 (Progress Monitoring of the Implementation Phase)**, WMCA shall have the right to locate, at any time and for such period as WMCA may require from time to time a number of WMCA monitors as requested by WMCA Personnel at the Premises and/or any Sub-Contractor's premises in order to monitor and review the Service Provider's performance of its obligations and provision of the Services under this Agreement.

35.2 The Service Provider shall:

- 35.2.1 invite such of the WMCA monitors to internal Service Provider meetings as WMCA may reasonably require from time to time and shall permit such WMCA monitors to attend such meetings;
- 35.2.2 permit such of the WMCA monitors as WMCA may reasonably require from time to time to attend Test Witnessing; and
- 35.2.3 ensure that its Sub-Contractors comply with the provisions of this **clause 35** as if they were a party to this Agreement.

- 35.3 The Service Provider acknowledges and accepts that the:
- 35.3.1 presence of WMCA monitors at the Premises from time to time shall in no way diminish or limit the Service Provider's responsibility for providing the Services in accordance with this Agreement; and
  - 35.3.2 actions of the WMCA monitors shall not in any circumstances be taken to be, or indicate, the Approval or acceptance of WMCA of any of the Services, WMETS Assets and/or Service Systems (or parts thereof).
- 35.4 WMCA shall ensure that the conduct of the WMCA monitors does not unreasonably:
- 35.4.1 disrupt the Service Provider or its Sub-Contractors; or
  - 35.4.2 delay the provision of the Services.

36. **Audit and inspection**

36.1 **Obligation to maintain Records**

The Service Provider shall, and shall procure that its Sub-Contractors shall:

- 36.1.1 maintain a complete, current and accurate set of Records pertaining to all:
    - 36.1.1.1 activities relating to the provision of the Services, WMETS Assets and Service Systems; and
    - 36.1.1.2 transactions entered into by the Service Provider for the purposes of this Agreement (or, in the case of a Sub-Contractor, all transactions entered into by the Sub-Contractor for the purposes of the relevant Sub-Contract);
  - 36.1.2 retain all such Records for a period of not less than six (6) years (or such period, if different, as may be prescribed by Law) following termination or expiry of this Agreement.
- 36.2 Subject to **clause 59 (Confidentiality)**:
- 36.2.1 the Records will be held by the Service Provider on its own behalf for the purposes of provision of the Services, WMETS Assets and Service Systems; and
  - 36.2.2 WMCA's right of access to the Records shall be solely as required for and in accordance with this **clause 36** or as otherwise set out in this Agreement.
- 36.3 The Records and documents referred to in this **clause 36** shall include the following, insofar as they relate to the Services or this Agreement:
- 36.3.1 details of all Service Provider Personnel involved in the provision of the Services including names, training records, National Insurance numbers

and any other information required in accordance with **Schedule 27 (Service Provider Personnel)**;

36.3.2 all Sub-Contracts commitments, leases, manufacturers Specifications, details and warranties, purchase orders and data relating to procurement of the Services, WMETS Assets and Service Systems (or any parts thereof);

36.3.3 management accounts and any other management records;

36.3.4 accounting records (in hard copy as well as computer readable data);

36.3.5 claims (including documentation covering negotiated settlements save where legally privileged) and variations to the agreement and/or Services;

36.3.6 detailed inspection records;

36.3.7 information relating to each and all System Failures, prepared in accordance with **clause 17 (System Failure)**; and

36.3.8 any other information specified in this Agreement,

(together the "**Records**").

36.4 The Service Provider shall procure that each Sub-Contract contains equivalent:

36.4.1 rights of audit, inspection and access in favour of WMCA (and any Third Party to whom rights of audit, inspection and access are granted pursuant to this **clause 36**); and

36.4.2 obligations on the relevant Sub-Contractor, to those set out in this **clause 36**.

### 36.5 **Rights of audit**

WMCA Personnel may

36.5.1 at any time during the Term; and

36.5.2 during the period of not less than six (6) years (or such other period as may be prescribed by Law) following termination or expiry of this Agreement,

and with five (5) Working Days' prior notice or such shorter notice as is reasonable in the circumstances, undertake any:

36.5.3 inspection of the Services, WMETS Assets and Service Systems; and

36.5.4 audit or check of the Records and any matter relating to the Service Provider's performance of its obligations under this Agreement, including:

36.5.4.1 the recording of performance against the Performance Indicators;

- 36.5.4.2 the implementation of the Security Policy and compliance with **Schedule 12 (Security Policy)**;
  - 36.5.4.3 compliance with **Schedule 19 (Business Continuity)**;
  - 36.5.4.4 the operation of any Management Information system;
  - 36.5.4.5 compliance with the data protection provisions in set out in **Schedule 13 (Information Compliance)**;
  - 36.5.4.6 Testing conduct, methodology and procedures; and
  - 36.5.4.7 the evaluation of claims or variations to the Agreement and/or Services.
- 36.6 The Service Provider shall grant identical inspection, audit and/or checking rights to those described in **clause 36.5** above where the same shall have been requested by the District Auditor or any other national or local Government body or department whether currently in existence or coming into existence during the continuance of this Agreement or at any time during the period of six (6) years (or such other period as may be prescribed by Law) following termination or expiry of this Agreement.
- 36.7 The Service Provider shall, at no additional cost to WMCA, promptly co-operate in relation to any inspection, audit or check, including to the extent relevant to the particular inspection, audit or check:
- 36.7.1 granting, or procuring the granting of access to:
    - 36.7.1.1 any premises (including the Premises and a Sub-Contractors premises) used in the Service Provider's performance of its obligations under this Agreement;
    - 36.7.1.2 any equipment (including all WMETS Assets and Service Systems) used (whether exclusively or non-exclusively, although in terms of non-exclusively subject to any reasonable requirements of the Service Provider relating to health and safety, Third Party confidentiality and non-disruption to the Service Provider's normal business operations) in the performance of the Service Provider's obligations under this Agreement, wherever situated and whether the Service Provider's own equipment, a Sub-Contractor's equipment or otherwise; and
    - 36.7.1.3 any Data dictionary and the fields and Records within it to enable Data (including standing data and transaction data processed by the Service Systems and security settings) to be downloaded from any computer Systems operated by the Service Provider or a Sub-Contractor;
  - 36.7.2 ensuring that appropriate security systems are in place in accordance with **Schedule 12 (Security Policy)** to prevent unauthorised access to,

extraction of and/or alteration to, Data during an inspection, audit or check;

- 36.7.3 making the Documentation, Records and any information and logs to be maintained under this Agreement (whether exclusively or non-exclusively) available for inspection;
- 36.7.4 providing a reasonable number of copies of any documents or Records and/or granting copying facilities for the purposes of making such copies;
- 36.7.5 maintaining Service Systems journal records for a minimum period of twelve (12) Months irrespective of the occurrence of any fraudulent act, suspected fraudulent act or security breach;
- 36.7.6 complying with reasonable requests of WMCA Personnel for access to Service Provider Personnel (and where necessary Sub-Contractor Personnel) engaged in the performance of the Service Provider's obligations under this Agreement;
- 36.7.7 procuring that all Service Provider Personnel (and where necessary Sub-Contractor Personnel) fully co-operate with WMCA Personnel in relation to any audit, or inspection or check conducted pursuant to this **clause 36**; and
- 36.7.8 providing all reasonably requested support at the premises (including the Premises and a Sub-Contractor's premises) to WMCA Personnel in the discharge of their functions and allowing them use of suitable office accommodation (if necessary).

## 36.8 **Audit Methodology**

36.8.1 Without limitation to the generality of the foregoing provisions of this **clause 36**, the Audit Methodology of the Service Provider will be subject to audit by WMCA from time to time. The Service Provider shall:

36.8.1.1 ensure that:

- (a) the Audit Methodology identifies omissions in the relevant process being audited; and
- (b) all features, functions and facilities ascribed as part of the Services, WMETS Assets and Service Systems (or any parts of them) which are not provided or managed by the Service Provider in accordance with this Agreement are identified and addressed;

36.8.1.2 provide details of the Audit Methodology, which shall be:

- (a) at least equivalent to Good Industry Practice; and
- (b) to WMCA's satisfaction;

36.8.1.3 if WMCA considers that the Audit Methodology is not at least equivalent to Good Industry Practice, WMCA shall be entitled to require the Service Provider to:

- (a) adopt a more rigorous Audit Methodology in line with Good Industry Practice. Such methodology shall be adopted by the Service Provider as the Audit Methodology within fifteen (15) Working Days of WMCA serving notice on the Service Provider requiring it to do so; and/or
- (b) implement any other recommendations made by WMCA Personnel in relation to the Audit Methodology from time to time at no additional cost to WMCA;

36.8.1.4 implement the Audit Methodology.

36.9 WMCA shall use reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Service Provider or its Sub-Contractors or delay the provision of the Services.

36.10 **Failure to comply**

Without prejudice to **clause 36.8**, if WMCA, as a result of audit, inspection or check whether or not undertaken in accordance with this **clause 36**, identifies any failures by the Service Provider in complying with its obligations under this Agreement, WMCA Personnel may notify the Service Provider to this effect. Promptly following receipt of such notice, and in any event no later than fifteen (15) Working Days from the date of such notice, the Service Provider shall rectify such failures to the satisfaction of WMCA, at no cost to WMCA.

36.11 **Inaccurate information**

In the event that an inspection, audit or check reveals that information previously supplied to WMCA Personnel pursuant to this **clause 36**, or otherwise, was inaccurate and:

36.11.1 such information was inaccurate in any material respect; and/or

36.11.2 any inaccuracy results in or creates any adverse impact on WMCA, the business of WMCA or the West Midlands eScooter Trial Services,

the cost incurred by WMCA and the Service Provider in respect of any such inspection, audit or check shall be borne solely by the Service Provider.

36.12 In the event of dispute concerning:

36.12.1 the existence of an inaccuracy under **clause 36.11**;

36.12.2 whether fraudulent activity on the part of the Service Provider, Service Provider Personnel or its Sub-Contractors has taken place;

36.12.3 the extent of such fraudulent activity; and/or

36.12.4 any matters concerning an audit certificate,

the Dispute Resolution Procedure shall apply.

36.13 In respect of any accounting information supplied by the Service Provider to WMCA Personnel such statement shall, at the request of WMCA Personnel, be accompanied by a separate audit certificate from the appointed auditor of WMCA or an independent auditor nominated by WMCA and, subject to **clause 36.11**, the reasonable cost of such audit certificate to be borne by WMCA.

## **PART 15: CONTRACT RISK MANAGEMENT**

### **37. Intellectual Property Rights**

37.1 For the purposes of this Agreement:

37.1.1 the Service Provider hereby licenses its Service Provider IPR to WMCA;  
and

37.1.2 WMCA hereby licenses its WMCA IPR to the Service Provider.

In each case such licence shall be non-exclusive, non-transferable, royalty-free and limited in scope such that (where WMCA is the recipient) WMCA may use (or sublicense) the Service Provider Background IPR solely for the purpose of receiving the benefit of the provision of the West Midlands eScooter Trial Services by the Service Provider or otherwise fulfilling WMCA's obligations under this Agreement, and (where the Service Provider is the recipient) the Service Provider may use (without the right to sublicense without WMCA approval other than to Sub-Contractors, such approval not to be unreasonably withheld or delayed) the WMCA Background IPR solely for the purpose of fulfilling the Service Provider's obligations under this Agreement. In each case the licence shall terminate on the termination or expiry of this Agreement.

37.2 In the absence of prior written agreement to the contrary:

37.2.1 all Intellectual Property Rights created by the Service Provider or any employee, agent or Sub-Contractor of the Service Provider other than as specified in **clause 37.2.2**, in the course of performing the Services or which are otherwise developed by the Service Provider ("**New IPR**") shall vest in the Service Provider on creation.

37.2.2 all Intellectual Property Rights created by the Service Provider or any employee, agent or Sub-Contractor of the Service Provider in the course of performing the Services or which are otherwise developed by the Service Provider in respect of the Swift System ("**Vesting IPR**") shall vest in WMCA on creation.

37.3 Subject to a Change Control Request Procedure the WMCA licenses the Service Provider to use the Vesting IPR (with a right to sublicense on the same terms) during

the Term solely for the purposes of the Service Provider performing the Services and its other obligations under this Agreement.

- 37.4 The Service Provider licenses WMCA to use the New IPR (with a right to sublicense on the same terms) during the Term solely for the purposes of WMCA receiving the benefit of the provision of the West Midlands eScooter Trial Services by the Service Provider.
- 37.5 The Service Provider shall indemnify WMCA against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any use by WMCA of Service Provider IPR or New IPR which is an infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right of any third party.

### 38. **Business Continuity**

- 38.1 The Service Provider shall throughout the Term comply with the provisions of **Schedule 19 (Business Continuity)** including creating, maintaining and updating the Business Continuity Plan, which shall:
- 38.1.1 be capable of mitigating, in accordance with Good Industry Practice, any adverse impact on the WMETS Assets, Service Systems and Services in any circumstances where the ability of the Service Provider to provide the WMETS Assets, Service Systems and Services would otherwise be impaired;
  - 38.1.2 make provision for action to be taken by the Service Provider in the event of non-availability of the Premises; and
  - 38.1.3 include a communications plan for relevant Service Provider Personnel and WMCA Personnel, in respect of which the Service Provider will consult with WMCA and incorporate WMCA's requirements.
- 38.2 Throughout the Term, the Service Provider will:
- 38.2.1 review, update and maintain the Business Continuity Plan to ensure that the Business Continuity Plan is at all times commensurate with the WMETS Assets, Service Systems and Services provided and total volume of business managed and administered and Services provided by the Service Provider. Such updates shall be provided on such dates as the Parties may agree from time to time in writing and as WMCA may reasonably request from time to time; and
  - 38.2.2 produce all updates and amendments required under **clause 38.2.1** above in advance of any agreed or anticipated volume increases in, or Changes to, the Services.



39. **Security Policy**

39.1 The Service Provider shall throughout the Term comply with the provisions of **Schedule 12 (Security Policy)**, including ensuring that Service Provider Personnel and its Sub-Contractors comply with the provisions of this **clause 39** and **Schedule 12 (Security Policy)**.

39.2 The Service Provider shall, at its own cost and in accordance with the Specifications and **Schedule 12 (Security Policy)** promptly prepare:

39.2.1 a written review of the Security Policy (as the same may be amended from time to time pursuant to the Change Control Request Procedure) upon request from WMCA from time to time and in any event at least once in each twelve (12) month period; and

39.2.2 an updated version of the Security Policy within ten (10) Working Days, or such other period as may be expressly agreed in writing by the Parties, following the implementation of a Change so as to incorporate the effects of that Change in the Security Policy where such Change impacts on the Security Policy,

in each case to reflect the Specifications, and submit a copy of those documents (as applicable) to WMCA for Approval.

39.3 WMCA shall use commercially reasonable endeavours to supply the Service Provider on reasonable notice with information that the Service Provider reasonably requires so that the Service Provider is not delayed in performing its obligations under **clause 39.2**.

39.4 In terms of the Security Policy, the Service Provider:

39.4.1 shall, at all times, provide such access, facilities, information, data, documentation and assistance reasonably required by WMCA Personnel and any Third Party nominated by WMCA in connection with the preparation and implementation of the Security Policy and any other security requirements envisaged under this Agreement;

39.4.2 agrees that WMCA Personnel may, notwithstanding anything to the contrary in this Agreement, share the Security Policy in form or substance with any Third Party for the purposes of the:

39.4.2.1 WMETS Assets;

39.4.2.2 Service Systems;

39.4.2.3 Services;

39.4.2.4 West Midlands eScooter Trial Services; and/or

39.4.2.5 this Agreement; and

39.4.3 shall, as soon as possible, and in any event before the end of the relevant calendar day, update the Incident Log in respect of each Security Incident in connection with the performance or otherwise of the Service Provider's obligations under this **clause 39**; and

39.4.4 shall ensure that the Incident Log is always:

39.4.4.1 available to WMCA; and

39.4.4.2 accurate, up to date and complete.

## 39.5 **Security Incidents**

In the event of a Security Incident:

39.5.1 the Service Provider shall at the Service Provider's cost:

39.5.1.1 as soon as possible:

(a) correct, make good, reinstate, replace and fix all deficiencies, loss and/or damage to the Services and/or Service Systems in connection with a Security Incident; and/or

(b) perform or re-perform Tests or alternative tests relating to the security of the Services and/or Service Systems,

as appropriate, including within reasonable timeframes specified by WMCA from time to time, to demonstrate to WMCA's reasonable satisfaction that the relevant parts of the Services and Service Systems provide the features, functions, and facilities and meet the performance criteria specified in the Specifications and this Agreement including in connection with the Service Provider implementing any Security Rectification Plan pursuant to **clause 39.5.1.2**;

39.5.1.2 immediately, prepare a Security Rectification Plan, including full details of the steps to be taken by the Service Provider to perform its obligations under **clause 39.5.1.1** and shall, without limiting **clause 39.5.1.1**, submit a copy of that Security Rectification Plan to WMCA for approval and, subject to such approval, the Service Provider shall fully carry out that Security Rectification Plan; and

39.5.1.3 promptly escalate the matter to such level of seniority within the Service Provider organisation as WMCA may require; and/or

39.6 The Service Provider agrees that a breach by the Service Provider (or a Sub-Contractor) of the respective obligations under this **clause 39** shall be deemed to be a material breach of this Agreement by the Service Provider giving rise to the right for

WMCA to terminate this Agreement in accordance with the provisions of **clauses 50.3 and 50.9 (Termination)**. For the purposes of **clauses 50.3 and 50.9 (Termination)**, if the Service Provider has failed to comply with the Security Rectification Plan Approved by WMCA in accordance with **clause 39.5**, such failure shall be deemed to be a breach which is not capable of remedy.

39.7 Either Party may request changes to any document envisaged under this **clause 39** in accordance with the Change Control Request Procedure.

39.8 If any Data or information is inaccurate, corrupted, lost or sufficiently degraded as to be unusable as a result of the Service Provider's failure to comply with the provisions of this **clause 39** or any other act or omission of the Service Provider, the Service Provider shall at its own cost carry out (or procure the carrying out of) such remedial action as is necessary to restore such Data or information.

#### 40. **Liability**

##### 40.1 **Unexcluded liability**

Nothing in this Agreement shall exclude or limit:

40.1.1 either Party's liability in respect of:

40.1.1.1 death or personal injury caused by its negligence;

40.1.1.2 fraud or fraudulent misrepresentation; or

40.1.1.3 breach of any obligation as to title implied by:

(a) section 12 of the Sale of Goods Act 1979; or

(b) section 2 of the Supply of Goods and Services Act 1982;

40.1.2 the Service Provider's liability in respect of:

40.1.2.1 the indemnities provided in:

(a) **clause 37.5 (Intellectual Property Rights)**;

(b) **clause 40.3**;

(c) **Schedule 27 (Service Provider Personnel)**;

40.1.2.2 breach by the Service Provider of:

(a) **clause 42 (Information Compliance)**; and

40.1.2.3 damage to any Third Party property as a result of the carrying out or any acts or omissions relating to the Works.

##### 40.2 **Excluded heads of loss**

Subject to **clause 40.1**, neither Party shall be liable to the other under or in relation to this Agreement for:

- 40.2.1 loss of goodwill;
- 40.2.2 loss of reputation;
- 40.2.3 loss of anticipated savings;
- 40.2.4 loss of profit; and
- 40.2.5 any indirect, special or consequential losses or damages howsoever arising.

#### 40.3 **Indemnities**

The Service Provider indemnifies and holds harmless the WMCA Indemnified Parties from and against all claims, demands, actions, proceedings, damages, losses, costs and expenses arising from any breach of the Service Provider's obligations under **Schedule 26 (Docking Station Implementation)**, save where any such actions, costs, claims, demands, charges or expenses result from any act or neglect, fault or omission on the part of the WMCA Indemnified Party. The indemnity set out in this **clause 40.3** is subject to **clause 40.2** and **clause 40.6**.

- 40.4 The Service Provider indemnifies and holds harmless the WMCA Indemnified Parties from and against all claims, demands, actions, proceedings, damages, losses, costs and expenses incurred or suffered by the WMCA Indemnified Parties, howsoever arising from any claim, demand, action or proceeding made by a:

- 40.4.1 Customer;
- 40.4.2 user of an eScooter (including a user who has not been permitted by a Subscriber or otherwise to use the eScooter); and/or
- 40.4.3 a Third Party arising from the use of an eScooter by a Customer or any user (permitted or not),

against the WMCA Indemnified Parties arising out of or in connection with any breach by the Service Provider of this Agreement. The indemnity set out in this **clause 40.4** is subject to **clause 40.2** and **clause 40.6**.

#### 40.5 **Service Provider's limitation of liability**

The Service Provider shall remain responsible for all lost, stolen or vandalised eScooter Assets or vandalised Docking Station Assets and their replacement or repair in accordance with this Agreement.

- 40.6 Subject to **clauses 40.1** and **40.2** above, the Service Provider's liability whether arising from tort (including negligence), breach of contract or otherwise, shall in no event exceed, in relation to any and all causes of action arising out of and/or in connection with:

- 40.6.1 the provision of Design Services and/or Build Services, shall be limited to £10 million;

40.6.2 the provision of the Operational Services, during each Operating Year of the Term shall be limited to £10 million;

40.6.3 the provision of Services from the Expiry Date or Termination Date and in respect of any obligations which continue beyond such expiry or termination, the relevant aggregate limit set out in **clauses 40.6.1** and **40.6.2** above that applied immediately preceding such expiry or termination shall continue to apply.

#### 40.7 **WMCA's limitation of liability**

WMCA's liability in respect of:

40.7.1 lost, stolen or vandalised eScooter Assets or vandalised Docking Station Assets shall be zero;

40.7.2 all other losses, whether arising from tort (including negligence), breach of contract or otherwise, shall (subject to **clauses 40.1** and **40.2** above and **40.10** below) in no event exceed, in relation to any and all causes of action during the provision of the Services the amount equivalent to the Termination Compensation if WMCA had terminated this Agreement pursuant to **clause 50.4 (Termination)**.

#### 40.8 **Conduct of claims**

Subject to WMCA's rights under **clause 40.9** below each Party's rights under this Agreement to be indemnified (the "**Indemnified Party**") shall be contingent on:

40.8.1 the Indemnified Party:

40.8.1.1 not making any admission of liability or act in a way which might reasonably be interpreted as an admission of liability or as a settlement of any action, claim or proceeding (in whole or in part) without the prior express written consent of the Party providing the indemnity (the "**Indemnifying Party**") and their insurers if appropriate;

40.8.1.2 promptly notifying the Indemnifying Party of any such action, claim or proceeding;

40.8.1.3 taking reasonable steps to mitigate and provide documentary evidence of all losses so claimed; and

40.8.1.4 providing such assistance to the Indemnifying Party as the Indemnifying Party may reasonably request. The Indemnifying Party shall bear the reasonable costs of the Indemnified Party in providing such assistance;

40.8.2 the Indemnifying Party having the right to assume full conduct of all discussions, negotiations, actions, claims and proceedings in relation to which it has or may have any obligation to indemnify the Indemnified

Party under this Agreement, and the Indemnifying Party shall regularly consult with and take reasonable heed of comments made by the Indemnified Party and use all reasonable endeavours not to act in a way detrimental to the reputation or business of the Indemnified Party.

40.9 In the event of any claim made by a Customer and/or a Third Party against WMCA, including such claims to which the indemnities in **clauses 40.3** and **40.4** above apply:

40.9.1 WMCA shall:

40.9.1.1 be given sole and full conduct of all such discussions, negotiations, actions, claims and proceedings; and

40.9.1.2 promptly notify the Service Provider of any such action, claim or proceeding;

40.9.2 the Service Provider shall provide WMCA with such reasonable assistance as WMCA may request.

#### 40.10 **Extension to Limitation Period for Works**

Notwithstanding any other provision of this Agreement, the Service Provider shall remain liable for any action or proceedings for any breach of any provision of this Agreement relating to the Works commenced against the Service Provider at any point up to the date of twelve (12) years from the date of completion of the Works.

### 41. **Insurance**

41.1 The Service Provider shall, throughout the Term of this Agreement (and any other period stated in this **clause 41**), arrange and maintain policies of insurance of the following types and levels of indemnity (the "**Insurances**"):

41.1.1 with effect from the Effective Date public and product liability insurance:

41.1.1.1 in respect of the Service Provider's liability for loss or damage to property (including property of WMCA); and

41.1.1.2 against liability in respect of death, injury, illness or disease, up to a limit of at least £20,000,000 on an each and every occurrence basis with a maximum excess of £100,000;

41.1.2 with effect from the Effective Date employer's liability insurance in respect of the Service Provider's liability for death, personal injury or occupational disease of any person in the Service Provider's employment up to a limit of at least £10,000,000 for each and every occurrence;

41.1.3 from the Effective Date until the later of the Operational Commencement Date and/or completion of the Works, insurance (including terrorism cover) against loss or damage in respect of the Works and all other fixtures, fittings, plant, machinery and apparatus from time to time in and

upon any Site in an amount not less than the full reinstatement cost for the time being of the Works and WMETS Assets (including professional fees, the cost of debris removal and Value Added Tax where applicable and taking account of inflation during the period of insurance for the period from the date of damage or destruction to the likely date of reinstatement);

- 41.1.4 from the Operational Commencement Date, material damage insurance on an all risks basis, including terrorism cover, in respect of all WMETS Assets (and any Other Service Provider Systems situated at the Premises, to the extent the Service Provider has control over and/or possession of them) for their full replacement value from time to time, together with business interruption cover in relation to the Service Provider's costs and loss of income; and
- 41.1.5 with effect from the Effective Date professional indemnity insurance up to a limit of at least £1,000,000 each and every occurrence with a maximum excess of £100,000 for the period of the Term and thereafter for a further period of six (6) years.
- 41.2 The Service Provider shall, throughout the Term of this Agreement (and any other period stated in this **clause 41**, arrange and maintain the Insurances with a reputable insurer or insurers rated with a Standard and Poor's Financial Standard Rating of A- or higher (or equivalent agency financial standard rating). In the event that one or more of the Insurances is entered into with an insurer who subsequently falls below an A-Standard and Poors Financial Standard Rating (or equivalent), or otherwise is downgraded by two or more levels, the Service Provider shall notify WMCA in writing. In these circumstances the Service Provider shall, if required by WMCA, replace the applicable Insurances with equivalent policies arranged and maintained with an insurer with a Standard and Poors Financial Standard Rating of A- or higher (or equivalent agency financial standard rating) at the Service Provider's own cost.
- 41.3 Fourteen (14) calendar days prior to entering into each of the Insurances, the Service Provider shall provide an insurance Specifications as prepared by the Service Provider's insurance broker to WMCA for review and comment.
- 41.4 In relation to each of the Insurances, the Service Provider shall prior to the execution of this Agreement and thereafter within five (5) Working Days of each due renewal date of the Insurance policies or at such other times as WMCA may reasonably require, provide to WMCA certificate of insurance in relation to Employers Liability Insurance and a "to whom it may concern" letter detailing insurance cover held issued by the Service Provider's insurance broker confirming that the Insurances are being maintained.
- 41.5 The Service Provider shall ensure that the Insurances:
  - 41.5.1 cover the Service Provider's legal liability so far as such liability is generally insurable which may arise out of or in the course of or by reason of the Service Provider's and/or its Sub-Contractors'

- performance, non-performance or part-performance of its obligations under or in connection with this Agreement; and
- 41.5.2 provide that both WMCA and the Service Provider are named insureds, provide that a vitiating act committed by one insured Party shall not prejudice the right to claim of any other insured Party who has an insured interest and who has not committed a vitiating act.
- 41.6 The insurance policies referred to in **clause 41.1.1** above shall extend to provide protection to WMCA under the provisions of an "indemnity to principals" clause and shall:
- 41.6.1 be endorsed to provide that no act or omission on the part of the Service Provider or its Sub-Contractors shall prejudice WMCA's rights under such policy;
- 41.6.2 not contain any exclusion prohibiting insured versus insured claims, to the extent that this would prevent the Service Provider receiving an indemnity under the policy for claims made by WMCA against the Service Provider; and
- 41.6.3 include a waiver of the insurer's rights of subrogation against WMCA.
- 41.7 The Service Provider's public and product liability insurance policy shall be worded so that any custody and control exclusion shall not exclude liability of the Service Provider in respect of any loss or damage to premises of WMCA that are occupied by the Service Provider for the purpose of performing the Services.
- 41.8 The Service Provider shall:
- 41.8.1 ensure that:
- 41.8.1.1 all claims under the Insurances are dealt with promptly and diligently; and
- 41.8.1.2 the terms and conditions of the Insurances and all reasonable requirements of the insurers, including, in connection with the prosecution, defence and settlement of claims, the recovery of losses and the prevention of accidents are complied with;
- 41.8.2 bear the cost of all exclusions and limitations under such Insurances and shall pay for any excess or deductible save where a claim is caused by the negligence of WMCA in which case the cost shall be borne by WMCA.
- 41.9 The Service Provider shall not take nor fail to take any action or (insofar as it is reasonably within its power) permit anything to occur in relation to it which would entitle any insurer to refuse to pay any claim under any of the Insurances.
- 41.10 In relation to all the Insurances (except employer's liability insurance and professional indemnity insurance), the Service Provider agrees that WMCA has the right to control



and to supervise all dealings with the press and any other media in relation to any incident, event, claim or action arising in connection with this Agreement.

41.11 The Service Provider shall:

41.11.1 give WMCA no less than fifteen (15) Working Days' prior written notice of any proposed cancellation or a material change in the terms of any of the Insurances; and

41.11.2 notify WMCA as soon as reasonably practicable in writing of:

41.11.2.1 any anticipated or actual event or circumstance which may lead or has led to any of the Insurances lapsing or being terminated or the cover under them being reduced or modified;

41.11.2.2 any matter likely to affect the decision of the insurers to grant or to continue any of the Insurances; and

41.11.2.3 any event which might materially affect any such Insurances.

41.12 In the event of a claim being made under any material damage insurance, the proceeds shall be applied in making good the loss or damage in respect of which the claim is made.

41.13 If the Service Provider is in breach of its obligation to arrange and maintain the Insurances or cause the Insurances to be arranged and maintained, as required under **clause 41** above, WMCA may at its absolute discretion:

41.13.1 pay any premiums required to keep such Insurances in force or procure such Insurances, and, in either case, recover from the Service Provider all costs, expenses or other amounts as WMCA may incur; or

41.13.2 terminate this Agreement immediately upon written notice.

## 42. **Information Compliance**

42.1 Each Party shall have the relevant rights and shall comply with the obligations set out in **Schedule 13 (Information Compliance)** in relation to Data Protection Legislation and FOI Legislation.

42.2 Without limiting the provisions within **Schedule 13 (Information Compliance)**, the Service Provider shall, and shall procure that the Sub-Contractors shall:

42.2.1 provide all such assistance as may reasonably be required by WMCA Personnel;

42.2.2 ensure that all WMCA Personal Data Processed by the Service Provider and/or its Sub-Contractors on behalf of WMCA pursuant to this Agreement is processed in accordance with the requirements of the Data Protection Legislation; and

- 42.2.3 comply with:
  - 42.2.3.1 all notification requirements and requests, including those made under the Data Protection Legislation and FOI Legislation, reasonably made by WMCA;
  - 42.2.3.2 the international Information Security Standard ISO 27001 (as amended from time to time) or such other standards as may from time to time replace, amend or augment such standard; and
  - 42.2.3.3 the further obligations set out in **Schedule 13 (Information Compliance)**,

so as to enable WMCA to comply with its obligations under the Data Protection Legislation and FOI Legislation.

#### 43. **Health and Safety**

##### 43.1 **General**

The Service Provider shall at all times comply with, and ensure that the Service Provider Solution and performance of all of the Service Provider's obligations under this Agreement complies with, all:

- 43.1.1 applicable Health and Safety Legislation; and
- 43.1.2 decisions, requirements, regulations, orders, instructions, directions or rules relating to health and safety applicable to the provision of the Services.

##### 43.2 The Service Provider shall:

- 43.2.1 be responsible for the observance by itself, Service Provider Personnel and its Sub- Contractors of all current and relevant health and safety precautions necessary for the protection of itself, Service Provider Personnel, its Sub-Contractors and other persons invited onto or visiting the Premises and the Sites, including all precautions required to be taken by or under any Health and Safety Legislation;
- 43.2.2 conduct:
  - 43.2.2.1 formal risk assessments from time to time of all aspects of the Services, WMETS Assets and Sites in accordance with the requirements of all applicable Health and Safety Legislation; and
  - 43.2.2.2 testing, examination and other work necessary to minimise and, so far as reasonably practicable, eliminate all risk to health or safety resulting from the performance of the Services or the use of any of the WMETS Assets, equipment or materials or other things in connection with the Services;

- 43.2.3 ensure that:
  - 43.2.3.1 there will be present at the Premises or Sites where the Works are performed at all times during Working Hours at least one (1) individual (or such greater number required by law) suitably qualified in first aid; and
  - 43.2.3.2 all necessary first aid supplies are:
    - (a) provided by the Service Provider; and
    - (b) adequate for first aid purposes and meet relevant health and safety standards;
- 43.2.4 strictly comply with, and shall procure that Service Provider Personnel and its Sub-Contractors strictly comply with, such induction training procedures, safety training procedures and Site procedures as:
  - 43.2.4.1 are required by Health and Safety Legislation; and
  - 43.2.4.2 WMCA Personnel may reasonably require from time to time.
- 43.3 In the event that a health or safety risk has arisen or is likely to arise in any part of the Premises or Sites at or from which the Service Provider provides Services, the Service Provider shall:
  - 43.3.1 notify WMCA promptly in writing;
  - 43.3.2 provide WMCA with adequate information relating to such risk, including any steps and safeguards which the Service Provider proposes to take and observe in order to ensure that the Services are performed safely; and
  - 43.3.3 promptly take such steps and adopt such safeguards.
- 43.4 **Obligations under the CDM Regulations.**

WMCA acknowledges and accepts that:

  - 43.4.1 it is the Client in respect of the Works for the purposes of the CDM Regulations; and
  - 43.4.2 it shall perform the duties imposed on a Client by the CDM Regulations.
- 43.5 WMCA appoints the Service Provider as Principal Contractor and Principal Designer for the purposes of the CDM Regulations or, if the Service Provider ceases to be the Principal Contractor or Principal Designer, such other contractor as WMCA shall appoint for this purpose.

- 43.6 Each Party acknowledges that it is aware of and undertakes to the other that in relation to the Works and Sites, it shall duly comply with the CDM Regulations and its obligations set out in **Schedule 26 (Docking Station Installation)**.
- 43.7 If WMCA appoints a successor to the Service Provider as the Principal Contractor or Principal Designer, the Service Provider shall at no cost to WMCA comply with all reasonable requirements of the new Principal Contractor or Principal Designer to the extent necessary for compliance with the CDM Regulations. No extension of time shall be given to the Service Provider in respect of compliance with this **clause 43.7**.
- 43.8 Whether or not the Works are notifiable and/or the Service Provider is the Principal Contractor or Principal Designer, the Service Provider shall, and shall procure that its Sub-Contractors shall, comply with schedule 2 of the CDM Regulations.

#### 44. **Representations and warranties**

- 44.1 Without prejudice to any other warranties or representations expressed elsewhere in this agreement:
- 44.1.1 each Party hereby warrants, represents (in relation to factual statements as at the Effective Date) and undertakes that in terms of this Agreement:
- 44.1.1.1 it has full capacity, authority and all authorisations, consents, approvals and permits necessary (including all necessary Shareholder and board approvals) for it to enter into and discharge its obligations under this Agreement;
- 44.1.1.2 this Agreement has been executed by a duly authorised Representative of that Party;
- 44.1.1.3 it is entering into this Agreement as principal and not as agent for any person;
- 44.1.1.4 it will act as an independent contractor in carrying out its obligations under this Agreement;
- 44.1.1.5 it has not, prior to or on the Effective Date, committed any of the acts referred to in **clause 45.1 or 45.2**;
- 44.1.1.6 the provisions of the Agreement do not put that Party in breach of any other agreements to which it is a party to the extent that it would make this Agreement or the Guarantee invalid; and
- 44.1.1.7 the execution of this Agreement does not contravene the terms of any licence, regulation or other restrictions applicable to that Party;
- 44.1.2 the Service Provider hereby warrants, represents and undertakes to WMCA that:

44.1.2.1 in terms of this Agreement that any and all information supplied in writing after the date of the OJEU Notice by or on behalf of the Service Provider to WMCA or to any of its advisers, including to all responses to any clarification process of the procurement, in connection with the award of contract to the Service Provider and in response to the tender for the provision of Services made by the Service Provider was, at the time it was provided, and, except where superseded by subsequent information supplied to WMCA, at the date hereof, true and accurate and it shall advise WMCA of any fact, matter or circumstance of which it may or has become aware which would render any material statement or representation to be false or misleading;

44.1.2.2 in terms of its obligations under this Agreement, it shall discharge its obligations under this Agreement and provide the Services, WMETS Assets and Service Systems:

(a) with all reasonable skill, care and diligence; and

(b) in accordance with:

(i) any specific performance standards, Service Levels or other obligations contained in this Agreement and, in the absence of any specific performance standards, Service Levels or obligations, in a timely, economic, efficient and reliable manner and in accordance with Good Industry Practice;

(ii) all applicable Laws and, furthermore, in such a way that does not hinder or prevent WMCA's compliance with all applicable Laws;

(iii) the British Standards Institute's BS ISO/IEC 20000:2005 "IT Services Management Standards" as updated, amended or replaced from time to time; and

(iv) the Information Technology Infrastructure Library ("ITIL") published by AXELOS on behalf of the United Kingdom Cabinet Office as updated, amended or replaced from time to time (and the Service Provider shall ensure that certification of the Service Provider and each Sub-Contractor under ITIL is achieved and maintained in connection with the Services and Service Systems);

44.1.2.3 in terms of the Services, WMETS Assets and Service Systems:

- (a) it has:
  - (i) full knowledge of the extent and nature of WMCA's requirements for and the purpose for which the Services, WMETS Assets and Service Systems are required and acknowledges that WMCA is relying upon the Service Provider's expertise and knowledge in the provision of the WMETS Assets, Service Systems and the Services;
  - (ii) allowed for all items of work described by or referred to in this Agreement or which are otherwise necessary to provide the Services and gained adequate detail and insight into all such items of work prior to the Effective Date; and
  - (iii) all licences and consents in respect of Intellectual Property Rights necessary to enable it to fulfil its obligations under this Agreement;
- (b) the Build Deliverables shall:
  - (i) be free from material defects;
  - (ii) be Fit for Purpose for which they are intended;
  - (iii) be of satisfactory quality; and
  - (iv) conform strictly to the Specifications and all statements and other requirements in this Agreement;
- (c) the Documentation provided by the Service Provider will be, and the Service Provider Solution is:
  - (i) complete and accurate; and
  - (ii) suitable and sufficient to enable WMCA to enjoy the full benefit of the Services, WMETS Assets and Service Systems;
- (d) the Services shall be supplied and rendered by appropriately experienced, trained and qualified Service Provider Personnel with reasonable skill, care and diligence;

- (e) it has title, free of all liens and encumbrances, to the WMETS Assets that are transferred to WMCA pursuant to **clause 47**;
- (f) the Services, WMETS Assets and Service Systems shall:
  - (i) be free from material defects;
  - (ii) be Fit for Purpose for which they are intended;
  - (iii) be of satisfactory quality;
  - (iv) conform strictly to the Specifications and all statements and other requirements in this Agreement; and
  - (v) comply in all respects with any Law which may be in force at the time of delivery;

44.1.2.4 in the case of the WMETS Assets and Service Systems, they are capable of running in combination and interface appropriately with all relevant:

- (a) Interested Party Systems;
- (b) Other Service Provider Systems; and
- (c) Third Party Systems;

44.1.2.5 in the case of Service Systems:

- (a) the Interfaces will permit interfacing between:
  - (i) the Services Databases and any other part of the Service Systems;
  - (ii) each of the Service elements;
  - (iii) the Service Systems;
  - (iv) Other Service Provider Systems; and
  - (v) Third Party Systems;
- (b) the Service Systems:
  - (i) will be Date Compliant; and
  - (ii) do not include any Software licensed under an Open Source Licence unless stated as such in **Schedule 21 (Service Provider Solution)** or agreed in writing by WMCA in accordance with the Change Control Request Procedure;

(c) it has used, and shall at all times use, the latest commercially available state of the art Virus protection Software, in accordance with Good Industry Practice, on all Service Systems and parts of the Service Systems;

44.1.2.6 it is a company registered in the UK and shall provide all of the Services from the Premises or such other premises notified to WMCA in writing in advance of the relevant Services (or any part thereof) being performed from such premises. Such written notice to specify the scope and nature of the Services (or any part thereof), the premises from which such Services are to be provided and the rationale for such Services being performed at such premises.

The Service Provider agrees that any breach of this **clause 44.1.2** shall be deemed to be a material breach of this Agreement.

44.2 If the Service Provider is not the manufacturer and/or developer of any element of the WMETS Assets and/or Service Systems, the Service Provider shall:

44.2.1 obtain the same warranties as specified in:

44.2.1.1 **clause 44.1.2.3(e)**;

44.2.1.2 **clause 44.1.2.3(f)**; and

44.2.1.3 **clause 44.1.2.5(b)**,

from the manufacturer and/or developer;

44.2.2 make the benefit of such warranties as it obtains from the manufacturer and/or developer available to WMCA as if they had been given to WMCA directly; and

44.2.3 at its own cost, assist and cooperate with WMCA in making claims under such warranties.

44.3 The warranties specified in:

44.3.1 **clause 44.1.2.3(e)**;

44.3.2 **clause 44.1.2.3(f)**;

44.3.3 **clause 44.1.2.3(c)**; and

44.3.4 **clause 44.2** above,

shall survive any inspection and acceptance in respect thereof by WMCA and shall inure to the benefit of WMCA, its agents, successors in interest and assigns.

44.4 If at any time the Service Provider becomes aware or WMCA Personnel notifies the Service Provider of a failure of all or any part of the Services to comply with the warranties (a "**Failure**"), without prejudice to any other rights or remedies available to



WMCA, the Service Provider shall at its own cost promptly and in accordance with any timings set out in the Specifications:

- 44.4.1 prepare and submit a draft remedial action plan ("**Action Plan**") to resolve the Failure to WMCA for comment;
- 44.4.2 take into account any comments or requested amendments received from WMCA in preparing a final remedial Action Plan; and
- 44.4.3 implement the final remedial Action Plan with the object of resolving any Failures, save to the extent provided for under **clause 17 (System Failure)**.

44.5 For the purposes of construing the warranties and representations in this **clause 44**, references to the Services, WMETS Assets and Service Systems shall include any part of the Services, WMETS Assets and Service Systems (as applicable).

44.6 Each warranty and representation shall:

- 44.6.1 be construed as a separate warranty or representation; and
- 44.6.2 subject to:
  - 44.6.2.1 **clause 40 (Liability)**;
  - 44.6.2.2 **clause 48 (Relief Events)**; and
  - 44.6.2.3 **clause 49 (Force Majeure)**,

not be limited or restricted by any other term of this Agreement during the Term of this Agreement.

44.7 The warranties and representations expressly set out in this Agreement are made in lieu of all other warranties and representations, expressed or implied, including any implied warranties of fitness for a particular purpose, satisfactory quality, adequacy or otherwise to the extent permitted by law and all such warranties and representations are expressly excluded to the fullest extent permitted by law.

## 45. **Ethical Requirements**

### 45.1 **Relevant Requirements**

45.1.1 The Service Provider shall not, and shall procure that Service Provider Personnel and its Sub-Contractors shall not:

45.1.1.1 comply with:

- (a) the Modern Slavery Act 2015 and all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption (together "**Relevant Requirements**"), and:

- (b) the Bribery Act 2010, the Anti-Terrorism, Crime and Security Act 2001, the Proceeds of Crime Act 2002; and
- (c) the United Nations Convention against Corruption (being the subject of General Resolution 58/4 of 31 October 2003 of the General Assembly of the United Nations); the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions adopted on 21 November 1997, and any legislation enacted to enforce or implement either of these instruments in a relevant jurisdiction (i.e. the place of incorporation of the Parties or the place of operation of the Agreement).

45.1.1.2 not engage in any activity, practice or conduct which would constitute an offence under sections 1 (offering, promising or giving a bribe), 2 (requesting or agreeing to receive a bribe or accepting a bribe) or 6 (bribing a foreign public official) of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;

45.1.1.3 not do, or omit to do, any act that will cause or lead WMCA to be in breach of any of the Relevant Requirements;

45.1.1.4 have and shall maintain in place throughout the term of the Agreement its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, and **clause 45.1.1.2**, and will enforce them where appropriate;

45.1.1.5 if requested, provide WMCA with any reasonable assistance, at WMCA's reasonable cost, to enable WMCA to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with any of the Relevant Requirements;

45.1.1.6 within two (2) months of the date of the Agreement, and at any time upon the reasonable request of WMCA, certify to WMCA in writing signed by an officer of the Service Provider compliance with this **clause 45.1.1** by the Service Provider and all persons associated with it or other persons who are performing services or supplying goods in connection with the Agreement, providing such supporting evidence of compliance as WMCA may reasonably request.

45.1.2 The Service Provider warrants and represents that:

45.1.2.1 neither the Service Provider nor any of its officers or employees:

- (a) has been convicted of any offence involving bribery or corruption;
- (b) to the best of its knowledge, has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence under the Relevant Requirements; or
- (c) has been or is listed by any government agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or other government contracts including any exclusion under section 57 of the Public Contracts Regulations 2015 (SI 2015/102) or section 57 of the Utilities Contracts Regulations 2016 (SI 2016/274);

45.1.2.2 none of the officers or employees of the Service Provider or any person associated with it or any other person who is performing services or providing goods in connection with the Agreement is a foreign public official; and

45.1.2.3 no foreign public official owns a direct or indirect interest in the Service Provider or any person associated with it or any other person for whom the Service Provider is responsible under **clause 45.1.2.2**.

45.1.3 The Service Provider shall promptly notify WMCA if, at any time during the Term of the Agreement, its circumstances, knowledge or awareness changes such that it would not be able to repeat the warranties set out in **clause 45.1.2** at the relevant time.

45.1.4 Any breach by the Service Provider of **clause 45.1.1** or **44.1.2** above shall entitle WMCA to terminate this Agreement in accordance with **clause 50 (Termination)**.

## 45.2 **Fraud**

45.2.1 If any fraudulent activity comes to the attention of the Service Provider in relation to the WMETS Assets, Service Systems, Services or the West Midlands eScooter Trial Services, the Service Provider shall:

45.2.1.1 notify WMCA by the most expeditious means available;

45.2.1.2 co-operate in the investigation of such fraudulent activity; and

45.2.1.3 implement any necessary changes to the procedures or working practices employed in the provision of the WMETS Assets, Service Systems or Services as may be necessary to

ensure that the likelihood or opportunity for a recurrence of such fraud is minimised.

45.2.2 In the event of any fraudulent activity on the part of the Service Provider, Service Provider Personnel or its Sub-Contractors, WMCA shall have the right to:

45.2.2.1 terminate this Agreement in accordance with **clause 50 (Termination)**; and

45.2.2.2 recover from the Service Provider any cost, loss, liability or damage incurred or suffered by WMCA as a result of, or which would not have arisen but for, such fraudulent activity provided that, in the case of fraudulent activity on the part of Service Provider Personnel or its Sub-Contractors, such termination right shall only be exercisable in the event that either:

- (a) the Service Provider has not taken action which WMCA, acting reasonably, considers appropriate, in relation to the relevant member of Service Provider Personnel or a Sub-Contractor; or
- (b) such cost, loss, liability or damage arose due to or was contributed to by, the negligence or default of the Service Provider or a Sub-Contractor.

## **PART 16: PREMISES AND WMETS ASSETS**

### **46. Premises**

46.1 The Service Provider shall be responsible for the identification and procurement for use of any Premises in connection with this Agreement.

### **47. WMETS Assets**

#### **47.1 General**

The Service Provider shall:

- 47.1.1 create, maintain and update the Asset Register in accordance with the provisions of **Schedule 10 (Asset Management)**; and
- 47.1.2 comply with the Service Provider's other obligations set out in this **clause 47** and **Schedule 10 (Asset Management)** in respect of all WMETS Assets.

#### **47.2 Title in WMETS Assets**

Unless and until such time that WMCA takes possession of any of WMETS Assets in accordance with the provisions of:

- 47.2.1 **clause 52.1 (Consequences of Termination)**; and

47.2.2 **clause 51.4 (Exit Management),**

full legal, beneficial and equitable title to and property in the WMETS Assets, and risk and liability in respect of the WMETS Assets, shall remain vested in the Service Provider.

47.3 **Restrictions on WMETS Assets**

The Service Provider shall not, without the express prior written consent of WMCA:

- 47.3.1 employ any of the WMETS Assets for any use other than for the provision of the Services and under no circumstances whatsoever shall they be subject to any form of shared use or use by the Service Provider for any other activities not related to the Services;
- 47.3.2 sell or offer for sale, transfer or assign, mortgage, pledge, underlet, lend or otherwise deal with the WMETS Assets or any interest in them;
- 47.3.3 allow the creation of any charge or lien over the WMETS Assets;
- 47.3.4 attach WMETS Assets to any land or premises (other than the Premises, or as specified in the Service Provider Solution) so as to cause them to become a permanent or immovable fixture on such land or premises;
- 47.3.5 allow, perform or consent to any act or omission to act which would or might cause the WMETS Assets to be forfeited under any applicable law or which might jeopardise the WMETS Assets;
- 47.3.6 agree to create any floating charge of the WMETS Assets without WMCA's prior written consent;
- 47.3.7 tamper with any identification upon the WMETS Assets.

47.4 **Service Provider obligations**

The Service Provider shall:

- 47.4.1 provide a full management service in respect of the WMETS Assets in accordance with the terms of this:
  - 47.4.1.1 Agreement; and
  - 47.4.1.2 Good Industry Practice;
- 47.4.2 in relation to the WMETS Assets when not in use in accordance with terms of this Agreement:
  - 47.4.2.1 store such WMETS Assets at the Premises (or such other place agreed with WMCA) in a proper manner and in conditions which adequately protect and preserve the WMETS Assets;
  - 47.4.2.2 ensure that such WMETS Assets are:

(a) stored separately from any other assets; and

(b) clearly identifiable as WMETS Assets;

47.4.2.3 ensure that all WMETS Assets are (without limiting the Specifications) at all times:

(a) housed, maintained and operated in accordance with:

(i) Good Industry Practice;

(ii) without limiting the generality of **clause 47.4.2.2(a)** above, the relevant manufacturers recommendations; and

(iii) the relevant Service Levels;

(b) labelled appropriately with a unique identifying reference corresponding with the relevant entry in the Asset Register;

(c) kept in good order, repair and condition; and

(d) provide to WMCA Personnel such access to the WMETS Assets as WMCA Personnel may reasonably require.

## 47.5 Asset Agreement

The Service Provider shall:

47.5.1 ensure that all WMETS Assets that the Service Provider and its Sub-Contractors acquire or use but do not own are subject to appropriate written legally binding contracts (including any relevant guarantees, warranties, licences, equipment rental or lease agreements) (the "**Asset Agreements**"), which:

47.5.1.1 permit the Service Provider (and its Sub-Contractors) [and WMCA] to use such WMETS Assets for the purposes set out in this Agreement; and

47.5.1.2 provide all necessary maintenance and support in respect of the WMETS Assets in order to permit the Service Provider to comply with its obligations under this Agreement;

47.5.2 use all reasonable endeavours to procure that except in relation to Service Provider IPR, the Asset Agreements relating to Service Provider Assets are assignable or transferable to WMCA at no additional cost to WMCA;

47.5.3 ensure that the Service Provider takes all steps reasonably necessary to ensure that the Asset Agreements in respect of WMETS Assets are not breached or terminated; and

47.5.4 if, notwithstanding the Service Provider's compliance with **clause 47.5.3** above any Asset Agreement is terminated, enter into or procure a suitable replacement for such Asset Agreement on similar terms in accordance with this Agreement to ensure that the Service Provider continues to receive no less a standard of maintenance and support as the Service Provider enjoyed under such Asset Agreement.

**47.6 No relief**

In no event shall the Service Provider be entitled to claim relief from its obligations under this Agreement due to defective or unsatisfactory performance of the WMETS Assets, except where such defective or unsatisfactory performance is directly due to the occurrence of a Force Majeure Event provided that the Service Provider has complied with the provisions of **clause 49 (Force Majeure)**.

**47.7 Spare Parts**

The Service Provider shall be responsible for the procurement of all necessary Spare Parts and replacements for the WMETS Assets (including the eScooter Assets) as part of the Services at the Service Provider's cost.

**PART 17: SUPERVENING EVENTS**

**48. Relief Events**

48.1 If, and to the extent that a Relief Event:

48.1.1 is the direct cause of a delay to Operational Commencement on the Operational Commencement Date; and/or

48.1.2 adversely affects the ability of the Service Provider to perform any of its obligations under this Agreement,

the Service Provider is entitled to apply for relief from any rights of WMCA arising under **clause 50 (Termination)**, subject to the provisions of **clause 50.3.5 (Termination)**.

48.2 To obtain relief, the Service Provider must:

48.2.1 promptly, and in any event within five (5) Working Days after becoming aware that the Relief Event has caused or is likely to cause delay and/or adversely affect the ability of the Service Provider to perform its other obligations, notify WMCA of its claim for relief, including full details of the nature of the Relief Event, the date of occurrence and its likely duration;

48.2.2 within five (5) Working Days of receipt by WMCA of the notice referred to in **clause 48.2.1** above, give full details of the relief claimed; and

48.2.3 demonstrate to the reasonable satisfaction of WMCA that:

48.2.3.1 neither the Service Provider nor any of the Service Provider Personnel or Sub-Contractor could:

- (a) reasonably have foreseen the occurrence or consequences of the Relief Event; and
  - (b) not have avoided such occurrence or consequences by taking steps which they might reasonably have been expected to have taken without incurring material expenditure;
- 48.2.3.2 the Relief Event has given rise to the need for relief from the Service Provider's obligations under this Agreement;
- 48.2.3.3 despite the occurrence of the Relief Event, the Service Provider is using all reasonable endeavours to perform its obligations under this Agreement, including complying with the Business Continuity Plan;
- 48.2.3.4 the relief from the obligations under the Agreement claimed, could not reasonably be expected to be mitigated or recovered by the Service Provider acting in accordance with Good Industry Practice;
- 48.2.3.5 the Relief Event caused or contributed to the delay to the Operational Commencement Date; and
- 48.2.3.6 the time lost could not reasonably be expected to be mitigated or recovered by the Service Provider acting in accordance with Good Industry Practice, without incurring material expenditure.
- 48.3 In the event that the Service Provider has complied with its obligations under **clause 48.2** above, then:
- 48.3.1 the Operational Commencement Date shall be postponed by such time as WMCA may at its sole discretion direct following consideration of the period proposed by the Service Provider in accordance with **clause 48** above; and
  - 48.3.2 WMCA shall not be entitled to exercise its rights to terminate this Agreement under **clause 50 (Termination)**, subject to the provisions of **clause 50.3.5 (Termination)**.
- 48.4 In the event that information required by **clause 48.2** above is provided after the dates referred to in that **clause 48.2**, the Service Provider shall not be entitled to any relief during the period for which the information is delayed.
- 48.5 The Service Provider shall notify WMCA if at any time it receives or becomes aware of any further information relating to the **Relief Event**, giving details of that information to the extent that such information is new or renders information previously submitted materially inaccurate or misleading.



48.6 The Service Provider may make a Change Control Request for a General Change to WMCA in accordance with **Schedule 7 (Change Control Request Procedure)** as part of its approach to overcoming the impact of the Relief Event.

48.7 If:

48.7.1 the Parties cannot agree the extent of the relief required; or

48.7.2 WMCA disagrees that a Relief Event has occurred or that the Service Provider is entitled to any extension of the Operational Commencement Date,

the Parties shall resolve the matter in accordance with the Dispute Resolution Procedure.

#### 49. **Force Majeure**

49.1 Subject to **clause 49.2** below, neither Party to this Agreement shall be deemed to be in breach of this Agreement or otherwise liable to the other as a result of any delay or failure in the performance of its obligations under this Agreement if and to the extent that such delay or failure is due to the occurrence of a Force Majeure Event.

49.2 The Service Provider shall not be entitled to rely upon **clause 49.1** above if and to the extent that the Service Provider has failed to comply with the Business Continuity Plan, unless the Service Provider is prevented from complying with the Business Continuity Plan as a direct result of the Force Majeure Event.

49.3 A Party whose performance of its obligations under this Agreement is delayed or prevented by a Force Majeure Event:

49.3.1 shall forthwith notify the other Party of the nature, extent, effect and likely duration of the circumstances constituting the Force Majeure Event. As soon as possible following such notification, the Parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to:

49.3.1.1 mitigate the effect of the Force Majeure Event; and

49.3.1.2 facilitate the continued performance of the Agreement;

49.3.2 shall use all reasonable endeavours, in accordance with Good Industry Practice to minimise the effect of the Force Majeure Event on its performance of its obligations under this Agreement, including in the case of:

49.3.2.1 the Service Provider, compliance with the Business Continuity Plan; and

49.3.2.2 either Party, the making of any alternative arrangements for resuming the performance of the relevant Party's obligations, which may be practicable without incurring material additional expense; and

- 49.3.3 shall forthwith after the cessation of the Force Majeure Event:
- 49.3.3.1 notify the other Party thereof; and
- 49.3.3.2 resume full performance of its obligations under this Agreement.
- 49.4 In the event that the Force Majeure Event occurs before Operational Commencement and if the Service Provider has complied with its foregoing obligations under this **clause 49**, then subject to **clause 49.5** below, the Operational Commencement Date shall be postponed by such time as shall be reasonable for such a Force Majeure Event, taking into account the likely effect of delay.
- 49.5 If, on the expiry of two (2) Months after occurrence of a Force Majeure Event (or at any time thereafter), where the Service Provider is the affected Party, the Force Majeure Event is continuing and has a material adverse effect on the Service Provider's performance of all or substantially all of the Services then, for as long as such Force Majeure Event continues and has that effect, WMCA may terminate this Agreement in its entirety or may Partially Terminate in accordance with **clause 50 (Termination)**.
- 49.6 If, on the expiry of six (6) Months after occurrence of a Force Majeure Event, where WMCA is the affected Party, the Force Majeure Event is continuing and has a material adverse effect on WMCA's compliance with all or substantially all of its obligations hereunder then, for as long as such Force Majeure Event continues and has that effect, the Service Provider may terminate this Agreement in its entirety.

## **PART 18: TERMINATION**

### **50. Termination**

#### **50.1 Termination by the Service Provider**

The Service Provider may terminate this Agreement in accordance with provisions of **clause 49.6 (Force Majeure)**.

50.2 Without prejudice to any other rights or remedies that the Service Provider may have, the Service Provider:

50.2.1 may only terminate this Agreement in accordance with the provisions of **clause 50.1** above; and

50.2.2 must fully specify in any notice of termination the details of the event which has occurred entitling the Service Provider to terminate.

#### **50.3 Termination by WMCA of the Agreement**

Without prejudice to any other rights or remedies that WMCA may have, WMCA may terminate this Agreement (in whole or part) in accordance with the following provisions of this **clause 50.3** upon the occurrence of any of the following events or circumstances:

- 50.3.1 a Change of Control or Change of Ownership of the Service Provider and/or Guarantor (other than as a result of a consolidation, amalgamation, merger or solvent reconstruction of the Service Provider Group), provided that WMCA serves the notice of termination within thirty (30) calendar days of the date of WMCA's receipt of notice served in accordance with **clause 67 (Change of Control and Change of Ownership)**;
- 50.3.2 the Service Provider commits:
- 50.3.2.1 one or more material breaches; or
- 50.3.2.2 a Persistent Breach,
- of this Agreement or any other agreement that it has entered into with WMCA pursuant to or in connection with this Agreement;
- 50.3.3 a Guarantor commits:
- 50.3.3.1 one or more material breaches; or
- 50.3.3.2 a Persistent Breach,
- of a Guarantee or any other agreement that it has entered into with WMCA pursuant to or in connection with this Agreement or (without limitation to the foregoing) any other event giving rise to a right for WMCA to terminate a Guarantee has occurred;
- 50.3.4 if any of the representations or warranties set out in **clause 44 (Representations and Warranties)** or set out in a Guarantee prove to have been inaccurate or incorrect when made on or at the Effective Date or of the relevant Guarantee (as appropriate), which materially adversely affects the provision of the WMETS Assets, Service Systems and/or Services or the operation of the West Midlands eScooter Trial Services;
- 50.3.5 a Milestone is delayed by more than ten (10) Working Days;
- 50.3.6 any:
- 50.3.6.1 falsification of Data and/or Personal Data;
- 50.3.6.2 failure to comply with:
- (a) clause 42 (Information Compliance); and/or
- (b) the provisions of **Schedule 13 (Information Compliance)**;
- 50.3.6.3 failure to comply with a provision of this Agreement that causes Data to be materially corrupted,

in each case by the Service Provider, Service Provider Personnel, its Sub-Contractors or their respective agents or employees where such falsification, non-compliance or failure by an agent or employee:

- (a) is not dealt with to WMCA's reasonable satisfaction;
- (b) arose due to or was contributed to by, the negligence or default of the Service Provider, Service Provider Personnel or its Sub-Contractor; or
- (c) adversely impacts the operation or integrity of West Midlands eScooter Trial Services;

50.3.7 an Insolvency Event affecting the Service Provider or a Guarantor occurs, unless in the case of an Insolvency Event affecting a Guarantor, the Service Provider has provided to WMCA such security in place of such Guarantor's guarantee as WMCA in its sole discretion deems acceptable to it;

50.3.8 if:

50.3.8.1 there is a Change in Law, other than a change in WMCA Policy, which renders operation of the West Midlands eScooter Trial Services wholly or partly illegal; or

50.3.8.2 the West Midlands eScooter Trial Services is cancelled or terminated by an authority other than by WMCA;

50.3.8.3 the Secretary of State for the Department of Transport or such other empowered body and or party empowered in accordance with the eScooter Legislation withdraws, terminates or otherwise suspends the eScooter Licence granted to the Service Provider in line with **clause 50.5 (Withdrawal Termination and Suspension of eScooter Licence)**;

50.3.8.4 the Condition Precedents set out in **clause 3** are not being met.

50.3.9 a System Failure has occurred and has continued, or in WMCA's opinion is likely to continue, for a period of more than twelve (12) hours and the Service Provider has either:

50.3.9.1 not implemented the Business Continuity Plan (if required to do so under this Agreement); or

50.3.9.2 failed to implement the Business Continuity Plan (in whole or in part),

such that the standard of Services provided does not comply with the standards to which the Services were provided immediately prior to the System Failure occurring;

50.3.10 as expressly provided for in the following provisions:

50.3.10.1 **clause 17.4 (System Failure);**

50.3.10.2 **clause 39.6 (Security Policy);**

50.3.10.3 **clause 41.13 (Insurance);**

50.3.10.4 **clause 49.5 (Force Majeure);**

50.3.10.5 **clause 59.1.4 (Confidentiality);**

50.3.10.6 **clause 60.2 (Assignment);**

50.3.10.7 **clause 66.3 (Conflict of Interest);**

50.3.10.8 **clause 67.2 (Change of Control and Change of Ownership);** and/or

50.3.10.9 **clause 65 (Parent Company Guarantee).**

#### 50.4 **Mutual rights of Termination**

50.4.1 Without prejudicing any other rights or remedies available to it, the WMCA and the Service Provider (as applicable) may terminate this Agreement (in whole) without any obligation to provide any reasons subject to providing three (3) Months advance written notice to the other party.

#### 50.5 **Withdrawal Termination and Suspension of eScooter Licence**

50.5.1 Subject to notice being provided by the WMCA to the Service Provider in accordance of **clause 57** of this Agreement the WMCA may at their sole discretion make a request and or an application in line with the eScooter Legislation to the Secretary of State for the Department of Transport for the immediate withdrawal suspension or otherwise termination of any eScooter Licence (be that in part or for the whole of the Area of Operation) granted to the Service Provider for the provision of Services under this Agreement.

#### 50.6 **Breaches capable of remedy**

Without prejudice to WMCA's rights and remedies under **clause 50.8** below and subject to any shorter notice periods set out elsewhere in this Agreement, upon the occurrence of a breach of this Agreement or other circumstances giving rise to a right of WMCA to terminate under **clause 50.3** above that are capable of remedy, WMCA shall serve a notice of default on the Service Provider requiring the Service Provider

at the Service Provider's option (and the Service Provider shall notify WMCA which of the following below applies within five (5) Working Days of WMCA's notice) to (the "**Notice to Remedy**"):

50.6.1 remedy or procure the remedy of the breach or breaches or other circumstances giving rise a right of WMCA to terminate the Agreement as soon as practicable and, in any event no longer than within ten (10) Working Days of the date of such Notice to Remedy (or such longer period as may be agreed by WMCA at its sole discretion); or

50.6.2 propose a programme for the remedy of the breach or breaches or other circumstances giving rise a right of WMCA to terminate the Agreement within ten (10) Working Days of the date of such Notice to Remedy (or such longer period as may be determined by WMCA at its sole discretion) (the "**Remedy Programme**"). The Remedy Programme shall specify in detail the:

50.6.2.1 manner in which such breach, breaches or circumstances is or are proposed to be remedied by the Service Provider; and

50.6.2.2 latest date by which is the Service Provider proposes that the breach, breaches or circumstances shall be remedied,

and the provisions of **clause 50.7** below shall apply.

50.7 Where the Service Provider puts forward a Remedy Programme in accordance with **clause 50.6.2** above:

50.7.1 WMCA shall endeavour to respond as soon as practicable and shall have ten (10) Working Days (or longer period agreed between the Parties) within which to notify the Service Provider in writing that it does not accept the Remedy Programme;

50.7.2 in the event that WMCA does not notify the Service Provider of its acceptance of the Remedy Programme within such period, WMCA shall be deemed to have accepted the Remedy Programme;

50.7.3 where WMCA notifies the Service Provider that it does not accept the Remedy Programme, WMCA and the Service Provider shall endeavour within the following five (5) Working Days to agree any necessary amendments to the proposed Remedy Programme; and

50.7.4 failing agreement of such necessary amendments within this five (5) Working Day period, WMCA may reject the proposed Remedy Programme in the event that WMCA determines that the Remedy Programme is not capable of remedying the relevant breach, breaches or circumstance within a reasonable period.

50.8 WMCA may terminate this Agreement by notice having effect either immediately or on such date as WMCA shall specify in such notice:

50.8.1 where the Service Provider puts forward a Remedy Programme pursuant to **clause 50.6** above and the:

50.8.1.1 the Service Provider fails to implement or comply with the Remedy Programme accepted by WMCA in accordance with **clause 50.7** above; or

50.8.1.2 the Remedy Programme is rejected by WMCA in accordance with **clause 50.7** above;

50.8.2 in all other cases to which **clause 50.6** above applies, the breach, breaches or other circumstances specified in the Notice to Remedy is or are not remedied before the expiry of the period referred to in **clause 50.6.1** above (or such other period as may have been agreed by WMCA at its sole discretion).

50.9 **Breaches not capable of remedy**

Where a material breach is not capable of remedy, WMCA shall be entitled to terminate this Agreement immediately or upon such notice as WMCA may, by notice, specify.

50.10 For the avoidance of doubt, and without prejudice to WMCA's rights under **clause 50.9** above, the Parties agree that a breach of the following clauses shall not be capable of remedy and are deemed to be material breaches:

50.10.1 clause 50.3.1;

50.10.2 **clause 50.3.5;**

50.10.3 **clause 50.3.7;**

50.10.4 **clause 50.3.8;**

50.10.5 **clause 50.3.10.1;**

50.10.6 **clause 50.3.10.2;**

50.10.7 **clause 50.3.10.3;**

50.10.8 **clause 50.3.10.5;**

50.10.9 **clause 50.3.10.6;**

50.10.10 **clause 50.3.10.8;** and

50.10.11 **clause 50.3.10.9.**

#### 50.11 Partial Termination

Partial Termination Event will occur when any of the circumstances described in:

- 50.11.1 **clauses 50.3.2 to 50.3.4 (inclusive);**
- 50.11.2 **clause 50.3.10.1;**
- 50.11.3 **clause 50.3.10.2;**
- 50.11.4 **clause 50.3.10.4;**
- 50.11.5 **clause 50.3.10.9.**

arise in relation to one or more of the Service elements. For the avoidance of doubt, WMCA shall also have the right to terminate this Agreement in relation to one or more of the Service elements in accordance with **clause 50.4** above.

50.12 On the occurrence of a Partial Termination Event, the provisions of **clauses 50.6 to 50.8 (inclusive)** shall apply *mutatis mutandis* to the relevant Service elements provided that, in addition to WMCA's rights to terminate such Service elements, where the relevant Service elements are being provided by a Sub-Contractor, WMCA shall have the right to require the Service Provider by notice to replace the relevant Sub-Contractor.

50.13 If the Service Provider fails to replace any relevant Sub-Contractor in accordance with the provisions of **clause 50.12** above within a reasonable time, such time not to exceed one (1) Month (or such longer time as WMCA may in its sole discretion agree) of WMCA issuing notice under **clause 50.12** above, WMCA shall be entitled at its sole option to terminate the rights and obligations of the Service Provider to continue to provide the relevant Service elements provided by the relevant Sub-Contractor by notice having effect either immediately or on such date as WMCA shall specify in such notice.

#### 50.14 Service Provider to notify WMCA

The Service Provider shall, promptly upon becoming aware that circumstances set out in **clause 50.10** above have or are likely to arise, notify WMCA of this occurrence or likely occurrence with full details.

### 51. Exit management

51.1 In addition to, and without limitation to, the generality of the following provisions of this **clause 51**, the Parties shall comply with their obligations set out in **Schedule 14 (Exit Management)**.

51.2 The Service Provider acknowledges that upon the termination or expiry of this Agreement or Partial Termination, WMCA may require part or all of the Services to be performed by WMCA Personnel or a New Service Provider. However, unless otherwise agreed, such performance shall not require the Premises, the WMETS Assets or the Service Systems or the Service Provider Personnel, and in which event



(and without prejudice to **clause 52.2 (Consequences of Termination)**) the Service Provider shall take all steps necessary to:

- 51.2.1 remove all Docking Stations and Docking Station Assets and other On-street Assets and make good any damage as soon as possible and in any event within twenty (20) Working Days (in each case in accordance with any consents or Third Party approvals that may be required); and
  - 51.2.2 promptly and in any event within two (2) Working Days separate all Interfaces.
- 51.3 In the event of termination or expiry of this Agreement or Partial Termination, the Service Provider shall, and shall procure that Service Provider Personnel and its Sub-Contractor provide all necessary co-operation and assistance in order to ensure the smooth transfer of all necessary information, Data and Documentation to WMCA Personnel and/or the New Service Provider in the event of termination or expiry of this Agreement or Partial Termination.
- 51.4 Notwithstanding the earlier provisions of this **clause 51**, in the event that WMCA identifies any WMETS Assets that it wishes to acquire (for the purposes of or in connection with any later eScooter Scheme), then it shall promptly notify the Service Provider and the parties shall (acting reasonably) seek to agree terms for the sale of such WMETS Assets to WMCA (the price for such assets being not greater than the then net book value of such WMETS Assets as depreciated under standard accounting principles adopted by the Service Provider).

**51.5 Future Procurement of the Services**

WMCA may require information to be provided by the Service Provider concerning the relevant:

- 51.5.1 Premises;
- 51.5.2 WMETS Assets;
- 51.5.3 Service Systems; and/or
- 51.5.4 the Services,

in order to provide such information to Third Parties whom a WMCA has invited to tender for the provision of the New Services whether or not an agreement with WMCA to provide the New Services has been entered into and whether or not the Parties have agreed to the transfer of such WMETS Assets to WMCA or the making available of the Service Systems to WMCA. The Service Provider shall provide all such information at WMCA's request provided that WMCA has obtained a written confidentiality undertaking from any Third Party to whom it proposes providing the information in respect of any information which is deemed to be confidential.

## 51.6 Partial Termination

In the event of a Partial Termination, any variations that are required to this Agreement as a result of such Partial Termination shall be agreed by the Parties pursuant to the Change Control Request Procedure as soon as practicable following the service of the Partial Termination Notice. Any such variations shall be deemed to be a Mandatory Change for the purposes of **Schedule 7 (Change Control Request Procedure)**.

## 52. Consequences of Termination, Partial Termination or Expiry

52.1 With effect from the Termination Date or Expiry Date (as appropriate), and subject to **clause 53 (Survival of Clauses)**, the rights and obligations of the Parties shall terminate and be of no future effect. This **clause 52.1** is without prejudice to either Party's rights and remedies which may have accrued prior to the Termination Date or Expiry Date. Subject always to **clause 40 (Liability)** and **clause 52.2** below, termination or expiry of this Agreement or Partial Termination shall not affect or prejudice any other right to damages or other remedy which:

52.1.1 the terminating Party may have in respect of the circumstances which gave rise to the termination or Partial Termination; or

52.1.2 any Party may have in respect of any breach of this Agreement, which existed at or before the Termination Date, Partial Termination Date or Expiry Date.

52.2 The Service Provider shall have no claim against WMCA in relation to the termination or expiry of this Agreement or Partial Termination or the events directly giving rise to termination or Partial Termination, where relevant, other than those amounts properly due under this Agreement but unpaid by WMCA or as expressly provided in:

52.2.1 this **clause 52**

52.3 Following termination or expiry of this Agreement or Partial Termination, each Party shall use its reasonable endeavours to mitigate any losses, expenditure and costs arising as a consequence of such termination or expiry of this Agreement or Partial Termination for which they are to be compensated by the other Party. Where compliance with this **clause 52** will mean that the Service Provider will incur additional material expenditure, the Service Provider shall not incur such material expenditure without the express written approval of WMCA.

52.4 Where WMCA has served:

52.4.1 a notice to terminate this Agreement in accordance with **clause 50.3 or 50.4**; or

52.4.2 a Partial Termination Notice,

WMCA shall, at any time before the expiry of the termination notice or Partial Termination Notice, be entitled to exercise, as soon as may be practicable within that period, such of the following powers as it considers expedient:

52.4.2.1 direct the Service Provider, where Services have not been provided, to refrain from providing such Services;

52.4.2.2 direct the Service Provider to:

(a) complete in accordance with this Agreement, the performance of all or any of the Services (or any component thereof) which are ongoing at the expiry of the notice; and

(b) deliver such Services at such time or times as may be mutually agreed on; and/or

52.4.2.3 direct that the Service Provider, as soon as may be practicable after the receipt of such notice to:

(a) take such steps as necessary to ensure that the Services (or relevant Service elements, in the event of Partial Termination) being provided by the Service Provider are reduced as rapidly as practicable;

(b) as far as possible, and in a manner consistent with **clause 52.4.2.3(a)** above, concentrate work on the completion of Services (or relevant Service elements, in the event of Partial Termination) partly provided,

as far as may be possible.

### 53. **Survival of clauses and schedule**

53.1 Termination or expiry of this Agreement shall not affect the coming into force or the continuance in force of any provision which is expressly or by its nature or implication intended to come into or continue in force on or after termination, including the following clauses and schedules:

53.1.1 **clauses 1.6 (Definitions and interpretation);**

53.1.2 **clause 21 (Commercial Exploitation of eScooter Assets and Docking Station Assets);**

53.1.3 **clause 23.1 (Revenue);**

53.1.4 **clause 36 (Audit and inspection);**

53.1.5 **clause 40 (Liability);**

53.1.6 **clause 41 (Insurance);**

53.1.7 **clause 42 (Information compliance);**

53.1.8 **clause 51 (Exit Management);**

- 53.1.9 **clause 52.1 (Consequences of Termination, Partial Termination or Expiry);**
- 53.1.10 **clause 53 (Survival of clauses and schedules);**
- 53.1.11 **clause 58 (Publicity);**
- 53.1.12 **clause 59 (Confidentiality);**
- 53.1.13 **clause 62 (Contracts (Rights of Third Parties) Act);**
- 53.1.14 **clause 69 (Dispute Resolution Procedure), including Schedule 16 (CEDR Model Expert Determination Agreement); and**
- 53.1.15 **clause 70 (Governing law and jurisdiction).**

#### **PART 19: MISCELLANEOUS**

#### **54. Waiver and approvals**

- 54.1 The rights, powers, privileges and remedies provided in any provision of this Agreement are cumulative and are not exclusive of any rights, powers, privileges or remedies provided by any other provision of this Agreement, law or otherwise.
- 54.2 No failure to exercise nor any delay in exercising by any Party to this Agreement of any right, power, privilege or remedy under this Agreement shall impair or operate as a waiver thereof in whole or in part.
- 54.3 No single or partial exercise of any right, power privilege or remedy under this Agreement shall prevent any further or other exercise thereof or the exercise of any other right, powers, privilege or remedy.
- 54.4 No consent, comment, acceptance or approval (including any Approval) of WMCA under this Agreement shall in any way relieve the Service Provider of its obligations under this Agreement.

#### **55. Entire Agreement**

- 55.1 This Agreement, together with all documents referred to in it (including but not limited to the documents referred to in **clause 44.1.2.1 (Representations and warranties)**), 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.
- 55.2 The Parties acknowledge that they have not been induced to enter into this Agreement by any representation or warranty other than those contained in this Agreement and, having understood and freely entered into this Agreement, they agree that it shall have no remedy in respect of any other such representation or warranty, except in the case of fraud. The Parties acknowledge that their respective legal advisers have explained to it the effect of this **clause 55.2**.

55.3 Subject to **clause 33 (Change control request procedure)** and save-fore matters referred to in **clause 55.4**, no variation to this Agreement shall be effective unless made in writing and duly executed on behalf of the Parties.

55.4 Any changes and or amendments relating to the applicable Trial Operational Playbook during the Term of this Agreement will be agreed and recorded and or otherwise evidenced as determined by the appropriate Trial Zone Project Board as set out in **paragraph 2 of Schedule 8 (Contract Management and Reporting Procedure)**.

56. **Illegality and severability**

If any provision of this Agreement (in whole or part) is held illegal, void, invalid or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed from the Agreement and the remaining provisions and shall continue in full force and effect as if this Agreement had been executed without the invalid, illegal, or unenforceable provision. In the event that in WMCA's reasonable opinion such a provision is so fundamental as to prevent the accomplishment of the purpose of the Agreement, WMCA and the Service Provider shall immediately commence good faith negotiations to remedy such invalidity.

57. **Notices**

57.1 Any notice (which term shall in this **clause 57** include any other communication) required to be given under this Agreement or in connection with the matters contemplated by it shall, except where otherwise specifically provided, be in writing in the English language.

57.2 Notices served under this Agreement shall be addressed as provided in **clause 57.4** below and may be:

57.2.1 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, 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;

57.2.2 if within the United Kingdom, sent by first class pre-paid post, in which case it shall be deemed to have been given two (2) Working Days after the date of posting;

57.2.3 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 (7) Working Days after the date of posting in the case of pre-paid airmail or two (2) Working Days after delivery to the courier, in the case of air courier;

57.2.4 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 hours on the next Working Day; or

57.2.5 subject to **clause 57.3** below, sent by electronic mail, in which case, it shall be deemed to be given when actually received provided that any notice sent by electronic mail 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 hours on the next Working Day.

57.3 The following provisions shall apply in respect of any notice sent by electronic mail:

57.3.1 the following notices, must, if sent by electronic mail, also be served simultaneously by one of the other methods referred to in **clause 57.2** above:

57.3.1.1 Notices of termination and Partial Termination Notices under **clause 50 (Termination)**.

57.3.2 notices sent by electronic mail shall:

57.3.2.1 be in a form and context calculated to come to the recipient's immediate attention, including by being classified as "urgent";

57.3.2.2 be set up such that the sender is able to check whether they have been received and opened by the recipient;

57.3.2.3 be in immediately intelligible form and saveable to the relevant information systems; and

57.3.2.4 comply with any other requirements specified in writing by WMCA from time to time;

57.3.3 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 57.2** above.

57.4 The addresses and other details of the Parties referred to in this **clause 57.4** are, subject to **clause 57.5** below:

57.4.1 Name: WMCA

For the attention of: Tim Martin (Head of Governance)

Address: 16 Summer Lane, Birmingham, B19 3SD

E-mail address: [Tim.Martin@wmca.org.uk](mailto:Tim.Martin@wmca.org.uk)

Name: Service Provider

For the attention of: [INSERT]

Address: [INSERT]

E-mail address: [INSERT]

57.5 Either Party to this Agreement may notify the other Party of any change to the address or any of the other details specified in **clause 57.4** above, provided that such notification shall only be effective on the date specified in such notice or five (5) Working Days after the notice is given, whichever is later and provided also that any new address shall be in the United Kingdom.

## 58. **Publicity**

58.1 Subject to **clause 58.3** below and whether or not any restriction contained in **clause 59 (Confidentiality)** applies, the Service Provider shall not, and shall procure that Service Provider Personnel and Sub-Contractors do not, make any announcement (including, any communication to the public, to any clients or suppliers of either party or to all or any of the employees of either party or to representatives of the press, television, radio or other media):

58.1.1 concerning the existence, provisions or subject matter of this Agreement;  
or

58.1.2 containing any information about WMCA (including, Confidential Information) without the prior written consent of WMCA.

58.2 WMCA shall have the absolute discretion in deciding whether to give its consent as referred to in **clause 58** above.

58.3 **Clause 58** above shall not apply if and to the extent that such announcement is required by Law or by any securities exchange or regulatory or Governmental body having jurisdiction over either Party (including the Financial Services Authority, the London Stock Exchange, The Panel on Takeovers and Mergers and the Serious Fraud Office) and whether or not the requirement has the force of law and provided that any such announcement will be made only after consultation with the other Party.

58.4 The obligations and restrictions contained in this **clause 58** shall survive termination of the Agreement and continue without limit of time.

## 59. **Confidentiality**

### 59.1 **WMCA Confidential Information**

59.1.1 The Service Provider acknowledges and accepts that it may receive, obtain, prepare or create WMCA Confidential Information.

59.1.2 The Service Provider undertakes to WMCA, subject to **clause 59.2.3** below, that:

59.1.2.1 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;

- 59.1.2.2 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 the performance of the Services or compliance with its obligations under this Agreement; and
- 59.1.2.3 it shall not disclose the WMCA Confidential Information to any Third Party without the prior written consent of WMCA, except that it is entitled to the extent strictly necessary to disclose the WMCA Confidential Information:
- (a) to such of the Service Provider Personnel and advisers who need to know the WMCA Confidential Information for the performance of the Services, provided that the Service Provider shall be responsible for any breach of its obligations occasioned by any act or omission of such Service Provider Personnel and shall, before disclosing WMCA Confidential Information to members of Key Personnel, either:
    - (i) require such Key Personnel to enter into a written confidentiality undertaking in the form reasonably acceptable to WMCA; or
    - (ii) have obtained prior written notice from WMCA confirming that the obligations of confidentiality imposed on such members of Key Personnel by the Service Provider are sufficient and that no such written undertaking is required;
  - (b) to the Service Provider's auditors and any other person or body having a legal right or duty to know the WMCA Confidential Information in connection with the Service Provider's business, provided that prior to such disclosure the Service Provider 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;
- 59.1.2.4 it shall inform each of the persons referred to in **clauses 59.1.2.3(a)** and **59.1.2.3(b)** above to whom WMCA Confidential Information is disclosed of the restrictions as to use and disclosure of the WMCA Confidential Information;
- 59.1.2.5 it shall, at WMCA's request, deliver to WMCA or destroy all or any 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 the purging of all disk-based WMCA Confidential Information and the reformatting of all disks provided that the Service Provider shall be entitled to retain such number of copies as are necessary for its internal or external audit purposes; and

59.1.2.6 it shall not, except where provided in **clause 59.1.2.3** 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.

59.1.3 The obligations set out in **clause 59.1.2** above do not apply to any WMCA Confidential Information which:

59.1.3.1 the Service Provider can show by documentary evidence was already in its lawful possession and at its free disposal before the disclosure to the Service Provider by WMCA;

59.1.3.2 is lawfully disclosed to the Service Provider otherwise than in breach of an obligation of confidentiality to WMCA;

59.1.3.3 is or has come into the public domain through no fault of the Service Provider or Service Provider Personnel or its Sub-Contractors; or

59.1.3.4 is required by law or by order of a court of competent jurisdiction to be disclosed.

59.1.4 The Service Provider acknowledges that damages may not be an adequate remedy for any breach of **clause 59.1.2** 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 terminate this Agreement and/or seek the remedies of injunction, specific performance and other equitable relief to enforce the provisions of this **clause 59** and no proof of special damages shall be necessary for the enforcement of the provisions of this **clause 59**.

59.1.5 The WMCA Confidential Information shall be and shall remain the property of WMCA.

## 59.2 **Service Provider Confidential Information**

59.2.1 WMCA acknowledges and accepts that during the Term it may receive Service Provider Confidential Information.

59.2.2 WMCA undertakes to the Service Provider, subject to **clause 59.2.3** below, that:

- 59.2.2.1 it shall receive and/or maintain the Service Provider Confidential Information in strictest confidence and it acknowledges that such information is of a proprietary and confidential nature;
- 59.2.2.2 it shall not use the Service Provider Confidential Information for any purposes whatsoever (and in particular shall not use the Service Provider Confidential Information to the detriment of the Service Provider) other than for the purpose of the receipt of the Services, compliance with its obligations under this Agreement or exercise of its rights under this Agreement;
- 59.2.2.3 it shall not disclose the Service Provider Confidential Information to any Third Party without the prior written consent of the Service Provider, except that it is entitled to the extent strictly necessary to disclose the Service Provider Confidential Information:
- (a) to such of WMCA Personnel, agents and advisers who need to know the Service Provider Confidential Information, provided that WMCA shall be responsible for any breach of its obligations occasioned by any act or omission of such persons; or
  - (b) to WMCA's auditors, any other person or body having a legal right or duty to know the Service Provider Confidential Information in connection with the business of WMCA and any other person to whom Service Provider Confidential Information may be disclosed under this Agreement, provided that prior to such disclosure WMCA consults with the Service Provider as to the proposed form of such disclosure and what, if any, confidentiality undertakings each such Third Party should enter into before Service Provider Confidential Information is disclosed;
- 59.2.2.4 it shall inform each of the persons referred to in **clauses 59.2.2.3(a)** and **59.2.2.3(b)** above to whom Service Provider Confidential Information is disclosed of the restrictions as to use and disclosure of the Service Provider Confidential Information;
- 59.2.2.5 it shall, at the Service Provider's request, deliver to the Service Provider or destroy all or any 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 Service Provider Confidential Information and if instructed by the Service Provider in writing, remove all electronically

held Service Provider Confidential Information, including the purging of all disk-based Service Provider Confidential Information and the reformatting of all disks provided that WMCA shall be entitled to retain such number of copies as are necessary for its internal and/or audit purposes; and

59.2.2.6 it shall not, except where provided in **clause 59.2.2.3** above, or without the prior written consent of the Service Provider, disclose to any Third Party the nature or content of any discussions or negotiations between the Parties relating to the Service Provider Confidential Information.

59.2.3 The obligations set out in **clause 59.2.2** above do not apply to any Service Provider Confidential Information which:

59.2.3.1 such information, Data, Documentation, Deliverables and or such Specification outcomes and outputs that relate to the Services that are shared and otherwise disclosed to any central government department, including but not limited to the Department of Transport and or agency appointed or otherwise instructed to act on behalf of such central government department;

59.2.3.2 WMCA can show by documentary evidence was already in its lawful possession and at its free disposal before the disclosure to WMCA by the Service Provider;

59.2.3.3 is lawfully disclosed to WMCA otherwise than in breach of an obligation of confidentiality to the Service Provider;

59.2.3.4 is or has come into the public domain through no fault of WMCA or WMCA Personnel;

59.2.3.5 WMCA determines should be disclosed in accordance with FOI Legislation; or

59.2.3.6 is required to be disclosed:

(a) to the National Audit Office or the Local Auditor; or

(b) by law or by order of a court of competent jurisdiction.

59.2.4 WMCA acknowledges that damages may not be an adequate remedy for any breach of **clause 59.2.2** above and that (without prejudice to all other remedies which the Service Provider may be entitled to as a matter of law) the Service Provider shall be entitled to seek the remedies of injunction, specific performance and other equitable relief to enforce the provisions of this **clause 59** and no proof of special damages shall be necessary for the enforcement of the provisions of this **clause 59**.

59.2.5 The Service Provider Confidential Information shall be and shall remain the property of the Service Provider.

59.2.6 The obligations of confidentiality set out in this **clause 59** shall remain in effect indefinitely, or until the relevant information is no longer confidential in accordance with the provisions of this **clause 59**.

60. **Assignment**

60.1 Subject to **clause 30 (Key Sub-Contractors and Sub-Contractors)**, this Agreement is personal to the Service Provider who shall not assign, transfer, charge, novate, encumber, hold on trust or deal in any other similar manner whether in whole or in part with this Agreement or its rights under this Agreement or any other agreement entered into pursuant to this Agreement without the consent of WMCA.

60.2 In the event of breach of **clause 60.1** above by the Service Provider, WMCA shall be entitled to terminate this Agreement immediately.

61. **Relationship of the Parties**

61.1 Nothing in this Agreement shall constitute, or be deemed to constitute:

61.1.1 a partnership between the Parties;

61.1.2 except as expressly provided to the contrary in this Agreement, either Party, as the agent of any other Party for any purpose; or

61.1.3 any relationship of employer and employee between WMCA and any member of Service Provider Personnel.

61.2 Except as expressly provided to the contrary in this Agreement, the Service Provider 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.

62. **Contracts (Rights of Third Parties) Act 1999**

62.1 Subject to **clause 62.2** below, a person that is not party to this Agreement has no rights under the Third Parties Act to enforce any term of this Agreement, but this does not affect any right or remedy of a third party that exists or is available apart from the Third Parties Act.

62.2 The Service Provider acknowledges and accepts that a New Service Provider may enforce the provisions of **paragraphs 6.1 (Indemnities) and 7.3 (Termination) of Schedule 27 (Service Provider Personnel)**.

62.3 Notwithstanding section 2(1) of the Third Parties Act, the Parties to this Agreement may vary or terminate this Agreement by agreement between them without requiring the consent of any third party on whom this **clause 62** confers rights.

63. **Set-off**

63.1 All damages, costs, charges, expenses, debts, sums or other amounts owing to or incurred by WMCA arising out of or attributable to this Agreement may be deducted by WMCA from monies due or which may become due to the Service Provider under this Agreement and WMCA may recover such amount as a debt.

63.2 All sums payable by the Service Provider under this Agreement shall be paid free and clear of any deductions, withholdings, set-offs or counterclaims whatsoever save as required by law.

64. **Mutual assistance**

64.1 Each Party shall, at its own expense, execute all documents and do all acts and things reasonably required by the other to give effect to the terms of this Agreement.

64.2 The Parties shall execute all such further deeds and documents as may reasonably be required, or to the extent necessary for the provision of the Services, WMETS Assets and Service Systems, to document, secure, register, acknowledge and perfect the vesting, assignment and licences in relation to any WMETS Assets and Intellectual Property Rights arising under this Agreement in accordance with the terms of this Agreement.

65. **Parent company guarantee**

The Service Provider shall, on the Effective Date, deliver to WMCA a parent company guarantee in the form set out in **Schedule 15 (Agreed Form of Guarantee)**, executed as a deed for and on behalf of the Guarantor by duly authorised representatives of the Guarantor (the "**Guarantee**"). In the event of breach of this **clause 65 WMCA** shall be entitled, at its sole discretion, to terminate this Agreement under **clause 50.3.2 (Termination)** for material breach.

66. **Conflict of interest**

66.1 The Service Provider acknowledges and agrees that:

66.1.1 it does not have and will not have an interest in any matter where there is or is likely to be a conflict of interest with it providing the Services, WMETS Assets and Service Systems to WMCA; and

66.1.2 except as provided below, it shall not act for any person, organisation or company where there is or is likely to be a conflict of interest with it providing the Services or with WMCA.

This **clause 66** shall not prevent the Service Provider from providing services to an existing client of the Service Provider to whom the Service Provider is, as at the Effective Date, providing services provided that the Service Provider shall:

66.1.3 not act for any such client in respect of any transactions between WMCA and such client;

- 66.1.4 ensure that the Service Provider Personnel acting in any capacity for any such client are different from the Service Provider Personnel involved in providing the Services or in any other work which the Service Provider carries out in relation to WMCA;
  - 66.1.5 ensure that any personnel acting for any such client do not have access to information held by the Service Provider relating to WMCA; and
  - 66.1.6 inform WMCA of all such existing clients and the steps that it is taking to ensure compliance with **clauses 66.1.3 to 66.1.5** above (inclusive).
- 66.2 The Service Provider shall:
- 66.2.1 undertake ongoing and regular conflict of interest checks throughout the Term, and in any event not less than once every three (3) Months;
  - 66.2.2 notify WMCA in writing immediately upon becoming aware of any actual or potential conflict of interest with the WMETS Assets, Service Systems or Services or WMCA; and
  - 66.2.3 work with WMCA Personnel to do whatever is necessary (including the separation of Service Provider Personnel working on, and data relating to, the Services, WMETS Assets and Service Systems from the matter in question) to manage such conflict to WMCA's satisfaction.
- 66.3 In the event of breach of **clause 66.1 or 66.2** WMCA shall be entitled, at its sole discretion, to terminate this Agreement under **clause 50 (Termination)** for material breach.
67. **Change of Control and Change of Ownership**
- 67.1 The Service Provider shall promptly, and in any event within five (5) Working Days of a public announcement, notify WMCA of:
- 67.1.1 any event that may give rise to a:
    - 67.1.1.1 Change of Ownership or a Change of Control; and/or
    - 67.1.1.2 future Change of Ownership or Change of Control,
 and provide such information as WMCA requires in relation to such a Change of Ownership or Change of Control; and
  - 67.1.2 the sale or proposed sale of all or substantially all of the business of the Service Provider or the Guarantor.
- 67.2 In the event of the sale of all or substantially all of the business of the Service Provider or the Guarantor, WMCA shall have the right to terminate this Agreement within thirty (30) calendar days of receipt of notice from the Service Provider in accordance with **clause 67.1** above unless, in the case of a sale affecting the Guarantor, the Service Provider has within such period provided a guarantee from a replacement guarantor acceptable to WMCA in terms identical to the Guarantee.

68. **Counterparts**

This Agreement may be executed in any number of counterparts or duplicates, each of which shall be an original, and such counterparts shall together constitute one Agreement and the same Agreement. Either Party may enter into this Agreement by signing any such counterpart or duplicate.

**PART 20: DISPUTE RESOLUTION PROCEDURE, GOVERNING LAW AND JURISDICTION**

69. **Dispute resolution procedure**

69.1 The Parties shall settle disputes arising out of, under or in connection with this Agreement in accordance with the provisions of this **clause 69**.

69.2 **Expert Determination**

69.2.1 WMCA and the Service Provider shall each use their reasonable endeavours to resolve as soon as possible any dispute which arises between them out of or in relation to this Agreement. In respect of each such dispute:

69.2.1.1 either Party may serve upon the other a written notice stating the nature of the dispute (the "**Dispute Notice**"); and

69.2.1.2 on receipt of the Dispute Notice, the Parties shall promptly attempt to settle the dispute by means of commercial negotiation between:

(a) the **Service Provider's Managing Director**; and

(b) **WMCA's Managing Director for Transport for West Midlands**.

69.2.2 Subject to **clauses 69.2.12** below, if the Parties fail to agree a mutually satisfactory resolution to their dispute within ten (10) Working Days following service of the Dispute Notice, any Party to the dispute may refer the dispute to the Expert for determination ("**Expert Determination**").

69.2.3 The Service Provider shall continue to provide the Services, WMETS Assets and Service Systems in accordance with the Agreement and without delay or disruption while a dispute is being resolved.

69.2.4 Within one (1) Month of the Effective Date, the Parties shall appoint an Expert to determine all disputes arising under this Agreement (the "**Expert**"). The Expert shall be:

69.2.4.1 a Queen's Counsel or such other suitably qualified person as the Parties may expressly in writing agree; and

69.2.4.2 independent of the Parties.

- 69.2.5 In the event that the proposed Expert:
- 69.2.5.1 refuses to be appointed or to continue to act as the Expert under this Agreement; or
  - 69.2.5.2 is incapable, or becomes incapable, of acting as Expert for any reason,
- either of the Parties may request the Chief Executive of the Centre for Effective Dispute Resolution ("**CEDR**") to appoint a replacement Expert as soon as reasonably practicable. Any such request shall include a request that before appointing a replacement Expert, the Chief Executive of CEDR shall first solicit comments from both Parties regarding the appropriate skills that the Expert will require in order to determine disputes under this Agreement. The Chief Executive of CEDR shall be entitled to proceed to appoint a replacement Expert if, in his opinion, such comments have not been received from one or other Party within two (2) weeks.
- 69.2.6 For the avoidance of doubt, the Expert shall sit as an expert not as an arbitrator.
- 69.2.7 Upon the proposed Expert consenting to his appointment as the Expert or upon the Chief Executive of CEDR notifying the Parties of his choice of Expert (as applicable), the Parties shall:
- 69.2.7.1 within ten (10) Working Days complete and sign the CEDR Model Expert Determination Agreement (2016 version) in the amended form set out in **Schedule 16 (CEDR Model Expert Determination Agreement)** (the "**Model Expert Determination Agreement**"); and
  - 69.2.7.2 each use their best endeavours to procure that the Expert signs such agreement promptly thereafter.
- If, notwithstanding their respective best efforts to procure his signature, the proposed Expert refuses to sign, the Parties shall promptly appoint a different individual to act as Expert in accordance with this **clause 69**.
- 69.2.8 When seeking to agree the procedural directions that will govern the conduct of the Expert Determination, each of the Parties shall request the Expert to include:
- 69.2.8.1 directions whereby either Party may request the Expert to issue declaratory relief; or
  - 69.2.8.2 issue an interim determination which (if issued by the Expert) shall be binding on the Parties, until the Expert issues his final determination (which he shall be requested to do as soon as reasonably practicable).



69.2.9 In respect of any dispute and particularly in respect of a dispute which is in any way concerned with:

69.2.9.1 termination or Partial Termination of this Agreement;

69.2.9.2 the implementation of the Exit Plan; or

69.2.9.3 otherwise relating to a New Service Provider being appointed for the supply of Services (or any part thereof),

when considering whether to issue declaratory relief or make 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 members of the public and as such the West Midlands eScooter Trial Services should continue to operate in a timely, economic, efficient and reliable manner and such that the Service Provider shall not cease to provide the Services.

69.2.10 The Expert's final determination shall be final and binding on the Parties except:

69.2.10.1 in the case of fraud or manifest error; or

69.2.10.2 where the Expert's final determination relates to:

(a) a dispute with a value in excess of two million pounds (£2,000,000) (as certified by the Expert in his final determination); or

(b) a dispute arising out of or in connection with or in relation to the termination, actual or threatened repudiation or abandonment of this Agreement by either of the Parties; or

(c) where the determination relates principally to the grant of relief of a non-financial nature,

where the exceptions at **clauses 69.2.10.1** and **69.2.10.2** above apply, the Parties reserve their rights to reject the final determination and to apply instead to the courts of England and Wales in order to resolve the dispute.

69.2.11 In the event that a Party wishes to exercise its right under **clause 69.2.10** above to reject the final determination, such Party shall:

69.2.11.1 so inform the Expert and the other Party (or parties) by notice in writing (the "**Rejection Notice**") within ten (10) Working Days of receipt of the Expert's final determination; and

69.2.11.2 issue proceedings regarding the dispute before the court no later than three (2) months following service of the final determination.

69.2.12 For the avoidance of doubt, the Parties shall abide by any interim determination or declaratory relief issued by the Expert pending his final determination. In the event that a Party exercises its right to reject the Expert's final determination under **clauses 69.2.8 and 69.2.10** above, the Parties shall nevertheless abide by the Expert's final determination pending the court's decision in the matter, unless and until the court orders otherwise.

### 69.3 **Additional Expert Provisions**

69.3.1 The Expert shall be entitled to appoint experts and/or other professional advisers to assist in reaching his determination. The fees of such experts and/or professional advisers shall be treated as part of the fees and expenses of the Expert Determination (as applicable).

69.3.2 The Parties agree that in respect of any dispute arising under this Agreement:

69.3.2.1 either Party may make an application to the Expert requesting that any Interested Party, Other eScooter Service Provider, Other Service Provider, the Insurance Provider, Sponsor and/or Third Party (including in each case their heirs, successors and assignees) (a "**Third Party Service Provider**") be joined to proceedings before the Expert under this Agreement;

69.3.2.2 the Expert shall, on an application by any Party, be entitled to join a Third Party Service Provider to proceedings between the Parties in the event that the Expert considers, in his sole discretion, that it is appropriate to do so, provided that such Third Party Service Provider consents to be joined to such proceedings; and

69.3.2.3 the Parties shall amend the Model Expert Determination Agreement to take account of a decision by the Expert to join a Third Party Service Provider to the proceedings before the Expert under this Agreement, in respect of the relevant dispute only.

## 70. **Governing law and jurisdiction**

70.1 This Agreement and any issues, disputes or claims arising out of or in connection with it (whether contractual or non-contractual in nature such as claims in tort, from breach of statute or regulation or otherwise) shall be governed by, and construed in accordance with, English and Welsh law.

70.2 Without prejudice to **clause 69 (Dispute Resolution Procedure)**, the Parties shall submit to the exclusive jurisdiction of the English courts to settle any dispute which may arise out of or in connection with the Agreement, provided 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 Service Provider is incorporated or in which any assets of the Service Provider may be situated. The Parties agree irrevocably to submit to that jurisdiction.

As witness the hands of the duly authorised Representatives of the Parties on the date first before written.

**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 **[INSERT]**, acting by , a director, in the presence of:

**WITNESS**

Signature: .....

Name: .....

Address: .....

.....

.....

Occupation: .....