

Agreement for PL0092 E-Scooter Rental Schemes

(1) ESSEX COUNTY COUNCIL

and

(2) VOI TECHNOLOGY UK LTD

Dated 11th August 2025

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SIGNATURE PAGE

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THIS AGREEMENT is dated 5th August 2025 **BETWEEN**

- (1) **ESSEX COUNTY COUNCIL** of County Hall, Market Road, Chelmsford, Essex, CM1 1QH ("**ECC**"); and
- (2) **VOI TECHNOLOGY UK LTD** whose registered office is 2nd Floor National House, 60-66 Wardour Street, London, W1F 0TA (the "**Service Provider**").

BACKGROUND

- (A) In an initiative to promote walking and cycling as part of a green and healthy recovery from COVID-19, the Secretary of State for Transport announced regulatory amendments go enable E-scooter trials in the UK.
- (B) As part of the continuation of the E-scooter trials in Essex, ECC invited bidders to submit proposals for the management of ECC's E-Scooter rental schemes, comprising the operation, provision, maintenance and protection of E-scooter vehicles in Essex, and the physical and technological infrastructure, business processes and services to support this, as required for delivery in accordance with the Specification (the "**Essex eScooter Trial Services**").
- (C) Voi Technology UK Ltd submitted the most advantageous proposal for delivering this proposal, in response to procurement exercise PL0092 E-Scooter Rental Schemes ocds-h6vhtk-051f94.
- (D) 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 ECC include its successors and permitted assigns which will include any or multiple persons or bodies who at any time is entitled, by assignment, novation, merger, division, reconstruction, reorganisation or otherwise, to ECC'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 ECC'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 email, typewriting, printing, lithography, photography, and the printed 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 **Not used.**

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 **Schedule 2 (Specifications);**

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

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

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

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

1.6.8 any other documents incorporated into this Agreement by reference.

1.7 **Obligation on ECC or ECC Personnel to act reasonably**

Any reference to ECC or ECC 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 ECC or ECC Personnel, but subject always to the following exception, namely that ECC or ECC 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 ECC and deliver

safe, integrated, reliable, efficient and economic transport facilities and services to, from and within Essex, provided that such exception shall not be used by ECC or ECC 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 31 May 2026 (the "**Trial Term**").
- ECC shall be entitled, at its sole option by giving notice to the Service Provider of at least two (2) Months prior to the expiry of the Trial Term, to extend this Agreement for a maximum period of up to thirty-six (36) Months, whether in single or multiple extensions (such period being the "Extended Term").
- 2.2

Transition Assistance Period

- 2.3 The parties agree that where either:
- 2.3.1 ECC has not yet appointed any necessary Replacement Provider by the Expiry Date or
 - 2.3.2 any necessary Replacement Provider has not fully transitioned to providing Replacement Services by the end of TAP,
- ECC may require the Service Provider to continue providing the Services and TAP Services until any and all necessary Replacement Providers have fully transitioned to providing Replacement Services. In such a case, the Service Provider shall continue to provide the Services and the TAP Services until all Replacement Services have been implemented and are running to the reasonable satisfaction of ECC. The Concession Fees shall continue to be calculated in accordance with this Agreement.

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 (Vehicle Special Order VSO) for the provision of the Services

4. Scope of Services, EETS Assets and Service Systems

- 4.1 ECC appoints the Service Provider to provide, and the Service Provider shall provide, the Services, EETS Assets and Service Systems to ECC in the Locations as follows:
- 4.1.1 from the Effective Date, the Service Provider shall provide the Design Services, the Build Services and EETS Assets in accordance with:
 - 4.1.1.1 **Schedule 2 (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 25 (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 **Schedule 2 (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 during the Term 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 23 (Additional Services);**
- 4.1.4 further Services during the Term 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;
- 4.1.6 in the event of expiry or termination of this Agreement or Partial Termination, the Exit Management Services; and
 - 4.1.6.1 during the Initial Mobilisation Period, the Service Provider shall provide the Services in accordance with Clause 3.1 of Schedule 2 – Specifications. The Service Provider shall not pay any Concession Fees during the Mobilisation Period except for any specific Service Credits that may accrue and be payable.
- 4.2 The Service Provider acknowledges that the EETS Assets (including the eScooter Assets) shall be used during the Term in the provision of the Services, and the Service Provider agrees to procure the rental of eScooter Assets to Customers as part of the 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 ECC will be free to appoint any Other eScooter Service Provider to undertake services equivalent to the Services within the geographic Area of Operation
- 4.4 ECC may change the Locations at any time during the Term on 30 days prior written notice to the Service Provider.
- 4.5 The “Location Change Date” is the 30th day of the notice provided to the Service Provider or such earlier date agreed in writing between the parties
- 4.6 A change to the Location is:
 - 4.6.1 adding new geographical areas to the Location or
 - 4.6.2 removing existing geographical areas from the Location.

- 4.7 Where a geographical area is removed from the Location, the Service Provider shall cease payment of Concession Fees for such geographical area on the Location Change Date.
- 4.8 Where a geographical area is added to the Location, the Service Provider shall commence payment of additional Concession Fees on the Location Change Date at the same rate as agreed for other Locations
- 4.9 Following a change, the parties shall enter into a Change Control Notice to update the Location and Concession Fees accordingly.

5. **Standard of Services and quality of EETS 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, EETS 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 25 (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 25 (Docking Station Installation)**);
 - 5.1.3 without prejudice to **clause 5.1.1** above, the Services, EETS 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 ECC requires the Service Provider to provide any Additional Services and/or further Services and/or EETS 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 EETS Assets requested by ECC);

- 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 EETS Assets requested by ECC).
- 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 ECC;
- 5.4 The Service Provider shall, subject to the terms and scope of this Agreement and obligations of ECC 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 EETS 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 Essex 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 EETS and provision of Services, EETS 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 ECC 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 ECC's requirements **Schedule 2 (Specifications)**, including any principles set out therein in connection with the scope of the Terminal Design;
- 6.2.2 the EETS Assets and Service Systems provided under this Agreement will be Fit for Purpose for the provision of the EETS and related Services.
- 6.3 The Service Provider acknowledges and accepts that, notwithstanding that ECC 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, if any, 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 Essex eScooter Trial Services;
- 6.3.1.2 EETS Assets required for provision of the Essex 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, EETS Assets and Service Systems in accordance with the provisions of this Agreement and so as to design, build and operate the Essex 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 EETS Assets)**, the Service Provider shall:
- 7.1.1 submit a draft Implementation Plan for Approval by ECC 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 ECC 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 EETS 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 Essex eScooter Trial Services by:
 - (i) Customers;
 - (ii) ECC 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 ECC 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 EETS 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 EETS Assets; and

10.1.2 Service Systems.

10.2 The Service Provider shall perform Testing of the EETS Assets and Service Systems to ensure that the EETS 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 ECC in connection with the Services, EETS 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 ECC of a:
 - (i) notice that ECC Approves any Documentation; and/or
 - (ii) issue of any Milestone Notice;

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

11.2.2.2 the issue of a notice that ECC Approves any Documentation and/or a Milestone Notice shall not affect ECC's right to later withdraw any such notice (in circumstances where ECC Personnel subsequently become aware of facts or circumstances that would have entitled ECC 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, EETS Assets or Service Systems or Documentation and, where applicable, seek the Approval of ECC 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 ECC 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 ECC 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 ECC 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 ECC (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 ECC's losses (including, in the case of ECC, any losses or likely losses notified by ECC 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, ECC shall notify the Service Provider whether it Approves or (acting reasonably) requires changes to, the Delay Plan provided that it shall be reasonable for ECC 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 ECC 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 ECC notifying such changes to the Service Provider.
- 12.5 Unless otherwise expressly agreed in writing by ECC, 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 ECC, the Service Provider shall:
- 12.6.1 carry out its obligations in the Delay Plan promptly (including such changes as ECC 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 ECC, 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 ECC 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),**
- ECC 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 ECC 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 ECC); and
- 12.8.2 update the Risk Register (as defined in **Schedule 3 (Milestones and Deliverables)**) 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**

Where the Service Provider has failed to achieve a Milestone, the provisions of **clause 50.3 (Termination by ECC of the Agreement)** shall apply.

PART 6: CO-OPERATION AND COLLABORATION

14. Co-operation with ECC, 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 ECC, ECC Personnel and, where requested by ECC 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 Essex eScooter Trial Services and any points of integration, interoperability or interface between:

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

14.1.2 the services, assets or resources to be provided to ECC 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) ECC, ECC Personnel and, where applicable, Interested Parties, Other Service Providers and/or Third Parties with:

14.2.1 information reasonably requested by ECC 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 ECC and ECC 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 that may be provided by one or more Interested Party, Other Service Provider or Third Party (as appropriate) including transport and booking systems and or MaaS (where this is requested by ECC during the 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 ECC; or
- (b) ECC 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 ECC, 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 ECC of contractual agreements between ECC and Interested Parties, Other Service Providers or Third Parties which the Service Provider has been notified of prior to the Effective Date.
- 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 ECC'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, ECC 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.

14.6 The Parties shall work together to identify additional products to be delivered through applications and/or MaaS with a view to integrating such products in the Essex eScooter Trial Services. Where the Parties identify such provisions which could be so integrated, the Service Provider shall use reasonable endeavours to develop such product and to integrate such product into the Essex 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: EETS ASSETS AND SERVICE SYSTEMS

15. Service Systems and Other Service Provider Systems

15.1 The Service Provider shall provide, at its own cost and expense, 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. EETS 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 EETS Assets and Service Systems.

17. System Failure

17.1 The Service Provider shall notify ECC 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 ECC and the Customers;
- 17.2.3 immediately conduct a comprehensive examination of the EETS 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 ECC Personnel, promptly provide ECC Personnel with:
 - 17.2.5.1 all relevant Data and information in connection with the:
 - (a) EETS 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 ECC; and
 - 17.2.5.2 all volumetric information and Operational Reports (both historical and current) as may be required by ECC,

to facilitate ECC'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 ECC 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 ECC 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 ECC may reasonably require for ECC Personnel, Interested Parties, Other Service Providers and Third Parties, in the use and operation of the EETS Assets and Service Systems so as to enable those personnel and parties to use or operate such EETS Assets and Service Systems in the manner contemplated by this Agreement and to ensure the delivery of the Essex 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 ECC 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 23 (Additional Services); and

19.1.3 the terms and conditions of this Agreement.

PART 9: FINANCIAL MATTERS

20. No Charges

20.1 ECC has appointed the Service Provider under this Agreement as a concession arrangement and in respect of which there shall be no charges payable by ECC 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. ECC shall have no obligation to consent to pay any charges save as may be set out in this Agreement.

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 Essex eScooter Trial Services

21.1 The Service Provider and ECC shall from time to time discuss opportunities for commercial exploitation of the Docking Station Assets and eScooter Assets, and generally the Essex 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 ECC:

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

21.2.2 ECC'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 ECC 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 EETS Assets or otherwise in connection with the Essex eScooter Trial Services; or

21.4.2 the provision of the Services,

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

21.5 ECC may provide the Service Provider with materials, at ECC's expense, to be affixed to certain of the eScooter Assets (for example, but not limited to, stickers promoting specific ECC campaigns). If ECC provides the Service provider with such materials, then the Service Provider shall affix the materials to the eScooter assets unless doing so would interfere with operations, in which case the Parties shall discuss alternatives.

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. **Concession Payments**

In consideration of the provision of the concession Services by the Service Provider in accordance with the terms and conditions of this Agreement, the Service Provider shall pay the Concession Fees to ECC in accordance with **Schedule 6 – Payment Mechanism**

Subject to receipt of accurate Service Reports in accordance with Schedule 2 – Specifications. ECC shall submit to the Service Provider an invoice for Concession Fees within 10 working days of each Quarter Day and the Service Provider shall pay ECC the Concession Fee in full within thirty (30) days of receipt of such invoice in accordance with **Schedule 6 – Payment Mechanism**.

Where any party disputes any sum to be paid by it then a payment equal to the sum not in dispute shall be paid and the dispute as to the sum that remains unpaid shall be determined in accordance with clause 69. Provided that the sum has been disputed in good faith, interest due on any sums in dispute shall not accrue until the earlier of 7 days after resolution of the dispute between the parties.

Subject to the above sub-clause, interest shall be payable on the late payment of any undisputed Fees properly invoiced under this agreement in accordance with the Late Payment of Commercial Debts (Interest) Act 1998. The Service Provider shall not suspend the supply of the

Services unless it is entitled to terminate this agreement.

The Concession Fees are stated inclusive of VAT. The Service Provider shall indemnify ECC against any liability (including any interest, penalties or costs incurred) which is levied, demanded or assessed on ECC at any time in respect of the Service Provider's failure to account for, or to pay, any VAT relating to payments made to ECC under this agreement.

The Service Provider shall maintain complete and accurate records of, and supporting documentation for, all amounts which may be chargeable pursuant to this agreement. Such records shall be retained for inspection by ECC for twelve (12) years from the end of the Contract Year to which the records relate.

ECC may retain or set off any sums owed to it by the Service Provider which have fallen due and payable against any sums due to the Service Provider under this agreement or any other agreement pursuant to which the Service Provider or any Associated Company of the Service Provider provides goods or services to ECC.

If ECC wishes to set off any amount owed by the Supplier to ECC against any amount due to the Service Provider under this Agreement it shall give notice to the Service Provider within 30 days of receipt of the relevant invoice, setting out ECC's reasons for withholding or retaining the relevant Concession Fees.

The Service Provider shall make any payments due to ECC without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise, unless the Service Provider has a valid court order requiring an amount equal to such deduction to be paid by ECC to the Service Provider.

PART 10: RESPONSIBLE PROCUREMENT

24. **Not used**

25. **Not used**

26. **Not used**

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 ECC, 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 26 (Service Provider Personnel)** in relation to Service Provider Personnel.

29. **Compliance with ECC 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 cost to ECC, the ECC Policies provided to the Service Provider by the Effective Date;

29.1.2 the ECC 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 ECC 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 ECC 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 EETS 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, the Service Provider 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 ECC, 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 ECC 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 ECC 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 ECC 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 ECC 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 ECC (or its nominee);

30.4.2.2 provides for:

(a) a right to require novation of the Key Sub-Contract (whether to ECC 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 ECC, such request for consent to identify the relevant sub-contractor, which may be refused or granted subject to such conditions as ECC 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 ECC 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 ECC 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 ECC 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 ECC 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 ECC Premises or Third-Party property;

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

31.1.2.1 the Essex eScooter Trial Services, EETS 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 ECC may reasonably require;

31.1.3 act with good faith in its dealings with ECC 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 ECC 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 ECC (without any transfer charge).

32. ECC obligations

32.1 ECC 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 reasonable requests by the Service Provider for:

32.1.2.1 information; and/or

32.1.2.2 access to ECC 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 Essex 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 ECC'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.

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 ECC 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 affected through the Change Control Request Procedure) amend the details of the Essex eScooter Trial Services, including the:
- 33.2.1 Locations of the Essex eScooter Trial Services;
 - 33.2.2 times and days of operation of the Essex 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 EETS Assets;
 - 33.3.2 Service Systems; and
 - 33.3.3 Services,
- in the event of a change to the Essex 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. ECC Monitoring Staff

35.1 Without prejudice to the provisions of the Specifications and **clause 8 (Progress Monitoring of the Implementation Phase)**, ECC shall have the right to locate, at any time and for such period as ECC may require from time to time, a number of ECC monitors as requested by ECC 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 ECC monitors to internal Service Provider meetings as ECC may reasonably require from time to time and shall permit such ECC monitors to attend such meetings;

35.2.2 permit such of the ECC monitors as ECC 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 ECC 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 ECC monitors shall not in any circumstances be taken to be, or indicate, the Approval or acceptance of ECC of any of the Services, EETS Assets and/or Service Systems (or parts thereof).

35.4 ECC shall ensure that the conduct of the ECC 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, EETS 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 twelve (12) 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, EETS Assets and Service Systems; and
 - 36.2.2 ECC'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 26 (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, EETS 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 ECC (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

ECC Personnel may

- 36.5.1 at any time during the Term; and
- 36.5.2 during the period of not less than twelve (12) 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, EETS 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 twelve (12) 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 ECC, 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 EETS 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 ECC 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 ECC 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 ECC 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 ECC 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, EETS 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 ECC's satisfaction;

36.8.1.3 if ECC considers that the Audit Methodology is not at least equivalent to Good Industry Practice, ECC 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 ECC serving notice on the Service Provider requiring it to do so; and/or
- (b) implement any other recommendations made by ECC Personnel in relation to the Audit Methodology from time to time at no additional cost to ECC;

36.8.1.4 implement the Audit Methodology.

36.9 ECC 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 ECC, 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, ECC 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 ECC, at no cost to ECC.

36.11 Inaccurate information

In the event that an inspection, audit or check reveals that information previously supplied to ECC 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 ECC, the business of ECC or the Essex eScooter Trial Services,

the cost incurred by ECC 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 ECC Personnel such statement shall, at the request of ECC Personnel, be accompanied by a separate audit certificate from the appointed auditor of ECC or an independent auditor nominated by ECC and, subject to **clause 36.11**, the reasonable cost of such audit certificate to be borne by ECC.

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 ECC; and

37.1.2 Intentionally deleted

In each case such licence shall be non-exclusive, non-transferable, royalty-free and limited in scope such that (where ECC is the recipient) ECC may use (or sublicense) the Service Provider IPR solely for the purpose of receiving the benefit of the provision of the Essex eScooter Trial Services by the Service Provider or otherwise fulfilling ECC's obligations under this Agreement, and (where the Service Provider is the recipient) the Service Provider may use (without the right to sublicense without ECC

approval other than to Sub-Contractors, such approval not to be unreasonably withheld or delayed) the ECC 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 existing or developing transport or Mobility as a Service systems ("**Vesting IPR**") shall vest in ECC on creation.

37.3 Subject to a Change Control Request Procedure the ECC 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 ECC to use the New IPR (with a right to sublicense on the same terms) during the Term solely for the purposes of ECC receiving the benefit of the provision of the Essex eScooter Trial Services by the Service Provider.

37.5 The Service Provider shall indemnify ECC 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 ECC 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 EETS Assets, Service Systems and Services in any circumstances where the ability of the Service Provider to provide the EETS 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 ECC Personnel, in respect of which the Service Provider will consult with ECC and incorporate ECC'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 EETS 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 ECC 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 ECC 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 ECC for Approval.

39.3 ECC 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 ECC Personnel and any Third Party nominated by ECC 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 ECC 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 EETS Assets;

39.4.2.2 Service Systems;

39.4.2.3 Services;

39.4.2.4 Essex 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 ECC; 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 ECC from time to time, to demonstrate to ECC'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 ECC 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 ECC 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 ECC 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 ECC 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 40.3.1**;

(c) **Schedule 26 (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**

40.3.1 The Service Provider indemnifies and holds harmless the ECC 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 25 (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 ECC Indemnified Party. The indemnity set out in this clause 40.3.1 is subject to clause 40.5.

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

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

against the ECC 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 40.3.2** is subject to **clause 40.2** and **clause 40.5**.

40.4 Not used.

40.5 Not used.

40.6 ECC's limitation of liability

ECC's liability in respect of:

- 40.6.1 Any lost, stolen or vandalised EETS Assets shall be zero. 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;
- 40.6.2 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 **40.9** 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 ECC had terminated this Agreement pursuant to **clause 50.4 (Termination)**.

40.7 Conduct of claims

Subject to ECC's rights under **clause 40.8** below each Party's rights under this Agreement to be indemnified (the "**Indemnified Party**") shall be contingent on:

- 40.7.1 the Indemnified Party:
 - 40.7.1.1 not making any admission of liability or acting 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;
 - 40.7.1.2 promptly notifying the Indemnifying Party of any such action, claim or proceeding;
 - 40.7.1.3 taking reasonable steps to mitigate and provide documentary evidence of all losses so claimed; and

- 40.7.1.4 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;
- 40.7.2 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 reasonable endeavours not to act in a way detrimental to the reputation or business of the Indemnified Party.
- 40.8 In the event of any claim made by a Customer and/or a Third Party against ECC, including such claims to which the indemnities in **clause 40.3** above apply:
 - 40.8.1 ECC shall:
 - 40.8.1.1 be given sole and full conduct of all such discussions, negotiations, actions, claims and proceedings; and
 - 40.8.1.2 promptly notify the Service Provider of any such action, claim or proceeding;
 - 40.8.2 the Service Provider shall provide ECC with such reasonable assistance as ECC may request.
- 40.9 **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 Liability Insurance:
 - 41.1.1.1 in respect of the Service Provider's liability for loss or damage to property (including property of ECC); and
 - 41.1.1.2 against liability in respect of death, injury, illness or disease, up to a limit of at least £10,000,000 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 £5,000,000 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 EETS 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 EETS 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;
- 41.1.5 appropriate vehicle hire insurance.

- 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 Poores Financial Standard Rating (or equivalent), or otherwise is downgraded by two or more levels, the Service Provider shall notify ECC in writing. In these circumstances the Service Provider shall, if required by ECC, replace the applicable Insurances with equivalent policies arranged and maintained with an insurer with a Standard and Poores 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 specification, as prepared by the Service Provider's insurance broker, to ECC 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 ECC may reasonably require, provide to ECC 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 ECC 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 ECC 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 ECC'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 ECC against the Service Provider; and
 - 41.6.3 include a waiver of the insurer's rights of subrogation against ECC.
- 41.7 The Service Provider's Public 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 ECC 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 ECC in which case the cost shall be borne by ECC.
- 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

the Service Provider agrees that ECC 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 ECC 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 ECC 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, ECC 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 ECC 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 ECC Personnel;

42.2.2 ensure that all ECC Personal Data, if any, Processed by the Service Provider and/or its Sub-Contractors on behalf of ECC 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 ECC;
- 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 ECC 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, EETS 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 EETS 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 ECC 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 ECC promptly in writing;
 - 43.3.2 provide ECC 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.**

ECC 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 ECC 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 ECC 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 25 (Docking Station Installation)**.
- 43.7 If ECC appoints a successor to the Service Provider as the Principal Contractor or Principal Designer, the Service Provider shall at no cost to ECC 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 ECC that:

44.1.2.1 in terms of this Agreement that any and all information supplied in writing after the date of the Notice by or on behalf of the

Service Provider to ECC 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 ECC, at the date hereof, true and accurate and it shall advise ECC 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, EETS 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 ECC'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, EETS Assets and Service Systems:

- (a) it has:
 - (i) full knowledge of the extent and nature of ECC's

requirements for and the purpose for which the Services, EETS Assets and Service Systems are required and acknowledges that ECC is relying upon the Service Provider's expertise and knowledge in the provision of the EETS 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 ECC to enjoy the full benefit of the Services, EETS 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 EETS Assets that are transferred to ECC pursuant to **clause 47**;
- (f) the Services, EETS 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 EETS 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 ECC 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 ECC 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 EETS 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 ECC as if they had been given to ECC directly; and

44.2.3 at its own cost, assist and cooperate with ECC 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 ECC and shall inure to the benefit of ECC, its agents, successors in interest and assigns.

44.4 If at any time the Service Provider becomes aware or ECC 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 ECC, 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 ECC for comment;

44.4.2 take into account any comments or requested amendments received from ECC 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, EETS Assets and Service Systems shall include any part of the Services, EETS 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 ECC 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 ECC with any reasonable assistance, at ECC's reasonable cost, to enable ECC 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 ECC, certify to ECC 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 ECC 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), section 57 of the Utilities Contracts Regulations 2016 (SI 2016/274) or section 38 of the Concession Contracts Regulations 2016 (SI 2016/273);

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 ECC 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 ECC 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 EETS Assets, Service Systems, Services or the Essex eScooter Trial Services, the Service Provider shall:

45.2.1.1 notify ECC 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 EETS 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, ECC 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 ECC 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 ECC, 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 EETS ASSETS

46. Premises

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

47. EETS 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 EETS Assets.

47.2 Title in EETS Assets

Unless and until such time that ECC takes possession of any of EETS 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 EETS Assets, and risk and liability in respect of the EETS Assets, shall remain vested in the Service Provider.

47.3 Restrictions on EETS Assets

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

47.3.1 employ any of the EETS 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 EETS Assets or any interest in them;

47.3.3 allow the creation of any charge or lien over the EETS Assets;

47.3.4 attach EETS 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 EETS Assets to be forfeited under any applicable law or which might jeopardise the EETS Assets;

47.3.6 agree to create any floating charge of the EETS Assets without ECC's prior written consent;

47.3.7 tamper with any identification upon the EETS Assets.

47.4 **Service Provider obligations**

The Service Provider shall:

47.4.1 provide a full management service in respect of the EETS 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 EETS Assets when not in use in accordance with terms of this Agreement:

47.4.2.1 store such EETS Assets at the Premises (or such other place agreed with ECC) in a proper manner and in conditions which adequately protect and preserve the EETS Assets;

47.4.2.2 ensure that such EETS Assets are:

(a) stored separately from any other assets; and

(b) clearly identifiable as EETS Assets;

47.4.2.3 ensure that all EETS 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 ECC Personnel such access to the EETS Assets as ECC Personnel may reasonably require.

47.5 **Asset Agreement**

The Service Provider shall:

47.5.1 ensure that all EETS 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 ECC to use such EETS Assets for the purposes set out in this Agreement; and

47.5.1.2 provide all necessary maintenance and support in respect of the EETS 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 ECC at no additional cost to ECC;

47.5.3 ensure that the Service Provider takes all steps reasonably necessary to ensure that the Asset Agreements in respect of EETS 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 EETS 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 EETS 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 ECC 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 ECC 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 ECC 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 ECC 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 ECC 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 ECC 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 ECC 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 ECC 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 ECC 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 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 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, ECC 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 ECC is the affected Party, the Force Majeure Event is continuing and has a material adverse effect on ECC'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 clause 50.4 and 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 ECC of the Agreement

Without prejudice to any other rights or remedies that ECC may have, ECC 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 ECC serves the notice of termination within thirty (30) calendar days of the date of ECC'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 ECC 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 ECC pursuant to or in connection with this Agreement or (without limitation to the foregoing) any other event giving rise to a right for ECC 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 EETS Assets, Service Systems and/or Services or the operation of the Essex eScooter Trial Services;

50.3.5 intentionally deleted

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:

50.3.6.4 is not dealt with to ECC's reasonable satisfaction;

50.3.6.5 arose due to or was contributed to by, the negligence or default of the Service Provider, Service Provider Personnel or its Sub-Contractor; or

50.3.6.6 adversely impacts the operation or integrity of Essex 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 ECC such security in place of such Guarantor's guarantee as ECC 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 ECC Policy, which renders operation of the Essex eScooter Trial Services wholly or partly illegal; or

50.3.8.2 the Essex eScooter Trial Services is cancelled or terminated by an authority other than by ECC;

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 ECC'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);** and/or

50.3.10.8 **clause 67.2 (Change of Control and Change of Ownership)**

50.4 **Mutual rights of Termination**

Without prejudicing any other rights or remedies available to it, the ECC and the Service Provider (as applicable) may terminate this Agreement (in whole) without any obligation to provide any reasons subject to providing two (2) Months' advance written notice to the other Party.

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

Subject to notice being provided by ECC to the Service Provider in accordance of **clause 57** of this Agreement ECC may at its 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 ECC'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 ECC to terminate under **clause 50.3** above that are capable of remedy, ECC 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 ECC which of the following below applies within five (5) Working Days of ECC'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 ECC 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 ECC 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 ECC 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 ECC 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 ECC 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 ECC does not notify the Service Provider of its acceptance of the Remedy Programme within such period, ECC shall be deemed to have accepted the Remedy Programme;

50.7.3 where ECC notifies the Service Provider that it does not accept the Remedy Programme, ECC 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, ECC may reject the proposed Remedy Programme in the event that ECC determines that the Remedy Programme is not capable of remedying the relevant breach, breaches or circumstance within a reasonable period.

50.8 ECC may terminate this Agreement by notice having effect either immediately or on

such date as ECC 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 ECC in accordance with **clause 50.7** above; or

50.8.1.2 the Remedy Programme is rejected by ECC 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 ECC at its sole discretion).

50.9 Breaches not capable of remedy

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

50.10 For the avoidance of doubt, and without prejudice to ECC'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 **Error! Reference source not found..**

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** Error! Reference source not found..

arise in relation to one or more of the Service elements. For the avoidance of doubt, ECC 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 ECC's rights to terminate such Service elements, where the relevant Service elements are being provided by a Sub-Contractor, ECC 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 ECC may in its sole discretion agree) of ECC

issuing notice under **clause 50.12** above, ECC 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 ECC shall specify in such notice.

50.14 **Service Provider to notify ECC**

The Service Provider shall, promptly upon becoming aware that circumstances set out in **clause 50.10** above have or are likely to arise, notify ECC 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, ECC may require part or all of the Services to be performed by ECC Personnel or a New Service Provider. However, unless otherwise agreed, such performance shall not require the Premises, the EETS 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, including, but not limited to employment information, Data and Documentation to ECC 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 ECC identifies any EETS 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 EETS Assets to ECC (the price for such assets being not greater than the then net book value of such EETS Assets as depreciated under standard accounting principles adopted by the Service Provider).

51.5 **Future Procurement of the Services**

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

51.5.1 Premises;

51.5.2 EETS Assets;

51.5.3 Service Systems;

51.5.4 the Services; and/or

51.5.5 staffing information similar to that which would be required by the Transfer of Undertakings (Protection of Employment) Regulations in the event that such regulations were found to apply to any such subsequent contract

in order to provide such information to Third Parties whom a ECC has invited to tender for the provision of the New Services whether or not an agreement with ECC to provide the New Services has been entered into and whether or not the Parties have agreed to the transfer of such EETS Assets to ECC or the making available of the Service Systems to ECC. The Service Provider shall provide all such information at ECC's request and shall do so no later than 30 days from the date of such request.

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 ECC 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 ECC or as expressly provided in 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 ECC.

52.4 Where ECC 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,

ECC 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 (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 ECC 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 EETS 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 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 ECC's reasonable opinion such a provision is so fundamental as to prevent the

accomplishment of the purpose of the Agreement, ECC 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 not used; 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 ECC 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 Address: County Hall, Market Road, Chelmsford CM1 1QH

In the first instance: Rachel.Brody@essex.gov.uk; Katie.Pudney@essex.gov.uk

Procurement: Gemma.Longman@essex.gov.uk

For escalations: Tracey.Vickers@essex.gov.uk; Mark.Glenister@essex.gov.uk

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 ECC (including, Confidential Information) without the prior written consent of ECC.

58.2 ECC 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 ECC Confidential Information

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

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

59.1.2.1 it shall receive and/or maintain the ECC 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 ECC Confidential Information for any purposes whatsoever (and in particular shall not use the ECC Confidential Information to the detriment of ECC) 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 ECC Confidential Information to any Third Party without the prior written consent of ECC, except that it is entitled to the extent strictly necessary to disclose the ECC Confidential Information:

(a) to such of the Service Provider Personnel and advisers who need to know the ECC 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 ECC 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 ECC; or

(ii) have obtained prior written notice from ECC 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 ECC Confidential Information in connection with the Service Provider's business, provided that prior to such disclosure the Service Provider consults with ECC as to the proposed form of such disclosure and what, if any, confidentiality undertakings each such Third Party should enter into before ECC 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 ECC Confidential Information is disclosed of the restrictions as to use and disclosure of the ECC Confidential Information;
- 59.1.2.5 it shall, at ECC's request, deliver to ECC 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 ECC Confidential Information and if instructed by ECC in writing, remove all electronically held ECC Confidential Information, including the purging of all disk-based ECC 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 ECC, disclose to any Third Party the nature or content of any discussions or negotiations between the Parties relating to the ECC Confidential Information.
- 59.1.3 The obligations set out in **clause 59.1.2** above do not apply to any ECC 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 ECC;
 - 59.1.3.2 is lawfully disclosed to the Service Provider otherwise than in breach of an obligation of confidentiality to ECC;
 - 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 ECC may be entitled to as a matter of law, ECC 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 ECC Confidential Information shall be and shall remain the property of ECC.

59.2 **Service Provider Confidential Information**

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

59.2.2 ECC 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 ECC Personnel, agents and advisers who need to know the Service Provider Confidential Information, provided that ECC shall be responsible for any breach of its obligations occasioned by any act or omission of such persons; or

(b) to ECC'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 ECC and any other person to whom Service Provider Confidential Information may be disclosed under this Agreement, provided that prior to such disclosure ECC 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 ECC 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 ECC can show by documentary evidence was already in its lawful possession and at its free disposal before the disclosure to ECC by the Service Provider;

59.2.3.3 is lawfully disclosed to ECC 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 ECC or ECC Personnel;

59.2.3.5 ECC 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 ECC 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 ECC.

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

60A **LGR Contract Transfer Clause**

60A.1 This Agreement shall automatically transfer in whole or part to a Successor Body in order to give effect to any Transfer.

60A.2 Following such Transfer, any references in this Agreement to ECC shall be construed as a reference to the Successor Body

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 ECC 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 ECC or bind ECC 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 26 (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 ECC arising out of or attributable to this Agreement may be deducted by ECC from monies due or which may become due to the Service Provider under this Agreement and ECC 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, EETS Assets and Service Systems, to document, secure, register, acknowledge and perfect the vesting, assignment and licences in relation to any EETS Assets and Intellectual Property Rights arising under this Agreement in accordance with the terms of this Agreement.

65. **NOT USED**

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, EETS Assets and Service Systems to ECC; 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 ECC.

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 ECC 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 ECC;
 - 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 ECC; and
 - 66.1.6 inform ECC 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 ECC in writing immediately upon becoming aware of any actual or potential conflict of interest with the EETS Assets, Service Systems or Services or ECC; and
 - 66.2.3 work with ECC Personnel to do whatever is necessary (including the separation of Service Provider Personnel working on, and data relating to, the Services, EETS Assets and Service Systems from the matter in question) to manage such conflict to ECC's satisfaction.
- 66.3 In the event of breach of **clause 66.1 or 66.2** ECC 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 ECC 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 ECC 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, ECC 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 ECC 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 ECC 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 Country Manager; and

(b) ECC's Head of Sustainable Transport .

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, EETS 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 Essex eScooter Trial Services is a service provided to members of the public and as such the Essex 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 ECC 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.

The Parties agree to be bound by the terms of this Agreement.

Executed by the Supplier VOI TECHNOLOGY UK LTD

by attested signature of a single Director of the company:

Signature:

Print Name:

Title/Position:

Date:

In the presence of a Witness; or second signature by Director/Secretary

Signature:

Print Name:

Title/Position:

Date:

Executed on behalf of ESSEX COUNTY COUNCIL by

Signature:

Print Name:

Title/Position:

Date:

SCHEDULE 1

Definitions

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

"Acceptance Testing"	the Testing to be undertaken by the Service Provider in accordance with Schedule 4 (Testing Regime) ;
"Active eScooter Rate"	the number of eScooters in use as a percentage of the total eScooter fleet each day;
"Adequacy Decision"	a finding under Article 25(2) of the Data Protection Directive that a country or territory ensures an adequate level of protection within the meaning of Article 25 of the Data Protection Directive or (as applicable) a finding under Article 45(1) of the General Data Protection Regulation that a country, a territory or one or more specified sectors within that country, or the international organisation in question ensures an adequate level of protection within the meaning of Article 45 of the General Data Protection Regulation;
"Additional Parking Sites"	parking sites additional to those illustrated in Specification Appendix 1, that the Service Provider will need to propose, with the Authority's role being to accept or decline these proposals in line with the process set out in the Specification
"Additional Services"	the services that ECC may request the Service Provider to provide from time to time, which are: (a) the same as or substantially similar to those Services provided by the Service Provider during the Implementation Phase and/or the Operational Phase; and/or (b) pursuant to the design, build, installation and operation of the Essex eScooter Trial Services, in accordance with the provisions of Schedule 23 (Additional Services) . The indicative Additional Services include those services set out in Schedule 23 (Additional Services) and the Specifications;
"Advertising Protocol"	the ECC advertising protocol at Schedule 27 (Protocols) ;

<p>“Affiliate”</p>	<p>In relation to a party, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with, that party from time to time;</p>
<p>"Agreed Daily eScooter Requirements"</p>	<p>ECC's requirement to have eScooters available for hire each calendar day as outlined in the Specifications, or other such lesser number of eScooters that ECC may notify the Service Provider in writing;</p>
<p>"Approved"</p>	<p>approved by ECC in accordance with Schedule 3 (Milestones and Deliverables) and/or the Implementation Plan, and "Approve" and "Approval" shall be construed accordingly;</p>
<p>"Approved Sub-processors"</p>	<p>the persons named as such in Appendix A to Schedule 13 (Information Compliance);</p>
<p>"Area of Operation"</p>	<p>means the Core Area;</p>
<p>"Asset Register"</p>	<p>the register of the EETS Assets to be created, maintained and updated by the Service Provider from time to time, in accordance with the provisions of Schedule 10 (Asset Management);</p>
<p>“Associated Company”</p>	<p>any holding company from time to time of the Supplier and any subsidiary from time to time of the Supplier, or any subsidiary of any such holding company.</p>
<p>"Audit Methodology"</p>	<p>the internal audit methodology of the Service Provider for checking compliance and fulfilment of this Agreement and used in providing Management Information and reports to ECC Personnel;</p>
<p>"Build Deliverables"</p>	<p>the Deliverables provided by the Service in respect of the Build Services;</p>
<p>"Build Services"</p>	<p>the Services to be provided by the Service Provider in relation to the manufacture, development, construction and installation of the EETS Assets and Service Systems and development and creation of the business processes the Service Provider deems necessary to deliver the Services in accordance with this Agreement, to meet the Specification requirements, and any related Works and Testing;</p>

"Business Continuity"	the continued operation of the Services (including the Service Systems and EETS Assets) and Essex eScooter Trial Services;
"Business Continuity Event"	has the meaning set out in paragraph 1.1.1 (Scope) of Schedule 19 (Business Continuity) ;
"Business Continuity Infrastructure"	the EETS Assets, Service Systems and Premises (including the Business Continuity Premises) and Systems that house and support the Business Continuity Services or relate to the Business Continuity Test Schedule;
"Business Continuity Manager"	the member of Service Provider Personnel that is the single point of contact for ECC Personnel in relation to all matters concerning the provision of the Business Continuity Services and the Business Continuity Infrastructure and responsible for: executing the Business Continuity Services; and providing the Business Continuity Infrastructure;
"Business Continuity Plan"	the plan to be developed, maintained and updated by the Service Provider in accordance with Schedule 19 (Business Continuity) ;
"Business Continuity Premises"	the alternative premises from which the Service Provider is to provide the Business Continuity Services;
"Business Continuity Services"	the Services to be provided by the Service Provider in the event of a: (a) Service Failure; (b) Business Continuity Event; or (c) Disaster Recovery Event, (d) in accordance with the Business Continuity Plan and Schedule 19 (Business Continuity) ;
"Business Continuity Test Schedule"	a document, to be developed, maintained and updated by the Service Provider in accordance with Schedule 19 (Business Continuity) and detailing the dates and times and criteria, processes and procedures of Business Continuity Testing;
"Business Continuity Testing"	the Testing of each element of the Business Continuity Service, Business Continuity Plan and Business Continuity Infrastructure, in accordance with: (a) Business Continuity Test Schedule; (b) paragraph 3 (Business Continuity Testing) of Schedule 19 (Business Continuity) ; (c) Schedule 4 (Testing Regime) ;

"CDM Regulations"	the Construction (Design and Management) Regulations 2015;
"Change Authorisation"	a notice issued by ECC in accordance with Schedule 7 (Change Control Request Procedure) authorising the Service Provider to proceed with a Change Control Request on the basis of the Initial Response and/or Impact Assessment;
"Change"	<p>any change to:</p> <ul style="list-style-type: none"> (a) the Specifications; (b) the Service Provider Solution; (c) the EETS Assets; (d) the Service Systems; (e) the Sites; (f) the Premises; (g) the Services; or (h) any of the terms of this Agreement, <p>(i) made in accordance with the Change Control Request Procedure. The term "Change" shall include the following categories of Change, each category as defined in paragraph 3 (Categories of Changes and Additional Services) of Schedule 7 (Change Control Request Procedure):</p> <ul style="list-style-type: none"> (ii) General Change; (iii) Internal Change; (vi) Mandatory Change
"Change Control Request" or "CCR"	the procedure for managing Changes and Change Control Requests set out in Schedule 7 (Change Control Request Procedure) ;
"Change Control Request Procedure"	a written request, raised by ECC or the Service Provider in accordance with Schedule 7 (Change Control Request Procedure) , in relation to a proposed Change;
"Change in Law"	<p>any:</p> <ul style="list-style-type: none"> (a) amendment, alteration or modification to or repeal of existing Law (or any elements thereof); (b) introduction of any new Law (or any elements thereof); (c) judgment of a competent court which changes a binding precedent or the interpretation of any relevant Legislation; or (d) the introduction of or amendment to any ECC Policy, instruction or guidance on any matters relevant to the Services

	<p>and operation and/or administration of the Essex eScooter Trial Services,</p> <p>which takes effect after the Effective Date;</p>
"Change Manager"	<p>the Service Provider's Representative appointed to manage and act as the single point of contact in relation to Changes and the Change Control Request Procedure;</p>
"Change of Control"	<p>any event where any person, whether acting alone or with others and whether on their own account or for or through one or more Third Parties:</p> <p>acquires control (as defined in section 416 of the Income and Corporation Taxes Act 1988) of the Service Provider or a Guarantor or Shareholder; or</p> <p>(a) in the case of a Service Provider or Guarantor or Shareholder which is subject to the Take-over Code, increases its or their interest in the relevant share capital (as defined in section 198(2) of the Companies Act 2006) such that that person or group of persons would be obliged to make an offer for the Service Provider or Guarantor or Shareholder under rule 9 of the Take-over Code or would be so obliged, but for any "whitewash" carried out pursuant to the notes on Dispensations from rule 9 of the Take-over Code,</p> <p>(b) and for the purposes of this definition, the "Service Provider", "Guarantor" and "Shareholder" includes the Service Provider, Guarantor or Shareholder (as appropriate) and each body corporate which is from time to time directly or indirectly its holding company (as defined in Section 736 of the Companies Act 2006);</p>
"Change of Ownership"	<p>any material change to the ownership of any shareholding in the Service Provider or a Guarantor or Shareholder (that carries the right to vote in general meetings of the shareholders of the Service Provider or a Guarantor or Shareholder). A change in the ownership is material if it is either:</p> <p>(a) a change of 10% or more of the Service Provider's or Guarantor's issued share capital during the Term; or</p> <p>(b) the acquisition or divestment of 10% or more of the Shareholder's issued share capital by any one shareholder, whether undertaken in a single transaction or series of transactions;</p>
"Civil Works"	<p>any Works required to produce a suitable Site for the implementation of a Docking Station, including, excavation of surface and subsoil, placing of any ducting or foundation, backfilling and reinstatement to appropriate standard of any surface;</p>

"Complaint"	a complaint made by a Customer and received by the Service Provider (or a Sub-Contractor) via any channel;
"Concession Fees"	the payment from the Service Provider payable to the ECC in accordance with Schedule 6 – Payment Mechanism and includes Fee Payable Per Vehicle (FPPV) and Service Credits
"Condition Precedent"	means each and every condition precedent set out in clause 3 of the Agreement;
"Contact Centre"	the Customer service centre through which the Service Provider interfaces with Customers and handles and/or processes, inter alia, enquiries, complaints and eScooter Charge Payments;
"Contact Centre Assets"	the EETS Assets located and used at the Contact Centre, including the Service Systems;
"Contract Management Meeting"	a meeting for contract management purposes established under Schedule 8 (Contract Management and Reporting Procedure) ;
"Contract Month"	<p>each successive Calendar Month in a Contract Year save that:</p> <p>(a) the first Contract Month shall comprise the period from (and including) the Services Commencement Date to (and including) the last day in the Calendar Month in which the Services Commencement Date occurs;</p> <p>(b) on Expiry, the final Contract Month shall comprise the period from (and including) the first day of the Calendar Month that precedes the Calendar Month during which the last day of the Contract Period falls and ending on that day; and</p> <p>(c) on early Termination, the final Contract Month shall comprise the period from (and including) the first day of the Calendar Month that precedes the last day of the Contract Period and ending on that day; and Months shall be construed accordingly.</p>
"Contract Year"	twelve (12) consecutive calendar months starting on the first day of the calendar month following the Services Commencement Date and each subsequent twelve (12) consecutive calendar month period; provided that the first Contract Year shall include the days in the prior month in which the Services Commencement Date occurred.
"Control"	that a person possesses directly or indirectly the power to direct or cause the direction of the management and policies of the other person, whether through the ownership of voting

	shares, by contract or otherwise and the terms "Controls" and "Controlled" shall be interpreted accordingly;
"Controller"	has the meaning given in the Data Protection Legislation;
"Core Area"	means the Trial Zone area individually and collectively (as applicable);
"COVID-19"	means the coronavirus disease 2019 being an infectious disease caused by severe acute respiratory syndrome coronavirus 2 which has been classified or advised by the World Health Organisation as a pandemic;
"Customer"	any person who: (a) is a Subscriber; or (b) is a User; (c) represents the Police; or (d) makes an Enquiry in relation to any aspect of the Service Provider in respect of the Essex eScooter Trial Services; or (e) otherwise interfaces with the Essex eScooter Trial Services;
"Daily eScooter Requirements"	the number of eScooter to be Available each day at each Site as agreed by the Parties in writing from time to time;
"Damaged"	the Status of an eScooter when it has been reported, by either a Customer or a member of Service Provider Personnel, as broken or unfit for Hire;
"Data"	data (including Personal Data and Customer Records), text, drawings, diagrams, maps, process models, forecast volumes, photographic images or sounds (together with any database (including Services Database) made up of any of the foregoing), which are embodied in any electronic or tangible medium which is: (a) produced pursuant to this Agreement; and/or (b) created, processed and/or used by the Service Systems; and/or (c) Mandatory Data.
"Data Protection Legislation"	means all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679) , the Data Protection Act 2018 , the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended;
"Data Subject"	has the meaning given to it in the Data Protection Legislation;

"Database"	see Services Database;
"Date Compliant"	that: (a) use and functionality, and the ability to express and calculate Data in accordance with dates and times, are unaffected by changes in dates, including year changes and leap years; and (b) Service Systems shall process and express dates in the format dd/mm/yyyy;
"Deed of Guarantee"	the document set out in Schedule 15 (Agreed Form of Guarantee) ;
"Delay Plan"	the plan specified in clause 12.3 (Delay) ;
"Deliverables"	the: (a) Build Deliverables; (b) Documentation; (c) Service Systems; and (d) EETS Assets, (e) supplied in accordance with Schedule 3 (Milestones and Deliverables) and/or the Implementation Plan and any other tangible item and asset that the Service Provider is required to provide as part of the Services or as a result of the Change Control Request Procedure;
"Deployment Point"	the geographical location where the Service Provider will place e-scooters for the Users to hire
"Depot Assets"	the assets used at the Premises and/or at any on-street location to repair, recharge and maintain the Docking Station Assets and eScooter Assets;
"Design Services"	the Services to be provided by the Service Provider in relation to the design of the EETS Assets, Service Systems and the business processes and procedures the Service Provider deems necessary to deliver the Services in accordance with this Agreement, as set out in the Specifications;
"Determination"	has the meaning set out in paragraph 3 (Purpose of Expert Determination) of Schedule 16 (CEDR Model Expert Determination Agreement) ;
"Devolution and LGR Legislation"	all applicable legislation in force from time to time (as amended) relating to devolution and LGR including without limitation: (a) the Local Government and Public Involvement in Health Act 2007;

	<p>(b) the Local Democracy, Economy and Construction Act 2009 ;</p> <p>(c) the Levelling Up and Regeneration Act 2023;</p> <p>(d) any additional legislation resulting from the English Devolution White Paper published on 16 December 2024;</p> <p>(e) any subordinate legislation; and</p> <p>(f) any other legislation repealing, implementing, enabling or replacing the same.</p>
"Disaster Recovery Event"	has the meaning set out in paragraph 1.1.2 (Scope) of Schedule 19 (Business Continuity) ;
"Dispute"	has the meaning set out in Schedule 16 (CEDR Model Expert Determination Procedure) ;
"Dispute Notice"	has the meaning set out in clause 69.2.1.1 (Dispute Resolution Procedure) ;
"Dispute Resolution Procedure"	the procedure for settling disputes arising out of, under or in connection with this Agreement set out in clause 69 (Dispute Resolution Procedure) ;
"Dock" and "Docks"	the act of returning and securing a eScooter at a Docking Point;
"Docked"	the Status of an eScooter when it is placed at a Docking Point after having been returned by a Customer or a member of Personnel;
"Docking Point"	Means <p>(a) the equipment and mechanism within a Docking Station that is used for the storage and retrieval of eScooter;</p> <p>(b) another eScooter which is Docked at a Docking Station eScooter; or</p> <p>(c) where proximity docking is used, the location,</p>
"Docking Station"	the group of Docking Points at a location from which a Customer can retrieve and return an eScooter;
"Docking Station Assets"	the EETS Assets comprising each Docking Station, including the Docking Points;
"Docking Station Installation Method Statement"	the processes and procedures for the implementation of: <p>(a) Docking Stations and Docking Station Assets; and</p> <p>(b) Traffic Management Schemes,</p> <p>as set out in Schedule 25 (Docking Station Installation);</p>

<p>"Document" or "Documentation"</p>	<p>all inbound and outbound postal correspondence including,</p> <p>(a) Registration documents, Payments, emails, web forms and faxes received and sent by the Service Provider;</p> <p>(b) the instructional and/or operational manuals relating to the EETS Assets, Service Systems and Services;</p> <p>(c) documents relating to the Build Deliverables;</p> <p>(d) Operational Processes and Procedures;</p> <p>(e) any other documentation which is:</p> <p>i. otherwise necessary for understanding or providing the EETS Assets, Service Systems and Services; and/or</p> <p>ii. Developed by the Service Provider in accordance with this Agreement;</p>
<p>"Effective Date"</p>	<p>the date of execution of this Agreement;</p>
<p>"Enquiry"</p>	<p>a Customer request for information or a Data search and retrieval in relation to the Essex eScooter Trial Services through any channel;</p>
<p>"Environment"</p>	<p>all Software, Hardware, Premises or other features, functions and facilities and Service Provider Personnel necessary or desirable to carry out the relevant Services or other relevant activity (including Testing);</p>
<p>"Error"</p>	<p>a fault or error found the EETS Assets and/or Service Systems during Testing or provision of the Services, arising:</p> <p>(a) from any failure to meet the Specifications;</p> <p>(b) as a result of any mis-instructions, inaccuracy, incompleteness or "out of date" Documentation, Deliverables or other instructions of the Service Provider (or its Sub-Contractors); or</p> <p>(c) because the relevant EETS Asset and/or Service System is not Fit for Purpose;</p>
<p>"eScooter"</p>	<p>an eScooter designed and manufactured in accordance with and pursuant to the provisions of this Agreement;</p>
<p>"eScooter Assets"</p>	<p>the eScooter fleet and their components (including stocks and Spare Parts for the eScooter) required for the Services in accordance with the Specification;</p>
<p>"eScooter Charge Payments"</p>	<p>a payment made by a Customer for subscription to and hire of eScooters in accordance with the terms for the Essex eScooter Trial Services;</p>
<p>"eScooter Licence"</p>	<p>a licence granted by the Department of Transport or such other empowered body and or party empowered in accordance</p>

	with the eScooter Legislation to the Service Provider in relation to the provision of the Services;
"Exit Plan"	the plan to be provided by the Service Provider in accordance with Schedule 14 ;
"Expert"	has the meaning set out in clause 69.2.4 (Dispute Resolution Procedure) ;
"Expert Determination"	has the meaning set out in clause 69.2.2 (Dispute Resolution Procedure) ;
"Expiry Date"	the date on which this Agreement terminates by effluxion of time in accordance with clause 2 (Duration) ;
"Extended Term"	has the meaning set out to it in clause 2.2 (Duration) ;
"Failure"	has the meaning set out in clause 44.4 (Representations and Warranties) ;
"Fit for Purpose"	<p>in the case of EETS Assets, the EETS Assets deliver the functionality:</p> <p>for the intended use specified in the Specifications and Service Provider Solution; and</p> <p>(a) to the performance criteria and Service Levels set out in this Agreement;</p> <p>i. in the case of Service Systems and Service System Interfaces, the Service Systems and Service System Interfaces deliver the functionality:</p> <p>ii. for the intended use specified in the Specifications and Service Provider Solution; and</p> <p>(b) to the performance criteria and Service Levels set out in this Agreement;</p> <p>i. in the case of Documentation and any other Deliverables not referred to in 0 or i above, the relevant Documentation or Deliverables:</p> <p>ii. are complete, taking into account during the Implementation Phase, the stage of the implementation of the Service Provider Solution, Essex eScooter Trial Services and related EETS Assets, Service Systems and Services or during the Operational Phase, the stage reached in the implementation of any Change Control Request;</p> <p>(c) meet any criteria or requirements relevant to the Documentation or Deliverables set out in the Agreement;</p> <p>i. are comprehensible to someone with the knowledge and skills of the intended audience;</p> <p>(i) reflect Good Industry Practice;</p>

	<p>(ii) are consistent with any physical or actual EETS Assets, Service Systems or processes that they describe;</p> <p>(iii) and take account of the reasonable comments of ECC Personnel following prior review, unless otherwise agreed between the Parties;</p>
"FOI Legislation"	<p>the Freedom of Information Act 2000;</p> <p>Environmental Information Regulations 2004;</p> <p>(a) Re-Use of Public Sector Information Regulations 2005,</p> <p>(b) in each case, including any subordinate Legislation, amendments to or successors of such Legislation or guidance; and</p> <p>(c) any related guidance given by the:</p> <p>i. Information Commissioner;</p> <p>ii. Department for Constitutional Affairs; and/or</p> <p>iii. the Department for Environment, Food and Rural Affairs, in each case, including their successors or assigns;</p>
"Force Majeure Event"	<p>The occurrence, after the Effective Date of:</p> <p>(a) war, civil war, armed conflict or terrorism;</p> <p>(b) nuclear, chemical or biological contamination (unless the source or cause of the contamination is the result of the actions of the Party seeking to rely on the Force Majeure Event or any of its employees); or</p> <p>(c) pressure waves caused by devices travelling at supersonic speeds,</p> <p>which directly causes either Party to be unable to comply with all or a material part of its obligations under this Agreement;</p>
"Freedom of Information Act" or "FOIA"	<p>the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time, any guidance given by the Information Commissioner, the Department for Constitutional Affairs and/or the Department for Environment, Food and Rural Affairs in relation to such legislation, and any amendment to or successor of such legislation or guidance;</p>
"General Change"	<p>has the meaning set out in the table to paragraph 3 (Categories of Changes and Additional Services) of Schedule 7 (Change Control Request Procedure);</p>
"General Data Protection Regulation"	<p>Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data;</p>

<p>"Good Industry Practice" or "GIP"</p>	<p>in relation to any undertaking and any circumstances, the or exercise of that degree of skill, diligence, prudence, foresight and practice, that would reasonably and ordinarily be expected from a highly skilled and experienced person engaged in the same type of undertaking as that to which each Service (and each Service Element) relates given the same or similar circumstances to those in which each Service (and each Service Element) is to be provided;</p>
<p>"Group"</p>	<p>in relation to a person other than a natural person, that person and its Affiliates;</p>
<p>"Guarantee"</p>	<p>has the meaning set out in clause 65 (Parent Company Guarantee);</p>
<p>"Guarantor"</p>	<p>[INSERT AS APPLICABLE];</p>
<p>"Hardware"</p>	<p>all physical materials associated with electronic processing and the transmission of information and Data, including computer equipment, telecommunications equipment (including wide area and local area network equipment), chips, chipsets, firmware, fixtures, fittings and peripherals;</p>
<p>"Health and Safety" or "Health and Safety Legislation"</p>	<p>Legislation or regulatory codes of practice, circulars, guidance notes and equivalent controls which have as a purpose or effect the protection or prevention of harm to human health, environment or health and safety including but not limited to the COVID-19 Pandemic or compensation for such harm which are binding in relation to the Essex eScooter Trial Services and/or upon the Service Provider throughout the Term;</p>
<p>"Highway"</p>	<p>a way over which all members of the public have the right to pass and re-pass as of right, which by virtue of section 36 of the Highways Act 1980 or of any other enactment is a highway maintainable at the public expense;</p>
<p>"Highway Authority"</p>	<p>the public authority designated as the highway authority for the relevant highway under section 1 of the Highways Act 1980;</p>
<p>"Hire Period"</p>	<p>the time for which an eScooter is hired, calculated from the point an eScooter is Hired until the eScooter is Docked;</p>
<p>"Hired"</p>	<p>the Status of an eScooter when it has been released under a valid Subscription to a Customer;</p>
<p>"Impact Assessment"</p>	<p>the document of that title relating to a Change Control Request that the Service Provider may be required to prepare in accordance with Schedule 7 (Change Control Request Procedure);</p>
<p>"Implementation Phase"</p>	<p>the period from the Effective Date until the Operational Commencement Date, during which the Design Services</p>

	and Build Services are provided by the Service Provider;
"Implementation Plan"	the implementation plan(s) containing the information set out in Schedule 3 (Milestones and Deliverables) ;
"Incident"	<p>an event that occurs or is observed during the provision of the Services, which causes, or may cause, an adverse impact on the provision or quality of the EETS Assets, Service Systems and Services (or any parts thereof), including:</p> <p>(a) Errors;</p> <p>(b) Service Issues;</p> <p>(c) Security Incidents; and</p> <p>(d) PI Incidents; and</p> <p>(e) in the case of Testing, where the relevant Test Criteria are not met;</p>
"Incident Communication Plan"	<p>a plan outlining the steps to be taken by the Service Provider and ECC in the aftermath of an Incident, including:</p> <p>(a) the circumstances in which an Incident should be communicated;</p> <p>(b) who should the Incident be communicated to;</p> <p>(c) the details to be communicated (e.g. classification, Severity, impact and resolution options, etc.);</p>
"Incident Log"	such tool as agreed by the Parties used to record all Incidents;
"Information"	<p>all records and information obtained, created, collected or held by ECC and/or the Service Provider on behalf of ECC, including ECC</p> <p>Confidential Information;</p>
"Information Commissioner"	the person appointed to regulate and enforce the Data Protection Legislation and FOI Legislation;
"Information Request"	a request for any Information under the FOI Legislation;
"Infrastructure"	the EETS Assets and Service Systems required to support the operation of the Essex eScooter Trial Services and provision of the Operational Services;
"Initial Mobilisation Period"	The period of contract operation from the 14 th August to the 13 th September 2025
"Initial Response"	the document of that title relating to a proposed Change Control Request that the Service Provider may be required to prepare in accordance with Schedule 7 (Change Control Request Procedure) ;

"Initial Security Plan"	the document set out in Annex A (Initial Security Plan) to Schedule 12 (Security Policy) ;
"Insolvency Event"	<p>in relation to the Service Provider or a Guarantor:</p> <p>the occurrence of any of the following events in respect of the Service Provider, not being events which have received the prior written approval of ECC:</p> <p>any action is taken, or any proceedings are commenced in any court and not withdrawn or struck out within thirty (30) calendar days (provided the Service Provider is taking all necessary steps during such period to have such action or proceedings withdrawn or struck out, as the case may be) for the liquidation, winding up, dissolution or any analogous process of, or for the making of an administration order in relation to, the Service Provider;</p> <ul style="list-style-type: none"> (a) proposals are formulated for a moratorium or for any other arrangement with creditors generally or any class of creditors of the Service Provider or for any other proceeding or arrangement by which all or any material part of the assets of the Service Provider would be submitted to the control or supervision of a trustee, supervisor, debtor in possession or creditors or any competent court or governmental authority; (b) a trustee, supervisor, administrator, administrative receiver, receiver, manager or similar officer is appointed in respect of the Service Provider or of all or any material part of its assets (or, in the case of an administrator, a party gives notice of its intention to appoint an administrator); (c) all or any material part of the assets of the Service Provider are attached or distrained upon or become subject to any order of court or other process; (d) the Service Provider becomes insolvent or is declared insolvent by a competent court or governmental authority or is unable or admits its inability to pay its debts as they fall due or suspends or proposes to suspend payment of its debts; or (e) any other event occurs in any jurisdiction outside England which has an effect equivalent or as nearly as can be equivalent to any of the events described in paragraphs 0 to (a)(iii) of this definition above inclusive; (f) the occurrence of any of the events set out in paragraph 0 above in relation to a Guarantor save where arrangements acceptable to the ECC have been put in place for the provision of a replacement

	guarantee or guarantees in substitution for the Guarantee provided by such Guarantor;
"Insurances"	Has the meaning set out in clause 41.1 (Insurances);
"Intellectual Property Rights" or "IPR"	all intellectual property rights whether registered or not and whether registrable or not including patents, rights (registered or unregistered) in designs, trade marks, service marks, applications for any of the foregoing, copyright (including copyright in databases and computer programs and/or software), database rights, topography rights, utility models, trade or business names, domain names, moral rights, rights protecting brand and goodwill and reputation, know-how, rights to use and/or register domain names, telephone/SMS numbers, and all rights and forms of protection of a similar nature to any of the foregoing subsisting now or in the future having equivalent effect anywhere in the world;
"Interest Rate"	4 per cent above the base rate of the Bank of England from time to time;
"Interested Party"	the: district, city, borough, and/or county councils included within the scope of the Essex eScooter Trial Services; and private landlords of certain Sites;
"Interface"	those physical or technology interfaces (including associated Software and Hardware), processes, procedures or methods between the Service Provider and Service Systems and: (a) ECC and ECC Systems; (b) Interested Parties; (c) Other Service Providers and Other Service Provider Systems; and (d) Third Parties and Third Party Systems; in each case as may be required from time to time in order to develop, operate and maintain the Essex eScooter Trial Services and deliver and Services in accordance with this Agreement;
"Interface Agreement"	means an interface agreement in the form set out in Schedule 17 which is entered into between the Parties and the Other eScooter Service Provider in accordance with the provisions of clause 3.1.2
"Internal Change"	a change made by the Service Provider to the Services, which do not impact: (a) the terms and conditions of the Agreement; (b) the EETS Assets, Service Systems and/or Services;

	<p>(c) ECC;</p> <p>(d) any Interested Party, Other Service Provider and/or a Third Party;</p>
"Joint Controllers"	two or more Controllers who jointly determine the purposes for which and the means by which Personal Data is Processed;
"Key Documents"	<p>(a) the Implementation Plans;</p> <p>(b) the Quality Plan;</p> <p>(c) Evidential Strategy;</p> <p>(d) the Infrastructure Design;</p> <p>(e) the Operational Processes and Procedures;</p> <p>(f) the Exit Plan;</p> <p>(g) the Test Strategy;</p> <p>(h) the Service Provider Design;</p> <p>(i) the Business Continuity Plan;</p> <p>(j) the Security Plan</p> <p>(k) the Asset Register;</p> <p>(l) such other documents as ECC may expressly in writing designate as "Key Documents" from time to time;</p>
"Key Personnel"	the Service Provider Personnel employed in the roles specified in Schedule 9 (Key Personnel) from time to time;
"Key Sub-Contract"	a Sub-Contract entered into with a Key Sub-Contractor;
"Key Sub-Contractor"	<p>a Sub-Contractor listed in Schedule 20 (Key Sub-Contractors);</p> <p>any Sub-Contractor providing Services similar to any person listed in Schedule 20 (Key Sub-Contractors), unless ECC has agreed otherwise in writing;</p> <p>any Sub-Contractor notified to the Service Provider by ECC Personnel from time to time as being designated as a Key Sub-Contractor in accordance with clause 30.2 (Key Sub-Contractors and Sub-Contractors) including persons:</p> <p>whose services cannot be readily and promptly replaced in the relevant market;</p> <p>whose services, if withheld or terminated, would have a material adverse effect on the provision of the EETS Assets, Service Systems and/or Services (or any parts thereof); and/or</p> <p>who has contracted with the Service Provider to provide its services on materially more favorable terms</p>

	(whether in terms of price or otherwise) than can normally be obtained in the relevant market place;
"Law"	any enforceable European Community right and any directive, regulation or any other law, legislation, treaty, enactment, statute, proclamation, decree, by-law, decision, notice, order, rule (including any rule or decision of court), local government rule, statutory instrument or other delegated or subordinate legislation and any directions, codes of practice or guidance issued pursuant to any legislation and/or, in any such case, the equivalent thereof (howsoever described) applicable in any jurisdiction in which or through which the Services are to be performed;
"Legislation"	any: <ul style="list-style-type: none"> (a) Act of the UK Parliament or Act of the Scottish Parliament or subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978; (b) any exercise of the Royal Prerogative; and (c) any enforceable European Community right within the meaning of section 7A of the European (Withdrawal Agreement) Act 2020 ;or (a) any law arising from the United Kingdom ceasing to be subject to the transition or implementation arrangements provided for by Part 4 of the withdrawal agreement between the UK and the European Union negotiated under Article 50(2) of the Treaty of the European Union which sets out the arrangements for the UK's withdrawal from the European Union (as such arrangements are extended from time to time) in each case in the United Kingdom;
"LGR"	local government reorganisation.
"Location(s)"	the geographical area or areas of Essex in which the Services will be provided, within the remit of the Operating Zones signed off by the DfT at any given time – as of April 2025, these are illustrated in Specification Appendix 1 (Operating Zones and Parking Maps)
"Management Information" or "MI"	The information specified in Schedule 8 (Contract Management and Reporting) ; <ul style="list-style-type: none"> (a) the information specified throughout this Agreement and schedules; and (b) such other information reasonably required by ECC Personnel from time to time, (c) relating to the operation and performance of the EETS Assets, Service Systems and Services. The term

	"Management Information" shall include the Financial Reports, operational metrics reports and Performance Indicator Reports;
"Mandatory Change"	has the meaning set out in the table to paragraph 3 (Categories of Changes and Additional Services) of Schedule 7 (Change Control Request Procedure) ;
"Mandatory Requirements"	means such data and eScooter requirements mandated by any central government department, including but not limited to the Department of Transport or such other requirements in accordance with eScooter Legislation and or eScooter Licence requirements;
"MaaS"	means mobility as a service;
"Milestone"	a milestone to be achieved pursuant to Schedule 3 (Milestones and Deliverables) by the relevant Milestone Date, including the relevant Deliverables to be delivered by the Service Provider, as specified: (a) in Schedule 3 (Milestones and Deliverables) ; or (b) as a result of the Change Control Request Procedure, as appropriate;
"Milestone Achievement Criteria"	the criteria to be met by the Service Provider in order to achieve a Milestone as specified in Schedule 3 (Milestones) or as specified as a result of the Change Control Request Procedure;
"Milestone Dates"	(a) those dates specified in the column headed "Milestone Date" in Schedule 3 (Milestones) for achievement of specified Milestones, (b) or other such date otherwise agreed between the Parties in writing or as part of the Change Control Request Procedure;
"Milestone Notice"	any notice issued by ECC (having regard to Schedule 3) which is either a notice confirming: (a) Approval of any Milestone Achievement Criteria; or (b) authority to proceed following completion of specific Milestones;
"Missing"	the Status of a eScooter when it has not been Docked prior to the end of a maximum continuous Hire Period;
"Mobilisation Period"	Please see "Initial Mobilisation Period"
"Model Expert Determination Agreement"	has the meaning set out in clause 69.2.7.1 (Dispute Resolution Procedure);

"Month"	a calendar month and the term "Monthly" shall be construed accordingly;
"New Service Provider"	ECC or any person who: does, or is appointed by ECC to provide to ECC all or any elements of services similar to or the same as the Services which are or have been provided pursuant to this Agreement by the Service Provider; or at any time tenders to ECC for the provision of services similar (be that enhanced or otherwise) to or the same as the Services or is invited to do so by ECC;
"Non-adequate Country"	a country or territory which is outside the European Union and in respect of which there has not been an Adequacy Decision. For the purposes of this Agreement, "Non-adequate Country" includes the United States of America;
"Notice"	the voluntary notice published by ECC relating to the design, build, operation and maintenance of the Essex eScooter Trial Services;
"On-street Assets"	assets comprising the Docking Stations, on-street signage and any CCTV equipment;
"Operational Commencement Date"	the Planned Operational Commencement Date, as the same may be amended in accordance with the provisions of: (a) clause 12 (Delay); and/or (b) clause 49 (Force Majeure), and the term "Operational Commencement" shall be construed accordingly;
"Operational Phase"	the period from the Operational Commencement Date until the Expiry Date or Termination Date (as appropriate);
"Operational Reports"	the report(s) to be provided by the Service Provider on the diagnostics of Service Systems;
"Operational Services"	the Services to be provided by the Service Provider relating to operation, support and maintenance of EETS Assets and Service Systems, as set out in the Specifications;
"Operating Zones"	The geographical location in which the EETS Assets are able to be hired. Operating Zones all fall within a Traffic Regulation Order (TRO) permitting trial e-scooters to be ridden within this area. Refer to Specification 1 Appendix 1 (Operating Zones and Parking Maps)
"Operating Year"	a twelve (12) Month period commencing on the Operational Commencement Date and on each successive anniversary of the Operational Commencement Date and ending on the day

	before each such successive anniversary of the Operational Commencement Date;
"Other eScooter Service Provider"	means any other service provider that has been appointed by the ECC to provide eScooter services similar and or identical to the Services provided under this Agreement within the Area of Operation;
"Other Service Provider"	a Third Party providing services to, or having an interface with, the Service Provider in relation to the Essex eScooter Trial Services (other than ECC and the Service Provider's Sub-Contractors);
"Other Service Provider System"	all or any part of any Systems, Hardware or Software used by and/or provided by or on behalf of any Other Service Provider in connection with the Essex eScooter Trial Services;
"Parent Company"	the parent company of the Service Provider;
"Partial Termination"	the termination by ECC of the right and obligation of the Service Provider to provide one or more Service Element(s) of the Services, but not the whole of this Agreement, pursuant to clause 50.3 or clause 50.11 (Termination), and the terms "Partially Terminate" and "Partially Terminated" shall be construed accordingly;
"Partial Termination Date"	the date on which this Agreement is Partially Terminated, as specified in the Partial Termination Notice;
"Partial Termination Event"	Any of the events envisaged under clause 50.11 (Termination) ;
"Partial Termination Notice"	a notice issued by ECC pursuant to clause 50.4 or clause 50.12 (Termination) ;
"Parties"	ECC and the Service Provider and the term "Party" shall be construed accordingly;
"Performance Indicator" or "PI"	an indicator of the Service Provider's performance against which Service Levels will be applied in accordance with Schedule 5 (Service Level Agreement) ;
"Performance Indicator Report"	the reports to be prepared by the Service Provider in accordance with paragraph 4 (Performance Indicator Reporting) of Schedule 8 (Contract Management and Reporting Procedure) and which shall include: a summary of the Service Provider's performance against the Service Levels; and details of any breach by the Service Provider of the Service Levels or any underperformance;

"Performance Management Regime"	the regime for the measurement of the Service Provider's performance set out in Schedule 5 (Service Level Agreement) ;
"Persistent Breach"	a breach of this Agreement or of the Guarantee (as appropriate) which has: continued beyond the period of twenty (20) Working Days after the date of service of the notice referred to in clause 50.3 (Termination); or has recurred three (3) or more consecutive occasions during the Month after the date of service of such notice;
"Personal Data"	has the meaning given in the Data Protection Legislation;
"Personal Data Breach"	an actual or suspected breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data transmitted, stored or otherwise Processed;
"Personnel"	the Service Provider's or ECC (as the case may be) employees, agents, consultants and sub-contractors and (in the case of any reference to the Personnel of the Service Provider) including any Sub-Contractor's employees, agents, consultants and sub-contractors;
"Planned Operational Commencement Date"	14 th August 2025
"Planning Consent"	the permission to be obtained by the Service Provider in order to be allowed to build on land, or change the use of land or building;
"Police"	means the relevant Police and or the British Transport Police;
"Premises"	the premises, property and other accommodation from which the Service Provider conducts provision of the Services from time to time;
"Principal Contractor"	has the meaning set out in regulation 5(1) of the CDM Regulations;
"Privacy Notice"	has the meaning given in paragraph 4.1.1 of Schedule 13 (Information Compliance) ;
"Problem"	a condition identified as a result of a single Incident or multiple Incidents that exhibit common symptoms and which is indicative of a single Error;
"processing"	shall have the meaning given to it under the Data Protection Legislation and shall include both manual and automatic processing and "process" and "processed" shall be interpreted accordingly Act;

"Processing Services"	the services described in Appendix A to Schedule 13 (Information Compliance) ;
"Protocol"	has the meaning given to it at paragraph 3.3 of Schedule 13 (Information Compliance) ;
Quarter Date	each of last calendar day of the 3rd, 6th, 9th and 12th month of the Contract Term
"Records"	has the meaning set out in clause 36.3 (Audit and Inspection) ;
"Relief Event"	<p>fire, explosion, lightning, storm, tempest, flood, bursting or overflowing of water tanks, apparatus or pipes, ionising radiation (to the extent it does not constitute a Force Majeure Event), earthquakes, riot and civil commotion;</p> <p>failure by any statutory undertaker, utility company, local authority or other like body to carry out works or provide services;</p> <p>(a) any failure or shortage of power, fuel or transport;</p> <p>(b) any blockade or embargo which does not constitute a Force Majeure Event; and</p> <p>(c) any:</p> <ul style="list-style-type: none"> i. official or unofficial strike; ii. lockout; iii. go-slow; or iii. other dispute; <p>generally affecting the industry in which the Service Provider operates or a significant sector of it, unless any of the events listed in paragraphs (a) to (c) inclusive arises (directly or indirectly) as a result of any wilful default, act or omission of the Service Provider or any of Service Provider Personnel;</p>
"Remedy Programme"	has the meaning given to it in clause 50.6.2 (Termination) ;
"Report"	the reports to be prepared by the Service Provider and submitted to ECC in accordance with the provisions of this Agreement;
"Replacement Provider"	any third party appointed by ECC from time to time to provide all or any of the Replacement Services and Replacement Providers shall be construed accordingly.
"Replacement Services"	services which are substantially similar to any of the Services, or received in substitution for any of the Services, following the suspension of any Service, expiry, termination or partial

	termination of this Agreement whether those services are provided by the Authority internally and/or by any third party
"Representative"	the representatives nominated by ECC and the Service Provider from time to time;
"Required Quantity"	The required minimum number of E-Scooter vehicles to be deployed, operational and available to the public at any point in time, from the 14 th September 2025 until Contract Completion
"Revenue"	revenue generated from Customers making eScooter Charge Payments;
"Scenario"	has the meaning set out in paragraph 2.8.6 (Business Continuity Plan and Business Continuity Test Schedule) in Schedule 19 (Business Continuity);
"Scheme"	the Essex eScooter Trial Services;
"Security Incident"	any failure, breach, hacking, penetration, Virus or other Incident in connection with the: security of the EETS Assets, Service Systems or Services (or any parts thereof); and Requirements of Schedule 12 (Security Policy), including the Security Policy and/or the Security Plan, in each case whether or not caused in whole or in part by an act or omission of the Service Provider (or its Sub-Contractors);
"Security Plan"	has the meaning ascribed to it in paragraph 2.2 (Security Plan Provision) of Schedule 12 (Security Policy) ;
"Security Policy"	the security policy set out in Schedule 12 (Security Policy) , as amended from time to time in accordance with the Change Control Request Procedure;
"Service Credit"	The performance credits payable by the Service Provider in accordance with Schedule 5 – Service Levels + Performance Management
"Service element"	each component of the Services;
"Service Failure"	the Service Provider not achieving the Service Levels;
"Service Issue"	an Incident which does not constitute an Error or Change to the Specifications, but which will or may adversely affect the quality or efficient functioning of the EETS Assets, Service Systems and/or the Services (or any parts thereof);
"Service Level"	mean the levels of performance to be achieved by the Service Provider in the provision of the Services, as set out in Schedule 5 (Service Level Agreement) ;

"Service Level Agreement"	the document setting out the Service Levels at Schedule 5 (Service Level Agreement) ;
"Service Provider Confidential Information"	the confidential information of the Service Provider as specifically set out in Schedule 11 (Service Provider Confidential Information) ;
"Service Provider Data"	all Personal Data (excluding Shared Data) obtained by the Service Provider (or on behalf of the Service Provider by a third party other than the ECC) which the parties intend will be Processed for the Shared Data Purpose;
"Service Provider Group"	the Service Provider and its Affiliates;
"Service Provider IPR"	Intellectual Property Rights in: (a) the Service Systems Software; (b) in the Docking Station Assets and their prototypes, workups and designs, including improvements and amendments to them; (c) in the eScooter Assets which are created pursuant to this Agreement or were created prior to the Term for the purpose of the bidding for the award of this Agreement or otherwise in anticipation of this Agreement, including improvements and amendments to them;
"Service Provider Personnel"	employees, agents, representatives, consultants and sub-contractors of the Service Provider and/or its Sub-Contractors (as appropriate);
"Service System"	all or any part of any: (a) Docking Station Systems; (b) Management Information system; (c) Services Website; (d) Interfaces; or (e) Hardware, to be designed, developed, implemented, maintained and used, as applicable, by or on behalf of the Service Provider in connection with the EETS Assets and/or the Services;
"Service Systems Software"	(a) Service Provider Software; (b) the Specially Written Software; and (c) Third Party Software, which forms part of the Service Systems;

"Services"	the services to be provided by the Service Provider to ECC under this Agreement, including the: (a) Build Services; (b) Operational Services; (c) Business Continuity Services; (d) Exit Management Services; and (e) any Additional Services and any further Services agreed through the Change Control Request Procedure;
"Services Database"	an integrated collection of logically related Data, records or files (which may include Personal Data, ECC Personal Data and Customer Records) stored in a computer system (including any of the Service Systems) which consolidates records previously stored in separate files into a common pool of Data records providing data for one or many components of the Service Systems;
"Services Website"	the website(s), including on any medium or in any form (such as the world wide web or mobile internet), and any App to be designed, developed, implemented and maintained by the Service Provider in accordance with the Specifications in order to provide the relevant parts of the Services to Customers;
"Shared Data"	those categories of ECC Data and Service Provider Data identified as Shared Data in the Protocol;
"Shared Data Purpose"	the purpose(s) set out in the Protocol;
"Shareholder"	a person holding shares in the Service Provider;
"Site"	the location at which a Docking Station is or will be installed within a Trial Zone;
"Site Design"	the process and documentation/drawings required for the Works at a Site;
"Site Specific Method Statement"	the sequence of operations and processes to be followed for the Works at a specific Site;
"Software"	system software, operating systems, applications, programs and procedures, and all updates and upgrades to any of the foregoing, that enable the Hardware or Systems (including the Service Systems) to perform tasks and/or operations and/or process Data, in each case in object code form unless expressly provided otherwise in this Agreement and excluding any other Data or input or output. The term "Software" shall include the term "Specially Written Software";
"Spare Parts"	parts or components which are retained so as to assist in maintenance, overhaul or replacement of the relevant EETS Asset that they relate to;

"Specially Written Software"	<p>the:</p> <p>(a) Software;</p> <p>(b) code for Interfaces, configuration and customisation of any part of the Service Provider Software;</p> <p>(c) customisation and configuration of the Services Database; and</p> <p>(d) enhancements or other alterations thereto,</p> <p>made in connection with the Services and/or the Service Systems, written specially for the Services and Service Systems by or on behalf of the Service Provider or its Sub-Contractors;</p>
"Specifications"	<p>the specification or specifications for the EETS Assets, Service Systems and Services, which describe ECC's business requirements for the Essex eScooter Trial Services and provision of related assets, service systems and services as set out in Schedule 2 (Specification);</p>
"Sponsor"	<p>the party (if any) with whom the Service Provider contracts (subject to ECC approval) to sponsor the Essex eScooter Trial Services from time to time;</p>
"Sponsorship Protocol"	<p>the ECC sponsorship protocol at Schedule 27 (Protocols);</p>
"Statutory Codes of Practice"	<p>the publication, "Safety at Street Works and Road Works; A Code of Practice" published for the Department for Transport by TSO (previously The Stationery Office)</p> <p>ISBN 011551958 0;</p>
"Status"	<p>the condition of a eScooter as either Hired, Docked, Damaged, Missing or Under Repair;</p>
"Sub-Contract"	<p>any contract or agreement (whether or not in writing) between the Service Provider and a sub-Contractor in relation to any activity arising out of or related to the provision of the Services (including such contracts between the Service Provider and a member of the Service Provider Group);</p>
"Sub-Contractor"	<p>a Third Party, including Key Sub-Contractor, with whom the Service Provider enters into a Sub-Contract;</p>
"Subject Access Request" or "SAR"	<p>a request from a Customer for details of all data held on the Customer by the Service Provider under the right of access to Personal Data by the individual who is the subject of that Data, as set out in the Data Protection Legislation;</p>
"Sub-processor"	<p>any third party which Processes Personal Data on behalf of the Service Provider pursuant to this Agreement;</p>

"Subscription"	a right to hire, purchased by a Subscriber, and of varying types, which allows them to use the Scheme;
"Subscription Fee"	the fee payable by a Subscriber for a Subscription;
"Successor Body"	means a successor body or successor bodies to the ECC (as applicable) as a result of LGR . For the avoidance of doubt, such successor body or bodies may be, without limitation, a unitary authority, a combined authority, a combined county authority, a strategic authority or any other status determined pursuant to the Devolution and LGR Legislation.
"Supervisory Authority"	an independent public authority which is established by a member state of the European Union, including without limitation the United Kingdom's Information Commissioner's Office (or any equivalent successor body that may be appointed from time to time);
"Subscriber"	a person who subscribes to the Essex eScooter Trial Services;
"System"	Hardware and Software;
"System Assets"	the Service System related assets;
"System Failure"	any material failure, fault or problem of the: EETS Assets; and/or Service Systems or part of it;
"System Level Test"	the Tests of each element of the Terminals, Service Systems and Services in respect of the capability and procedures undertaken by the technical and operational Service Provider Personnel to establish whether: (a) Security Policy meets the requirements of Schedule 12 (Security Policy); and (b) Business Continuity Infrastructure meets the requirements of Schedule 19 (Business Continuity);
"TAP"	the transition assistance period during which the provisions of Clause 2.3 shall apply and which shall run for a period of up to twenty-four (24) months from the TAP Commencement Date unless terminated or extended in accordance with the provisions of this Agreement.
"Temporary Traffic Regulation Order"	an order under section 14(1) of the Road Traffic Regulation Act 1984, (as amended from time to time) that varies the use of the Highway for a temporary period;
"Term"	the duration of this Agreement from the Effective Date up to and including the Expiry Date or the Termination Date (whichever is applicable);

"Terminal"	the computer terminal and associated housing whether forming part of the eScooter which enables a Customer to register and make payment for the hire of an eScooter;
"Terminal Design"	the design for the structure and appearance of the Terminal (but excluding the Services System);
"Termination"	the termination and/or expiry of this Agreement;
"Termination Date"	the date with effect from which this Agreement is terminated in its entirety by either Party in accordance with clause 50 (Termination);
"Test"	<p>the tests undertaken or to be undertaken by the Service Provider in accordance with:</p> <p>clause 10 (Testing of EETS Assets and Service Systems);</p> <p>Schedule 4 (Testing Regime);</p> <p>Schedule 12 (Security Policy); and</p> <p>Schedule 19 (Business Continuity),</p> <p>to assess whether the Deliverables meet ECC's requirements as set out in this Agreement and "Testing" shall have a corresponding meaning;</p>
"Test Data"	any Data in relation to any Testing;
"Test Environment"	an Environment used in relation to the relevant Testing;
"Test Plan"	a detailed document prepared or to be prepared by the Service Provider as envisaged under Schedule 4 (Testing Regime);
"Test Report"	a test report prepared or to be prepared by the Service Provider as envisaged under Schedule 4 (Testing Regime);
"Test Stage"	each and any stage of Testing as set out in Schedule 4 (Testing Regime);
"Test Strategy"	the high level document to be produced by the Service Provider in accordance with Schedule 4 (Testing Regime);
"Test Witnessing"	a process by which ECC Personnel, or a nominated Third Party, witnesses the execution of Tests performed by the Service Provider, as envisaged under paragraph 5 of Schedule 4 (Testing Regime) which where reasonably appropriate may be carried out remotely;
"Testing Documents"	all Documentation to be provided by the Service Provider to ECC in accordance with Schedule 4 (Testing Regime);
"Third Parties Act"	the Contracts (Rights of Third Parties) Act 1999;

"Third Party"	any person or entity which is not a party to this Agreement, but excluding Sub-Contractors and Key Sub- Contractors;
"Third Party Service Provider"	has the meaning set out in clause 69.3.2.1 (Dispute Resolution Procedure) ;
"Third Party Software"	any Software, code for Interfaces, databases which are included in the Service Systems (including the Services Database), and enhancements thereto, and in respect of which in each case the Intellectual Property Rights are owned by one or more Third Parties (including relevant Software which is COTS);
"Third Party System"	all or any party of the Systems, Hardware or Software used by and/or provided by or on behalf of any Third Party in connection with the Essex eScooter Trial Services;
"Total Service Test"	the Tests of all Terminals, Service Systems and Services in respect of the capability and procedures undertaken by the technical and operational Service Provider Personnel to establish whether the Service Provider is complying with the: <ul style="list-style-type: none"> (a) Security Policy meets the requirements of Schedule 12 (Security Policy); and (b) Business Continuity Infrastructure meets the requirements of Schedule 19 (Business Continuity);
"Traffic Management Scheme"	has the meaning given to it in paragraph 6.1.3 of Schedule 25 (Docking Station Installation) ;
"Traffic Regulation Order"	an order under the Road Traffic Regulation Act 1984 (as amended from time to time) that regulates the use of the Highway;
"Transfer"	the transfer of this Agreement from ECC to a Successor Body in order to give effect to any order(s) or regulation(s) arising from the Devolution and LGR Legislation
"Trial Term"	has the meaning set out in clause 2.1 (Duration) ;
"Trial Zone"	means the areas within the area of Essex Council as defined in the specification of requirements..
"TUPE Regulations" or "TUPE"	the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended) or any successor legislation in force from time to time;
"Under Repair"	the Status of an eScooter when it has been confirmed by the Service Provider as requiring repair and has been removed from distribution;
"User"	a person permitted to use an eScooter under the terms of a Subscription;

"Vehicle Special Order (VSO)"	a legal authorisation issued by the DfT that allows the trial e-scooters to operate on public roads with exemptions from certain use regulations. The VSO is made under the authority of the Secretary of State;
"Virus"	any thing or device, other than a bug or error (insofar as such bug or error is itself a fault in the design or production of Service Systems Software), which may impair or otherwise adversely affect the operation of any computer, prevent or hinder access to any program or data, impair the operation of any program or the reliability of any data (whether by re-arranging within the computer or any storage medium or device, or altering or erasing, the program or data in whole or part or otherwise), including worms, trojan horses, computer viruses and other similar things;
"Waste Management Plan"	a plan setting out how the Service Provider will handle, transport, recycle or otherwise dispose of any waste generated by the Works;
"week"	a seven (7) day calendar week and the term "weekly" shall be construed accordingly;
"Essex eScooter Trial Services"	has the meaning set out within (B) Background;
"EETS Assets"	the: eScooter Assets; Contact Centre Assets; Depot Assets (including Spare Parts); Service Systems; Docking Station Assets; and On-street Assets,
	listed in the Asset Register, which are used in the provision of the Services, whether or not such assets are leased by, owned or licensed to, or in the possession or control of the Service Provider or its Sub-Contractors;
"ECC Confidential Information"	information and Data relating to the Essex eScooter Trial Services and the business or affairs of ECC and/or its employees which is divulged to, or obtained by, prepared by or created by or for the Service Provider and/or one or more Guarantors and/or Shareholders during the bid process, negotiation of this Agreement and/or provision of the Services and which is either: in written form and marked as proprietary and confidential; is by its very nature confidential; or which may otherwise reasonably be regarded as confidential;

"ECC Data"	all Personal Data (excluding Shared Data) obtained by ECC (or on behalf of ECC by a third party other than the Service Provider) which the parties intend will be Processed for the Shared Data Purpose;
"ECC Policies"	those policies set out at: Schedule 18 (Equality and Diversity); and Schedule 24 (ECC Policies) , as amended from time to time; and any all of policies, procedures and standards of the ECC that are relevant to the performance of the Services, including those relating to safety, security, business ethics, drugs and alcohol and any other regulations specified by ECC;
"ECC IPR"	the Intellectual Property Rights of members of the ECC whether pre- existing or created by or on behalf of a member of the ECC (other than by or on behalf of the Service Provider) in relation to the Essex eScooter Trial Services including: (a) trade marks and logos of the ECC; and (b) static web pages (if any) supplied by ECC for the Services Website and web designs;
"ECC Obligations"	the obligations of ECC that are specified in this Agreement;
"ECC Indemnified Parties"	each of: (a) ECC; (b) Each Affiliate of ECC; and (c) ECC Personnel;
"ECC Personnel"	employees of members of the ECC and their agents, representatives, consultants and sub-contractors, including ECC;
"ECC Premises"	any land or premises (including temporary buildings) owned or occupied by or on behalf of any member of the ECC group;
"ECC Systems"	all or any part of any Systems, Hardware or Software used by ECC in connection with the Essex eScooter Trial Services;
"Working Day"	any day other than any Saturday, Sunday or public holiday in England;
"Working Hours"	the period from 9:00am to 5:00pm on a Working Day;
"Works"	all of the works (including the works necessary for obtaining access to the Sites) to be undertaken during the Implementation Phase in relation to the construction and installation of the Docking Stations at each of the Sites, in accordance with the terms of this Agreement and Schedule 25 (Docking Station Installation) ; and

"Year"	the twelve (12) month period running from the Operational Commencement Date.
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Essex County Council

PL0092 Electric Scooters Rental Scheme Specification v2

Version	Amendments
V1 (22/05/2025)	-
V2 (27/06/2025)	<ul style="list-style-type: none">• 5.3: Minor correction to cross-referencing• 6.1: Removal of requirement for Professional Indemnity Insurance• Page Breaks

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1. Introduction

1.1 Essex County Council ('the Authority') are procuring a concessions contract for a single Service Provider to deliver E-scooter rental schemes, including but not limited to the provision, management, protection and maintenance of E-scooter vehicles within set Operating Zones in the county (Appendix 1 – Operating Zones and Parking Maps).

1.2 The regulatory amendments established by the Department for Transport (DfT) in 2020 to enable E-scooter trials in the UK are currently ongoing until 31st May 2026 (Appendix 2 – Regulatory Basis for E-Scooter Trials), and so the initial term for the Contract is from 14th August 2025 to 31st May 2026. There are provisions within the Contract to extend Services for three periods of twelve months thereafter, permitting extension to align with government regulations should the E-scooters trials be extended. The decision to extend the Contract is at the sole discretion of the Authority.

1.3 The Service Provider is responsible for ensuring that delivery of E-scooter rental schemes within Essex complies with current regulations, and any changes to such by the DfT during the life of the Contract. The Authority does not foresee that the Authority or DfT requirements will change during the trial Scheme period however the Service Provider must be able to respond and implement any requirement changes directed to ensure ongoing compliance.

1.4 To comply with these regulations, this opportunity is therefore only open to operators whose vehicles have been assessed by the DfT and issued with vehicle orders under s44 and s63(5)-(7) of the Road Traffic Act 1988, confirming their suitability. The Service Provider is required to only use e-Scooter vehicle models that have been confirmed by the DfT as meeting their approval requirements for the delivery of this Contract.

1.4 The Service Provider is required to provide E-scooters rental schemes in the following "Locations" or "Districts" that have been defined and agreed with the DfT: Braintree, Chelmsford, Colchester and Harlow.

1.5 After the Contract Award Notice has been issued, the Authority will provide the DfT with the Service Provider's name, for licensing to operate E-scooter rental schemes in these locations.

1.6 The Service Provider shall ensure the outcome of this contract is an additional sustainable transport option to support the Authority's net zero targets, promoting behaviour change away from motor transport, and to improve connectivity across the region.

2. Key Dates

Stage	Date/Time
Contract Commencement Date	14 th August 2025
Services Commencement Date	14 th August 2025
Contract duration	9 months 17 days, with three x 12-month extension provisions, to be exercised at the Authority's discretion
Initial Contract Completion Date	31 st May 2026
One extension Contract Completion Date	31 st May 2027
Two extensions Contract Completion Date	31 st May 2028
Three extensions Contract Completion Date	31 st May 2029

3. Service Requirements

3.1 Mobilisation Requirements

3.1.1 The Authority has a reduced Required Quantity of E-scooters during the Mobilisation Period: 14th August 2025 to 13th September 2025. The Service Provider shall ensure a quantity of E-scooters are deployed, operational and available at each Location equal to or greater than the Required Mobilisation Quantity:

Required Mobilisation Quantity

Date Deployed and Operational By	Braintree	Colchester	Chelmsford
14/08/2025	100	200	250

3.1.2 The Required Mobilisation Quantity is the minimum requirement during this Mobilisation Period, and the Authority welcomes the Service Provider to exceed this minimum.

3.1.3 The Service Provider shall deliver Services in line with the Mobilisation Plan submitted as part of the Contractor's Proposals.

3.1.4 The Service Provider shall submit to the Authority a Deployment Plan by the 31st of August 2025, including the following information at minimum:

- a. The data transfer route with links enabled and tested;
- b. Key contact information;
- c. Any facilities that will be used to deliver this contract, such as the storage location and any other relevant facilities;
- d. For each Operating Zone, the exact Quantity of E-scooters that will be deployed from the 14th September 2025;
- e. For each Operating Zone, the location of the Parking Bays that will be used in accordance with those stated in Appendix 1, and communication of any immediate Parking Bay change requests prior to the 14th September 2025.

3.1.5 Within one Calendar Month of the Contract Start Date, the Service Provider shall run a demonstration to the Authority of the vehicle's geofence capability; and a demonstration to key stakeholders (including the Authority and District Councils' representatives, and enforcement bodies where relevant) of how vehicles are hired, operated, and their capabilities.

3.2 Required Quantity of E-Scooters

3.2.1 The Service Provider shall ensure a quantity of E-scooters are deployed, operational and available from 14th September 2025 to Contract Completion at each Location equal to or greater than the Required Quantity of E-scooters:

District	Braintree	Colchester	Chelmsford	Harlow
Required Quantity of E-scooters	200	400	500	100
Maximum number allowed by the Vehicle Special Order (VSO)	750	1000	900	500

3.2.2 The Required Quantity is the number of E-scooters deployed in the county under the previous contract as of April 2025, and further details on the ridership figures can be found in the Bidder Information.

3.2.3 Harlow is a new Location for this procurement, and as such the Authority would not enforce Performance Standard 1B for the Required Quantity of E-scooters until the District Council and the Authority deem the E-scooter rental scheme has bedded successfully into the town.

3.2.4 The Service Provider may increase the quantity of E-scooters above this Required Quantity to best meet demand; however, any proposed quantity increases of 25% or more above the current quantity shall be subject to approval by the Authority and the relevant District Council.

3.2.5 The Service Provider may request a Contract Amendment to reduce the Required Quantity of E-scooters in a Location, and the Authority would approve or decline this revision in conjunction with the relevant District and Borough Councils.

3.2.6 The Service Provider shall distribute E-scooters between and within the Locations to best respond to demand, and this should be reviewed on a regular basis, with physical redistribution of E-scooters as may be necessary. The Service Provider shall ensure that the quantity of E-scooters is not to excess in any one place where it may cause unacceptable conflict with other road and pavement users.

3.3 Required Operating Zones

3.3.1 Operating Zones

3.3.1.1 The Service Provider shall deploy E-scooters within the Locations and ensure E-scooter use is limited to the Operating Zone boundaries as agreed with the DfT – the current boundaries as of April 2025 are displayed in Appendix 1 (Operating Zone and Parking Maps).

3.3.1.2 Consent will continue to apply to the existing geofenced areas for E-scooter use, along with specified non-use/stop areas, private land agreements and parking proximity to approved use areas.

3.3.2 Location 1: Chelmsford

3.3.2.1 The Service Provider shall deliver rental E-scooter schemes across the Chelmsford Operating Zone in accordance with the requirements in this Specification.

3.3.2.2 The Service Provider shall work with Chelmsford City Council, Network Rail and the Train Operating Company on introducing E-scooter provision at the new Beaulieu Park Station.

3.3.2.3 It is desirable that deployment and Additional Parking Bay proposals focus particularly on promoting E-scooter use for the following areas and priorities:

- Connecting outer areas of the Operating Zone to key destinations in the city centre, including Chelmsford Station, Chelmsford Bus Station and Anglia Ruskin University;
- Connections to and from Broomfield Hospital, educational establishments, leisure locations, and key workplace locations outside of the city centre;
- Connections to and from the Beaulieu and Channels areas, including newly constructed estates.

3.3.3 Location 2: Colchester

3.3.3.1 The Service Provider shall deliver rental E-scooter schemes across the Colchester Operating Zone in accordance with the requirements in this Specification.

3.3.3.2 It is desirable that deployment and Additional Parking Bay proposals focus particularly on promoting E-scooter use connecting Colchester North Station into the town centre.

3.3.4 Location 3: Braintree

3.3.4.1 The Service Provider shall deliver E-scooter rental schemes across the Braintree Operating Zone in accordance with the requirements in this Specification.

3.3.4.2 It is desirable that deployment and Additional Parking Bay proposals focus particularly on promoting E-scooter use connecting the town centre (including Braintree Station) to the Horizon 120 Innovation and Business Park, Gridserve Charging Station, Great Notley Garden village and the Springwood industrial estate.

3.3.5 Location 4: Harlow

3.3.5.1 The Service Provider shall deliver E-scooter rental schemes across the Harlow Operating Zone in accordance with the requirements in this Specification.

3.3.5.2 The Service Provider shall collaborate with the Authority and the District Council to design the introduction of E-scooters in this Location, through designing the locations of Parking Bays deployment points, go-slow zones and no-go zones.

3.3.5.3 It is desirable that deployment and Additional Parking Bay proposals focus particularly on promoting E-scooter use connecting transport interchanges and employment centres – including but not limited to Princess Alexandra Hospital, town centre businesses and local business parks. It is desirable that the Service Provider deploys E-scooters and suggests parking Bays to promote connectivity across all of the Operating Zone so that residents in areas such as Church Langley and New Hall can connect safely with cycle routes into the Town Centre.

3.3.5 Changes to Locations

If the Required Quantity of E-Scooters are deployed in a Location and demand continues to be low, then the Service Provider can request the removal of the Location. Such a request is subject to the Authority's approval or refusal.

3.4 Parking Bays Requirements

3.4.1 The Service Provider shall commence the Contract utilising the existing Parking Bays displayed in Appendix 1 (Operating Zone and Parking Maps) where possible. There is scope to request amendments to the location of existing Parking Bays through submitting such a request via e-mail to both the relevant District Council staff and the Authority's Authorised Representative for approval.

3.4.2 The Service Provider is additionally required to propose new Parking Bays ("Additional Parking Bays") for each Location in areas outside of the city centres. The Service Provider shall propose all Parking Bays for Harlow as a newly established Location for this Contract.

3.4.3 The Service Provider shall propose Parking Bays and make any Parking Bay change requests in accordance with the Additional Parking Bays Plan submitted as part of the Contractor's Proposals, and in advance of the proposed Parking Bay being established. The Service Provider shall submit Parking Bay change requests through E-mail to both the relevant District or City Council staff and the Authority's Authorised Representative containing the following information:

- a) Specific geolocation (GPS or map reference);
- b) Proposed parking model (either bay based or free-floating);
- c) Total capacity of E-scooters available to park at that Parking Bay;
- d) Necessary signage needed and timeframes in which this will be deployed;
- e) Inclusion in the cleaning and charging schedule.

The Authority will then evaluate if the Parking Bay request aligns with the needs specific to the geographic location, and where needed, complete a check to confirm adherence with required standards on the highway. The Authority would suggest that the most appropriate

parking model for city and town centres may be delineated parking bays identified by painted markings on the highway network. The Authority would suggest that the most appropriate parking model for residential and suburban areas may be a mixture of marked parking bays and free-floating parking, whereby the use of the E-scooter is restricted to a geofenced area and so cannot be parked outside of a set geographic boundary.

3.4.4 The Service Provider shall demarcate Parking Bays at no cost upon the request of the Authority and following DfT and Essex County Council policies and guidance. This demarcation shall primarily be through line painting and not hard infrastructure like docking stations.

3.4.5 The Service Provider shall ensure that Parking Bays do not cause an obstruction to other users of the highway, nor obstruct access to properties.

3.5 Electric Scooter Hardware

3.5.1 The Service Provider shall ensure that all E-scooter vehicles deployed under this Contract are compliant with the statutory definition of an E-scooter:

- is fitted with no motor other than an electric motor with a maximum continuous power rating of 500W and is not fitted with pedals that are capable of propelling the vehicle;
- is designed to carry no more than one person;
- has a maximum speed not exceeding the regulatory maximum (currently 15.5mph as of April 2025 but subject to change by government regulation);
- has 2 wheels, 1 front and 1 rear, aligned along the direction of travel;
- has a mass including the battery, but excluding the rider, not exceeding 55kg;
- has means of directional control via the use of handlebars that are mechanically linked to the steered wheel;
- has means of controlling the speed via hand controls and a power control that defaults to the 'off' position.

3.5.2 The Service Provider shall ensure that all E-scooter vehicles deployed under this Contract are a model that has been assessed by the DfT as being suitable to participate in trials and have been issued with a vehicle order under s44 and s63(5)-(7) of the Road Traffic Act 1988 accordingly (Appendix 3 - Minimum Technical Standards).

3.5.3 The Service Provider shall ensure that all E-scooters deployed under this Contract are covered by a motor vehicle insurance policy to cover users of the vehicles.

3.5.4 The Service Provider shall ensure that all E-scooters deployed under this Contract have a clearly visible Unique Identification Number (UIN), in the form of a registration plate or equivalent.

3.5.5 The Authority has the following additional requirements for any E-scooter vehicle deployed under this Contract:

- Has means of being located at any time;
- Are equipped with appropriate automatic controls including geo-fencing to enforce no-go zones and speed limitation below the maximum E-scooter speed in go-slow zones;
- Is equipped with functional and clearly visible indicators;
- Has a clear visible association with the Authority E-scooter pilot, to be distinctive from other privately owned and/or illegal use of E-scooters;
- Has visible contact information, for Interested Parties and/or members of the public to make relocation requests or to report other issues with devices.

3.5.6 It is desirable that the vehicles deployed by the Service Provider under this contract would have additional capabilities, including but not limited to:

- i. Ability to recording a 'fallen-over' status, or a status of not being parked in accordance with the parking policy/in a designated Parking Bay;
- ii. Equipped with User operated audible alert (such as a bell or horn);
- iii. Equipped with anti-theft devices;
- iv. Ability to reduce the maximum speed for first time riders of E-scooters;
- v. Availability of helmets where possible; for example, given away at events or training sessions.

3.6 Maintenance Requirements

3.6.1 The Service Provider shall ensure that E-scooters are maintained in a safe state of repair, and the fleet is managed in accordance with the Maintenance and Disposal Plan submitted as part of the Contractor's Proposals. Where a safety or maintenance issue is identified, the Service Provider shall ensure that the E-scooter is made unavailable to Users (for example designated "maintenance mode") and shall be removed from service within 24 hours of notification. The Service Provider shall fully test for compliance and safety before the E-scooter is made available for use again.

3.6.2 The Service Provider shall ensure that E-scooters are maintained in a good state of cleanliness, and that cleaning is managed in accordance with the Maintenance and Disposal Plan submitted as part of the Contractor's Proposals.

3.7 Booking and Payment

3.7.1 The Service Provider shall only permit rental of E-scooters on the condition that the individual hire can be recorded and attributed to a specific User, who is over 18 years of age and holds a relevant full or provisional driving licence (categories AM, A1, A2, A or B).

3.7.2 The Service Provider shall ensure that Users are able to hire an E-scooter through an app. It is desirable that E-scooter hire is also available through further means, such as online or via phone.

3.7.3 The Service Provider shall deliver their Pricing Structure in accordance with the Operational Plan and communicate any changes at least two weeks in advance.

3.7.4 The Service Provider shall ensure that current pricing structures and terms and conditions for E-scooter hire are clearly provided to Users and the General Public. The Service Provider shall clearly explain pricing information, including any surcharges to Users at the beginning of each journey. This should include information about bulk journey or unlock passes.

3.7.5 The Service Provider shall implement low cost, discounted or free schemes for certain demographics (e.g. students, low income, at-risk populations, NEETS), which shall be clearly communicated with Users and the General Public.

3.7.6 It is desirable that the Service Provider ensure that other means of hire and payment are available, so that users who do not have a smart phone are still able to use the E-scooters, to mitigate for digital exclusion.

3.8 User Safety and Appropriate Behaviour

3.8.1 Rules Agreement

3.8.1.1 The Service Provider shall have a Conditions of Use Policy (or equivalent) for Users to sign before E-scooter hire, which shall be shared with the Authority. This shall be clearly communicated to Users through a mobile or web application that sets out information on where and how E-scooters can and should be used to be compliant with the law.

3.8.1.2 The Service Provider shall ensure the rules surrounding use are regularly communicated to users and enforced, including but not limited to the following:

- 1) The Service Provider shall ensure that E-scooters use is limited to public roads of 30mph speed limits (unless otherwise discussed and agreed with the Authority) or lower and where available.
- 2) The Service Provider shall ensure that E-scooter use is limited to riding on the streets, and where available, in bike lanes and bike paths. The use of E-scooters is not permitted on footways.
- 3) The Service Provider shall ensure that E-scooter riding is limited to the left of street lanes, and Users offer the right of way to bicycles on bike lanes and bike paths.
- 4) The Service Provider shall ensure that E-scooters are parked appropriately in the Parking Bays to reduce obstruction of other road users
- 5) The Service Provider shall ensure that E-scooters are rode responsibly, and repeated disregard of the guidance will result in the User being barred from access.
- 6) The Service Provider shall ensure that E-scooters are not ridden on private land unless the landowner has granted explicit permission to the Service Provider and/or User (as applicable). Private landowners may have their own rules in place dictating how their land is used, this is often the case at universities and hospitals. The Authority would expect the Service Provider to work with private landowners where appropriate to ensure private landowner's rules are adhered to.

3.8.1.3 The Service Provider shall ensure that Users agree to these above rules before the first time of use, with appropriately timed reminders.

3.8.1.4 It is desirable that the Service Provider use creative messages and methods to make rules memorable.

3.8.1.5 The Service Provider shall promote helmet use where possible.

3.8.2 In-app training

3.8.2.1 The Service Provider shall deliver in-app training in accordance with the Safety and Considerate Road Usage Plan submitted as part of the Contractor's Proposals.

3.8.2.2 The Service Provider shall promote safe use of E-scooters and require all Users to undertake regular training as deemed appropriate by the Service Provider and the Authority to ensure the safety of the User and others in the operational environment. This training shall include the above rules on safe riding and appropriate parking.

3.8.2.3 The in-app training shall avoid the ability for the User to automatically click through to proceed with the hire.

3.8.2.4 The Service Provider shall collaborate with the Authority in communicating Location specific rules and regulations, including the Service Provider providing education to E-scooter riders on these.

3.8.2.5 The Service Provider is required to offer a minimum of twenty in-person training sessions per annum as part of their engagement with the community.

3.8.2.6 The Service Provider shall inform E-scooter Users on the risks that usage may pose to people with disabilities, and how Users can mitigate this.

3.8.2.7 Where appropriate, it is desirable that the Service Provider offer extended training programmes to User groups who may find this beneficial.

3.8.3 Ensuring considerate behaviour

3.8.3.1 The Service Provider shall ensure appropriate and responsible usage of E-scooters in accordance with the Safety and Considerate Road Usage Plan submitted as part of the Contractor's Proposals.

3.8.3.2 The Service Provider shall have automatic systems in place to detect when Users have breached the designated speed limits for a particular area, and issue sanctions and bans appropriately.

3.8.3.3 The Service Provider shall identify reports of inappropriate usage, which shall be investigated within three days. The Service Provider shall appropriately action investigations within seven days, in accordance with the sanctions and bans in their Safety and Considerate Road Usage Plan.

3.8.4 The Service Provider shall offer incentivisation to maintain desired behavioural practises.

3.8.4 Ensuring Parking Compliance

3.8.4.1 The Service Provider shall ensure that the User will not be able to end their E-scooter journey until is parked in an authorised area or designated Parking Bay at the end of their trip.

3.8.4.2 The Service Provider shall design and operate their service in such a way to ensure Users comply with the following parking principles:

- a. Users of E-scooters shall park devices upright in designated areas responsibly;
- b. Users shall not park E-scooters in such a manner as to block the pedestrian thoroughfare, any emergency facility or utility pole or box;
- c. Users shall not park E-scooters in such a manner as to impede or interfere with the reasonable access to or from any building, or of any bicycle rack; and
- d. Users shall not park E-scooters in the landscape/furniture zone directly adjacent to or within the following areas, such that access is impeded:

- I. transit zones, including bus stops, shelters, passenger waiting areas, and bus layover and staging zones, except at existing bicycle racks;
- II. loading zones;
- III. disabled parking zone;
- IV. street furniture that requires pedestrian access (for example - benches, parking pay stations, bus shelters, transit information signs, etc.);
- V. curb ramps;
- VI. entryways; and
- VII. driveways.

3.8.4.3 The Service Provider shall monitor failure to adhere to these parking principles, and issue mandatory training, warnings and other sanctions as suitable.

3.8.4.4 The Service Provider shall maintain suitable operational management practices and User incentives to ensure parking of E-scooters is managed without detriment to the public and is contained to the designated Parking Bay.

3.8.4.5 The Service Provider shall respond to reports of inappropriately parked E-scooters or reports of unsafe or inoperable E-scooters by relocating, re-parking, or removing the E-scooters, within 4 Working Hours following identification, in accordance with their Operational Plan. Performance statistics will be recorded by the Service Provider and shared with the Authority. The Service Provider shall use electric vehicles or cargo bikes to reposition inappropriately parked e-Scooters wherever possible.

3.8.4.6 The Service Provider shall be able to offer District or City Council staff representatives the option of 'admin unlock' so that they can remove and reposition E-scooters, should this be requested.

3.9 Customer Service Requirements

3.9.1 The Service Provider shall deliver customer service in accordance with the Essex Communications and Customer Service Plan submitted as part of the Contractor's Proposals.

3.9.2 The Service Provider shall maintain responsive customer service and public communication channels for Users and the General Public to report concerns about E-scooter usage, complaints, or to ask questions. Communication shall be provided through multiple channels including e-mail, telephone, in app communications, and social media platforms with a UK presence. This service shall be accessible to all, including individuals without the Service Provider app, or those who may be digitally and financially excluded.

3.9.3 The Service Provider shall provide an immediate automated response to all electronic enquiries, and where possible within a timely manner to all other enquiries, containing acknowledgement.

3.9.4 The Service Provider shall provide a specific response to enquiries within a Calendar Week. The Service Provider shall ensure that customer services staff responding to such enquiries are provided with UK specific training if they are not based within the UK.

3.10 External Communication Requirements

3.10.1 The Service Provider shall provide promotional campaign material for use within Essex.

3.10.2 The Service Provider shall collaborate with the Authority and other stakeholders to disseminate information relating to the E-scooters service, including but not limited to changes to services, service news and survey results. This may include providing a unified and coordinated public information campaign to promote safe, sustainable, and responsible use of E-scooters and correct parking.

3.10.3 The Authority reserves the right to request the Service Provider to support an information push to their Users for formal traveller research, travel behaviour change campaigns and road safety information campaigns. The Service Provider shall support such an information push at no charge to the Authority.

3.10.4 The Service Provider shall work with the Authority, local councils, and local businesses and educational establishments to develop specific training and engagement programmes.

3.10.5 The Service Provider shall work with local access and disability groups to ensure the services takes consideration of their needs.

3.10.6 It is desirable that the Service Provider works with local businesses and other organisations to explore opportunities to promote the use of E-scooters. This may be through subsidising the scheme, organising promotional credits, or other incentives, as part of their commitment to job growth.

3.10.7 The Service Provider shall work with local police services around managing differentiation between legal and illegal vehicles and enforcement. In the event of an incident on the highway the Service Provider shall be compliant and prompt in providing relevant data, information and insurance to enforcement bodies, at their request.

3.11 Temporary riding restrictions

3.11.1 Temporary riding and parking restrictions may apply in the case of events (such as festivals or football matches) and because of highway works. Any temporary riding and parking restrictions will be agreed and communicated with the Service Provider at least 2 weeks in advance of the event.

3.11.2 The Service Provider shall comply with these restrictions and collaborate with the relevant District Authority in communicating such restrictions to Users in that area no less than 4 hours in advance of the commencement of the restrictions, and during the restricted time.

3.12 Equality and Equity aspects

3.12.1 The Service Provider shall comply with all national law and guidance pertaining to equalities and inclusion.

3.12.2 The Service Provider shall understand the demographic and economic profile of the Location areas, including areas with higher densities of protected characteristics, in particular individuals who are visibly or audibly impaired. It is desirable that the Service Provider undertake equalities and inclusion assessments of each Location.

3.12.3 The Service Provider shall design E-scooter deployment and management according to these needs, using this information to underpin their operations, fleet management, onboarding vehicle technologies and User training. The Service Provider must continually seek input from Users and the General Public on ensuring equal access, and work towards continuous improvement of accessible service design.

3.13 Vandalism and Theft

3.13.1 The Service Provider shall hold all responsibility for managing any issues of E-scooter theft, vandalism and recovery of abandoned vehicles or those which have been littered by non-users. The cost of replacement and repair of E-scooters shall be covered by the Service Provider.

3.13.2 In the event of any theft or vandalism incident, the Service Provider shall inform the local enforcement representative and the Authority within three days.

3.13.3 In the event of repeated incidents, the Service Provider shall work with the relevant District or City Council, local highway authority, enforcement authorities to review and implement solutions to mitigate anti-social behaviour against vehicles. This will be addressed through fortnightly operational meetings and ad hoc communications as required.

3.14 Service Improvement

3.14.1 The Service Provider shall trial future technological advances in the Authority, such as, pavement recognition technology and vehicle audio alerts. The Service Provider shall work with accessibility groups and key stakeholders on introducing future technology.

3.14.2 Should a new E-scooter model be approved for deployment by DfT, if the Service Provider intends to deploy this within Essex, then the Service Provider will provide a model for the Authority's engineers to test ahead of the model being deployed.

3.15 Integration with Travel Essex App

3.15.1 The Service Provider shall provide an API capable of enabling deep integration of e-scooters with the Council's Mobility-as-a-Service (MaaS) TravelEssex app and shall work with the Council and its Supplier to deliver the integration. This requirement is within scope of this contract and so shall not be an additional charge.

3.15.2 The deep integration shall enable Users of the TravelEssex app, via its journey planning functionality and map, to find, book and pay for E-scooter journeys without leaving the TravelEssex app. The approximate costs and current charge remaining of the E-scooters must also be shown. Parity of pricing and purchasing options must exist between the Service Providers app and the TravelEssex app.

3.15.3 This requirement does not prevent the Service Provider from having its own app for E-scooters in Essex available to the public.

4. Payable Fee Requirement

4.1 The Service Provider is required to pay a Fee Payable Per Vehicle (FPPV) to the Authority for each E-scooter in Operation under this Contract in any Contract Month. This shall be the amount submitted in the Commercial Matrix as part of the Contractor's Proposals. Please refer to Schedule 5 (Payment Mechanism) for further information on the payment structure.

4.2 The Authority will waive the Fee Payable Per Vehicle (FPPV) until the 14th September 2025 whilst the service is being mobilised.

5. Contract Management Requirements

5.1 General

5.1.1 The Service Provider shall be responsible for monitoring their own performance in accordance with this Specification.

5.1.2 The Service Provider shall maintain clear and open communication with the Authority and local district councils. The Service Provider shall support the Authority and the District Council to meet each District's objectives.

5.1.3 The Service Provider shall assign a dedicated local manager for this Contract. The name and contact details of the manager shall be shared with the Authority so any urgent issues can be raised.

5.1.4 The Service Provider shall ensure the Authority are kept up to date with relevant points of contact and are promptly informed of any changes in the contact details.

5.2 Event reporting

5.2.1 In the event of exceptionally bad weather impacting Service, the Service Provider shall keep both the Authority and the District Councils informed appropriately of any contingency measures, including the removal of vehicles from the highway.

5.2.2 In the event of an incident, the Service Provider shall inform the Authority as soon as possible, and at maximum within 24 hours of becoming aware. Such incidents include collision, injury, involvement of police or other emergency services.

5.2.3 In the event of a theft or vandalism incident, the Service Provider is obliged to inform the local enforcement representative and the Authority within three days.

5.3 Weekly Activity

5.3.1 The Service Provider shall provide a Weekly Service Report, setting out the following information in respect of the previous Contract Week:

- a. Number of operational and available E-scooters in each Location;
- b. Number of rides per week per District;
- c. Unique number of riders per week;
- d. Total Kilometres ridden per District;
- e. Number of discount passes sold;
- f. Number of injuries reported;

- g. Numbers of warnings and suspensions;
- h. Numbers of E-scooters parked outside of Parking Bay and the timeframes in which these were rectified;
- i. Number of inoperable E-scooters identified and the timeframe in which these were removed from use;
- j. Number of Reports of Inappropriate Usage, defined as any use of E-scooters which is in contravention to the rules set out in Section 3.8. These shall be, categorised into automatic reports identified through the Service Provider's systems, and those that were communicated by other means; and
- k. Categorisation of how the Reports of Inappropriate Usage were responded to.

5.4 Monthly Activity

5.4.1 At the end of each month, the Service Provider shall fully complete and return to the Authority the DfT's Situation Reports (Sit-Reps), detailing the required data from the previous month.

5.5 Quarterly Activity

5.5.1 The Service Provider shall provide a Quarterly Service Report, no more than fifteen (15) Working Days from the end of each Contract Quarter, setting out the following information in respect of the previous Contract Quarter:

- a. Performance against KPIs PS01A/PS01B, PS02 and PS03
- b. Avoided CO2 emissions
- c. Satisfaction rates for rides
- d. Number of decommissioned E-scooters, reason for decommissioning and the E-scooter age

5.5.2 The Service Provider shall complete and submit the quarterly Social Value report sent to them by the Authority, detailing the Social Value they have delivered for the last quarter, as set out in Specification Section 6.4.

5.5.3 The Service Provider shall attend Quarterly Strategic Review Meetings with the Authority's Authorized Representative to update on:

- A. Performance against the Performance Standards, as set out in Schedule 5 (Service Levels and Performance Management), using data from the various Service Reports. Failure to meet the Performance Standards will entail Service Credits, and a discussion in the Strategic Review meeting of any resulting performance improvement actions

- B. Any risks that have arisen or changed in the previous quarter
- C. An explanation of the Social Value delivered during the previous quarter, as submitted in the Social Value Report

5.6 Annual Activity

5.6.1 The Service Provider shall communicate and confirm relevant points of contact in their organization on an annual basis.

5.6.2 The Service Provider shall provide to the Authority, no more than fifteen Business Days following the end of the Contract Year with an Annual Service Report setting out the following information in respect of the previous Contract Year:

- A. Summary of performance against the Performance Standards;
- B. Average E-scooter age of the fleet;
- C. A written description of the delivery of the Social Value Plan

5.6.3 The Service Provider shall be required to complete a contract compliance audit on an annual basis, as provided by the Authority.

5.6.4 The Service Provider shall attend a Quarterly Strategic Review Meetings with the Authority's Authorized Representative to update on:

- A. Identified actions to improve Service efficiency, effectiveness, or Passenger experience;
- B. Opportunities to improve the Services through collaboration or innovation;
- C. Confirmation of the delivery of the Social Value as set out in the Social Value Plan together with details of any additional Social Value;
- D. The delivery of the Environmental Sustainability Plan, and any additional measures the Service Provider is taking to reduce carbon emissions and to reduce negative environmental impacts, in the delivery of this Contract;
- E. The Service Provider's management and monitoring for modern slavery supply chain risks, and any action plans for tackling identified issues in the supply chain for this Contract.

5.7 Contract Management and Reporting

5.7.2 The Service Provider shall provide to the Authority any other data the DfT requests during this Contract.

5.7.3 The Service Provider shall also undertake and maintain a robust Data and Privacy Impact Assessment which they will share with the Authority and Users and ensure compliance with.

5.7.4 The Service Provider shall implement data policies and practices that are designed to allow sharing of key operational and performance data with the DfT, emergency services, the Authority and/or Interested Parties and the Service Provider will obtain all necessary consents for such sharing from the Users.

6. Contractual Requirements

6.1 Insurance Requirements

6.1.1 The Service Provider shall maintain the following “Required Insurances”:

Employer’s Liability insurance of not less than £5 million;

Public Liability insurance of not less than £10 million;

6.1.2 As required by the DfT, the Service Provider shall ensure that all E-scooters deployed under this Contract are covered by a motor vehicle insurance policy that adequately covers users of the vehicles.

6.2 Business Continuity Plan Requirement

6.2.1 The Service Provider shall provide a compliant organisational Business Continuity Plan (BCP) within 5 Working Days of Contract Award. If the Service Provider does not have an established organisational BCP, this should be communicated to the Authority’s Contract Manager, for discussion about developing such a plan during the Contract.

6.2.2 The BCP provides the Authority with the necessary assurances that the winning bidder has contingency plans in place to respond to emergencies & disruptive events and to minimise any disruption caused.

6.2.3 A compliant BCP must meet the requirements of the following six categories:

Category
Roles & Responsibilities: The plan clearly identifies the roles and responsibilities of different individuals and teams involved in the response to a business continuity incident
Command & Control: The plan establishes a clear command structure for coordinating the response to the incident.
Communication: The plan identifies how internal and external stakeholders will be contacted.
Threats & Hazards: The plan identifies key threats and hazards that could impact the provision of service.
Recovery Strategies: The plan clearly identifies strategies to recover from differing impacts.
Contact Information: The plan has evidence that key contact details are contained and that secondary points of contact are identified.

Each of these categories will be reviewed by the Authority's Emergency Planning & Resilience Team and marked as **Satisfactory**, **Satisfactory with Advisories** or **Not Satisfactory**.

Satisfactory - Will require no further action but will be monitored throughout the life of the contract through Contract Management and Contract Compliance Audits.

Satisfactory with Advisories - Will require further discussion and agreement during the Contract Mobilisation phase and will be monitored throughout the life of the Contract through Contract Management and Contract Compliance Audits.

Unsatisfactory - Will require the Supplier to revise and resubmit the BCP to meet the specified criteria and be compliant. If the revised BCP does not meet the minimum standard of 'Satisfactory with Advisories' there will be one further opportunity to resubmit. Failure to meet the required standard at this point could result in the termination of the contract.

6.3 Modern Slavery Prevention Plan Requirement

6.3.1 The Service Provider shall submit to the Authority a Modern Slavery Prevention Plan within 3 months of Contract Award. This shall include, but not be limited to:

- A description of the supply chain that the E-scooter vehicles are being sourced through, including detail on the main suppliers that are involved, and which country these vehicles are manufactured in
- A description of how the supply chain for this Contract will be managed and monitored for modern slavery supply chain risks and the Service Provider's action plans for tackling issues as they arise. This should include information on who monitors the modern slavery risk, how frequently, and the organisations processes to identify, manage and mitigate risks

6.3.2 Once the Modern Slavery Prevention Plan has been submitted to the Authority, a meeting will be held for the Service Provider to present and explain the measures detailed in this document.

6.3.3 The Service Provider is required to work openly and proactively with the Authority to discuss issues of Modern Slavery and areas the Service Provider is working on improving.

6.4 Social Value Requirement

6.4.1 For the initial term, the Service Provider shall deliver the Social Value Plan commitments, made in the ECC TOMs Social Value Calculator and the Social Value Supporting Statement submitted as part of the Contractor's Proposals.

6.4.2 At each extension point, the Service Provider shall resubmit the ECC TOMs Social Value Calculator and the Social Value Supporting Statement, detailing the Social Value Plan for the year ahead. The total value submitted in each extension calculator must be equal to the prorata'd total value bid in the Social Value Calculator submitted for the initial term, as this is evaluated as part of the contract award and is therefore forms a contractual obligation. This total extension value per year will be calculated through the total amount of Social

Value pledged in the initial Social Value Calculator, divided by the 9 months 17 days of the contract length, multiplied by the 12-month contract extension.

6.4.3 The Service Provider shall complete and provide the Authority with a quarterly Social Value report, in the form and format specified by the Authority, detailing commitments delivered as part of their Social Value Plan in the previous quarter. Quarterly Social Value reports shall be completed by the Service Provider and returned to the Authority no later than ten (10) Business Days after the end of each quarter of each Contract Year.

6.4.4 The Service Provider shall provide the Authority with an annual report describing how they delivered on the commitments made in that year's Social Value Plan, in conjunction with a discussion with this delivery at the Annual Strategic Review meeting.

6.4.5 For more information on Social Value, including the full list of ECC's TOMs, Social Value examples, and bidders' guidance, you can find our Social Value Catalogue here: [Social Value Catalogue | Provider Hub | Essex \(essexproviderhub.org\)](#)

6.5 Climate Requirements

6.5.1 The Service Provider shall deliver the Environmental Sustainability Plan as detailed in the Contractor's Proposals.

6.5.2 It is desirable that the Service Provider has a published organisational Carbon Reduction Plan (CRP) that complies with the required technical standards under PPN 06/21 (Technical Standard for the Completion of Carbon Reduction Plans), as set out in the below table:

Ref	Compliance Criteria
1	Carbon Reduction Plan is published on company website (if the company does not have a website they must be willing to provide a copy of their CRP to anyone who requests it, within 30 days).
2	Plan contains scope 1 and scope 2 emissions data
3	Plan contains emissions data for the following scope 3 measures: upstream transport & distribution, waste generated in operations, business travel, employee commuting, downstream transport & distribution.
4	Plan is dated within 12 months of tender submission
5	Company has set a target to achieve net zero by 2050 at the latest
6	Company has provided their baseline emissions
7	Company has provided the current year emissions

6.5.3 The Authority reserves the right to ask the Service Provider for data regarding their organisational Green House Gas emissions during the life of the Contract.

6.6. Exit Plan Requirements

6.6.1 Three months prior to the end of the Contract, the Service Provider shall submit an Exit Plan, including but not limited to the following:

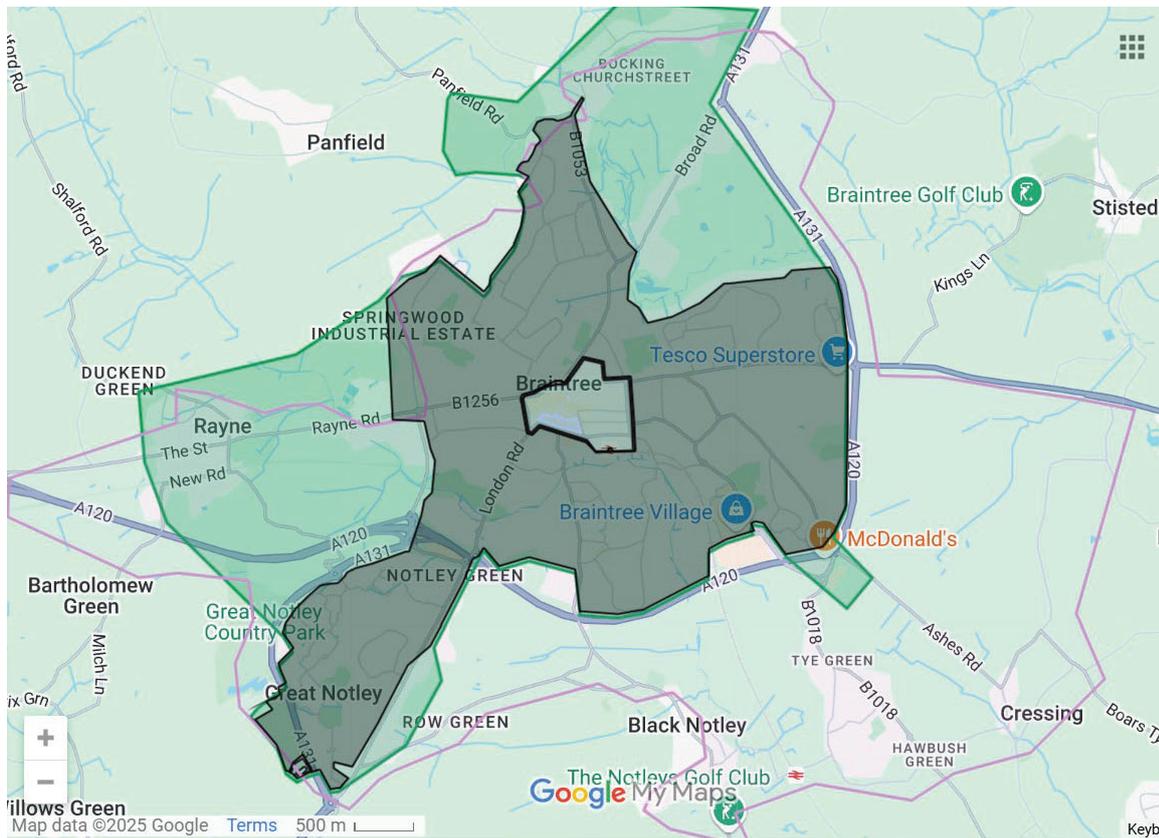
- a. Operational demobilisation
- b. Fleet withdrawal
- c. Suspension of service
- d. Timescales of communicating exit to users
- e. Refunds of any fees
- f. Data
- g. Infrastructure
- h. Lessons learned

Appendix 1: Operating Zone and Parking Bay Maps

Braintree Operating Zone:

Key:

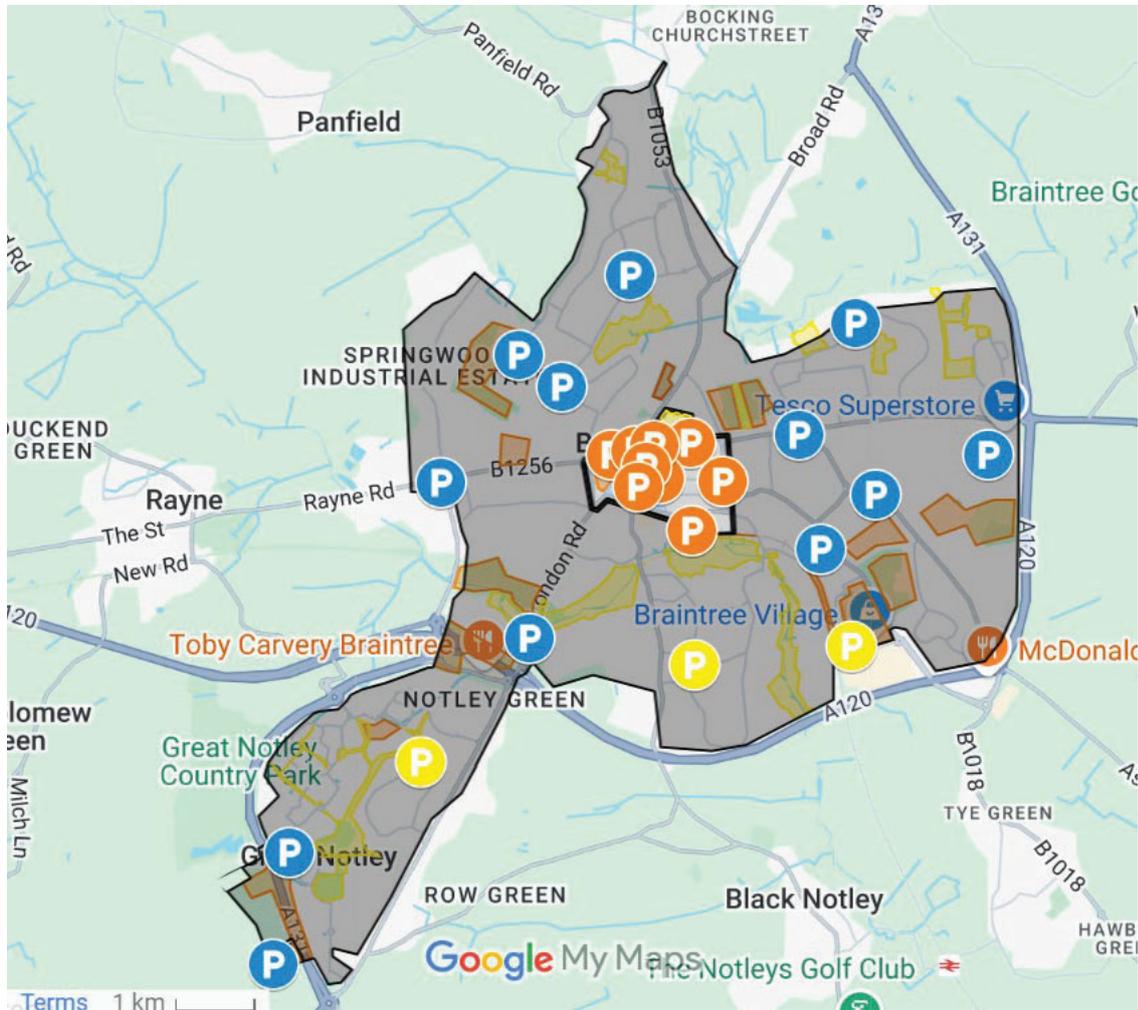
-  Braintree boundary
-  Expansion zone
-  Current zone of operation as of 9th April 2025



Braintree Parking Map:

Key:

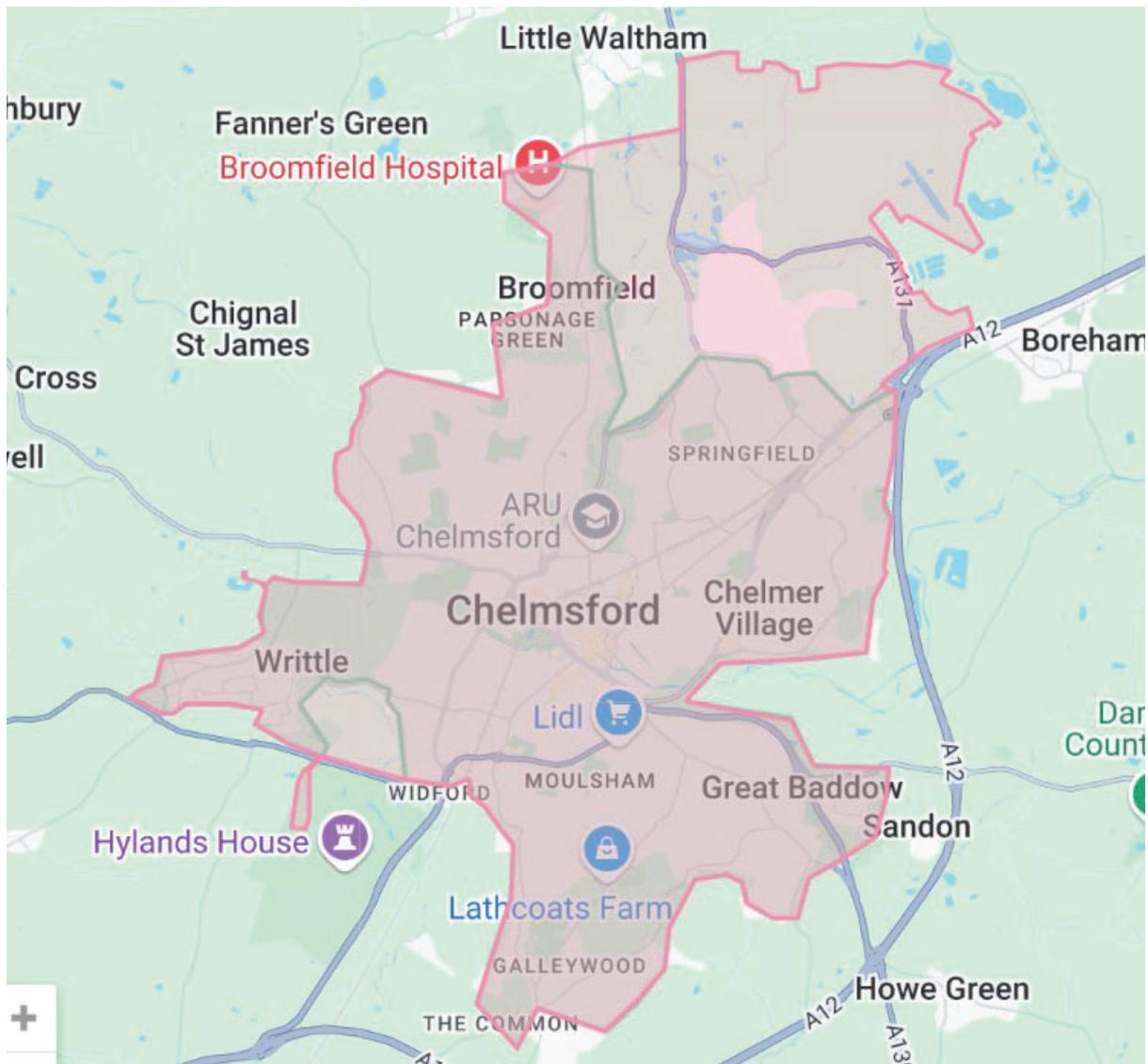
-  Free floating Parking Bay
-  Mandatory Parking Bay
-  Proposed Parking Bay



Chelmsford Operating Zone

Key:

— Zone of operation

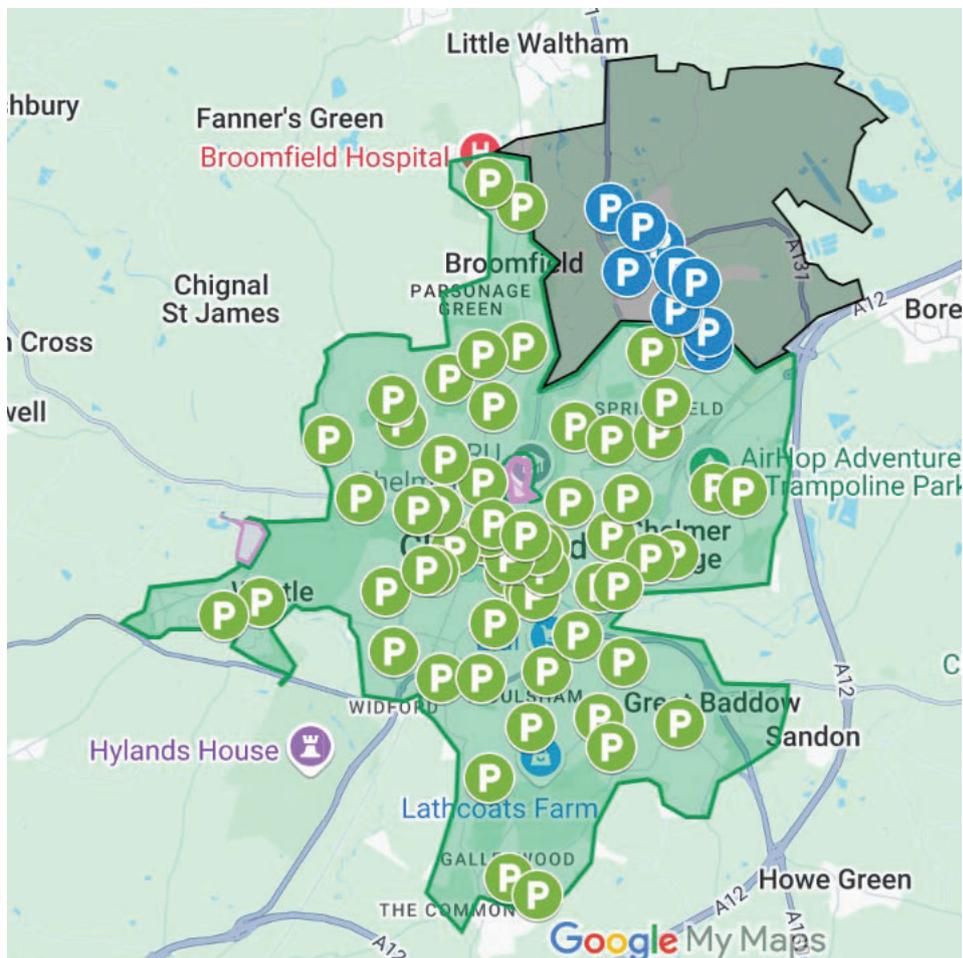


Chelmsford Parking Map:

Key:

 Proposed Parking Bay once area opened up

 Parking Bay

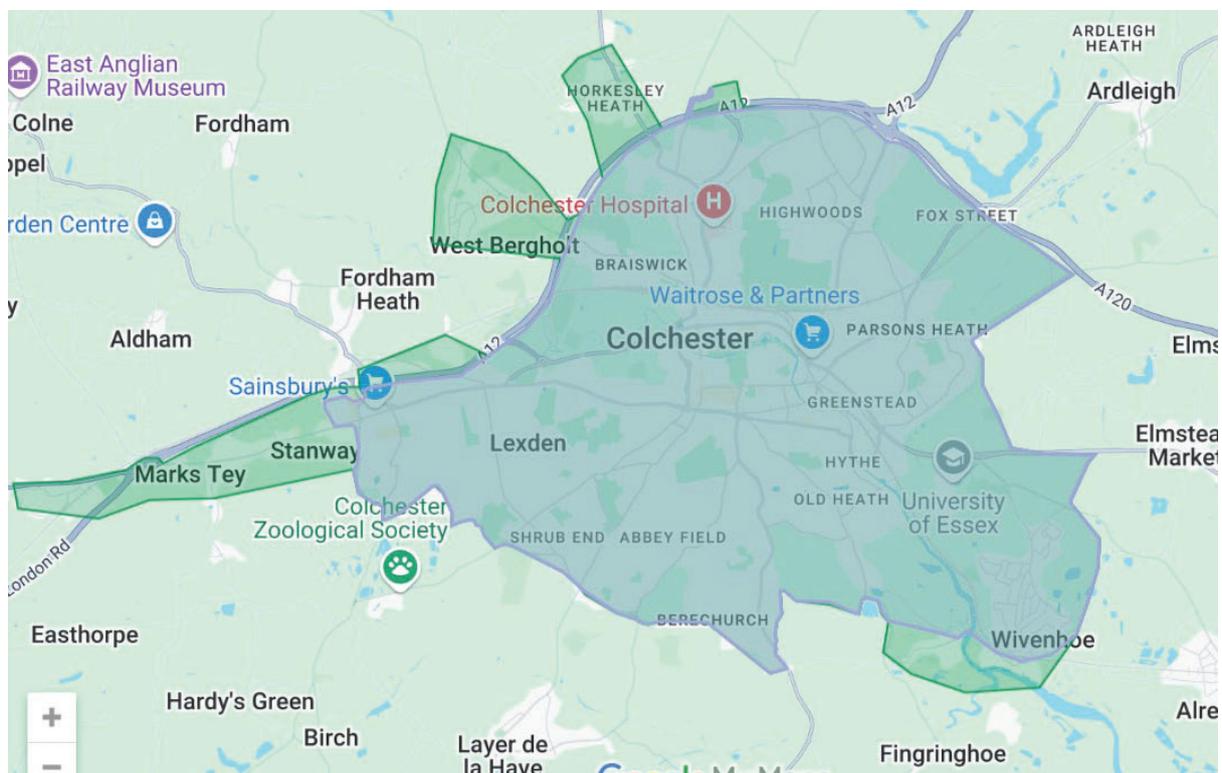


Colchester Operating Zone:

Key:

— Zone of operation

— DfT approved expanded zone



Colchester Parking Map:

Key:

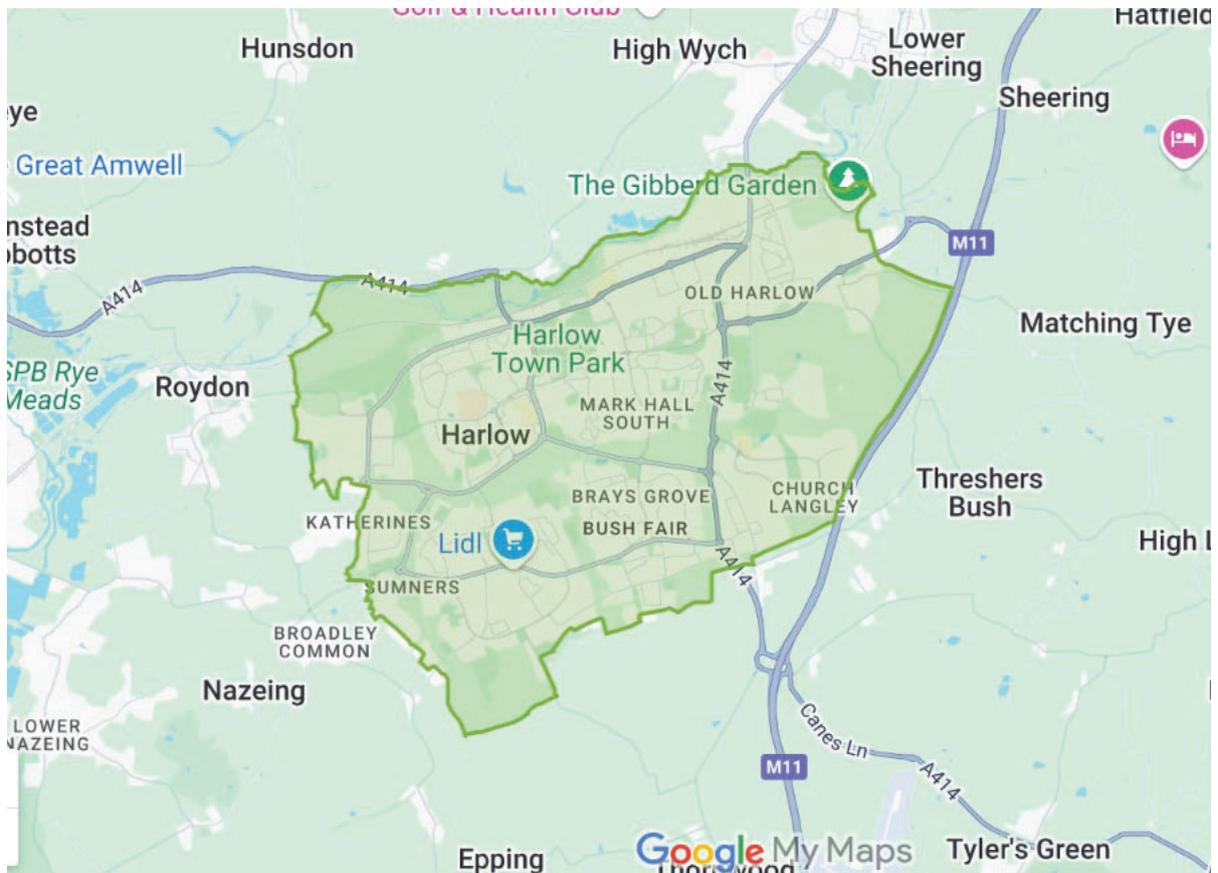
P Parking Bay



Harlow Operating Zone:

Key

— DfT approved operating area (exact operating area to be agreed with Harlow District Council, the Authority and the Service Provider)



Appendix 2: Regulatory Basis for E-scooter Trials

The Service Provider shall operate within the regulations established by the Department for Transport to enable trials of rental E-scooters. The below screenshots detail the regulatory amendments that currently underpin the E-scooter trials (captured from the Gov.UK E-Scooter Trials Webpage on 30th April 2025:

<https://www.gov.uk/government/publications/e-scooter-trials-guidance-for-local-areas-and-rental-operators/e-scooter-trials-guidance-for-local-areas-and-rental-operators#minimum-technical-requirements-for-e-scooters>).

1. Amendments to the statutory definition of E-scooters, to now be defined as following:

Vehicle design: current position

An e-scooter continues to fall within the statutory definition of a motor vehicle. We have defined the sub-category of an e-scooter as being a motor vehicle that:

- is fitted with no motor other than an electric motor with a maximum continuous power rating of 500W and is not fitted with pedals that are capable of propelling the vehicle
- is designed to carry no more than one person
- has a maximum speed not exceeding 15.5mph
- has 2 wheels, 1 front and 1 rear, aligned along the direction of travel
- has a mass including the battery, but excluding the rider, not exceeding 55kg
- has means of directional control via the use of handlebars that are mechanically linked to the steered wheel
- has means of controlling the speed via hand controls and a power control that defaults to the 'off' position

In this definition, after considering consultation responses, we decided to allow e-scooters to be used up to a maximum speed of 15.5mph. This matches the speed limit for EAPCs. Geo-fencing technology could allow for greater flexibility for lower speeds, where appropriate, across trial areas.

We also increased the permitted vehicle mass from 35kg to 55kg and removed from the original definition that an e-scooter should have 'no provision for seating' to allow seated variants to participate where they comply with our other requirements.

Finally, we introduced a maximum motor power – up from 350W to 500W.

2. Amendments to the License requirements for E-scooter users

Rules for e-scooter users

Anyone with a full or provisional driving licence can use a trial e-scooter ([categories AM, A1, A2, A and B](#)) by permitting those licence holders to ride category Q vehicles.

To achieve this, we have amended the various existing requirements in the [Motor Vehicles \(Driving Licences\) Regulations 1999](#) that currently require users to hold a full category A, AM licence, a full category B licence pre-2001 or later full category B licence plus CBT certificate.

3. Amendments to permit E-scooter use on cycle lanes

Cycle lanes: regulatory changes by DfT

We have made amendments to the [Traffic Signs Regulations and General Directions 2016](#) (that apply to England only) to include e-scooters within the definition of vehicles permitted to use cycle lanes.

We have amended the definition of cycle lane to read ‘part of a carriageway of a road reserved for pedal cycles and/or electric scooters that is separated from the rest of the carriageway—’ or similar. This will permit e-scooters to be used in cycle lanes. It also means that the cycle symbol on signs will apply to e-scooters.

4. Other regulatory amendments

Other regulations that apply to e-scooters

There are other regulations that apply to e-scooters that we do not consider relevant to running trials. Therefore, we have exempted trial e-scooters from vehicle registration and licensing (vehicle excise duty). To achieve this, we have amended the [Road Vehicles \(Registration and Licensing\) Regulations 2002](#).

We have also exempted trial e-scooters from the requirements for vehicle type approval. To achieve this, we have exempted e-scooters from the type approval requirements in the [Road Traffic Act 1988](#).

Appendix 3: Minimum Technical Standards

The Service Provider shall ensure all E-scooters deployed under this Contract are compliant with the minimum technical standards assessed as part of the Vehicle Special Order process, a summary of which is set out below (captured from the Gov.UK E-Scooter Trials Webpage on 30th April 2025: <https://www.gov.uk/government/publications/e-scooter-trials-guidance-for-local-areas-and-rental-operators/e-scooter-trials-guidance-for-local-areas-and-rental-operators#minimum-technical-requirements-for-e-scooters>).

Summary of technical requirements required from operators

Section	Description of requirements
General safety	All aspects of the design and construction of the vehicle that are not covered by other items shall be such that no danger is caused or likely to be caused to any person using the vehicle or other road users.
Anti-tampering	Measures shall be taken to prevent tampering of: <ul style="list-style-type: none">– controls– maximum speed– power
Audible warning	Each vehicle shall be fitted with a bell or horn suitable for giving audible warning of the approach or position of the vehicle.
Braking	Each vehicle should be fitted with 2 independent braking systems, each of which is capable of bringing the vehicle safely to a halt. Combined braking systems are allowed provided: <ul style="list-style-type: none">– a failure in one system does not affect the performance of the other– each system meets the given brake performance requirements below

At least one brake must be hand-operated. If a kinetic energy recovery system is counted as one braking system, then the second braking system shall be a friction brake.

The braking systems shall meet the following requirements on a dry and level surface and when fully laden:

1. When all braking systems are used in combination, a minimum deceleration rate of 3.5m/s^2 or max stopping distance $\leq 7\text{m}$ from a speed of 15.5mph.
2. Each braking system shall independently be able to achieve a minimum deceleration 1.5m/s^2 or max stopping distance $\leq 15\text{m}$ from a speed of 15.5mph.

If a mudguard brake is used, the following conditions shall be met:

1. It shall be constructed of materials that limit wear of wheel and mudguard.
2. It shall be possible to actuate the foot brake over its full travel without interference.
3. Mudguard brake shall have a non-slip surface. The braking force shall be progressive and graduated.

Where the e-scooter is fitted with brakes which are intended to be hand-operated:

1. The brake lever intended to be operated by the right hand must operate the front brake.
 2. The brake lever intended to be operated by the left hand must operate the rear brake.
- A single lever operating both braking systems shall be permitted to be operated by either hand.

Means to operate brakes must be exclusive for braking.

Every part of every braking system and the means of operation shall be maintained in good and efficient working order and be properly adjusted.

Mass and dimensions of e-scooters	Minimum payload capacity: 100kg Maximum mass without rider: 55kg Maximum length: 1.5m Maximum width: 0.7m Maximum height: 1.5m
Electrical safety	The vehicle and its components of the electrical system including the battery shall be so designed, constructed and fitted as to: <ul style="list-style-type: none">- minimise and protect against the risk of electrolyte leakage, fire, explosion and electric shock- ensure electromagnetic compatibility
Lighting and reflectors	<p>Obligatory lamps:</p> <ol style="list-style-type: none">1. The vehicle shall be fitted with a front position lamp meeting the following requirements:<ul style="list-style-type: none">- colour: white- visibility: easily visible for other road users from a reasonable distance, but not to dazzle oncoming road users2. The vehicle shall be fitted with a rear position lamp meeting the following requirements:<ul style="list-style-type: none">- colour: red- alignment: at or near the rear- visibility: easily visible for other road users from a reasonable distance, but not to dazzle oncoming road users3. Flashing lamps are permitted with a flashing frequency of 1Hz to 4Hz (60 to 240 times per minute). <p>Optional lamps:</p> <ol style="list-style-type: none">1. The vehicle may be fitted with direction indicators. If fitted, the colour of the direction indicators shall be amber.2. The vehicle may be fitted with a stop lamp. If fitted, the stop lamp shall meet the following requirements:<ul style="list-style-type: none">- colour: red- alignment: to the rear

Obligatory retro reflectors:

1. The vehicle shall be fitted with a red reflector to the rear.
2. The vehicle shall be fitted with reflectors that are capable of reflecting light to each side of the vehicle and shall be of colour either amber or white.
3. Reflective materials (such as reflective tapes) shall be allowed.

Optional retro reflectors:

1. The vehicle may be fitted with a reflector to the front. If fitted, the colour of the reflector shall be white;
2. Reflective materials (such as reflective tapes) shall be allowed.

Use:

1. No person shall use/permit to be used on a road any light to cause undue dazzle or discomfort to other persons using the road.
2. Obligatory lamps are required to be kept lit and unobscured when the vehicle is:
 - used between sunset and sunrise, or in seriously reduced visibility between sunrise and sunset
 - allowed to remain at rest on a road between sunset and sunrise
3. Lamps and reflectors must be clean and maintained in good working order.

Manufacturer's label	<p>A tamper-resistant, weatherproof label shall be firmly affixed, legible and located in a conspicuous place displaying:</p> <ul style="list-style-type: none">- manufacturer name- model identifier- unique identification number- maximum payload- maximum speed- maximum continuous rated power <p>The unique identification number may be located on a separate label positioned elsewhere on the vehicle.</p> <p>If removed, a new label shall be put in its place.</p>
Stands	<p>The vehicle must be fitted with a stand that can support the e-scooter when left unattended.</p> <p>The stand – once retracted – shall remain in the retracted position while driving so as not to disturb the vehicle while in motion.</p>
Towing	<p>Towing is prohibited.</p> <p>The use of side-cars is prohibited.</p>
Tyres	<p>Tyres may be of either pneumatic or non-pneumatic construction. The tyre shall be suitable having regard to the use to which the e-scooter is being put.</p> <p>The tyre shall:</p> <ul style="list-style-type: none">- be maintained in such condition as to be fit for the use to which the vehicle is being put- not have any defect which might in any way cause damage to the surface of the road, rider or other persons using the road
Stability	<p>The vehicle shall be so designed and constructed as to pass the stability tests outlined in 8.2.</p>

Redacted

Schedule 21 (Service Provider's Solution): Pages 171-287

FREEDOM OF INFORMATION ACT FORM

Name of Bidder:	Voi Technology UK Ltd
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Essex County Council is subject to the provisions of the Freedom of Information (FOI) Act 2000.

If you consider that any information supplied for the purposes of this tender, or which will be supplied during the performance of the contract, is either confidential in nature or commercially sensitive (within the meaning of the aforementioned Act under sections 41 or 43) please refer to the guidance on exemptions on the Information Commissioner’s website (www.ico.gov.uk). If after doing this you believe that an exemption applies, the exemption should be highlighted in the body of the tender submission and the reasons for its sensitivity given in the table below.

This form should accompany your submission.

We would ask that the Council withhold the following information from release under the Freedom of Information (FOI) Act 200 as appropriate:

Location and description of commercially sensitive or confidential information	Reason for Exemption
<p>Technical, Social Value and Climate Responses</p> <p>(all submitted question responses and supporting appendices)</p>	<p>This material is exempt from disclosure under sections 41(1) and 43(2) of the Freedom of Information Act 2000:</p> <ul style="list-style-type: none"> ● It contains information provided in confidence, the disclosure of which would constitute a breach of confidence actionable by Voi, as it was developed specifically for this procurement and shared in circumstances giving rise to a reasonable expectation of confidentiality (Section 41). ● It includes proprietary methodologies, operational strategies, deployment plans, and non-public processes that are commercially sensitive, and disclosure would be likely to prejudice the commercial interests of Voi by providing competitors with insight into our delivery approach, business model, and bidding tactics (Section 43).

	<p>While some elements may appear similar to public-facing features of our service, the responses include strategic and contract-specific adaptations that are not publicly available and would only become visible post-contract implementation.</p> <p>If disclosure is required, we would be prepared to provide a redacted version removing sensitive material</p>
<p>Commercial Response</p>	<p>This information is exempt under sections 41(1) and 43(2) of the Freedom of Information Act 2000:</p> <ul style="list-style-type: none"> ● The response includes detailed pricing structures, financial modelling, and commercial strategies which were submitted in confidence and are not in the public domain (Section 41). ● Disclosure would be likely to prejudice Voi's commercial interests by revealing cost assumptions, pricing methodology, and strategic financial positioning, giving competitors an unfair advantage in future procurements (Section 43). <p>This information was created solely for this opportunity and submitted in the context of a confidential procurement process. Should disclosure be deemed necessary, we request the opportunity to submit a suitably redacted version.</p>

SCHEDULE 5

Service Levels and Performance Management

1. Performance Management Regime Objectives

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

2. Performance Management Regime Overview

- 2.1 The Performance Management Regime consists of:
 - 2.1.1 the required Service Levels;
 - 2.1.2 the Performance Standards (PS);
 - 2.1.3 the Management Indicators;
 - 2.1.4 the procedure which applies if the Acceptable Service Levels are not met.

3. Performance Standards Table

- 3.1 The table in **Appendix 1 (Performance Standards and Management Indicators Tables)** to this **Schedule 5** sets out the Performance Management Regime parameters for the Operational Services.

4. NOT USED

5. Liability

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

6. Performance Monitoring

- 6.1 The Service Provider shall accurately document all processes for the identification of performance against the Performance Standards in accordance with **Specification Section 5 (Contract Management Requirements)**
- 6.2 The Service Provider's performance in meeting the Service Levels in respect of each PS shall be reported, monitored and assessed every 3,6,9 Months in accordance with **Specification Section 5 (Contract Management Requirements)**
- 6.3 In addition to providing Performance Standard Reports, the Service Provider shall measure and provide such Data as is reasonably required by ECC Personnel for the purposes of monitoring the Service Provider's performance in meeting the Performance Standards.
- 6.4 The Service Provider shall be responsible for ensuring that all Performance Standard Reports are accurately prepared, using up to date and accurate Data.

7. Escalation Procedure

- 7.1.1 Without prejudice to any other rights or remedies arising under this Agreement, if the Service Provider fails to deliver on the Service set out in the Specification or any of the Performance Standard(s) or Management

Indicator(s), ECC shall have the right to serve notice on the Service Provider to require the Service Provider to prepare an improvement plan (an "**Improvement Plan**") within the timescales specified in the Performance Standard Table, or the timescales as set by the Authority's Authorised Representative at the time.

- 7.2 The Improvement Plan shall set out:
- 7.2.1 the reasons for the failure;
 - 7.2.2 the impact the Service Provider reasonably expects such failure to have on the Scheme's programme;
 - 7.2.3 the impact the Service Provider reasonably expects such failure to have on Customers; and
 - 7.2.4 the Service Provider's proposed remedy or remedies for the failure, together with a proposed programme for implementation.
- 7.3 Following receipt of the Improvement Plan, ECC shall notify the Service Provider in writing whether or not it agrees with the Service Provider's proposed remedies and proposed programme for implementation ("**Response**").
- 7.4 If ECC confirms it agrees with the proposals, the Service Provider shall implement its proposed remedies and programme for implementation as set out in the Improvement Plan.
- 7.5 If ECC advises that it does not agree with the proposals, the Parties shall seek to resolve the issue(s) at a meeting between the Service Provider and the Authority, with such meeting to be convened within three (3) Working Days of the Response.
- 7.6 If following the meeting the Parties cannot agree the remedies and/or the programme for implementation, then the Parties shall seek to resolve the issue(s) at a meeting between the Service Provider and the Authority's Representative's Escalation Personnel, such meeting to be convened within three (3) Working Days of the meeting held or, where no such meeting was held, within five (5) Working Days of the Response.
- 7.7 If, following the meeting referred to in **paragraph 7.5 or 7.6** the Parties cannot agree the remedies and/or the programme for implementation, or in the event that a meeting has not been convened within the relevant timescales, then **clause 50 (Termination)** shall apply.

8. Remedies for Failure to Achieve Acceptable Service Levels

8.1 If:

8.1.1 the Service Provider fails to implement an Improvement Plan approved by ECC pursuant to **paragraph 7.4**;

8.1.2 the Service Provider fails to provide an Improvement Plan;

then the provisions of **clause 50 (Termination)** shall apply.

9. Changes to Performance Standards

9.1 ECC and the Service Provider may at any time request a Change to any part or all of the Performance Management Regime set out in the Performance Standard Table and the Management Indicator Table.

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

Performance Standards

Critical Success Factor	Performance Standard Ref	Performance Standard	Monitoring Frequency	Performance Standard Monitoring Methodology	Implications of Failure	Service Credits
Sufficient Quantity of E-scooters during Mobilisation Period	PS01A Quantity of E-scooter vehicles deployed during the Mobilisation period	The Service Provider shall have deployed and operational at minimum the Required Mobilisation Quantity of E-scooters for each Location at any one time, as set out in Specification Section 3.1.	Data collected and reported Weekly Analysed Monthly	The Service Provider shall report the quantity of E-scooters deployed across each Location in their Weekly Service Report, as set out in Specification Section 5.3. A quantity of E-scooters less than the Required Mobilisation Quantity specified in Specification Section 3.1 will constitute a failure to meet this Performance Standard.	A quantity of E-scooters below the Required Mobilisation Quantity will accrue Service Credits. The Harlow Location is exempt from this service credit	£50 per E-scooter per week that less than the Required Mobilisation Quantity are deployed and operational, payable to the Authority as set out in Schedule 6 (Payment Mechanism).
Sufficient Quantity of E-scooters	PS01B Quantity of E-scooter vehicles deployed	The Service Provider shall have deployed and operational at minimum the Required Quantity of E-scooters for each Location at any one time, as set	Data collected and reported Weekly Analysed Quarterly	The Service Provider shall report the number of E-scooters deployed across each Location in their Weekly Service Report, as set out in Specification Section 5.3	A quantity of e-Scooters below the Required Quantity will accrue Service Credits.	£25 per E-scooter per week that less than the Required Quantity are deployed and operational, payable to the Authority as set out in Schedule 6 (Payment Mechanism).

		out in Specification Section 3.2		The Service Provider shall have deployed and operational the specified minimum number of E-scooters at any point, and any quantity below this will constitute a failure of this Performance Standard.		
Correct Parking	PS02 Response to Incorrectly Parked Vehicles – Automatically Identified	The Service Provider shall respond to reports of E-scooters parked outside of Parking Bays within 4 hours on average, detailed in Section 3.8.4.5 of the Specification	Data reported Weekly Measured against a monthly period Analysed Quarterly	<p>The Service Provider shall identify when E-scooters are parked outside of a Parking Bay automatically through suitable technologies, e-mail, app functionality or other means</p> <p>The Working Time within which an incorrectly parked scooter is rectified shall be reported in the Weekly Service Report. An average Collection Time will be calculated for each Month.</p> <p>An average Collection Time greater than 4 Working Hours in a Month will constitute a failure of this Performance Standard.</p>	An average time per scooter greater than 4 Working Hours in any month will incur service credits.	The Service Provider will incur a charge of £250 accumulating for every 10 minutes the monthly average Collection Time exceeds 4 hours, up to a limit of £1000 per Quarter.

				<p>‘Working Hours’ here is defined as those specified by the Service Provider in their Contractor’s Proposals.</p>		
<p>Considerate Road Usage</p>	<p>PS03 Response to Reports of Inappropriate Usage</p>	<p>The Service Provider shall ensure appropriate riding of E-scooters through investigating specific reports of Inappropriate Usage by other Users or the General Public, communicated through e-mail, app functionality or other means. Inappropriate Usage is defined as any use of E-scooters which is in contravention to the rules set out in Specification Section 4.8.</p>	<p>Data collected Weekly Analysed Quarterly</p>	<p>The Service Provider shall ensure that the number of reports of Inappropriate Usage are communicated to the Authority in their Weekly Service Report, as set out in Specification Section 6.3.</p> <p>Reports of Inappropriate Usage identified shall be investigated, categorised and appropriately actioned within 7 calendar days, reported in the Weekly Service Report. Where reports of Inappropriate Usage have not been appropriately actioned within 7 Calendar Days, these reports should be communicated to the Authority.</p>	<p>In the first instance, the Authority will require the Service Provider to submit an Action Plan detailing measures being introduced to ensure this Performance Standard is met.</p> <p>For any further recurrences without sufficient justification, the Authority will impose a Service Credit.</p>	<p>The Authority will impose a Service Credit of £100 per occurrence, where “occurrence” is defined as a report of inappropriate usage not appropriately actioned within 7 Calendar Days.</p>

				<p>Reports of Inappropriate Usage not actioned appropriately by the following Weekly Service Report shall be communicated to the Authority, in conjunction with a justification for why this has not been appropriately actioned within the 7 calendar days. Failure to communicate a justification, or a justification the Authority deems as insufficient, shall constitute a failure of this Performance Standard.</p>		
Data Reported to the Authority	PS04 Quarterly Contractual Activity	Service Provider provides all data in accordance with the 'Quarterly Activity' requirements in Section 5.5 of the Services Specification	Quarterly	<p>The Service Provider shall provide the required activity</p> <p>Not providing the required information within the specified 15 Business Days of the end of the Contract Quarter will constitute a failure of this Performance Standard.</p>	Failure of this Performance Standard will accrue Service Credits.	Service Credits of £250, accruing for each week the required information is not provided

Data Reported to the Authority	PS05 Annual Contractual Activity	Service Provider provides all data in accordance with the 'Annual Activity' requirements in Section 5.6 of the Services Specification	Annually	The Service Provider shall provide the required activity Not providing the required information within the specified 15 Business Days of the end of the Contract Quarter will constitute a failure of this Performance Standard.	Failure of this Performance Standard will accrue Service Credits	Service Credits of £250, accruing for each week the required information is not provided
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Management Indicators

The below Management Indicators determine the delivery of Social Value requirements, in accordance with Section 10 of the Specification. If the Contractor fails to meet any of the Management Indicators set out, an Action Plan will be requested.

Critical Success Factor	Management Indicator Ref	Management Indicator	Monitoring Frequency	Management Indicator Monitoring Methodology	Performance Management
Social Value	MI01 Social Value Quarterly Report	The Service Provider submits a quarterly Social Value report	Quarterly	The Authority receives a quarterly Social Value report	Action Plan

		in accordance with the requirements of Section 6.4 of the Specification		that complies with Section 10 of the Specification	
Social Value	MI02 Social Value Delivery	The Contractor ensures that Social Value is delivered as committed, in the Social Value Plan	Quarterly	The Authority monitors delivery of the commitments within the Social Value Plan	Action Plan

Schedule 6

Payment Mechanism

1 Definitions and Interpretation

1.1 Definitions specific to this Schedule are as follows:

Note to Bidders: Any inconsistencies between definitions set out in this document and the main body of the Contract will be corrected prior to Contract signature. Where any material corrections are required, these will be notified by the Authority during the clarification stage.

Concession Fee	The total concession fee payable to ECC by the Service Provider including both FPPV and Service Credits
Fee Payable Per Vehicle (FPPV)	This is the fee payable to ECC by the Service Provider, this shall be the amount submitted in the Commercial Matrix as part of the Contractor's proposals.
Monthly Authority Payment	means the payment to the Contractor calculated in accordance with paragraph 3
Monthly Service Credits Deduction	means the deduction calculated in accordance with paragraph 6
Service Credits	The performance credits payable by the Service Provider in accordance with Schedule 5 (Service Levels + Performance Management)
Vehicle	E-scooter(s)
Mobilisation Period	The time period as defined in Specification Section 3.1.

INTERPRETATION

1.2 Unless otherwise provided, references in this Schedule to Clauses and Schedules shall be references to the relevant Clauses and Schedules in the Agreement.

1.3 Unless otherwise provided, references to parts, paragraphs, tables and appendices shall be references to parts, paragraphs, tables and appendices in this Schedule.

1.4 The Parties agree that without prejudice to the express provisions of the Agreement, this Schedule 6 Payment Mechanism shall form the sole basis of payment from the Service Provider to ECC.

1.5 VAT properly chargeable on any component of either the Fee Payable Per Vehicle (FPPV)/Monthly Authority Payment or Service Credits.

- 1.6 This Schedule 6 - Payment Mechanism shall be read in conjunction with the Agreement and Schedule 2 – E-Scooter Specification.
- 1.7 Unless otherwise stated and/or defined in paragraph 1.1 above, defined terms within this Schedule shall have the meaning set out in the Agreement.

2 Monthly Authority Payment

- 2.1 The Fee Payable Per Vehicle (FPPV) is the fee payable to ECC submitted by the Service Provider in the Commercial Matrix as part of the Service Provider's proposals. This will be the amount the Service Provider is required to pay to ECC for each vehicle deployed under this Contract in a month.
- 2.2 The Service Provider shall submit a Weekly Service Report and the Monthly Situational Reports to ECC (Schedule 2, 5.3.1), evidencing the number of E-scooters deployed under this Contract in any Contract Month
- 2.3 The Monthly Authority Payment will be calculated through multiplying the number of E-scooters deployed under this Agreement in any given month by the Fee Payable Per Vehicle (FPPV) submitted in the Contractor's Proposal, to calculate the Monthly Authority Payment for that month.
- 2.4 The Service Provider is to supply ECC with a Purchase Order Number, this will be quoted on the invoice raised to the Service Provider. ECC shall raise an invoice to the Service Provider on a quarterly basis on the Quarter Days during the Term.
- 2.5 During the Mobilisation Period, the Monthly Authority Payment will not be enforced, and during this time only applicable Service Credits will be payable.

3 Service Credits Deductions

- 3.1 In the event of failure by the Service Provider to meet the Performance Standards set out in Schedule 5 (Service Levels and Performance Management), ECC will make performance deductions in the form of Service Credits, set out for each respective Performance Standard. Service Credit deductions will be calculated and paid quarterly or annually in accordance with Schedule 5 (Service Levels and Performance Management).

Clarification Number	Message Reference Number	Date Received	Clarification Subject	Clarification	ECC Response	ECC Response Sent
01A	1.1	02/06/25	Small inconsistencies	<p>Please could you clarify the following inconsistencies between the Proactis portal and the ITT, and within the ITT:</p> <ul style="list-style-type: none"> - 1. E-scooters Unit. The ITT mentions a page limit of 2, whereas Proactis mentions a page limit of 3; - 3. Mobilisation Plan. The ITT mentions a page limit of 3, whereas Proactis mentions a page limit of 4; - 3. Mobilisation Plan. The supporting text for this question in the Proactis portal is a duplicate of the Operational Plan supporting text; - A technical question 8, Reporting Data and Contract Management Plan, is mentioned once in the ITT but not referred to again, or in the portal. <p>Which document (or, the portal) is the master source of truth in case of any further small inconsistencies which are not identified by the council or bidders during the tender submission phase?</p> <p>Article 33 of the Bidder Guidance document states that "Bidders are advised that they should not incorporate embedded documents, pictures, diagrams, charts or URL links in their response unless specifically requested to do so". We ask that pictures, diagrams and charts are permitted for question 2 of the Technical Response, 'Additional Parking Bays Plan', where bidders will be able to use pictures, diagrams and charts to demonstrate their parking proposal and methodology more clearly, and question 6, 'Safety and Considerate Road Usage Plan', where it would be typical to add images of the vehicle or mobile application to demonstrate the existence of certain features.</p>	<p>Part 1: Thank you for highlighting - I am now rectifying the inconsistency in page numbers for the ITT questions on both the ProContract system and in the Bidder's Guidance. In the instance that minor inconsistencies are identified during the evaluation that are not picked up during the tender period, the order of precedent would be 1) Clarification Messages sent out by the Authority, 2) the ITT documents, and 3) the ProContract question itself.</p> <p>part 2: This wording has been removed - the score awarded for each Plan shall be decided solely on the basis of the content submitted within the specified page limit, in relation to the evaluation criteria. But, the Bidder may include additional diagrams, charts or similar beyond this page limit as Appendices, to illustrate and aid comprehension of the Plans.</p>	04/06/25
	3.1		Bulletin 01: V2 of Bidder's Guidance and Evaluation Matrix		<p>Please see below the amendments that have been made for the V2 version:</p> <ul style="list-style-type: none"> • Page limits on technical questions amended, to rectify inconsistency with ProContract portal. Technical questions with a weighting of 7.5% have a 3 page limit, and those with a weighting of 15% have a 5 page limit. The Pass/Fail E-scooters Unit question has a 3 page limit. The Evaluation Matrix has a new column with the page limits accordingly • Removed the clause forbidding diagrams and charts. New wording on diagrams added in: "The Authority will only evaluate within the specified page limits for each question, set out in this document and the Evaluation Matrix. The Bidder may include additional diagrams, charts or similar beyond this page limit as Appendices, for supporting reference by the evaluation panel, but the score awarded shall be decided solely on the basis of the content submitted within the page limit." • Amended the Social Value Score table to be based on real values, whereas previously this had been relative to the tender bid. This has been rectified given we are not bidding on price in the standard way for this procurement, to instead use real values, based on the estimate revenue. • Removal of reference in one place to a Technical Q8 Reporting Data and Contract Management, which was removed from the broader ITT prior to tender 	04/06/25

01B	1.1	02/06/25	Bulletin 02: Operating Zones and Parking Bays Geodata	Please could you share data files of the service area polygons and parking locations in Appendix 1 of Schedule 2 in a GIS format, such as kml or shapefile?	Please see attached the KML files with the exact boundaries of the Operating Zones and Parking Bays we are requiring for this contract for Braintree, Chelmsford and Colchester. For Harlow, the DfT approved Operating Zone is attached, and Parking Bays will need to be proposed under the new Contract - please see Specification Section 3.3.5. These will now also be added to the main ITT page.	05/06/25
2	4.1.2; Response 7.1	09/06/25	Location Data	We are having slight trouble accessing the files provided, is it possible for the Authority to please provide these in either a CSV, json or geojson file format?	We have received confirmation from operators that the KML files sent out are working correctly to provide the geodata on the operating zones and parking locations. Please can we direct you to the use of these tools for converting the KML files if needed: to convert borders of operating zones to geojson, the following tool can be used https://geojson.io/#map=2/0/20 ; and to convert Parking Bays to CSV, the following tool can be used https://www.convertcsv.com/kml-to-csv.htm to convert to CSV. Spots use the tool https://www.convertcsv.com/kml-to-csv.htm to convert to CSV	16/06/2025 09:47
3	5.1; Response 8.1	10/06/25	E-Scooters Unit Question + Diagrams	In relation to section 33 within 01 Bidder Guidance "Bidders are advised that they should not incorporate embedded documents, pictures, diagrams, charts or URL links in their response unless specifically requested to do so. Failure to do so may result in your submission being rejected.", please could the authority confirm if this applies to evidential pictures and diagrams supplementing written text? Are operators allowed to include process flows i.e. for maintenance? We believe this will make sections more legible for the reader and evaluation purposes. Could the Authority confirm if the diagram of the e-scooter unit is included within the page count in TQ1?	Please can we refer you to Bulletin 01/version 2 of the Bidder's Guidance, where this text was removed. A paragraph on the subject was added into the Bidder's Guidance: "The Authority will only evaluate within the specified page limits for each question, set out in this document and the Evaluation Matrix. The Bidder may include additional diagrams, charts or similar beyond this page limit as Appendices, for supporting reference by the evaluation panel, but the score awarded shall be decided solely on the basis of the content submitted within the page limit" We can confirm that for all questions including TQ1, diagrams can be added as an Appendix. The 'pass' criteria for this question as set out in the Bidder's Guidance is: "Bidder submits a diagram of the e-Scooters unit, confirming it has been certified for use on the DfT trials, including a written description of its features = Pass" For clarity on the 'Bidder submits a diagram of the e-Scooters unit' part of this, the Authority will pass questions where the e-Scooters unit diagram is in the Appendix, and will not be failing questions on the basis that their diagrams are in the Appendix for this question. We will require confirmation that your model is approved by the DfT and the description of key features within the page limit.	16/06/25 10:05
4	5.1; Response 9.1	10/06/25	E-bikes	We understand that the current operator in Essex has deployed e-bikes in some areas. Please could the authority confirm its intentions for the provision of e-bikes as part of this contract or a future contract?	E-bikes are currently deployed in one Location in Essex, in the city of Colchester, through a separate agreement between the local City Council and the operator. This Contract is purely for the purposes of delivering the government's E-scooter Trials, and there is no intention for e-bikes to be added into this Contract.	16/06/25 10:11

5	5.1; Response 10.1	10/06/25	Ridership and Fleet Size	Can we please have a breakdown of performance of each scheme (fleet and rides on a monthly basis) for the last 12 months?	<p>We are looking at this as a priority and should have further information on what we can provide in the next couple of days at the latest.</p> <p>Please can I highlight the following information in the meantime that is already available in the documents, for a high level understanding of utilisation.</p> <p>The size of the current fleet over the last 12 months has been the same as those set out in the Required Quantity of E-Scooters in the Specification:</p> <p>Braintree: 200 Colchester: 400 Chelmsford: 500</p> <p>The total number of rides across these three Operating Zones between 1st June 2024 and 30th April 2025 was 551,412, as set out in the Bidder Information.</p>	16/06/25
6	5.1; Response 11.1	10/06/25	TQ5 Maintenance and Disposal	Please could the Authority confirm if they are looking for safe battery management in addition to battery disposal as referenced in TQ5 "A description of how the Bidder will safely store, and where necessary dispose, of damaged e-Scooter units, including how you will safely dispose of batteries and their components;"	<p>Thank you for highlighting this - the Authority would be looking for information on safe battery management to provide confidence in how Operators would maintain E-Scooters. This will be added into this sentence in the Bidder's Guidance today.</p>	16/06/25
7	5.1; Response 7.1	10/06/25	Location Data	Could the authority please share node information i.e. the agreed locations that E-scooters under the current scheme can be dropped off, relocated and redistributed to?	<p>The Authority have specified Operating Zones agreed with the DfT, and parking sites, which may be amended to some degree using the process set out in Specification 3.4.3 (as shared in the KML files and illustrated in the PDF appendix). Decisions around where e-Scooters are deployed, relocated and redistributed to will be the Provider's responsibility, proposed in their responses to the technical questions, and if needed, refined during the contract (in alignment with their technical response).</p>	16/06/25
8	6.1; Response 12.1	10/06/25	Associated Persons and Subcontractors	Can the council confirm that if we utilise subcontractors for significant parts of our operation, but that we can still meet the conditions of participation alone, we do not need to consider those subcontractors as associated persons ?	<p>Associated Persons are those that the Bidder is relying on in order to satisfy the conditions of participation for the requirement. The questions which constitute the Conditions of Participation for this Procurement are set out in full in PSQ Question '7.1 Conditions of Participation Guidance Note' on the e-Sourcing portal.</p> <p>This includes 2 Technical Capacity Conditions:</p> <ul style="list-style-type: none"> • Resourcing and Systems Plan - the Bidder demonstrates that they have the appropriate resources available to deliver similar services • Relevant Experience and Contract Examples - Bidder demonstrates sufficient relevant experience to provide confidence that they have the technical and professional ability to deliver similar requirements <p>Parties that the Bidder would not have the 'technical and professional ability/sufficient resources to deliver the Services without would be an Associated Persons.</p>	16/06/25
9	6.1; Response 13.1	10/06/25	Extending Tender Period	We would like to request an extension of one week to the submission date, due to multiple public and personal holidays at this time of year.	<p>Personal holidays are insufficient reason to extend the tender period, and it is the Bidder's responsibility to plan resourcing accordingly. The tender period for this procurement was 36 days, which already has built in time above the 25 days minimum.</p> <p>We will extend the tender period until Monday 9am 30th June 2025, but unfortunately we are unable to extend for longer than this, as any further extension would impact on timelines to facilitate contract award by the end of July.</p>	16/06/25

	14.1	18/06/25	Bulletin 03: V3 Bidder's Guidance		<p>The amendments to the tender are as following:</p> <p>1) Submission deadline for PSQ and ITT responses extended through the weekend, to close at 9am Monday 30th June 2025, should Bidder's need this extra couple of days</p> <p>2) Edits to the Bidder Guidance:</p> <ul style="list-style-type: none"> • Updated tender submission deadline accordingly • Text added in around the Clarification Deadline - "Clarifications may be asked following the Clarification Deadline (20th June), but it is at the Authority's discretion whether to respond to such clarifications after this date. • Minor amendment to one of the requirements in TQ5: "A description of how the Bidder will safely store, and where necessary dispose, of damaged e-Scooter units, including how you will safely manage and dispose of batteries and their components;" <p>Please see attached the Clarification Log for all Clarifications</p>	16/06/25
	15.1	18/06/25	Clarification 05 - Ridership and Fleet Size (follow up)		Please see attached the Fleet and Ridership figures for Location, broken down per month, as requested	
10	16.1	18/06/25	Minor correction to cross-referencing	05. Schedule 2 and 07. Schedule 6 reference a '4.8' which doesn't seem to appear in any documents. Please could ECC confirm this should actually be 3.8?	<p>Thank you for highlighting this</p> <p>The sentences in question are: Specification section 5.3.1 "The Service Provider shall provide a Weekly Service Report, setting out the following information in respect of the previous Contract Week... j. Number of Reports of Inappropriate Usage, defined as any use of E-scooters which is in contravention to the rules set out in Section 3.8."</p> <p>As far as we can see, Schedule 6 does not reference a 4.8 and all cross-references in this Schedule appear to be correct</p>	26/06/25
11	16.1	18/06/25	Data Protection	Can Schedule 13, 3.1.1 be amended to "The Service Provider and ECC are Data Controllers for any personal data they process unless otherwise specified." Our recommendation is in line with all other e-scooter schemes being operated in the UK and is the correct (and most beneficial) set-up from a data protection point of view.	The Authority has reviewed this again, and have reissued the Ts and Cs and the Further Schedules, with amendments to Clause 42 and Schedule 13.	26/06/25
12	16.1	18/06/25	Data Protection	Please could ECC clarify what specific "Shared Data" it expects to be shared between the parties (e.g. as a list), as should be described in Appendix B? We are happy to discuss and conclude this in detail after a potential tender award, in which case we would be thankful if ECC can confirm that it may engage in such discussions/conclusions post tender award.	Currently, the only Shared Data that is envisaged could be in relation to any accidents where the Authority is under an obligation to notify the DfT. The terms have been amended to reflect that only in those specific circumstances will there be Shared Data.	26/06/25
13	16.1	18/06/25	Data Protection	Given our current understanding, we are unsure why the Service Provider and ECC would be joint controllers for any purposes, including where data is shared between the parties, as neither party would exercise control of the other party's essential means of processing. (i) Can ECC please clarify why it believes that the Service Provider and ECC are Joint Controllers of any Shared Data as stated in Schedule 13, 3.1.2? (ii) If the ECC agrees that the Service Provider and ECC are separate controllers even when there are data sharing activities, could the agreement please be updated to reflect this?	The Authority has reviewed this again, and have reissued the Ts and Cs and the Further Schedules, with amendments to Clause 42 and Schedule 13.	26/06/25

14	16.1	18/06/25	Data Protection	If Service Data originates only from the Service Provider, could Schedule 13, 5.1.1 please be amended so that the Service Provider handles all Data Subject requests and has no obligation to inform ECC of each request? Notifying ECC would be overly cumbersome on operators and would not strengthen data subjects' rights. If ECC would like aggregated data about the number of data subjects exercising these rights, this can be provided upon request.	The Authority has reviewed this again, and have reissued the Ts and Cs and the Further Schedules, with amendments to Clause 42 and Schedule 13.	26/06/25
15	16.1	18/06/25	Data Protection	Could Schedule 13, 5.1.2, 5.1.3, and 5.1.4 please be amended to a data breach, claim or investigation "which relates to the processing of personal data for which the Service Provider and EEC are joint controllers"? This broad current provision does not benefit any party nor the data subjects and may cause risks to data subjects.	The Authority require the clauses to remain as drafted. The Authority would still need to be advised by the Service Provider of all data breaches, claims or investigations in relation to any data subjects under this Contract.	26/06/25
16	16.1	18/06/25	Data Protection	Please can Schedule 13, 5.3. be amended to clarify the circumstances in which a data breach needs to be reported to the other party? For example, the data subject has taken a ride in the ECC zone. In [REDACTED] experience, data breaches should only be reported to the Council when there is a high risk to the data subject.	The Authority require the clauses to remain as drafted. The Authority would still need to be advised by the Service Provider of all data breaches, claims or investigations in relation to any data subjects under this Contract.	26/06/25
17	16.1	18/06/25	Data Protection	Since Appendix A is meant only to apply where each party acts as an independent controller and is not related to privacy provisions concerning data sharing, can this section please be removed? Each party is independently subject to applicable data protection laws, and limiting the essential means of processing of each party may unintentionally make the parties joint controllers.	The Authority require this to remain as drafted.	26/06/25
18	16.1	18/06/25	Data Protection	Can ECC clarify if it believes that either party will act as a processor on behalf of the other party?	The Authority does not currently believe there will be any Processing on behalf of the other party under this Contract.	26/06/25
19	16.1	18/06/25	Data Protection	Can EEC please clarify what specific data "ECC Data" includes, and if it expects to provide this to operators?	The Authority would define "ECC Data" as any data required to meet the outcomes for service delivery as set out in the Specification, including but not limited to the reporting data set out in Specification Section 5 'Contract Management Requirements'. We would suggest that Bidders who have any further concerns around this should seek their own legal advice.	26/06/25
20	16.1	18/06/25	Termination rights	Under Clause 50 of the Agreement, there is no express mechanism for mutual termination. Will ECC consider including a clause allowing for termination by mutual written agreement, subject to a reasonable wind-down period and exit obligations?	The Authority has discussed the point raised, and unfortunately we will not be making any amendments to the Contract to permit termination by the Service Provider.	26/06/25
21	16.1	18/06/25	TUPE	Under Section 13 of the PSQ, can ECC confirm whether it considers TUPE to apply to this contract and whether any current service provider employees have legal rights to transfer to the incoming operator?	The Authority would advise that all Bidders should seek their own independent legal advice on whether they believe TUPE should apply to this contract or not. We have attached Indicative Employee Information for reference. We have tweaked the PSQ and ITT questions relating to TUPE slightly in light of this.	26/06/25
22	16.1	18/06/25	Extension	Will ECC publish objective performance indicators or a review mechanism to guide the extension decision under Clause 2.2?	The Authority does not have set performance metrics or review mechanisms for determining the extension decision. It should be noted that it is not in the Authority's interest to reprocur this requirement sooner than is necessary. It is currently the Authorities intention to extend the Contract in accordance with the extension rights given through the continuation of the DfT's e-Scooters trials, and subject to the Authority's internal governance processes.	26/06/25

23	16.1	18/06/25	Indemnity	Clause 40.3.1 and 40.3.2 require the Service Provider to indemnify ECC for essentially all claims, losses, and damages arising from the Service Provider's acts, omissions, or breaches. This indemnity is very broad. Would ECC consider narrowing these provisions to a more proportionate scope? For example, limiting indemnities to third-party claims (such as third-party injury, property damage, or IP infringement (per Clause 37.5)) and excluding indirect or consequential losses suffered by ECC (which are already disclaimed in Clause 40.2). As drafted, the indemnities could be interpreted to cover even ECC's own direct losses from any breach, effectively bypassing the liability limitations. We request confirmation that any indemnified claims would be subject to the liability regime of the Agreement (including the excluded loss types in Clause 40.2 and any agreed caps), and ask ECC to clarify or adjust the indemnity scope so it does not impose an unlimited liability on the Service Provider.	The Authority has discussed the point raised, and unfortunately we will not be making any amendments to this clause.	26/06/25
24	18.1	19/06/25	Insurance	Professional Indemnity Insurance: Can you confirm professional indemnity insurance with not be required noting it is not relevant to the services we provide under this contract?	Thank you for highlighting this - having discussed further with our Insurance team, we have removed the requirement for Professional Indemnity Insurance from this Agreement. This has been removed from the Specification and the PSQ question on Insurance.	26/06/25
25	18.1	19/06/25	IP Rights	Intellectual Property Rights: Can you confirm that 37.2.1 is sufficient for setting out the IP rights for this agreement that 37.2.2 can be deleted noting that all improvements to our hardware and software will remain the intellectual property of the Service Provider?	The Authority has reviewed this and has updated Terms and Conditions Clause 37.2 accordingly	26/06/25
26	19.1	20/06/25	Exclusivity of operations	The draft Agreement makes the contract non-exclusive, allowing ECC to appoint other E-Scooter providers within the Area of Operation. Could ECC clarify whether it actually anticipates engaging multiple operators concurrently under this scheme? If so, how will overlapping operations be managed (e.g. distinct service zones or coordination mechanisms) to prevent user confusion and operational conflict? We seek confirmation that the successful operator will not be expected to share critical assets or responsibilities with another provider without clear boundaries and agreements in place.	The Authority cannot guarantee exclusivity for micromobility across the region to the Successful Bidder. It is not in the Authority's interest to have multiple providers operating E-scooter schemes in one geographical area during the Trials. Essex County Council has no further E-Scooter or E-Bike micromobility requirements on the Authority's pipeline at the current date. However, we can't guarantee that separate city councils won't have separate related requirements, for instance, the current agreement that Colchester City Council has for the provision of E-bikes. It is a known risk that there may be changes to the Authority's requirements, due to potential changes to the DfT's e-scooter trial requirements, or the establishment of the Greater Essex Mayoral Strategic Authority next year. If a new operator wins the contract for e-scooters and e-bikes continues with the existing provider in Colchester then we would not expect critical assets and responsibilities to be shared without clear agreements and boundaries in place. We would expect the 2 operators to work together to ensure continued success of micromobility projects in Colchester.	26/06/25
27	19.1	20/06/25	Termination rights	Clause 50.3.5 gives ECC the right to terminate the Agreement if any Milestone is delayed by more than 10 working days. We note the Service Provider is obliged under Clause 12 (Delay) and Schedule 3 to produce and implement a Delay Plan to remedy any slippage. Could ECC clarify how these provisions will operate together? In particular, will ECC exercise the right to terminate for a 10-day delay only if the Service Provider has failed to produce or adhere to an agreed Delay Plan (or the delay is not rectifiable within a reasonable cure period)?	The Authority has reviewed and deleted 50.3.5 from the circumstances under which the Authority may terminate the Contract. Please see revised Terms and Conditions v2.	26/06/25

28	19.1	20/06/25	Scope for Additional Services	The Agreement permits ECC to request Additional Services or further services during the term. Could ECC clarify that any such Additional Services (beyond the initially contracted scope) will be subject to mutual agreement and the formal Change Control process, including adjustments to timelines or other terms as appropriate?	The Authority has no intention of adding Additional Services into this Contract. We confirm that any Additional Services that may be identified during the Contract Term, would be subject to mutual agreement and the Change Control process for this. We anticipate that this would have no implications for any timeframes referenced in the Specification, and any unforeseen changes to the Terms in the Contract would be part of the Change Control discussions with the Successful Bidder, in accordance with the regulations for contract modification set out in the Procurement Act 2023.	26/06/25
29	20.1		Bulletin 04: Extending Deadline for Tender Submission		We received a significant amount of clarifications on the clarification deadline last Friday. The Authority is working to provide responses to these in the next 48 hours, alongside a reissue of Schedule 13 (Information Compliance). As a result, we will be extending the tender submission deadline to next Thursday, to give Bidders fair time to read these changes. We will therefore be reissuing the Bidder's Guidance with the updated submission deadline, and making the necessary amendment to the ProContract system as soon as we can (today or tomorrow morning).	26/06/25
30	20.1.1	24/06/25	Financial Assessment Form	Thank you for your recent update. While we understand that the clarification stage is now closed, we are currently encountering an issue with the Financial Assessment Form. Specifically, the form appears to be protected, and we are unable to enter the "Enter Year Ending Date" field. We would appreciate any guidance or instructions on how to resolve this issue so that we can complete the required section.	The Authority has not found any difficulty in populating these cells. In case of continued issues, we will be adding a v2 with less protection to the main ITT.	26/06/25
31	20.1.1.1.1	26/06/25	PSQ - Modern Slavery	11.4 Modern Slavery - Non-relevant commercial organisations : for relevant commercial organisations (subject to Section 54 of the Modern Slavery Act 2015) who provided information in previous questions, it is still required to upload attachment. Is a blank page ok?	Yes, we confirm attaching a blank page would be the appropriate response in this scenario, where Modern Slavery information has already been filled out in the relevant other questions in the PSQ.	27/06/25

SCHEDULE 3

Milestones and Deliverables

1. General provisions

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

2. Implementation Plan

- 2.1 The Implementation Plan shall include:
 - 2.1.1.1 planning details;
 - 2.1.1.2 an illustration of the key activity phases during the Implementation Phase, together with their corresponding Milestone Dates.
 - 2.1.1.3 a fully resourced Gantt chart covering all detailed activities, including all dependencies on ECC and the Service Provider and any Third Party and a level of detail that identifies the individual tasks for the successful completion of the Implementation Phase;
 - 2.1.1.4 the dates for production of the Operational Processes and Procedures, detailing the business processes and procedures required to implement and operate the Services;
 - 2.1.1.5 the processes and requirements for the recruitment of Service

Provider Personnel;

2.1.1.6 the dates for all training and roll-out activities; and

2.1.1.7 the work packages that the Service Provider anticipates will be required to complete the Test Stages and meet the Milestones.

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

2.2 Quality Criteria

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

2.2.1.1 the Implementation Plan shall be capable of being used in "Microsoft Project 2013" (or equivalent) format with all supporting Documentation as appropriate;

2.2.1.2 the Implementation Plan shall contain details of any assumptions on which it is based and/or any other dependencies on ECC, the Service Provider and/or any Third Party (where applicable); and

2.2.1.3 the Service Provider shall ensure that the Implementation Plan allows the Service Provider to achieve the Milestones in accordance with the provisions of this Agreement, including the relevant Milestone Dates.

3. Quality Plan

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

3.1.1 the scope of the plan;

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

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

3.1.4 roles and responsibilities for quality assurance;

3.1.5 identification of Deliverables;

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

3.1.7 project management and control processes including:

3.1.7.1 communication, reporting and project review mechanisms;

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

- 3.1.7.3 the Change Control Request Procedure;
- 3.1.8 Third Party and Sub-Contractor management; and
- 3.1.9 quality control processes for:
 - 3.1.9.1 Documentation including version control and review processes;
 - 3.1.9.2 Service Systems design, build, Testing and implementation including configuration, release and Problem management processes for the Service Systems;
 - 3.1.9.3 Services delivery including recruitment, Training, and Operational Phase process development and improvement; and
 - 3.1.9.4 quality audit processes,
 (the “**Quality Plan**”).

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

4. **Risk Register and Issues Register**

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

5. **Capacity Planning**

- 5.1 The Service Provider shall on and at all times following the Operational Commencement Date:
 - 5.1.1 ensure that the EETS Assets and Service Systems have at all times sufficient capacity and process and deal with all Data and other requirements provided to or required of the Service Provider in providing the EETS Assets, Service Systems and Services in order to enable the Services to be supplied in accordance with the Service Levels; and

- 5.1.2 carry out capacity planning to identify potential gaps between the capacity available and the capacity required with a view to ensuring that the Service Systems will have capacity (including sufficient processing power, Data storage capacity and network bandwidth) to cope with all foreseeable contingencies and with all expansion of the EETS Assets, Service Systems and Services (including in connection with the implementation of any Additional Services and further Services agreed through the Change Control Request Procedure).
- 5.2 The Service Provider shall during the Operational Phase prepare and keep updated on an ongoing basis during the Term draft capacity plans supported by spreadsheets (as necessary) (the “**Draft Capacity Plans**”) and shall submit a current version of such plans, to ECC:
 - 5.2.1 NOT USED
 - 5.2.2 if ECC requests it or the Service Provider wishes to raise a capacity planning issue of concern with ECC; and
 - 5.2.3 as part of the Change Control Request Procedure and promptly following the issue of a Change Authorisation where such Change requires an amendment to the Draft Capacity Plan(s).
- 5.3 ECC:
 - 5.3.1 shall inform the Service Provider of any likely significant increases in the demand for Capacity of which it is aware during the Operational Phase; and
 - 5.3.2 may consult with the Service Provider regarding the Draft Capacity Plans and shall have the right, by notice to the Service Provider, to Approve the Draft Capacity Plans (the “**Agreed Capacity Plans**”) or (where ECC reasonably believes that the Draft Capacity Plans do not make allowances for likely significant increases in the demand for capacity) to require the Service Provider to make amendments to the Draft Capacity Plans (“**Requested Amendments**”).
- 5.4 On receipt of the Requested Amendments, the Service Provider shall promptly (and in any event within five (5) Working Days of having received them, or such other timeframe as may be agreed between the Parties in writing) amend the Draft Capacity Plans to include the Requested Amendments and re-submit the Draft Capacity Plans to ECC for review. The procedure for Approving the Draft Capacity Plans set out in **paragraph 5.2** above shall apply to the re-submitted Draft Capacity Plans.
- 5.5 Where **paragraph 5.4** above applies, if the Agreed Capacity Plans are not in place within fifteen (15) Working Days of the Draft Capacity Plans having been submitted to ECC, ECC may by notice to the Service Provider require the Service Provider to comply with the Requested Amendments and/or the Draft Capacity Plans (again the “**Agreed Capacity Plans**”).
- 5.6 The Service Provider shall comply with the Agreed Capacity Plans in providing the Operational Services and/or any further Services agreed through the Change Control Request Procedure.

- 5.7 The Parties shall meet to discuss capacity planning:
- 5.7.1 NOT USED
- 5.7.2 if that Party wishes to raise a capacity planning issue of concern with the other Party.

5.8 NOT USED

6. **Operational Processes and Procedures**

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

7. **Infrastructure Design**

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

8. **Deliverables**

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

Part B: Documentation and Approvals

9. Key Documents and Approval of Key Documents
- 9.1 The Service Provider shall, in accordance with the applicable Milestone Dates and the Implementation Plan (as appropriate):
 - 9.1.1 provide the Design Services such that the Service Provider creates the Key Documents, in each case to reflect the requirements of this agreement;

9.1.2 perform any other tasks allocated to it in the Implementation Plan in relation to the Key Documents; and

9.1.3 provide ECC with a copy of the Key Documents.

9.2 ECC shall:

9.2.1 where reasonably practicable supply the Service Provider on reasonable notice with information the Service Provider reasonably requires so that the Service Provider is not delayed in performing its obligations under **paragraph 9.1** of this Schedule;

9.2.2 within such period as is specified in the agreement or the Implementation Plan and in any event by any applicable Milestone Dates (or as the Parties otherwise agree in writing) following ECC's receipt of the Key Documents:

9.2.2.1 review the Key Documents; and

9.2.2.2 notify the Service Provider that ECC:

(a) accepts the Key Documents; or

(b) if the Key Documents:

(i) fail to provide for the functions and the performance criteria specified in the Specifications; or

(ii) are not Fit for Purpose;

rejects the Key Documents.

9.3 If ECC rejects any Key Documents under **paragraph 9.2.2.2(b)** of this Schedule:

9.3.1 the Service Provider shall, at its own cost, promptly undertake a revision or amendment of the relevant Key Documents and re-submit them to ECC for review;

9.3.2 the Parties shall repeat the procedure set out in **paragraph 9.2** and this **paragraph 9.3** of this Schedule until acceptance of the Key Documents by ECC or referral to the Dispute Resolution Procedure;

10. Testing Documents and Other Documents

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

10.1.1 prepare:

10.1.1.1 the Testing Documents for the Implementation Phase to reflect the Specifications and the Test Strategy;

10.1.1.2 the following other Documentation required during the Implementation Phase:

- (a) Service Provider Solution;
- (b) Delay Plan;
- (c) Maintenance Plans;
- (d) training plan in respect of ECC Personnel;
- (e) a timetable detailing any downtime of the whole or part of the EETS Assets, Service Systems and/or Services or any training details referred to in **clause 18 (Training)**; and
- (f) any other Documentation or Deliverables (other than Software) requiring Approval under the agreement,

(all Documentation in this **paragraph 10.1.1.2** is hereinafter collectively referred to as the “**Other Documents**”); and

10.1.1.3 an updated version of each of the Testing Documents for the Implementation Phase following a Change so as to incorporate the effects of that Change in the relevant document in accordance with the Change Control Request Procedure;

10.1.1.4 an updated version of each of the Other Documents following a Change so as to incorporate the effects of that Change in the relevant document in accordance with the Change Control Request Procedure;

10.1.2 if requested by ECC, consult and work in conjunction with ECC (or any Third Party nominated by ECC) in relation to the preparation of the Documentation referred to in **paragraph 10.1.1** of this Schedule; and

10.1.3 submit a copy of that Documentation to ECC for Approval pursuant to **paragraphs 11.1.2 and 11.2** of this Schedule.

10.2 The Service Provider shall, in accordance with the agreement, the applicable Milestone Dates, the Change Control Request Procedure, the Specifications and **Schedule 4 (Testing Regime)** and so as to achieve all relevant Milestones:

10.2.1 promptly upon request by ECC, prepare:

10.2.1.1 the Testing Documents for the Operational Phase as required from time to time to reflect the Test Strategy and the Specifications and to deal with the Testing of:

- (a) Changes (including Additional Services);
- (b) work undertaken to correct Errors or Service Issues; and
- (c) work undertaken as a result of Security Incidents where there is a System impact; and

10.2.1.2 the Other Documents as required from time to time to reflect the Test Strategy and the Specifications and to deal with the Testing of:

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

11. Approval of Documentation

- 11.1 In relation to Documentation, ECC shall:
- 11.1.1 where reasonably practicable supply the Service Provider on reasonable notice with information the Service Provider reasonably requires so that the Service Provider is not delayed in performing its obligations under **paragraphs 10.1 and 10.2** of this Schedule;
 - 11.1.2 within such period as is specified in the Implementation Plan (if applicable) and in any event so as to comply with any applicable Milestone Dates (or as the parties otherwise agree in writing including pursuant to the Change Control Request Procedure) following ECC's receipt of any Documentation envisaged under **paragraphs 10.1 and 10.2** of this Schedule:
 - 11.1.2.1 review that Documentation; and
 - 11.1.2.2 at ECC's absolute discretion:
 - (a) issue to the Service Provider a notice confirming that ECC approves Documentation to be reviewed by ECC during the Implementation Phase;
 - (b) issue to the Service Provider a notice confirming that ECC approves Documentation to be reviewed by ECC during the Operational Phase;

- (c) agree the Change subject to the Change Control Request Procedure; or
- (d) issue to the Service Provider notice of rejection of that Documentation.

- 11.2 If ECC rejects any Documentation under **paragraph 11.1.2.2(d)** of this Schedule:
- 11.2.1 the Service Provider shall, at the Service Provider's cost, promptly undertake a revision or amendment of that Documentation and re-submit it to ECC for review within such period as ECC may reasonably require;
 - 11.2.2 the Service Provider shall promptly escalate the matter to such level of seniority within the Service Provider's Personnel as ECC may require; and/or
 - 11.2.3 the Parties shall repeat the procedure set out in **paragraph 11.1 and this paragraph 11.2** of this Schedule until a notice confirming that ECC has approved that Documentation, or agreement subject to the Change Control Request Procedure (as applicable) is issued pursuant to **paragraph 11.1** of this Schedule;
- 11.3 The Service Provider agrees that the provisions of **clause 11 (Responsibility for achievement of Milestones and Milestone Dates)** apply in respect of **Part B** of this Schedule.

SCHEDULE 4

Testing Regime

1. Introduction

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

2. Testing Regime General Provisions

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

2.1.1 Specifications; and

2.1.2 Service Provider Solution.

2.2 The Service Provider shall:

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

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

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

3. Test Strategy

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

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

3.1.1.1 for Docking Station Assets:

(a) power supply (solar or battery);

(b) GPS, bluetooth or alternative location devices;

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

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

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

4. **Documentation**

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

5. **Test Witnessing**

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

6. **Documentation**

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

SCHEDULE 7

Change Control Request Procedure

1. Introduction

1.1 This **Schedule 7** sets out the:

1.1.1 resources to be provided by the Service Provider to support the Change Control Request Procedure;

1.1.2 process to be followed by the Parties for proposing, reviewing and approving Changes;

1.1.3 categories of Changes;

1.1.4 basis of funding Changes made as a result of a Change in Law;

1.1.5 process for requesting Additional Services; and

1.1.6 principles to be adopted by the Service Provider when pricing Changes.

1.2 The principles for pricing of the Service Provider's charges for Additional Services are set out in **Schedule 23 (Additional Services)**.

1.3 All Changes shall be categorised as one of the categories of Changes set out in **paragraph 3 (Categories of Change and Additional Services)** below.

2. Change Manager and Resources

2.1 The Service Provider shall nominate a Change Manager to manage and act as the single point of contact for ECC in relation to:

2.1.1 Changes; and

2.1.2 the Change Control Request Procedure.

2.2 The Service Provider shall, and shall procure that its Sub-Contractors shall, make available sufficient Service Provider Personnel and resources in order to respond promptly to Change Control Requests raised in accordance with this Agreement.

2.3 Changes to the EETS shall be managed under **paragraph 2 of Schedule 8 of Contract Management and Reporting Procedure**.

3. Categories of Changes and Additional Services

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

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

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

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

4. Change Request Process — General Principles

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

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

4.2.1 a description of the requested change;

4.2.2 the basis and drivers for the change;

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

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

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

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

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

5. **Testing**

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

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

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

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

6. **General Changes Proposed by ECC**

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

6.1.1 ECC's reasons for proposing the General Change;

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

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

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

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

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

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

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

6.4 Within ten (10) Working Days of an Impact Assessment being agreed or determined pursuant to **paragraph 6.3** above, ECC shall either:

6.4.1 issue to the Service Provider, a Change Authorisation requiring the Service Provider to implement the General Change in accordance with the agreed or determined Impact Assessment; or

6.4.2 notify the Service Provider that it is rejects the Change Control Request.

6.5 Subject to agreement on the scope and implementation of a General Change, the Service Provider shall implement the relevant General Change in accordance with the terms of the agreed or determined Impact Assessment.

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

7.1 If the Service Provider wishes to propose a General Change, the Service Provider shall provide to ECC a Change Control Request together with an Impact Assessment relating to such requested General Change.

7.2 Such Impact Assessment shall contain the detail set out in **paragraph 6 (General Changes Proposed by ECC)** above.

7.3 Upon receipt of a Change Control Request and Impact Assessment from the Service Provider, the provisions of **paragraph 6 (General Changes Proposed by ECC)** shall apply (*mutatis mutandis*).

7.4 Within (ten) 10 Working Days of an Impact Assessment being agreed or determined pursuant to **paragraph 7.3** above, ECC shall either:

7.4.1 issue to the Service Provider, a Change Authorisation requiring the Service Provider to implement the General Change in accordance with the agreed or determined Impact Assessment; or

7.4.2 notify the Service Provider that it is rejects the Change Control Request.

7.5 Upon notice of a Change Authorisation being issued by ECC the provisions of **paragraph 6 (General Changes Proposed by ECC)** above shall apply in respect of the General Change.

8. **Mandatory Changes**

8.1 Subject to **paragraph 8.2** below:

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

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

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

9. **Costs of Changes in Law**

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

SCHEDULE 8

Contract Management and Reporting Procedure

1. Introduction

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

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

1.1.1.1 ECC and ECC Personnel;

1.1.1.2 relevant members of the:

(a) ECC;

(b) Interested Parties;

(c) Other eScooter Service Providers; and

Other Service Providers;

1.1.1.3 the Service Provider;

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

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

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

1.2.1.1 Milestones and Milestone Dates; and

1.2.1.2 the Implementation Plan.

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

2. Type and Conduct of Meetings

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

2.1.1 As set out in Specification

2.1.2 are attended by appropriate Representatives of the relevant Party having

regard to the agenda for the same.

2.2 At its sole discretion, ECC or relevant members of ECC Personnel, shall have the right to invite members of:

2.2.1 ECC;

2.2.2 Interested Parties;

2.2.3 Other eScooter Service Providers;

2.2.4 Other Service Providers;

2.2.5 the Insurance Provider; and

2.2.6 the Sponsor,

to any of the Contract Management Meetings set out in this **Schedule 8**.

2.3 All Contract Management Meetings shall be held either in person at a mutually convenient location for all attendees or virtually using online virtual meeting software as may be agreed between the Parties prior to the relevant meeting or through any agreed medium of communication.

2.4 A member of ECC Personnel shall:

2.4.1 record minutes of each meeting;

2.4.2 circulate the minutes to the attendees (including the Service Provider's Representatives) for review; and

2.4.3 create, update and maintain an action log detailing actions and key decisions agreed at each meeting. Such actions shall only be deemed closed when the Parties have agreed them to be closed:

2.4.3.1 at a relevant meeting; or

2.4.3.2 expressly in writing.

3. **Contract Management Meetings scope**

3.1 Contract Management Meetings may cover:

3.1.1 reviewing and agreeing and change amendments and or additions to the EETS;

3.1.2 maintaining, reviewing and agreeing the Incidents to be recorded in the Incident Log detailing Incidents arising during the Implementation Phase;

3.1.3 resolving incidents affecting the Essex eScooter Trial Services, that have not been resolved at an operational level;

3.1.4 resolving and mitigating Risks affecting the Essex eScooter Trial Services;

- 3.1.5 monitoring progress of the provision of Design Services (and Design Deliverables) and Build Services (and Build Deliverables) against the Milestones, Milestone Dates and the Implementation Plan;
- 3.1.6 reviewing the level of the Service Provider's resources (including Service Provider Personnel) assigned to the provision of the Services and to meet the Implementation Plan;
- 3.1.7 reviewing preparations for Milestones;
- 3.1.8 reviewing unresolved Risks and Incidents;
- 3.1.9 reviewing Performance Indicator Reports;
- 3.1.10 reviewing and agreeing Changes raised in accordance with the Change Control Request Procedure;
- 3.1.11 reviewing significant commercial, legal and media issues affecting the provision of the Operational Services and Essex eScooter Trial Services;
- 3.1.12 identifying opportunities for improvement to the delivery of the Services;
- 3.1.13 prioritising Change Control Requests and Internal Changes, as ECC may require (ECC acting reasonably),

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

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

- 3.2.1 Incident Reports; and
- 3.2.2 other reports relating to:
 - 3.2.2.1 Excusing Events;
 - 3.2.2.2 Relief Events; and
 - 3.2.2.3 Force Majeure Events,

at each Contract Management Meeting.

4. **Performance Indicator Reporting**

4.1 The Service Provider shall provide Performance Indicator Reports to ECC in line with the provisions in the Specification (in a standard format approved by ECC acting reasonably) on or before the Performance Indicator Report Date to ECC Personnel.

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

- 4.2.1 the Performance Indicators set out in Schedule 5 (Service Level Agreement); and
- 4.2.2 any additional Performance Indicators as may be required from time to time pursuant to **Schedule 7 (Change Control Request Procedure)**.
- 4.3 If ECC or the Service Provider identifies any errors, omissions or discrepancies in the Performance Indicator Reports, the Service Provider shall:
 - 4.3.1 promptly correct such errors, omissions or discrepancies; and
 - 4.3.2 republish the Performance Indicator Reports within two (2) Working Days of such errors, omissions or discrepancies being identified, or such other period as the Parties may agree in writing.

5. **Financial reporting**

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

6. **Incident reporting**

- 6.1 The Service Provider shall promptly:
 - 6.1.1 identify all Incidents that come to the Service Provider's attention, whether raised by Service Provider Personnel, its Sub-Contractors, an Interested Party, an Other Service Provider, the Insurance Provider, Third Parties (including Customers) or by ECC, as a result of or in connection with Testing and/or during the provision of the Services;
 - 6.1.2 record the Incident in the Incident Log (which, in the case of a Security Incident, shall be no later than four (4) hours after it came to the Service Provider's attention);
 - 6.1.3 prepare an Incident Report in relation thereto in such format as ECC may require from time to time;

- 6.1.4 notify the relevant ECC Personnel of the Incident; and
- 6.1.5 notify any relevant Interested Party, Other Service Provider, Insurance Provider and/or Third Party of any Incident which may affect, or of any Errors or problems arising from the Interface with such party and the action being taken by the Service Provider to mitigate and/or resolve such Incident and/or Error in accordance with the Incident Communication Plan.
- 6.2 At any time during the Term, ECC shall be entitled to call, and the Service Provider shall be required to attend, any additional meetings to discuss each new Incident and any other outstanding Incidents on such notice as ECC deems appropriate.
- 6.3 The Service Provider shall, and shall procure that its Sub-Contractors shall, as soon as possible record each Incident arising from time to time in the Incident Log.
- 6.4 The Service Provider shall comply with its obligations under schedule 3 (Milestones and Deliverables) which shall apply mutatis mutandis in respect of each Error and Service Issue which arises in connection with the Testing and/or the provision of the Services.
- 6.5 The Service Provider shall follow the instructions of ECC Personnel in relation to the identification and resolution of Incidents and the recording of Incidents.

7. Other reporting obligations

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

SCHEDULE 9

Key Personnel

The Service Provider shall provide the following Key Personnel:

Personnel as pledged in the Service Provider's Proposals

SCHEDULE 10

Asset Management

1. Items to be included in the Asset Register

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

2. Details to be included

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

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

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

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

3.1.1 Specifications; and

3.1.2 Service Provider Solution.

4. Updates to Asset Register

The Service Provider shall:

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

4.2 update the Asset Register:

4.2.1 each Month; and

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

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

SCHEDULE 11

Service Provider Confidential Information

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

The Information contained within the Freedom of Information Form, included in the Service Provider's Proposals

SCHEDULE 12

Security Policy

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

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

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

1. Security Principles

- 1.1 The Service Provider agrees that security and Data confidentiality in connection with the Terminals and Services Website, Service Systems and the Services are of key importance and fundamental to the evidential and financial security requirements necessary to administer and operate the Essex eScooter Trial Services and to retain public confidence.
- 1.2 The Service Provider shall, and shall procure that its Sub-Contractors shall, at all times ensure that the Terminals, Service Systems and Services:
 - 1.2.1 avoid the security threats to the Terminals, Service Systems and Services in accordance with the Specifications; and
 - 1.2.2 comply with the requirements of the latest version of PCI DSS, including application for (if applicable) and maintenance of PCI DSS accreditation and certification;
 - 1.2.3 comply with ISO/IEC 27001:2013 (Security Techniques - Information Security Management Systems - Requirements);
 - 1.2.4 ensure that:
 - 1.2.4.1 the Security Policy and Security Plan are approved, in accordance with **Schedule 3 (Milestones and Deliverables)**; and
 - 1.2.4.2 Testing of the Security Plan is carried out in accordance with:
 - (a) **Schedule 4 (Testing Regime)**;
 - (b) **Schedule 3 (Milestones and Deliverables)** during the Implementation Phase; and
 - (c) **paragraph 5 (Testing of the Security Plan during the Operational Phase) of this Schedule 12**;

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

2. **Security Plan Provision**

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

3. **Security Incidents**

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

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

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

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

ANNEX A

Initial Security Plan

Security Policy

1. Purpose

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

2. Policy

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

3. Security Compliance

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

3.1.1. PCI DSS - Self-signed Attestation of Compliance for PCI-DSS-v3_2-SAQ-A (for Worldpay Corporate IFRAME, Redirect payments);

3.1.2. PCI-DSS-v3_2-SAQ-A_EP (in case of payments that need to use Front-side-encryption) and results from approved scanning vendor (though we comply with A-EP, we need to attest only a more loose level (A), when we do not process card data anyways);

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

3.1.4. AFAIK no documentation as described is currently present.

4. Suppliers

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

4.1.1. Compliance with EU legislation; and

4.1.2. EU standards on information security policies.

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

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

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

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

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

SCHEDULE 13

Information Compliance

1. Information

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

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

2. Interpretation

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

3. Data protection - General

3.1 The parties acknowledge and agree that for the purposes of this Agreement:

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

4. Shared Data

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

4.1 **Information and Access to Personal Data**

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

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

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

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

4.2 **Processing Shared Data**

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

4.3 **Retention and Deletion of Shared Data**

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

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

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

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

4.4.1 any Enquiry; and

4.4.2 any Personal Data Breach.

5. **ECC Data and Service Provider Data**

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

5.1.1 Intentionally Deleted 5.1.2 a Personal Data Breach;

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

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

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

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

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

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

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

5.3.5 NOT USED

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

6. **Processor Obligations**

- 6.1 This paragraph does not apply where the parties act as a Data Controller, and in connection with Shared Data.
- 6.2 If the Service Provider Processes the ECC Data as Processor for the purpose of performing its obligations under this Agreement, the Service Provider warrants that it shall, and shall procure that its Personnel shall:
- 6.2.1 process the ECC Data only for the purposes specified in this agreement during the Term and/or on documented instructions that ECC may give to the Service Provider from time to time and in compliance with Data Protection Legislation;
 - 6.2.2 not do anything that would put ECC in breach of Data Protection Legislation;
 - 6.2.3 put in place before undertaking any Processing and maintain appropriate technical and organisational measures in accordance with Articles 5 and 32;
 - 6.2.4 provide ECC with such assistance as ECC requires to ensure compliance with Articles 32 to 36 (inclusive), taking into account the nature of the processing and the information available to the Service Provider;

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

unless required to do so by applicable Law, in which case the Service Provider shall (to the extent permitted by applicable Law) give ECC prior written notice of such requirement;
- 6.2.10 at any time upon request, and in any event upon termination or expiry of this Agreement, deliver up to ECC or (at the ECC's choice) securely delete or destroy all Personal Data in the Service Provider's possession (except for such Personal Data which the Service Provider is required to keep in compliance with Data Protection Legislation);

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

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

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

7. **Indemnity**

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

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

8. **FOI Legislation**

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

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

APPENDIX A

The Processing Services

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

3. The subject-matter and duration of the Processing

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

4. The nature and purpose of the Processing

- 4.1. Where applicable, the Parties will process data for the following lawful purposes:

4.1.1. for the performance of a contract entered into between the Parties and Data Subject;

4.1.2. If the parties have a Legal obligation to process the Data;

4.1.3. If ECC is performing a public task in the public interest or for official functions, and the task or function has a clear basis in law; and

4.1.4. where a Customer's consent is obtained.

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

5. The type and categories of Personal Data

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

5.1.1.names;

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

5.1.3 date of birth;

5.1.4 bank or building society details;

5.1.5 Customer transaction information;

5.1.6 Customer service usage information; and

5.1.7 Customer journey information.

5.1.8 [Any further information as agreed between parties]

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

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

5.3.1. gender;

5.3.2. racial or ethnic origin;

5.3.3. religion; and

5.3.4. sexual orientation.

6. Categories of Data Subject

6.1. The Data Subjects will be:

6.1.1. Service Provider Customers using the Essex eScooter Trial Service .

APPENDIX B

Data Sharing Protocol

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

2. Details of the organisations involved in the data sharing

ECC	
Data Protection Officer	DPO@essex.gov.uk
Contact details	Data Protection Officer Essex County Council Essex County Council, County Hall Market Road Chelmsford CM1 1QH
Service Provider	
Data Protection Officer	
Contact details	

3. Data items to be collected and shared

3.1. The Parties agree:

- 3.1.1. to share information with each other where it is lawful to do so;
- 3.1.2. to comply with the requirements of the Data Protection Act 2018 and General Data Protection Regulation (GDPR);
- 3.1.3. to inform Data Subjects when and how information is recorded about them, and how their information may be used;
- 3.1.4. to ensure that adequate security measures are applied to the Personal Data held and shared;
- 3.1.5. to have due regard to guidance published by the Information Commissioner; and
- 3.1.6. to promote staff awareness of the protocol and to train staff in the principles of lawful information sharing.

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

3.3. The Service Provider shall prepare:

- 3.3.1. Rental reports including raw (anonymised) rental report data which includes but is not limited to Origin station, date and time of 'origin' journey, destination station, date and time of return (destination), distance of journey in metres, membership method, time lapse in park mode;

4. The purpose and basis for sharing

- 4.1. The Parties must clearly identify the specific purposes for which they share information and the legal basis. Data sharing between the Parties may take place to meet the following shared objectives:
 - 4.1.1. to assist in the delivery of services;
 - 4.1.2. to improve service delivery performance;
 - 4.1.3. managing and planning services;
 - 4.1.4. research and analysis; and
 - 4.1.5. developing strategies and improvements to services.
- 4.2. Each Party must ensure compliance with Data Protection Legislation at all times.
- 4.3. Each Party must maintain a valid registration with the Information Commissioner.
- 4.4. Each Party shall ensure that it processes the Shared Personal Data fairly and lawfully in accordance with one of the following legal grounds:
 - 4.4.1. Processing is necessary for the performance of a contract with the Data Subject;
 - 4.4.2. processing is necessary for the purposes of the legitimate interests pursued by the Parties except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the Data Subject; and
 - 4.4.3. processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller.
- 4.5. Where Sensitive Personal Data or Special Category Data is shared this will be on the additional ground of consent.
- 4.6. Both Parties shall, in respect of Shared Personal Data, ensure that their privacy notices are clear and provide sufficient information to Data Subjects in order for them to understand what Personal Data the Parties are sharing, the circumstances in which it will be shared, and the purposes for the data sharing.
- 4.7. Both Parties undertake to inform Data Subjects of the purposes for which it will process their Personal Data and provide all of the information that it must provide in accordance with Data Protection Legislation.

5. Access to data and individuals' rights

- 5.1. The Parties shall maintain a record of Subject Access Requests, the decisions made and any information that was exchanged. Records must include copies of the request for information, details of the data accessed and shared and where relevant, notes of any meeting, correspondence or phone calls relating to the request.

- 5.2. The Parties agree that the responsibility for complying with a Subject Access Request falls to the Party receiving the Subject Access Request in respect of the Personal Data held by that Party.
- 5.3. The Parties agree to provide reasonable and prompt assistance (within 5 Working Days of such a request for assistance) as is necessary to each other to enable them to comply with Subject Access Requests and to respond to any other queries or complaints from Data Subjects.
- 5.4. Each party will bare its own costs for complying with a Subject Access Request.

6. Information governance

6.1. Responsibilities

- 6.1.1. The Parties have a responsibility to keep Personal Data/ information secure from unauthorised disclosure, and ensure its staff understand:

- 6.1.1.1. What information can be shared and under what circumstances;
- 6.1.1.2. What information cannot be shared and under what circumstances; and
- 6.1.1.3. Who to go to for advice if they are not sure what to do.

6.2. Data sharing rules

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

- 6.2.1.1. acknowledging that the Data Protection Act is not a barrier to sharing information but provides a framework to ensure that personal information about living persons is shared appropriately;
- 6.2.1.2. Being open and honest with the data subjects about why, what, how and with whom information will, or could be shared;
- 6.2.1.3. Only sharing information if there is a legitimate purpose and legal basis to share;
- 6.2.1.4. Considering the rights and privacy of data subjects and ensuring these are not infringed;
- 6.2.1.5. Only sharing necessary, proportionate, relevant, accurate, timely and secure: Ensuring that the information shared is necessary for the purpose for which you are sharing it, is shared only with those people who need to have it, is accurate and up-to-date, is shared in a timely fashion, and is shared securely;
- 6.2.1.6. Keep a record of sharing decisions and the reasons for it – whether it is to share information or not;

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

- 6.2.2.1. Is there a clear and legitimate purpose for you or your agency to share the information?
- 6.2.2.2. Does the information enable a living person to be identified?
- 6.2.2.3. Is the information confidential?

- 6.2.2.4. If the information is confidential, do you have consent to share?
- 6.2.2.5. If consent is refused, or there are good reasons not to seek consent to share confidential information.
- 6.2.2.6. Is there a sufficient public interest to share the information?
- 6.2.2.7. If the decision is to share, are you sharing information appropriately and securely?
- 6.2.2.8. Has the information sharing decision been properly recorded?

6.3. Use of anonymised information

- 6.3.1. Personal Information will be anonymised before it is shared wherever that is possible and practicable.
- 6.3.2. It is important that care is taken to ensure that anonymised data, especially when combined with other information, does not identify an individual either directly or indirectly and the data cannot be combined with any data sources held by a partner to produce personal identifiable data.

6.4. Data quality

- 6.4.1. Shared data needs to be of sufficient quality for its intended purpose.
- 6.4.2. The Data Discloser shall ensure that Shared Personal Data is accurate.
- 6.4.3. Where either Party becomes aware of inaccuracies in Shared Personal Data, they will notify the other Party.
- 6.4.4. The parties will work towards the following characteristics of good data quality:
 - 6.4.4.1. **Accuracy** – Data should be accurate so as to present a fair picture of circumstances and enable informed decision-making at all appropriate levels. Definitions for data should be specific and unambiguous.
 - 6.4.4.2. **Validity** – Data should represent clearly and appropriately the intended result and should be used in accordance with the correct application of any rules or definitions.
 - 6.4.4.3. **Reliability** – Data should reflect stable and consistent data collection processes that need to be fit for purpose and incorporate controls and verification procedures.
 - 6.4.4.4. **Timeliness** – Data input should occur on a regular ongoing basis rather than being stored to be input later. Verification procedures should be as close to the point of input as possible. Data must not be retained for longer than is necessary.
 - 6.4.4.5. **Relevance** – Data collected should comprise the specific items of interest only.
 - 6.4.4.6. **Completeness** – All the relevant data must be recorded. Missing or invalid data can lead to incorrect judgement and poor decision-making.
 - 6.4.4.7. **Data sharing method** - The Parties to this Agreement are responsible for

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

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

6.4.4.7.2. Deliberate compromise or opportunist attack;

6.4.4.7.3. Unauthorised disposal or destruction of the data;

6.4.4.7.4. Unauthorised access.

7. Transfers

7.1. For the purposes of this Protocol, transfers of personal data shall mean any sharing of Personal Data by the Data Receiver with a third party, and shall include, but is not limited to, the following:

7.1.1. sharing of the shared personal data with any other third party;

7.1.2. publication of the shared personal data via any medium, including, but not limited to; social media, websites, publicly available communications;

7.1.3. storing shared personal data on servers outside the European Economic Area (EEA);

7.1.4. subcontracting the processing of shared personal data to data processors located outside the EEA;

7.1.5. granting third parties located outside the EEA access rights to the shared personal data.

7.2. The Data Receiver shall not share the Shared Personal Data with a third party without the express written permission of the Data Discloser.

7.3. Where express written permission has been granted, the Data Receiver shall not disclose or transfer Shared Personal Data outside the EEA without ensuring that adequate and equivalent protections will be afforded to the Shared Personal Data.

8. Retention

8.1. The Data Receiver shall not retain or process shared personal data for longer than is necessary to carry out the Agreed Purposes, and any applicable statutory or professional retention periods.

8.2. The Data Receiver shall ensure that any shared personal data are returned to the Data Discloser or destroyed in the following circumstances:

8.2.1. on termination of the Agreement for whatever reason;

8.2.2. on reaching the prescribed retention period has been;

8.2.3. once processing of the shared personal data is no longer necessary for the purposes it were originally shared for; and

8.2.4. Data security breaches and reporting procedures.

9. Data security breaches and reporting procedures

- 9.1. The Parties are under a strict obligation to notify any potential or actual losses of the shared personal data to the other Party as soon as possible and, in any event, within 1 **Working Day** of identification of any potential or actual loss to enable the Parties to consider what action is required in order to resolve the issue.
- 9.2. The Parties agree to provide reasonable assistance as is necessary to each other to facilitate the handling of any Data Security Breach in an expeditious and compliant manner. To comply with Subject Access Requests and to respond to any other queries or complaints from Data Subjects.
- 9.3. Where not already in place, processes will be set up in each party to adopt a risk management approach to breaches/problems in relation to the implementation of this Agreement

10. Review

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

SCHEDULE 14

Exit Plan

1. Scope

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

2. Exit Plan

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

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

3. **Enhanced Exit Plan**

3.1 The Service Provider shall:

3.1.1 if requested by ECC from time to time;

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

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

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

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

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

3.2 The Service Provider shall:

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

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

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

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

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

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

4. Disclosure of Exit Documents

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

4.1.1 Exit Strategy;

4.1.2 Exit Plan; and/or

4.1.3 Enhanced Exit Plan,

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

5. Contents of the Exit Plan

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

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

5.1.2 document:

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

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

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

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

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

5.1.4 when the Service Provider shall provide:

5.1.4.1 Data; and

5.1.4.2 Documentation;

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

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

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

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

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

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

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

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

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

6. **Implementation of Enhanced Exit Plan**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8. **Continued Performance**

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

9. **Scope of Exit Strategy**

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

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

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

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

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

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

9.1.6 information on:

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

(b) the procedure and timeframe for the hand back or destruction of documents or other materials containing the other Party's Intellectual Property Rights or Confidential Information as expressly required by this Agreement;

(c) a full list of the information relevant to the Service Provider's provision of the Services including, but not limited to, volumes

processed, Data volumes stored, performance against the Service Level Agreement, maintenance statistics and fault statistics; and

- (d) any other information or action pertaining to the Exit Plan required by ECC to ensure a smooth exit and appointment (if relevant) by ECC of a New Service Provider as the case may be.

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

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

SCHEDULE 15

Agreed Form of Guarantee

Dated

2023

(1) **[INSERT]**

and

(2) **ESSEX COUNTY COUNCIL**

DEED OF GUARANTEE

relating to an agreement between [INSERT] and Essex County Council for the provision of services for the Essex eScooter Trial Services

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THIS DEED IS DATED

2020

BETWEEN

- (1) **[INSERT]** (the "Guarantor");
- (2) **ESSEX COUNTY COUNCIL** of County Hall, Market Road, Chelmsford, CM1 1QH ("**ECC**").

BACKGROUND

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

TERMS AGREED

1. Definitions and interpretation

1.1 In this Deed:

"Guarantee" this Deed; and

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

1.2 The Guarantor agrees that in this Guarantee:

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

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

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

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

2. Guarantee and indemnity

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

2.2 As a separate and independent obligation, the Guarantor hereby irrevocably and unconditionally agrees, as a primary obligation, to indemnify and keep indemnified ECC in full and on demand from all losses, claims, liabilities, damages, costs and expenses

which may be incurred or suffered by ECC as a result of or in connection with (whether directly or indirectly) any failure by the Service Provider (whether or not caused by or connected with any invalidity, unenforceability or ineffectiveness), fully to perform or discharge the Guaranteed Obligations as and when the same shall respectively become (or, but for any such invalidity, unenforceability or ineffectiveness, would have become) due for performance or discharge.

- 2.3 The Guarantor agrees to indemnify ECC and keep it indemnified on demand from and against all liabilities, losses, costs and expenses incurred or suffered by ECC in connection with or as a result of:
- 2.3.1 any provision in the Agreement being or becoming void, voidable, invalid or unenforceable;
 - 2.3.2 the enforcement of the provisions of this Guarantee; and
 - 2.3.3 ECC entering into or being a party to this Guarantee (including in the event that any of the obligations or undertakings expressed to be assumed by the Guarantor in this Guarantee are not performed or observed fully and punctually).
- 2.4 Notwithstanding any other provision of this Guarantee, this Guarantee shall not be construed so as to impose on the Guarantor any greater obligations or liabilities in scope or in value than those assumed by the Service Provider under the Agreement.
- 2.5 The obligations of the Guarantor under each of **clauses 2.1, 2.2, 2.3, and 2.4** above of this Guarantee shall be separate and independent from each other.

3. **Beneficiary protections**

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

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

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

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

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

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

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

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

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

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

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

4. **Interest**

4.1 Intentionally left blank

5. **Appropriation**

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

6. **Discharge to be conditional**

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

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

7. **Payment and taxes**

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

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

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

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

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

8. **Waiver of Guarantors rights**

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

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

9. **Benefit of Guarantee**

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

10. **Variation of the Agreement**

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

11. **Information**

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

affairs) which ECC reasonably requests to the extent that such information is within the public domain and where not the Guarantor shall make such reasonable disclosures as are possible, provided that, subject to **clause 11.2** below, any Service Provider Confidential Information disclosed is held and used by ECC in accordance with **clause 59 (Confidentiality) of the Agreement**.

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

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

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

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

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

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

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

12. **Representations and warranties**

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

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

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

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

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

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

13. **Confidentiality**

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

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

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

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

14. **Ethics**

- 14.1 The Guarantor shall:
- 14.1.1 comply with all applicable Law relating to anti-bribery, anti-slavery and anti-facilitation of tax evasion including the Bribery Act 2010, the Modern Slavery Act 2015 and the Criminal Finances Act 2017 ("**Relevant Requirements**");
 - 14.1.2 not engage in any activity, practice or conduct which would constitute an offence under the Bribery Act 2010 or the Modern Slavery Act 2015 if such activity, practice or conduct had been carried out in England and Wales.
- 14.2 The Guarantor shall: promptly report to ECC any:
- 14.2.1 breach, or potential breach, of the Relevant Requirements;
 - 14.2.2 actual or suspected slavery or human trafficking in a supply chain which has any connection with this Agreement;
 - 14.2.3 request or demand for any undue or suspicious financial or other advantage of any kind received by the Service Provider or the Guarantor in connection with the performance of the Services under the Agreement or in connection with this Guarantee;
 - 14.2.4 request or demand from a third party to facilitate the evasion of tax within the meaning of Part 3 of the Criminal Finance Act 2017 in connection with the performance of the Services under the Agreement or in connection with this Guarantee.
- 14.3 The Guarantor acknowledges and agrees that any breach by the Guarantor of the foregoing provision of this **clause 14** shall entitle ECC to terminate the Agreement in accordance with **clause 50 (Termination) of the Agreement**.
- 14.4 **Fraud**
- 14.4.1 If any fraudulent activity comes to the attention of the Guarantor in relation to the Essex eScooter Trial Services, the Guarantor shall notify ECC by the most expeditious means available. The Guarantor shall then co-operate in the

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

14.4.2 In the event of any fraudulent activity on the part of the Guarantor, its agents or employees, the Guarantor agrees and acknowledges that ECC shall have the right to terminate the Agreement in accordance with **clause 50 (Termination) of the Agreement**.

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

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

16. **Cumulative rights**

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

17. **Notices**

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

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

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

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

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

17.2.4 sent by facsimile, in which case it shall be deemed to have been given when despatched, subject to confirmation of uninterrupted transmission by a transmission report provided that any notice despatched by facsimile

after 17:00 hours on any Working Day or at any time on a day which is not a Working Day shall be deemed to have been given at 08:00 on the next Working Day; or

17.2.5 subject to **clause 17.3** below, sent by electronic mail, in which case, it shall be deemed to be given when actually received but subject to the same provisions regarding receipt after 17:00 hours as apply to notices sent by facsimile.

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

17.3.1 notices sent by electronic mail shall:

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

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

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

17.3.1.4 comply with any other requirements specified in writing by ECC from time to time;

17.3.2 if any notice is received in an unintelligible or unrecognisable form, the recipient shall immediately notify the sender (if identifiable from such notice) and the sender shall re-send the notice and simultaneously serve a copy of the notice by one or other of the methods referred to in **clause 17.2** above.

17.4 The addresses and other details of the parties referred to in **clause 17.2** above are, subject to **clause 17.5** below:

17.4.1 Name: Essex County Council

For the attention of: [INSERT]

Address: County Hall, Market Road, Chelmsford CM1 1QH

Facsimile number: [INSERT]

E-mail address: [INSERT]

17.4.2 Name: [INSERT]

For the attention of: [INSERT]

Address: [INSERT]

Facsimile number: [INSERT]

E-mail address: [INSERT]

17.5 Either party to this Guarantee may notify the other party of any change to the address or any of the other details specified in **clause 17.4** above, provided that such

notification shall only be effective on the date specified in such notice or five Working Days after the notice is given, whichever is later and provided also that any new address shall be in the United Kingdom.

18. **Certificate**

18.1 Intentionally left blank

19. **Entire Agreement**

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

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

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

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

20. **Assignment**

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

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

20.3 In the event of a breach by the Guarantor of **clause 20.2** above, the Guarantor acknowledges and agrees that ECC shall be entitled to terminate the Agreement immediately pursuant to **clause 50 (Termination) of the Agreement**.

21. **Relationship**

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

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

22. **Severability**

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

23. **Third Parties**

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

24. **Law and Jurisdiction**

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

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

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

SIGNATURE PAGE

EXECUTED (but not delivered until the date hereof) as a **DEED** by affixing the common seal of **ESSEX COUNTY COUNCIL** in the presence of:

.....

Authorised Signatory

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

DIRECTOR

Signature:

Name (in block capitals):

DIRECTOR

Signature:

Name (in block capitals):

SCHEDULE 16

CEDR Model Determination Agreement

THIS AGREEMENT is dated

BETWEEN

- (1) **ESSEX COUNTY COUNCIL** of County Hall, Market Road, Chelmsford, CM1 1QH ("**Party A**");
 - (2) **[INSERT]** whose registered office is **[INSERT]** ("**Party B**");
- (jointly the "**Parties**");

1. **Definitions**

"Assistant"	[];
"CEDR Solve"	Centre for Effective Dispute Resolution Limited of IDRC, 70 Fleet Street, London EC4Y 1EU;
"Dispute"	any dispute arising under out of or in connection with the agreement relating to the provision of services for the Essex eScooter Trial Services dated [] (the " Agreement ") that has been referred to Expert Determination in accordance with the Agreement (referred to in this CEDR Model Determination Agreement as the " Dispute(s) ");
"Expert"	[] appointed on [], by [].

2. **Appointment of Expert**

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

3. **Purpose of Expert Determination**

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

4. **Confidentiality**

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

5. **Independence**

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

6. Conduct of Expert Determination

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

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

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

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

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

6.2.1 declaratory relief; or

6.2.2 an interim determination,

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

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

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

6.3.2 the Expert shall, on an application by either Party, be entitled to join Third Party Service Providers to proceedings between the Parties in the event that he considers in his sole discretion that it is appropriate to do so and provided that such Third Party Service Providers consent to be joined to such proceedings;

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

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

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

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

7. **Challenge to the Procedure**

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

8. **Mediation Option**

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

9. **Reasons in the Determination**

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

10. **Interest**

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

11. **Costs, Fees and Expenses**

11.1 Unless the Parties agree, or the Expert directs upon an application by any Party, otherwise, the costs, fees and expenses of each Expert Determination shall be borne by the Parties in equal shares.

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

12. **Implementation of the Determination**

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

13. **No Liability**

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

14. **Role of CEDR Solve**

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

15. **After the Determination**

15.1 Where the Expert's Determination relates to:

- 15.1.1 a Dispute with a value in excess of **[INSERT]** (£**[INSERT]**) (as certified by the Expert in his Determination); or

15.1.2 a Dispute arising out of or in connection with or in relation to the termination, actual or threatened repudiation or abandonment of the Agreement by either of the Parties; or

15.1.3 where the Determination relates principally to the grant of relief of a non-financial nature made in relation to ownership or use of Intellectual Property Rights,

the Parties reserve their rights to reject the Determination pursuant to **clause 69.2.10 (Dispute Resolution Procedure) of the Agreement** and to apply instead to the English courts in order to resolve the Dispute.

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

16. **Law and Jurisdiction**

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

Signed

On behalf of Party A

On behalf of Party B

Signed by the Expert

Signed on behalf of CEDR Solve

Appendix 1

Fees and Expenses

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

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

SCHEDULE 17
Interface Agreement

Dated

2025

Essex County Council

and

VOI TECHNOLOGY LTD

and

[eScooter Service Provider 2]

Interface Agreement

in relation to the Essex eScooter Trial Services

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THIS AGREEMENT is dated

2025

Parties

- (1) **Essex County Council** of County Hall, Market Road, Chelmsford, CM1 1QH (**ECC**);
- (2) **[eScooter Service Provider 1]** (Company No []) whose registered office is at [ADDRESS] (**Service Provider 1**); and
- (3) **[eScooter Service Provider 2]** (Company No []) whose registered office is at [ADDRESS] (**Service Provider 2**).

Introduction

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

Agreed terms

1 Definitions and interpretation

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

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

2 **Commencement and duration**

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

3 **Interaction with the Contracts**

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

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

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

4 **Mutual covenants and acknowledgments**

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

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

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

5 **Coordination**

5.1 **Interface Activities**

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

5.2 **Scheme coordination group**

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

5.3 **Appointment of Interface Coordinators**

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

5.4 **No Slow Downs or Work Stop**

Each Service Provider shall use its best efforts to avoid delaying or stopping the performance of its obligations under its Contract as a result of a dispute with the other

Service Provider, and any disputes shall be resolved as specified in **clause 7 (Dispute Resolution)**.

5.5 **Programme**

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

5.6 **Early Warning**

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

5.7 **Mitigation Meeting**

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

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

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

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

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

5.8 **Information Sharing**

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

6 **Indemnities**

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

6.1 any injury to or the death of any employee of or person engaged howsoever arising and notwithstanding any act or omission of the other; and/or

6.2 in respect of or in connection with any damage to property real or personal; and/or

6.3 any injury to or death of any person whatsoever (excluding employees of each),

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

7 **Dispute resolution**

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

8 **Confidentiality**

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

9 **Miscellaneous provisions**

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

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

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

Schedule 1

Scheme Coordination Group

1 **Nomination of members**

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

2 **Meetings**

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

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

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

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

3 **Membership and operation**

3.1 Each Party may:

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

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

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

3.2 One of the Parties (as determined by ECC from time to time) shall act as secretary in relation to the overall operation of the Scheme Coordination Group and shall arrange for minutes to

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

Schedule 2

Interface Activities

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

1 Service Provider 1 Interface Activities

Service Provider 1 shall perform the following interface activities:

2 Service Provider 2 Interface Activities

Service Provider 2 shall perform the following interface activities:

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

.....
Authorised Signatory

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

.....
Director's Signature

in the presence of:

witness signature:

name:

address:

occupation:

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

.....
Director's Signature

in the presence of:

witness signature:

name:

address:

occupation:

SCHEDULE 18

Equality and Diversity

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

1. Compliance

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

2. Equality and Diversity Audit

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

SCHEDULE 19

Business Continuity

1. Scope

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

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

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

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

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

1.2.1 NOT USED.

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

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

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

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

1.4 The Service Provider acknowledges and agrees that:

1.4.1 Business Continuity in respect of the EETS Assets, Service Systems and Services and the overall provision of the Essex eScooter Trial Services is fully dependent upon the:

1.4.1.1 Business Continuity Plan;

1.4.1.2 Business Continuity Infrastructure;

1.4.1.3 Business Continuity Premises for continued provision of the Services, Service Systems and EETS Assets; and

1.4.1.4 Business Continuity Services; and

1.4.2 it is necessary for the Service Provider to ensure Business Continuity at all times and the continued provision of the Services in accordance with the provisions of this Agreement in all circumstances, events and scenarios including in respect of and following a:

1.4.2.1 Business Continuity Event; or

1.4.2.2 Disaster Recovery Event.

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

1.4.2.3 the Business Continuity Infrastructure (including Business Continuity Premises); or

1.4.2.4 the Business Continuity Services,

if and to the extent that its ability to provide the Business Continuity Infrastructure (including Business Continuity Premises) or the Business Continuity Services is affected by a Force Majeure Event.

1.5 Without limiting **paragraph 1.4** above, the Service Provider shall:

1.5.1 develop the:

1.5.1.1 Business Continuity Plan; and

1.5.1.2 Business Continuity Test Schedule,

in accordance with **paragraph 2.1 (Business Continuity Plan and Business Continuity Test Schedule)**;

1.5.2 throughout the Term, review and keep up to date the Business Continuity Plan and the Business Continuity Test Schedule and submit them to ECC for Approval and in any event in accordance with **paragraph 2.3 (Business Continuity Plan and Business Continuity Test Schedule)**;

1.5.3 provide the Business Continuity Infrastructure and other actions or measures specified in the Business Continuity Plan to prevent or limit the effects of any:

1.5.3.1 Business Continuity Event; or

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

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

- 2.1 The Service Provider shall:
 - 2.1.1 ensure that a draft:
 - 2.1.1.1 Business Continuity Plan (which shall include the requirements set out in **paragraph 2.8** below); and
 - 2.1.1.2 Business Continuity Test Schedule (which shall include the Business Continuity Testing),are prepared and submitted to ECC as soon as practicable and in any event not later than twenty (20) Working Days following the Effective Date for approval;
 - 2.1.2 throughout the Term, maintain the:
 - 2.1.2.1 Business Continuity Plan; and
 - 2.1.2.2 Business Continuity Test Schedule,including pursuant to **paragraph 2.3** below.
- 2.2 ECC shall use reasonable endeavours to ensure that:
 - 2.2.1 the Interested Parties and Other Service Providers will provide the appropriate services to the Service Provider; and
 - 2.2.2 the Interested Parties' and Other Service Providers' business continuity plans shall be made available to the Service Provider so that they can be taken into account by the Service Provider in the development of the Business Continuity Plan and the Business Continuity Test Schedule.
- 2.3 The Service Provider shall review (including in accordance with **paragraph 2.5** below) and resubmit the Business Continuity Plan and the Business Continuity Test Schedule to ECC for approval:

- 2.3.1 at least annually following the Operational Commencement Date; or
- 2.3.2 at other intervals if requested as part of any Change or as may be required by ECC or the Service Provider,

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

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

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

- 2.5.1 examine the procedures and methodologies set out in the Business Continuity Plan and the Business Continuity Test Schedule; and
- 2.5.2 assess their suitability in light of any amendments to the EETS Assets, Service Systems and Services that have occurred since the original Business Continuity Plan or Business Continuity Test Schedule respectively or the most recent review (whichever is later).

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

- 2.5.2.1 the findings of the review;
- 2.5.2.2 any resulting changes to the risk profile of the EETS Assets, Service Systems and/or Services; and
- 2.5.2.3 the recommendations for addressing the new risk profile and any other findings of the review, as the Service Provider deems necessary.

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

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

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

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

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

2.7.1 Business Continuity Plan; or

2.7.2 Business Continuity Test Schedule,

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

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

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

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

2.8.2.1 a risk and issue assessment;

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

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

(a) notifying ECC Personnel, Customers, Interested Parties, Other Service Providers, Third Parties and Service Provider Personnel and Sub-Contractors;

(b) assignment of Service Provider Personnel and tasks;

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

(each a "**Scenario**") and action maps for each different Scenario;
- 2.8.7 a description of the capability of the EETS Assets, Service Systems and/or Services to be delivered under each Scenario as a proportion of the capability required under the provisions of the Agreement, including the Service Levels;
- 2.8.8 a description of the Business Continuity Infrastructure;
- 2.8.9 proposed Service Levels to apply in relation to the alternative, additional or replacement EETS Assets, Service Systems, Premises (including the Business Continuity Premises), Service Provider Personnel, processing, methods, processes or procedures or other actions or measures in relation to restoration, reinstallation, repair, removal, retrieval, re-entering, recovery or replacement set out in the Business Continuity Plan, but only to the extent that the existing Service Levels under **Schedule 5 (Service Level Agreement)** or otherwise agreed using the Change Control Request Procedure or in respect of Additional Services cannot in any way be applied;

- 2.8.10 provision for an extended Business Continuity Event or Disaster Recovery Event, such as permanent loss of the Premises; and
- 2.8.11 separate detailed plans in respect of responding to a:
 - 2.8.11.1 Business Continuity Event; and
 - 2.8.11.2 Disaster Recovery Event (and including all EETS Assets and Service Systems for responding to a Disaster Recovery Event);
- 2.8.12 measures to ensure continuity of Services in the event of:
 - 2.8.12.1 Back Office or Business Continuity loss;
 - 2.8.12.2 Docking Station functionality loss;
 - 2.8.12.3 Data loss or Data corruption which prevents operation of the Essex eScooter Trial Services;
 - 2.8.12.4 Systems failure; and
 - 2.8.12.5 failure of the communication links between Docking Station and the Service Systems;
- 2.8.13 provision for the availability of the Contact Centre / Services Website including:
 - 2.8.13.1 how availability and Business Continuity will be maintained; and
 - 2.8.13.2 how the required infrastructure will be used for System maintenance and backup to support Business Continuity;
- 2.8.14 provision for availability of Terminals and smartcard readers; and
- 2.8.15 details on how loss of communications or power will impact:
 - 2.8.15.1 Charges in progress;
 - 2.8.15.2 Charges during loss of communications or power; and
 - 2.8.15.3 the availability of eScooter for hire.
- 2.9 The Service Provider shall ensure that the Business Continuity Plan is designed in such a way to ensure that:
 - 2.9.1 the Business Continuity Plan does not depend on any Interested Party or Other Service Provider adjusting its Hardware, Software or Systems as a result of any Business Continuity Event or Disaster Recovery Event;
 - 2.9.2 in the event of a Business Continuity Event or Disaster Recovery Event:
 - 2.9.2.1 the security of the EETS Assets, Service Systems and Services (or any part thereof) is not compromised in any way by the Business Continuity Event or Disaster Recovery Event;

- 2.9.2.2 the Service Provider will still be able to make available Data so that the Services will be able to perform the Data synchronisations required in order to ensure consistent Data across the Services and Service Systems;
- 2.9.3 it allows the Services to be provided by the Service Provider in accordance with the Service Levels and that the Business Continuity Plan mitigates the adverse impact of a Business Continuity Event or Disaster Recovery Event on such Service Levels;
- 2.9.4 the Business Continuity Plan is upgradeable and sufficiently flexible to support any changes to the business functionality and changes to the business processes facilitated and supported by the EETS Assets and Service Systems in the future;
- 2.9.5 the Service Provider is able to respond to, and comply with, the instructions or directions of any civil and/or military authority (including the fire, police or army services) attending any premises (including the Premises) affected by a Business Continuity Event or Disaster Recovery Event, without affecting the Service Provider's compliance with **Schedule 12 (Security Policy)** and the Security Plan; and
- 2.9.6 it otherwise complies with the provisions of:
 - 2.9.6.1 **clause 39 (Security Policy)**;
 - 2.9.6.2 the Security Plan; and
 - 2.9.6.3 **Schedule 12 (Security Policy)**.

3. **Business Continuity Testing**

- 3.1 Subject to **paragraph 3.3** below, the Service Provider shall, at its own cost and expense, conduct Business Continuity Testing of all aspects of the Business Continuity Plan (including the Business Continuity Services and the Business Continuity Infrastructure) in accordance with the Business Continuity Test Schedule and as a minimum:
 - 3.1.1 during Ready for Service Testing;
 - 3.1.2 once in each six (6) Month period taken from the Operational Commencement Date,in each case at a time agreed in writing with ECC in advance.
- 3.2 Subject to ECC's prior written consent, the Service Provider may conduct the Tests described above, at its own cost and expense, more frequently than is specified in **paragraph 3.1** above, if the Service Provider, acting in accordance with Good Industry Practice, deems it necessary.

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

- 3.6.2 liaise with ECC in respect of the planning, performance and review of each Test; and
- 3.6.3 participate in the Business Continuity Testing with Interested Parties, Other Service Providers and/or any Third Party, as ECC may require from time to time.
- 3.7 Any participation by ECC in relation to the Testing of the Business Continuity Plan will be without prejudice to and will not be deemed in any way to:
 - 3.7.1 restrict:
 - 3.7.1.1 the steps required to be taken by the Service Provider pursuant to this **Schedule 19**; or
 - 3.7.1.2 the Service Provider obligations under **clause 49 (Force Majeure)**; or
 - 3.7.2 be acceptance or Approval by ECC that the Business Continuity Plan is adequate.
- 3.8 If any aspect of the Business Continuity Testing fail to meet the criteria in the Business Continuity Plan, the Service Provider shall take such action, at its own expense, as is necessary, and repeat such tests until all the relevant criteria are met.

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

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

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

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

24 hours a day, seven (7) days a week, 365 days of the year, including in the event of a Business Continuity Event or a Disaster Recovery Event;

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

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

4.6.5.1 appropriate EETS Assets; and

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

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

5. **ECC's Right to Inspect**

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

5.1.1 Premises (including the Business Continuity Premises);

5.1.2 EETS Assets;

5.1.3 Service Systems,

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

5.2 The Service Provider shall:

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

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

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

6. **General**

6.1 The Service Provider shall ensure that the:

6.1.1 Business Continuity Plan;

6.1.2 Business Continuity Services; and

6.1.3 Business Continuity Infrastructure,

each comply, as a minimum, with:

6.1.3.1 Good Industry Practice; and

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

- 6.2 The Service Provider shall implement the relevant provisions of the Business Continuity Plan in accordance with the applicable timescales specified in the Business Continuity Plan (or, if no such timescales are specified, as soon as possible) following the occurrence of a Business Continuity Event or Disaster Recovery Event.
- 6.3 Subject to **paragraph 3.5 (Business Continuity Testing)** above, the Service Provider agrees that the Service Levels shall continue to apply in the event that a Business Continuity Event or Disaster Recovery Event occurs.
- 6.4 Without limiting **paragraph 6.3** above, the Service Provider shall ensure that the EETS Assets, Service Systems, Services, Services Data, Premises or Service Provider Personnel (or any parts thereof) used to provide the Services are resumed as soon as possible (and, in any event, within the time frames set out in the Business Continuity Plan) following a Business Continuity Event or Disaster Recovery Event (as applicable) in place of the Business Continuity Infrastructure or Business Continuity Services or any other alternative, additional or replacement Hardware, Software, assets, Systems, Business Continuity Premises, Service Provider Personnel, processing, methods, processes or procedures as set out in the Business Continuity Plan.
- 6.5 The Service Provider shall only cease to:
- 6.5.1 follow the Business Continuity Plan;
 - 6.5.2 use the Business Continuity Infrastructure; and/or
 - 6.5.3 provide the Business Continuity Services,
- following a Business Continuity Event or a Disaster Recovery Event, once ECC has agreed in writing that the Service Provider may do so, provided that ECC shall not withhold its agreement if the Service Provider can demonstrate to the satisfaction of ECC (ECC acting reasonably) that:
- 6.5.4 the Service Provider is able to provide the Services at the level of performance required under the Service Level Agreement otherwise than through the implementation of the Business Continuity Plan; and
 - 6.5.5 either:
 - 6.5.5.1 there is only a remote risk that the relevant Business Continuity Event or Disaster Recovery Event will affect the EETS Assets, Service Systems, Services, Services Data, Premises, Service Provider Personnel, ECC Personnel, members of the public (including Customers) and overall provision of the Essex eScooter Trial Services;

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

SCHEDULE 20

Key Sub-Contractors

Detailed in Schedule 21 Service Provider Solution

SCHEDULE 22

Customer Use and Revenue Collection

NOT USED

SCHEDULE 23

Additional Services

1. Additional Services

- 1.1 ECC may, pursuant to the Change Control Request Procedure, require the Service Provider to provide any services which are:
 - 1.1.1 the same as or substantially similar to those Services provided by the Service Provider during the Implementation Phase and/or the Operational Phase; and/or
 - 1.1.2 pursuant to the design, build, installation and operation of the Essex eScooter Trial Services,in accordance with the provisions of this **Schedule 23**.
- 1.2 The Additional Services shall be provided and subject to the terms and conditions of this Agreement.
- 1.3 Additional Services may include:
 - 1.3.1 Not used;
 - 1.3.2 increasing the number of Docking Stations and eScooter within the Area of Operation;
 - 1.3.3 providing additional functional capabilities to:
 - 1.3.3.1 support the operation of the Essex eScooter Trial Services; and/or
 - 1.3.3.2 improve the Customer experience and acceptance of the Essex eScooter Trial Services ; and/or
 - 1.3.4 extending the Service Systems and Terminals to support new charging methods.

The list above is not exhaustive.

2. Procurement

The Parties hereby acknowledge that unless ECC elects (at its sole discretion) to do otherwise, the Additional Services will be requested of VOI TECHNOLOGY LTD by ECC in the first instance and the parties shall adhere to the process set out in the Change Control Request Procedure.

SCHEDULE 24

ECC Policies

This **Schedule 24** sets out the ECC Policies that are applicable to the provision of the Services.

In accordance with **clause 29 (Compliance with ECC Policies)**, the Service Provider shall comply with provisions set out in ECC Policies, unless and to the extent that such provisions are contrary to the Service Provider's obligations under this Agreement. The Service Provider will, at all times, be responsible for complying with all relevant legislation and regulatory requirements.

1. Anti-Bribery Policy:

http://www.essex.gov.uk/Your-Council/Strategies-Policies/Code-of-Governance/Documents/anti_bribery_strategy.pdf

2. Anti-Money Laundering Policy:

http://www.essex.gov.uk/Your-Council/Strategies-Policies/Code-of-Governance/Documents/Anti_Money_Laundering_Policy.pdfEqualities Strategy 2015-18:

http://www.essex.gov.uk/Publications/Documents/EQUALITIES_POLICY.pdf

3. Health & Safety Policy Statement:

http://www.essex.gov.uk/Your-Council/Strategies-Policies/Code-of-Governance/Documents/Health_and_Safety_Policy_Statement.pdf

4. Information Policy Requirements:

http://www.essex.gov.uk/Business-Partners/Supplying-Council/Documents/ECC_information_policy_requirements_for_contractors.pdf

5. Retention Policy:

http://www.essex.gov.uk/Your-Council/Your-Right-Know/Documents/Retention_Schedule.pdf

Copies of the Policies listed above can be obtained from ECC website at the addresses provided above. Further policies or amendments to the policies above will be applicable as notified to the Service Provider.

SCHEDULE 25

Docking Station Installation

NOT USED

Where required, refer to Schedule 21 – Service Provider Solution

SCHEDULE 26

Service Provider Personnel

1. Introduction

This **Schedule 26** sets out the Service Provider's obligations in respect of Service Provider Personnel.

2. Service Provider Personnel

2.1 In terms of the Service Provider Personnel, the Service Provider shall:

2.1.1 use sufficient, suitable, appropriately qualified, experienced and competent Service Provider Personnel to provide the Services (or any part thereof);

2.1.2 use all reasonable efforts to ensure continuity of Service Provider Personnel engaged in the provision of the Services (or any part thereof);

2.1.3 ensure that there are sufficient Service Provider Personnel available with an appropriate level of knowledge and skill and who have been involved in the Design Services and the Build Services during the period from the Effective Date, to resolve any problems arising from the:

2.1.3.1 function, operation and maintenance of the:

(a) EETS Assets; and

(b) Service Systems;

2.1.3.2 provision of the Operational Services; and

2.1.4 [ensure that all Service Provider Personnel having access to Personal Data, in respect of which ECC is the Data Controller, are fully aware of the measures to be taken in accordance with:

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

2.1.4.2 **Schedule 13 (Information Compliance)**,

when Processing Personal Data on behalf of ECC.]

3. Removal/Replacement of Service Provider Personnel

3.1 In the event that ECC, acting reasonably, considers that any member of the Service Provider Personnel is:

3.1.1 unsatisfactory (ECC acting reasonably);

3.1.2 not performing their role properly, efficiently or effectively; or

3.1.3 in any way disruptive to the business or activities of ECC,

ECC may, by written notice to the Service Provider, request the Service Provider to take remedial action in relation to such member of the Service Provider Personnel. If within ten (10) Working Days of such notice, ECC reasonably considers that the matter has not been resolved to the satisfaction of ECC, ECC shall have the right, by written notice to the Service Provider, to require the removal of such member of the Service Provider Personnel with immediate effect. The exercise of ECC's rights under this **paragraph 3.1** shall not relieve the Service Provider of any of its obligations under this Agreement.

- 3.2 In the event that the Service Provider replaces any member of the Service Provider Personnel for whatever reason, the cost of effecting such replacement shall be borne solely by the Service Provider (including, any costs associated with training, induction or other efforts involved in bringing the replacement member of the Service Provider Personnel up to the same level of knowledge as his predecessor).

4. **Non-solicitation**

- 4.1 During the Term and for a period of twelve (12) Months following Termination, neither Party shall, without the prior written consent of the other Party:

4.1.1 make any offer of employment or enter into any discussion or negotiations with a view to making any offer of employment to any person employed by the other Party at any time during the period of six Months prior to the Effective Date of this Agreement and with whom it has had personal contact or dealing; or

4.1.2 solicit or attempt to solicit services from any employee of the other Party on their own account or entice or attempt to entice any such employee away from the other Party.

- 4.2 The provisions of **paragraph 4.1** above shall not apply if such employee is employed as a result of:

4.2.1 a response by the employee to a public advertisement placed by the other Party; or

4.2.2 the operation of the TUPE Regulations.

5. **Key Personnel**

- 5.1 The Service Provider acknowledges and accepts that the Key Personnel set out in **Schedule 9 (Key Personnel)** are essential to the provision of the Services. Accordingly, the Service Provider shall:

5.1.1 provide job descriptions for all Key Personnel positions set out in **Schedule 9 (Key Personnel)** to ECC for its approval, including, as a minimum the:

5.1.1.1 scope of each Key Personnel position;

5.1.1.2 minimum qualifications and experience required to fulfil the Key Personnel position;

- 5.1.1.3 key accountabilities and responsibilities of the Key Personnel position; and
- 5.1.1.4 core skills and competencies required for the Key Personnel position,
(the "**Job Description**");
- 5.1.2 notify ECC Personnel of the identity of each member of the Key Personnel and make them available for the provision of the Services. ECC shall have the right to:
 - 5.1.2.1 request the curriculum vitae of; and/or
 - 5.1.2.2 interview and/or accept or reject,
any member of Service Provider Personnel proposed to fulfil the position of Key Personnel;
- 5.1.3 ensure that all Key Personnel devote their time and effort exclusively to the performance of the Services;
- 5.1.4 ensure that the role of any Key Personnel is not vacant for longer than twenty (20) Working Days save to the extent that the role is vital for the proper provision of the Services in which circumstances the Service Provider shall ensure that the role is not vacant for longer than five (5) Working Days;
- 5.1.5 ensure that any replacement member of Key Personnel will be fully competent to carry out the tasks assigned to the Key Personnel, which he has replaced within fifteen (15) Working Days of his commencing work on the Services. Nothing in this **paragraph 5.1.5** shall prevent the Service Provider from using temporary staff in the role of Key Personnel whilst it is recruiting a permanent replacement, provided that the Service Provider complies with the provisions of **paragraph 5.3** below in respect of such temporary staff;
- 5.1.6 take all reasonable steps to retain the services of the Key Personnel;
- 5.1.7 not remove, change or replace any member of the Key Personnel without the prior written consent of ECC. Such consent shall not be required in respect of the removal of Key Personnel due to dismissal, resignation, illness or other significant circumstances; and
- 5.1.8 promptly notify ECC in writing in the event that a member of Key Personnel leaves the employment of the Service Provider (including, where such member is a secondee to the Service Provider and the period of their secondment expires) and provide details of their proposed replacement.
- 5.2 ECC may, at its reasonable discretion, require the Service Provider to remove any member of Key Personnel that ECC considers is:
 - 5.2.1 unsatisfactory (ECC acting reasonably);

5.2.2 not performing their role properly, efficiently or effectively; or

5.2.3 in any way disruptive to the business or activities of ECC,

and the terms of **paragraph 3** (Removal/Replacement of Service Provider Personnel) above shall apply in respect of the replacement of that member of Key Personnel.

5.3 Prior to assigning a replacement Key Personnel, the Service Provider shall:

5.3.1 propose an individual to replace such Key Personnel and supply to ECC the curriculum vitae of any proposed replacement;

5.3.2 such individual shall have (in the opinion of ECC) the status, skills and experience at least equal to that of such Key Personnel that he is proposed to replace;

5.3.3 ECC shall have the right to interview and/or accept or reject any proposed replacement; and

5.4 in the event of an agreed redeployment or the resignation of any of the Key Personnel, the Service Provider shall:

5.4.1 use their reasonable endeavours to ensure that such Key Personnel shall work such part of his or her notice period as is necessary to ensure appropriate knowledge transfer to his or her replacement; and

5.4.2 demonstrate to ECC that an appropriate knowledge transfer plan has been implemented by such Key Personnel and his replacement.

6. **Indemnities**

6.1 The Service Provider shall be liable for, and shall indemnify the ECC Indemnified Parties and/or any New Service Provider against, any Employment Liabilities incurred by the ECC Indemnified Parties and/or any New Service Provider, which arise out of or in connection with:

6.1.1 the employment or termination of employment of any person engaged in connection with the provision of the Services up to and including the Expiry Date, Termination Date or Partial Termination Date (as applicable); and

6.1.2 any Service Provider Personnel (other than any employee who immediately before the Expiry Date, Termination Date or Partial Termination Date (as applicable) is an Exit Transferring Employee and whose name is included on the final list of Exit Transferring Employees provided in accordance with the provisions of **paragraph 7.2 (Termination)** below) whose employment or claims or liabilities arising out of their employment or its termination transfers to ECC or a New Service Provider following the Expiry Date, Termination Date or Partial Termination Date (as applicable) pursuant to or by virtue of the TUPE Regulations or who claim that their employment or such claims or liabilities so transfer save where such person continues to be employed by ECC or a New Service Provider six (6) months after ECC or the New Service Provider

becomes aware of the claim that their employment has transferred in which case the relevant Employment Liabilities shall be those relating to the period on or before the Expiry Date, Termination Date or Partial Termination Date (as applicable).

7. Termination

7.1 At least thirty (30) calendar days prior to the Expiry Date or Termination Date, or in the case of Partial Termination the Partial Termination Date, the Service Provider shall provide to ECC, or at its request a New Service Provider, a final list of the names of all Exit Transferring Employees, which shall be complete, accurate and up to date and the Service Provider shall immediately notify ECC of:

7.1.1 any changes to such list prior to the Expiry Date, Termination Date or Partial Termination Date (as applicable); and

7.1.2 any Exit Transferring Employee who has:

7.1.2.1 objected to a transfer pursuant to Regulation 4(7) of the TUPE Regulations; and

7.1.2.2 given or been given notice of termination of his employment,

prior to the Expiry Date, Termination Date or Partial Termination Date (as applicable).

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

7.2.1 comply with their duties to provide employee liability information in accordance with Regulation 11 of the TUPE Regulations, but in addition will provide the information specified in that Regulation 11 no later than thirty (30) calendar days before the, Expiry Date, Termination Date or Partial Termination Date (as applicable); and

7.2.2 indemnify ECC Indemnified Parties and any New Service Provider against any Employment Liabilities arising from such breach.

7.3 In accordance with and subject to clause **64.2 (Contract (Rights of Third Parties) Act)**, a New Service Provider or contractor of ECC shall be entitled to enforce the provisions of this **Schedule 26**.

8. Assistance with Employment Claims

8.1 In the event that any of the Service Provider Personnel or any other person who is or has been, or purports to be or have been, employed in connection with all or any of the Services (or any part thereof), makes a claim against a ECC Indemnified Party or a New Service Provider arising out of or in connection with the provision of the Services, the ECC and the Service Provider shall:

8.1.1 notify the other Party that such claim has been made; and

8.1.2 give to the other as soon as practicable after such request all co-operation, assistance and information which may be reasonably required by the other party in relation to the claim.

8.2 The Service Provider shall procure that, whenever ECC so requires on reasonable notice at any time during the Term and for the period of six (6) years following the Expiry Date, Termination Date or Partial Termination Date (as applicable), ECC will be given access to and be allowed to consult with any person, consultant or employee who:

8.2.1 at that time is still an employee or sub-contractor of the Service Provider or any Affiliate of the Service Provider; and

8.2.2 was at any time employed or engaged by the Service Provider to provide the Services under this Agreement,

and such access and consultation will be provided free of charge and, thereafter, be charged at reasonable rates for the time spent by the Service Provider and/or its Sub-Contractors on such consultation. The Service Provider will further procure that all such persons co-operate with the requests of ECC from time to time.

9. Pensions

9.1 The Service Provider shall make available a Service Provider Pension Plan for the provision of relevant benefits to the Service Provider Personnel in accordance with applicable Laws.

9.2 The terms of the Service Provider Pension Plan (including the benefits provided under it) shall be made available to ECC on request.

9.3 For the purposes of this paragraph 9, "**relevant benefits**" has the meaning given to it in section 612 of the Income and Corporation Taxes Act 1988.

SCHEDULE 27

Protocols

A. ECC Advertising and Sponsorship Protocols

ECC will actively seek opportunities to work with all forms of organisations to identify opportunities for advertising and sponsorship; which are in keeping with its Strategic Priorities and Organisation Strategy. It is keen to encourage and support advertising and sponsorship.

ECC reserves the right to evaluate the suitability of all advertisements or sponsorship before including them on/through its channels and all advertisements or sponsorships are accepted at ECC's absolute discretion.

ECC reserves the right to refuse to publish an advertisement or accept sponsorship or to withdraw a published advertisement without notice and it may cancel or withdraw any advertisement or sponsorship at any time. For specificity, an advertisement will not be approved, or permitted to remain if, in the Council's reasonable opinion, the advertisement does not comply with the law, does not comply with the UK Code of Non-broadcast Advertising, Sales Promotion and Direct Marketing (or any relevant CAP code), is otherwise not appropriate, or is inconsistent with the Council's obligations under section 149 of the Equality Act 2010.

ECC reserves the right to evaluate the suitability of advertisements and sponsorships and reserves the right to veto where it deems necessary. ECC's determination shall be absolute and final in this regard.