

**MAYOR OF LONDON**



Agreement Reference Number: tfl\_scp\_002092\_e-scooter\_trial\_project\_dott

Date: 8 April 2021

**Administration Agreement**  
**relating to the Provision of an E-scooter Rental Service**

**between**

***Transport for London***

**and**

***EMTransit Ltd***

**Version: 1.0**

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**THIS AGREEMENT** is made the eighth day of April 2021

**BETWEEN:**

- (1) **TRANSPORT FOR LONDON**, a statutory body established under the Greater London Authority Act 1999 whose office is at 5 Endeavour Square, London, E20 1JN (the “**Administrator**”); and
- (2) **EMTRANSIT LTD**, a company registered in England and Wales (Company Registration Number 11768066) whose registered office is at 33 Cranley Gardens Flat 11, London, England, SW7 3BD (the “**Operator**”).

each a “Party” and together the “Parties”.

**RECITALS:**

- A. The Administrator placed a prior information notice 2020/S 115-280631 on 16 June 2020 in the Official Journal of the European Union seeking expressions of interest from providers interested in trialling e-scooter rental in the Greater London area. The trial (“**Trial**”) is part of the Department of Transport's programme for supporting the green restart of local travel post the Covid-19 pandemic. The lawfulness and commencement of the Trial is subject to prior making of an Order pursuant to Section 44 of the Road Traffic Act 1988.
- B. The Administrator has subsequently competitively procured suppliers of an e-scooter service on a trial basis, pursuant to Regulation 14 of the Public Contracts Regulations 2015, as set out in contract notice 2020/S 227-560574 . The Operator's tender response in respect of the provision an e-scooter service is incorporated in this Agreement at Schedule 5.
- C. The Parties wish to enter into this Administration Agreement, which sets out terms that apply to the Operator's provision of a trial e-scooter rental service to Eligible Boroughs that wish to participate in the Trial.
- D. An Administrative Order dated 31 March 2021 enabling the Operator's provision of the Service has been issued by the Department for Transport; a copy of the order is appended as Annex A to Schedule 5 (Operator's Service Response to ITT) of this Agreement.
- E. This Agreement provides the mechanism for a Participating Borough to enter into a contract with an Operator. A Participating Borough that requires e-scooters to be parked and distributed at key locations within its borough may request that the Operator enters into a contract with it to provide an e-scooter rental service.
- F. Alternatively a Participating Borough can participate in the Trial but only to the extent of allowing e-scooter users to travel across the borough but not stop. In this case, the Operator is requested to enter into a contract with the relevant Participating Borough before its users can ride through the borough.



- G. As well as being able to use the thoroughfares within the jurisdiction and control of the Participating Boroughs, the Administrator is also making some of the thoroughfares and land that it controls and/or owns available for use by Operators for the purposes of e-scooter rental services. This means that users of the Operator's e-scooters will be able to make journeys across London using a mixture of borough and TfL thoroughfares. The TfL thoroughfares are subject to the same types of zoning restrictions as apply to boroughs. All the zoning restrictions that apply to use of thoroughfares are geo-mapped and kept up-to-date on the data platform provided by the Administrator.
- H. The Operator has entered into an E-scooter Parking Licence with the Administrator on or about the same date as this Agreement.

## THE PARTIES AGREE THAT:

In consideration of the payment of five pounds (£5.00) by the Operator to the Administrator (receipt of which the Administrator acknowledges), it is agreed that:

### 1. DEFINITIONS AND INTERPRETATIONS

In the Agreement (including the Recitals):

- 1.1 unless the context indicates otherwise the following expressions shall have the following meanings:

<b>“Administrative Order”</b>	an order made pursuant to Sections 44 and 63 of the Road Traffic Act 1988 authorising the use on roads of vehicles that are otherwise not permitted for road use;
<b>“Administrator”</b>	Transport for London, a statutory corporation established under the Greater London Authority Act 1999;
<b>“Affected Party”</b>	has the meaning given to it in Clause 28.5;
<b>“Agreement”</b>	this administration agreement, including the Schedules and all other documents referred to in this Agreement except an Operator Contract;
<b>“Agreement Commencement Date”</b>	the date for commencement of this Agreement specified in Schedule 1;
<b>“Agreement Expiry Date”</b>	the date on which this Agreement expires being that date 5 (five) clear Business Days after the Trial End Date;
<b>“Agreement Reference”</b>	the reference number for this Agreement

<b>Number”</b>	as set out in Schedule 1;
<b>“Agreement Termination Date”</b>	has the meaning set out in Clause 28.9;
<b>“Borough Level Plan”</b>	an Operator's plan for use of e-scooters in the area within the jurisdiction of a Participating Borough;
<b>“Borough Licence”</b>	has the meaning set out in Clause 5.19;
<b>“Business Continuity Plan”</b>	the plan attached at Schedule 8 to this Agreement;
<b>“Business Day”</b>	any day excluding Saturdays, Sundays or public or bank holidays in England;
<b>“Cessation Plan”</b>	<p>a plan agreed between the Parties or determined by the Administrator pursuant to Clause 30:</p> <ul style="list-style-type: none"><li>(a) to give effect to a Declaration of Ineffectiveness; or</li><li>(b) to give effect to a Public Procurement Termination Event;</li></ul>
<b>“Change Date”</b>	has the meaning set out in Clause 28.10.1;
<b>“Change in Law”</b>	<p>any:</p> <ul style="list-style-type: none"><li>(a) amendment, alteration or modification to or repeal of existing law (or any elements thereof and including guidance), relating to the design and/or use of e-scooters;</li><li>(b) introduction of any new law (or any elements thereof);</li><li>(c) judgment of a competent court which changes a binding precedent or the interpretation of any relevant legislation;</li></ul> <p>which takes effect after the Agreement Commencement Date;</p>
<b>“Charges”</b>	the charges payable by the Operator in connection with the Trial, comprising either an initial, up-front Full-service Charge or a Ride-through Charge, and a Per-vehicle

Charge payable each Trial Period;

**“Confidential Information”**

all information (whether written or verbal) that by its nature may reasonably be regarded as confidential to the Administrator and/or a Participating Borough (whether commercial, financial, technical or otherwise) including information which relates to the business affairs, customers, suppliers, products, software, telecommunications, networks, trade secrets, know-how or personnel of the Administrator and/or Participating Borough;

**“Consents”**

all permissions, consents, registrations, approvals, certificates, permits, licenses, statutory agreements and authorisations required by law and all necessary consents and agreements required from any third parties for the performance of the Service by the Operator, including the Administrative Order;

**“Contract Co-ordinator”**

the person named as such in a Full-service Contract or Ride-through Borough, or such other person as notified to the Operator by the Participating Borough;

**“Contract Information”**

this Agreement and any Operator Contract in their entirety (including from time to time agreed changes to the Agreement or to any Operator Contract);

**“Data”**

principally, the journey data captured by Vehicles, as further set out in the Specification but includes other Trial data;

**“Data Platform”**

the IT system provided by the Administrator for the sharing of data about Vehicle usage and other Trial data;

**“Data Protection Legislation”**

means:

- (a) the Regulation (EU) 2016/679 on the protection of natural persons with regard to the Processing of personal data and on the free movement of such data;
- (b) Directive (EU) 2016/680 (the Law

Enforcement Directive);

- (c) any legislation in force from time to time in the United Kingdom relating to privacy and/or the Processing of Personal Data, including the Data Protection Act 2018;
- (d) any statutory codes of practice issued by the Information Commissioner in relation to such legislation; and
- (e) the Privacy and Electronic Communications (EC Directive) Regulations 2003;

**“Declaration of Ineffectiveness”**

a declaration of ineffectiveness in relation to this Agreement made by a Court of competent jurisdiction pursuant to Regulation 98 of the Public Contracts Regulations 2015 or Regulation 113(2)(a);

**“DfT”**

the Department for Transport;

**“Disputing Parties”**

in relation to a Dispute or difference arising out of or related to:

- (i) this Agreement, will be the Parties, and
- (ii) an Operator Contract, will be the parties to such Operator Contract;

**“Eligible Borough”**

each of the thirty two London Boroughs and the City of London Corporation;

**“E-scooter Parking Licence”**

the licence between the Operator and the Administrator in relation to any parking spaces the Administrator makes available on TfL Premises;

**“Exit Plan”**

the plan to be carried out by the Operator in connection with termination of this Agreement and/or an Operator Contract;

**“Force Majeure Event”**

any of the following: riot, civil unrest, war, act of terrorism, threat or perceived threat of act of terrorism, fire, earthquake, extraordinary storm, flood, abnormal weather conditions or other natural catastrophe or strikes, lock-outs or other industrial disputes to the extent that such

event has materially affected the ability of the Affected Party to perform its obligations in accordance with the terms of this Agreement but excluding any such event insofar as it arises from or is attributable to the wilful act, omission or negligence of the Affected Party or the failure on the part of the Affected Party to take reasonable precautions to prevent such Force Majeure Event or its impact, and provided always the Covid-19 virus and its impacts shall not constitute a Force Majeure Event;

**“Full-service Borough”**

a Participating Borough that allows Vehicles to be parked and distributed in, as well as travel through the area within the jurisdiction of the Full-service Borough;

**“Full-service Borough's Premises”**

any thoroughfare, land or premises (including temporary buildings) controlled, owned or occupied by or on behalf of the relevant Full-service Borough;

**“Full-service Charge”**

the non-refundable up-front charge payable by the Operator in consideration of deploying its Vehicles in the area within the jurisdiction of each Full-service Borough;

**“Full-service Contract”**

an Operator Contract between a Full-service Borough and an Operator;

**“Full-service Request”**

a request to an Operator by a Full-service Borough to enter into a Full-service Contract;

**“Geographic Requirements”**

the requirements and restrictions for the use of e-scooters within the specific jurisdiction of a Participating Borough or the Administrator, such as zoning;

**“Guarantor”**

any person who agrees to act as guarantor under a Parent Company Guarantee;

**“Health and Safety Legislation”**

all 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, the environment or health and safety, including the Covid-19 pandemic;

**“Holding Company”**

any company which from time to time directly or indirectly controls the Operator as set out by section 1159 of the Companies Act 2006;

**“Insolvency Event”**

any of the following:

- (a) the Operator and/or the Holding Company making any voluntary arrangement with its creditors or becoming subject to an administration order;
- (b) a receiver, administrative receiver, manager, or administrator being appointed over all or part of the business of either or both of the Operator or the Holding Company;
- (c) being a company, either or both of the Operator or the Holding Company having passed a resolution for its winding-up or being subject to a petition for its winding-up (except for the purposes of a voluntary amalgamation, reconstruction or other re-organisation without insolvency);
- (d) either or both the Operator or the Holding Company ceasing or threatening to cease to carry on its business for any reason or being unable to pay its debts within the meaning of the Insolvency Act 1986;
- (e) being an individual or firm, the Operator becoming bankrupt or dying; or
- (f) any similar event to those in (a) to (e) above occurring in relation to either or both of the Operator or the Holding Company under the law of any applicable jurisdiction for those purposes;

**“Insurances”**

has the meaning set out in Clause 21;

**“Intellectual Property”**

any patent, know-how, trade mark or name, service mark, design right,

<b>Rights”</b>	copyright, rights in passing off, database right, rights in commercial or technical information, any other rights in any invention, discovery or process and any other intellectual property rights, whether registered or unregistered and including applications for the grant of any such rights and all rights or forms of protection having equivalent or similar effect in each case in the United Kingdom and anywhere else in the world;
<b>“Key Personnel”</b>	the Operator’s key personnel named as such in Schedule 1 or any relevant Operator Contract;
<b>“London Level Mobilisation Plan”</b>	an Operator’s overall plan for providing e-scooters in accordance with the Specification;
<b>“Losses”</b>	all costs (including legal costs and costs of enforcement), expenses, liabilities (including any tax liability), injuries, direct, indirect or consequential loss (all three of which terms include pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss), damages, claims, demands, proceedings and judgments;
<b>“Low Income/Equitable Access Plans”</b>	the Operator’s plan, as attached at Schedule 10 and agreed by the Administrator, by which the Operator will support access to its e-scooter rental service, as further described in the Specification;
<b>“Materials”</b>	all equipment and materials other than the Operator Equipment forming part of the Service;
<b>“Maximum Fleet Size”</b>	the maximum number of Vehicles that can be deployed by the Operator, as further set out in Section 9.3 of the Specification;
<b>“Minimum Vehicle Requirement”</b>	the minimum number of Vehicles that may be deployed in the relevant Full-service Borough;
<b>“Operational Board”</b>	has the meaning set out in the Specification;

<b>“Operator”</b>	the entity named at the head of this Agreement or its permitted successor or assign;
<b>“Operator Contract”</b>	the contract between the Operator and a Participating Borough, being either a Full-service Contract or a Ride-through Contract, entered into in accordance with the Operator Contract Request procedure as provided in Clause 5;
<b>“Operator Contract Start Date”</b>	the date on which the Operator can either (i) start provision of e-scooter rental services under a Full-service Contract or (ii) use the thoroughfares for e-scooter rental service under a Ride-through Contract;
<b>“Operator Contract Effective Date”</b>	the date from which an Operator Contract is in effect;
<b>“Operator Contract Request”</b>	a request from a Participating Borough to an Operator to enter into either a Full-service Contract (Full-service Request) or a Ride-through Contract (Ride-through Request);
<b>“Operator Equipment”</b>	the Vehicles, together with all that equipment and materials of whatsoever nature used by the Operator to maintain the Vehicles;
<b>“Operator’s Manager”</b>	the person who is identified as the Operator’s Manager in the Operator Contract;
<b>“Operator Personnel”</b>	all those persons, including employees, officers, suppliers, sub-contractors and agents engaged by the Operator in connection with the provision of e-scooter rental and including the Key Personnel;
<b>“Parent Company Guarantee”</b>	a duly executed parent company guarantee from such Holding Company or other person of the Operator, in each case as the Administrator approves in writing;
<b>“Participating Borough”</b>	an Eligible Borough participating in the Trial, either on a full-service basis as a Full-service Borough, or on a ride-through



	basis as a Ride-through Borough;
<b>“Participation Agreement”</b>	the agreement between the Administrator and a Participating Borough setting out the obligations of each party in respect of the Trial;
<b>“Participation Commencement Date”</b>	the date for commencement of the Participation Agreement;
<b>“Participation Expiry Date”</b>	the date on which the Participation Agreement expires being that date five (5) Business Days from the Trial End Date;
<b>“Participation Termination Date”</b>	that date, earlier than the Participation Expiry Date, on which the Participation Agreement terminates, whether as a result of notice being served by one of the parties to the Agreement, or automatically as a result of some other trigger e.g. early termination of the Trial;
<b>“Parties”</b>	the Administrator and the Operator (including their successors and permitted assignees) and <b>“Party”</b> shall mean either of them as the case may be;
<b>“Permitted Fleet Size Review”</b>	the process for reviewing each Operator's Permitted Fleet Size as set out in the Specification;
<b>“Permitted Fleet Size”</b>	the maximum number of Vehicles that can be deployed by the Operator in the Trial Area, during a specific Trial Period;
<b>“Per-vehicle Charge”</b>	the charge payable by the Operator to reflect the average number of Vehicles being deployed during the preceding Trial Period, as further described in the Specification;
<b>“Personal Data”</b>	has the meaning given to it in the Data Protection Legislation;
<b>“Processing”</b>	has the meaning given to it in the Data Protection Legislation;
<b>“Procurement Manager”</b>	the person named as such in Schedule 1 or such other person as notified to the Operator by the Administrator;

<b>“Public Procurement Termination Event”</b>	has the meaning given to it in Clause 30.7;
<b>“Public Procurement Termination Grounds”</b>	any one or more of the grounds described in either Regulation 73(1) of the Public Contracts Regulations 2015;
<b>“Public Safety Reasons”</b>	any current or imminent circumstance that in the opinion of a Participating Borough and/or the Administrator has or may have a serious impact on the health, safety and/or security of the public (including members of the emergency services) and/or Users;
<b>“Remedial Action Plan”</b>	has the meaning given to it in Clause 11.6;
<b>“Revised Start Date”</b>	the revised date for starting provision under a Full-service Contract, being TP Day 1 of the next Trial Period following the original Operator Contract Start Date;
<b>“Ride-through Borough”</b>	a Participating Borough that only allows Vehicles to travel through the area within the jurisdiction of the Ride-through Borough;
<b>“Ride-through Charge”</b>	the non-refundable up-front charge payable by the Operator in consideration of Ride-through Boroughs permitting the Operator's Vehicles to use thoroughfares within their respective jurisdictions;
<b>“Ride-through Contract”</b>	an Operator Contract between a Ride-through Borough and the Operator;
<b>“Ride-through Request”</b>	a request to the Operator by a Ride-through Borough to enter into a Ride-through Contract;
<b>“Service”</b>	the e-scooter rental service as further set out in the Specification;
<b>“Service Level”</b>	the required levels of Service, as further provided in Clause 11.5 and Section 29 of the Specification;
<b>“Service Response to ITT”</b>	the Operator's response to the Invitation to Tender for the Service, exhibited in Schedule 5;

<b>“Specification”</b>	the specification and other requirements set out in Schedule 3 to this Agreement;
<b>“Suspension Period”</b>	has the meaning set out in Clause 28.10.2 of this Agreement;
<b>“TfL”</b>	Transport for London, a statutory corporation established under the Greater London Authority Act 1999;
<b>“TfL Group”</b>	TfL in its own right and as holding company of all its subsidiaries (as defined in section 1159 of the Companies Act 2006) from time to time together and reference to any “member of the TfL Group” shall refer to TfL or any such subsidiary;
<b>“TfL Premises”</b>	the thoroughfares, land and other premises (including temporary buildings) controlled, owned or occupied by or on behalf of any member of the TfL Group (including for the avoidance of doubt the Administrator) that have been confirmed from time to time as available for use in the Trial;
<b>“TP Day”</b>	a day of a Trial Period, where “TP Day [n] ” denotes the specific day of the relevant Trial Period;
<b>“Transparency Commitment”</b>	a public authority’s commitment to publish its contracts, tender documents and data from invoices received in accordance with the Local Government Transparency Code 2015 and the relevant authority’s own published transparency commitments;
<b>“Trial”</b>	the trial for e-scooter rental services in London pursuant to DfT's Future of Transport programme and which is subject to the prior making of an Order pursuant to Section 44 of the Road Traffic Act 1988;
<b>“Trial Area”</b>	collectively:  (i) the thoroughfares within the jurisdiction and control of each Participating Borough; and

- (ii) Tfl Premises,
- from time to time, subject to the Geographic Requirements;
- “Trial End Date”** the date on which the Trial Term ends in accordance with Clause 3.4 (subject to the other terms of this Agreement), and where extended, the last date of the extension period;
- “Trial Objectives”** has the meaning set out in Clause 4;
- “Trial Period”** has the meaning set out in Clause 3.4, where “Trial Period [n]” denotes the relevant Trial Period in the Trial Term;
- “Trial Term”** the period during which the Trial is in operation, commencing in accordance with the provisions of Clause 3.3 and ending in accordance with the provisions of Clause 3.4;
- “User”** a Vehicle user;
- “VAT”** value added tax as provided for in the Value Added Tax Act 1994 and any tax replacing the same or of a similar nature;
- “Vehicle”** an e-scooter deployed by the Operator for the purposes of the Trial; and
- 1.2 a reference to the singular includes the plural and vice versa, and a reference to any gender includes all genders;
- 1.3 a reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended or re-enacted by any subsequent statute, enactment, order, regulation or instrument and shall include all statutory instruments or orders made pursuant to it, whether replaced before or after the date of this Agreement;
- 1.4 a reference to any document other than as specified in Clause 1.3 and save as expressed otherwise shall be construed as a reference to the document as at the date of execution of this Agreement;
- 1.5 headings are included in the Agreement for ease of reference only and do not affect the interpretation or construction of the Agreement;

- 1.6 references to Clauses and Schedules are, unless otherwise provided, references to clauses of, and schedules to, the Agreement and any reference to a paragraph in any Schedule shall, in the absence of provision to the contrary, relate to the paragraph in that Schedule;
- 1.7 in the event, and only to the extent, of any conflict between the Clauses of this Agreement and the Schedules, the Clauses prevail, except where:
  - 1.7.1 the conflicting part of the Schedule is explicitly expressed to take precedence; or
  - 1.7.2 the conflict is with a provision in Schedule 3 (Service Specification), in which case the provisions in Schedule 3 shall prevail.
- 1.8 except as otherwise expressly provided in any Operator Contract, and subject to Clause 1.7, if there is any inconsistency between the Schedules, any Operator Contract or any other document referred to in or incorporated into this Agreement or any Operator Contract, the order of priority for the purposes of construction is:
  - 1.8.1 this Administration Agreement;
  - 1.8.2 the Schedules;
  - 1.8.3 the relevant Operator Contract(s);
  - 1.8.4 any other document referred to in or incorporated by reference into this Agreement (including the Service Response to ITT) or any Operator Contract;
- 1.9 the Schedules form part of the Agreement and will have the same force and effect as if expressly set out in the body of the Agreement;
- 1.10 the expression “person” means any individual, firm, body corporate, unincorporated association, partnership, government, state or agency of a state or joint venture;
- 1.11 the word “day” means a calendar day, i.e. a 24-hour period commencing at midnight; and
- 1.12 the words “including”, “includes” and “included” will be construed without limitation unless inconsistent with the context.

## **2. ADMINISTRATION AGREEMENT**

- 2.1 The purpose of this Agreement is to:
  - 2.1.1 provide a mechanism whereby a Participating Borough may require the Operator to enter into an Operator Contract;

- 2.1.2 provide the framework for the administration of the Trial by the Administrator; and
  - 2.1.3 set out the obligations of the Parties.
- 2.2 An Eligible Borough is under no obligation to actively participate in the Trial, but should it decide to do so, in effect becoming a Participating Borough, then:
  - 2.2.1 it must do so in compliance with its obligations as set out in this Agreement, including the Specification; and
  - 2.2.2 it must enter into a binding Operator Contract with each Operator so that each Operator's e-scooters can either:
    - i. be ridden, parked and distributed in the area within the Participating Borough's jurisdiction (Full-service Contract), or
    - ii. be ridden on the Participating Borough's thoroughfares (Ride-through Contract).
- 2.3 The Operator shall not commence any e-scooter rental unless it has:
  - 2.3.1 written confirmation from the Administrator that its insurances and policies are satisfactory for the purposes of the Trial;
  - 2.3.2 at least one Full-service Contract in place with a Participating Borough;
  - 2.3.3 procedures in place to ensure Users are notified of the conditions that apply to travel in the Trial Area.
- 2.4 Once at least one Full-service Contract is in place between the Operator and a Participating Borough, the Operator may use available TfL Premises within the Trial Area.
- 2.5 A Participating Borough may change its status from a Full-service Borough to a Ride-through Borough and vice versa, but may only be a Full-service Borough once, i.e. the following status changes are possible (i) Full-service -> Ride-through; (ii) Ride-through -> Full-service -> Ride-through. A change of status is subject to the following notice periods:
  - Full-service Borough to Ride-through Borough – ten (10) days' notice;
  - Ride-through Borough to Full-service Borough – thirty one (31) days' notice.
- 2.6 In the event that the Administrative Order is rescinded, each Party shall notify the other of all DfT communications received to this effect and this Agreement shall terminate as provided under Clause 28.1.9.

- 2.7 This Agreement is not an exclusive arrangement and nothing in this Agreement shall operate to prevent the Administrator from engaging any other organisations or persons to provide services similar to or the same as the Service.

### **3. TERM OF THIS AGREEMENT, TRIAL TERM AND TERM OF OPERATOR CONTRACTS**

- 3.1 This Agreement (but not an Operator Contract) commences on the Agreement Commencement Date and continues in force until the Agreement Expiry Date unless terminated earlier in accordance with its terms.
- 3.2 From the Agreement Commencement Date, the Operator shall implement the London Level Mobilisation Plan in accordance with the provisions of Schedule 6 (Mobilisation).
- 3.3 The Trial Term shall commence on such date as confirmed in writing by the Administrator no later than three (3) days prior to TP Day 1 of Trial Period 1.
- 3.4 The Trial Term shall run for up to thirteen consecutive 28-day periods (each day being a “**TP Day**”), each period being a “**Trial Period**”. The Trial Term may be extended for a further six Trial Periods subject to the Administrator giving the Operator not less than fourteen (14) days' written notice of such extension. In the event that the Trial Term is extended, the Trial End Date shall be the last day of the extended Trial Term.
- 3.5 A Full-service Contract or Ride-through Contract comes into effect between the parties in accordance with the Operator Contract Request procedure set out in Clause 5.
- 3.6 A Full-service Contract or Ride-through Contract may be terminated in accordance with its terms but such termination shall not, in and of itself, give rise to the termination of any other Full-service Contract or Ride-through Contract to which the Operator is a party.
- 3.7 Where this Agreement is terminated in accordance with its terms, then all Full-service Contracts and Ride-through Contracts to which the Operator is a party shall terminate. The E-scooter Parking Licence also terminates.
- 3.8 Each Full-service Contract and Ride-through Contract automatically terminates on the Trial End Date, as does the E-scooter Parking Licence.

### **4. TRIAL OBJECTIVES**

- 4.1 The objectives for the Trial are primarily:
- 4.1.1 To explore and understand the appropriate e-scooter operating standards, safety standards, environmental standards, regulations and city-level management powers required to ensure

they benefit e-scooter users as well as Londoners as a whole, and feed this insight gleaned through data collection into the DfT ahead of any changes to relevant legislation;

- 4.1.2 To understand the impact of e-scooters on air quality and demand for travel by car, walking, cycling and public transport as well as where e-scooters can enhance transport options and complement existing public transport;
- 4.1.3 To establish the changes in infrastructure required (if any) for rental e-scooter schemes to deliver a safe and attractive environment on our streets;
- 4.1.4 To understand user and non-user reaction to e-scooters, their attitudes and perceptions;
- 4.1.5 To understand the commercial viability of rental e-scooters in London, determine any areas of market failure including inequality in access and to understand the total cost impacts for Eligible Boroughs and TfL; and
- 4.1.6 To understand how e-scooters might support ongoing restart and recovery objectives by providing a relatively green alternative to both private car and capacity restricted public transport, as part of London's wider re-opening following the coronavirus pandemic,

being the **"Trial Objectives"**.

## **5. OPERATOR CONTRACT REQUEST PROCEDURE**

- 5.1 The Operator Contract Request procedure involves a Participating Borough issuing to each Operator either:
  - 5.1.1 a Full-service Request, where the Participating Borough is participating as a Full-service Borough; or
  - 5.1.2 a Ride-through Request, where the Participating Borough is participating as a Ride-through Borough.
- 5.2 The Participating Borough is responsible for completing the Full-service Requests or the Ride-through Requests, as applicable, and ensuring that all measures required to facilitate the use of Vehicles within its Borough are completed or capable of completion by its proposed Operator Contract Start Date, and, as applicable, take account of each Operator's London Level Mobilisation Plan.
- 5.3 The Administrator deals with the administration of Operator Contract Requests. This includes issuing all the Operator Contract Requests for a specific Participating Borough to Operators at the same time, and seeking confirmation from each Operator that the required Insurances are in place.



- 5.4 The Participating Borough shall supply the completed Operator Contract Requests to the Administrator. The Administrator will then issue them to Operators no later than twenty eight (28) days prior to the start of the Trial Period in which the Full-service Contract or Ride-through Contract is required to start. A Participating Borough may not issue Operator Contract Requests that will start later than Trial Period 6.
- 5.5 The Operator must respond to an Operator Contract Request within the time limit set out in the Request. If for any reason the Administrator cannot complete the Operator Contract Request procedure in time to allow the Operator Contract to start by TP Day 1 of the Trial Period in which the Contract is intended to start, the Contract Start Date will be TP Day 1 of the following Trial Period.
- 5.6 Nothing in this Agreement shall require any Borough to exercise its option to enter into an Operator Contract with any Operator.

*Full-service Requests*

- 5.7 The Full-service Requests shall be in the form set out in Schedule 4 and shall attach the Administrator's invoice for the Full-service Charge.
- 5.8 On receipt of a Full-service Request, the Operator shall:
- 5.8.1 sign and return both signature pages of the Full-service Request in accordance with the provisions set out in the Request;
  - 5.8.2 pay the Full-service Charge to the Administrator in accordance with the provisions set out in the invoice;
  - 5.8.3 submit the relevant Borough Level Plan directly to the Full-service Borough.
- 5.9 On receipt of the signed and dated signature pages of the relevant Full-service Request from the Administrator, and notification from the Administrator that the relevant Full-service Charge has been paid, the Full-service Borough shall:
- 5.9.1 sign and date both signature pages;
  - 5.9.2 return one signed and dated signature page to the Administrator; and
  - 5.9.3 confirm the Contract Start Date to the Administrator in writing, such Contract Start Date to be TP Day 1 of a Trial Period and be consistent with the requirements of each Operator's London Level Mobilisation Plan and the Borough Level Plan for that Full-service Borough.
- 5.10 The Administrator shall then forward the signed and dated signature page to the Operator and confirm the Contract Start Date for the relevant Full-service Contract, which shall be the same for all Operators.

*Ride-through Requests*

- 5.11 The Ride-through Requests shall be in the form set out in Schedule 9 and shall attach the Administrator's invoice for the applicable Ride-through Charge.
- 5.12 On receipt of a Ride-through Request, the Operator shall:
  - 5.12.1 sign and return both signature pages of the Ride-through Request in accordance with the provisions of the Request;
  - 5.12.2 pay the Ride-through Charge to the Administrator in accordance with the provisions set out in the invoice.
- 5.13 On receipt of the signed and dated signature pages of the Ride-through Request from the Operator, and notification from the Administrator that the Ride-through Charge has been paid, the Ride-through Borough shall:
  - 5.13.1 sign and date both signature pages;
  - 5.13.2 return one signed and dated signature page to the Administrator; and
  - 5.13.3 confirm the Contract Start Date to the Administrator in writing, such Contractor Start Date to be TP Day 1 of a Trial Period and be consistent with the requirements of each Operator's London Level Mobilisation Plan.
- 5.14 The Administrator shall then forward the signed and dated signature page to the Operator and confirm the Contract Start Date for the relevant Ride-through Contract, which shall be the same for all Operators.

*Formation of and liability under Operator Contracts*

- 5.15 Failure by the Operator to comply fully with the provisions of Clause 5.8 (response to Full-service Requests) or Clause 5.12 (response to Ride-through Request) will result in the relevant Full-service Contract / Ride-through Contract not being formed.
- 5.16 The Administrator shall in no way be liable for the obligations of either a Participating Borough or the Operator arising in connection with any Operator Contract.

*Change in the status of a Participating Borough (Full-service to Ride-through and vice versa)*

- 5.17 If a Participating Borough decides to change its status, the Administrator shall send the Operator a new Operator Contract Request, either a Full-service Request or a Ride-through Request, as appropriate, in accordance with the notice periods set out in Clause 2.5.

- 5.18 When a Full-service Borough or a Ride-through Borough issues notice of its change in status, the current Operator Contract (whether Full-service or Ride-through) terminates on the day preceding the Operator Contract Effective Date under the subsequent Operator Contract.

#### *Borough Licences*

- 5.19 Where a Full-service Borough enters into a Full-service Contract it may require the Operator to enter into a separate licence for e-scooter parking in the area within the jurisdiction of the Full-service Borough ("**Borough Licence**"). For the avoidance of doubt:

- 5.19.1 any Borough Licence issued by a Full-service Borough is a separate arrangement from the E-scooter Parking Licence with the Administrator;
- 5.19.2 the Administrator shall have no liability in respect of any such Borough Licence;
- 5.19.3 a Full-service Borough does not have the right to charge the Operator any fee in relation to any such Borough Licence.

## **6. PROVISION OF THE SERVICE**

### **6.1 The Operator:**

- 6.1.1 shall provide the Service to a Participating Borough in accordance with this Agreement (including the Specification), its Service Response to ITT, and the terms of the relevant Operator Contract;
- 6.1.2 acknowledges that it has sufficient information about the Specification and that it has made all appropriate and necessary enquiries to enable it to perform the Service in accordance with an Operator Contract;
- 6.1.3 shall not be excused from any obligation or liability under this Agreement or the terms of the relevant Operator Contract due to any misinterpretation or misunderstanding by the Operator of any fact relating to the Specification or otherwise to this Agreement or relevant Operator Contract; and
- 6.1.4 shall comply with all lawful and reasonable directions of the Administrator and/or the relevant Participating Borough relating to its performance of the Service under any Operator Contract.

- 6.2 The Parties shall use all reasonable endeavours to work co-operatively with each other and the Participating Boroughs with a view to achieving the Trial Objectives, and shall ensure that suitably senior personnel are briefed and available to meet the management and governance arrangements set out in the Specification, including attendance at the meetings of the Operational Board. The Administrator shall circulate

terms of reference for the Operational Board as soon as reasonably practicable following the Agreement Commencement Date.

6.3 Notwithstanding anything to the contrary in this Agreement, the discretion of either the Administrator or any Participating Borough in carrying out its statutory duties shall not be fettered or otherwise constrained or affected by any provision of this Agreement or any Operator Contract.

6.4 The Operator shall provide the Service under each Operator Contract:

6.4.1 with the high degree of skill, care and diligence normally exercised by recognised professional firms or by highly skilled and experienced service providers providing services of a similar scope, type and complexity to the Service and with sufficient resources including project management resources;

6.4.2 in accordance with 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;

6.4.3 in conformance in all respects with the Specification and so that the Service fulfils the purpose indicated by or to be reasonably inferred from the Specification;

6.4.4 in accordance with the methodology, technology, plans, schedules, policies, processes, approaches set out in, outlined, or referred to in the Service Response to ITT;

6.4.5 in compliance with the Administrative Order and all other relevant Consents (including the giving of notices and the obtaining of any such consents) and taking steps so as not to prejudice the renewal of any such Consents;

6.4.6 in accordance with all applicable Law, including all applicable Health and Safety Legislation;

6.4.7 in accordance with measures which ensure that adequate and appropriate maintenance and support services are available and in place for all vehicles, systems and infrastructure, hardware and software used by Operator in the delivery of the Service;

6.4.8 in co-operation with the Administrator, each Participating Borough, and any third party engaged to provide services to the Administrator, including a third party which is a competitor of the Operator;

6.4.9 in a manner that shall not embarrass the Administrator or any Participating Borough (meaning by its actions or omissions contrary to the spirit of this Agreement that cause material

adverse public comment concerning the Administrator or a Participating Borough) or otherwise brings the Administrator or a Participating Borough into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Administrator or a Participating Borough, regardless of whether or not such act or omission is related to the Operator's obligations under this Agreement;

6.4.10 in conformance with any policies notified to it by the Administrator from time to time; and

6.4.11 in a safe manner and free from any unreasonable or avoidable risk to any person's health and well-being or property.

6.5 The Operator shall remove any member of its staff from the provision of the Service at the reasonable request of the Administrator, forthwith (and without any compensation being payable) if the Administrator can demonstrate that any such member of the Operator's staff:

6.5.1 has not co-operated with the Administrator in meeting its reasonable requests for the provision of information relating to the Service;

6.5.2 has breached the confidentiality obligations in clause 25 (Confidentiality); or

6.5.3 has been guilty of any misconduct which, if such member of the Operator's staff had been an employee of the Administrator, would have entitled the Administrator to summarily to dismiss that employee; or

6.5.4 is not performing the Service demonstrating the skill and experience expected of staff which would reasonably and ordinarily be expected from a skilled, efficient and experienced staff member carrying out services that are the same or similar to the Service,

and, in each case, replace such individual.

6.6 The Operator shall provide a Business Continuity Plan to the Administrator for approval no later than thirty (30) days from the Agreement Commencement Date and implement such amendments to the Business Continuity Plan as the Administrator may reasonably require. The Operator shall maintain and comply with the agreed Business Continuity Plan throughout the Trial Term and shall not amend such Business Continuity Plan without the Administrator's prior written approval.

6.7 The Operator shall not be liable for any failure to provide the Service in accordance with this Agreement or in accordance with an Operator Contract to the extent that such failure is caused by a breach by either

the Administrator of its obligations under this Agreement or a Participating Borough of its obligations under the relevant Operator Contract.

6.8 The Administrator shall, throughout the term of this Agreement at its own cost:

6.8.1 facilitate sharing of the Data produced in the course of the Trial;

6.8.2 implement measures which ensure that adequate and appropriate maintenance and support services are available and in place for all systems and software used by the Administrator solely to facilitate the Operator's delivery of the Service, including the Data Platform.

## **7. DATA AND REPORTING**

7.1 The Operator shall provide Data for each Vehicle and its trial activity more widely in accordance with the Specification and hereby agrees to enter into a data sharing agreement where required by the Administrator. Additional categories of data reporting may be added over the course of the Trial.

7.2 The Operator shall work with the provider of the Data Platform to ensure that the feeds for Data are compatible with such Platform and permit upload to the Platform as required by the Administrator.

7.3 The Operator shall throughout the term of this Agreement maintain and comply with a recognised information security management system in connection with its storage and management of Data.

7.4 The Administrator shall be entitled to share the Data as may be set out in any data sharing agreement, and use the Data produced during the course of the Trial for the purposes of publishing reports about the methodology and findings of the Trial during and after the Trial has concluded.

## **8. DYNAMIC FLEET MANAGEMENT**

8.1 Each Full-service Request sets out the Minimum Vehicle Requirement for the relevant Full-service Borough. Thereafter the relevant Full-service Borough shall give the Operator written notice of any change to its Minimum Vehicle Requirement (subject to the Permitted Fleet Size across the Trial Area), effective for the next Trial Period.

8.2 The Specification sets out the parameters that determine the number of Vehicles that may be deployed by the Operator as at Trial Period 1. Thereafter, with effect from Trial Period 2, the number of Vehicles deployed is determined by the Permitted Fleet Size Review process (as defined below). The Operator shall not deploy any e-scooters in addition to the number of Vehicles permitted pursuant to this Agreement.

- 8.3 The Administrator shall work with the Operator, the Participating Boroughs, London Councils and other Operational Board members and relevant stakeholders such as the police services to conduct a review of the Operator's current Service and hence its Permitted Fleet Size (a "**Permitted Fleet Size Review**") as set out in the Specification. The Permitted Fleet Size requirements apply to the Operator's fleet of Vehicles when used as part of the Trial, regardless of any agreements that the Operator may have in place with private landowners adjacent to Participating Boroughs.
- 8.4 From the TP Day 1 of Trial Period 1, where feasible, a Permitted Fleet Size Review shall be conducted every twenty eight (28) days in the final seven days of the relevant Trial Period (i.e. TP Days 22-28), subject always to the Administrator varying these timescales for operational reasons.
- 8.5 The Administrator reserves the right to:
- 8.5.1 revise the parameters used in Permitted Fleet Size Reviews at any point during the Trial Term; and/or
  - 8.5.2 where it reasonably determines that the frequency for conducting a Permitted Fleet Size Review is not viable, conduct Reviews less frequently,
- subject to giving the Operator reasonable written notice.
- 8.6 Following a Permitted Fleet Size Review, any changes to the Permitted Fleet Size deployed apply from TP Day 1 of the next Trial Period. The Operator must apply any decrease in Vehicle numbers resulting from a Permitted Fleet Size Review from TP Day 1 of the next Trial Period, while an increase in Vehicle numbers is optional, subject always to the Minimum Vehicle Requirements.
- 8.7 In the event that Data is unavailable to evidence any stage of the Permitted Fleet Size Review process, the Administrator shall notify the Operator and the Operator shall provide the required Data in a format and timescale reasonably acceptable to the Administrator, depending on the type of Data and the Review stage to which such Data relates.
- 8.8 If no Data is available or the Operator cannot reasonably provide it to the Administrator as required pursuant to Clause 8.7, the Administrator shall have discretion to change the Permitted Fleet Size, having first consulted with relevant stakeholders.
- 8.9 Intentional provision of false Data by the Operator shall be deemed a material breach of this Agreement for the purposes of Clause 28.1.

## **9. CHARGES AND PAYMENT**

- 9.1 The Charges comprise the Full-service Charge, the Ride-through Charge and the Per-vehicle Charge. The level of Charges is set with a view to cost recovery by Participating Boroughs. The structure of the Charges is as set out in the Specification.
- 9.2 The Full-service Charge is payable per Full-service Borough, and the Ride-through Charge is payable per Ride-through Borough. The Operator is invoiced for each of these Charges as part of the Operator Contract Request procedure as further set out in Clause 5.
- 9.3 The Per-vehicle Charge is payable in arrears for each Trial Period in which Vehicles are deployed in Full-service Boroughs. The invoice for the Per-vehicle Charge shall show the total Charge payable by the Operator for the relevant Trial Period, broken down by the amounts due to Full-service Boroughs and the Administrator. Invoices are payable within thirty (30) days of the invoice date.
- 9.4 The Administrator shall allocate and distribute the monies it receives in respect of the Charges to the Participating Boroughs as set out in the Specification.
- 9.5 All Charges exclude any VAT which may be chargeable, which will be payable in addition to the sum in question at the rate and in the manner for the time being prescribed by law on delivery of a valid VAT invoice.
- 9.6 The Operator shall notify the Administrator promptly if it considers that the Charges in any invoice have not been calculated correctly and/or if the invoice contains any other error or inadequacy, and the Parties shall work together to resolve the error or inadequacy. Upon resolution, the Administrator shall, as applicable, submit a revised invoice to the Operator.
- 9.7 The Operator shall not be entitled to treat any properly submitted invoice as disputed or incorrect solely due to its own undue delay in considering and verifying it.
- 9.8 No receipt of monies in respect of the Charges by the Administrator or act or omission or approval by the Administrator (whether related to receipt of monies or otherwise) shall indicate or be taken to indicate the Administrator's acceptance or approval of the Service or any part of it or any act or omission of the Operator, or otherwise prejudice any rights, powers or remedies which the Administrator or a Participating Borough may have against the Operator, or absolve the Operator from any obligation or liability imposed on the Operator under this Agreement or under an Operator Contract.
- 9.9 The Operator is not entitled to receive payment under this Agreement or any Operator Contract for any costs of staff, facilities, equipment, materials, taxes, fees and other costs associated with operating a



business in the UK or any other expenses whatsoever that it may incur in connection with this Agreement or the provision of the Service to a Participating Borough and neither the Administrator or any of the Participating Boroughs shall have any responsibility or liability in relation to any of the foregoing.

- 9.10 The Operator shall be liable to pay any fines, costs, claims, damages or expenses including any such fines, costs, claims, damages or expenses incurred by the Administrator, an Eligible Borough or the police service, in respect of:

9.10.1 any obstruction of the highway by its Vehicles or removal of such obstructing Vehicles;

9.10.2 any circumstances in relation to the provision of the Service that are contrary to, or do not comply with, the Specification; and

9.10.3 the removal and/or storage of any Vehicles not removed from:

9.10.3.1 the area within the jurisdiction of a Participating Borough within five (5) days of the termination of the Operator Contract with that Participating Borough; or

9.10.3.2 the Trial Area within five (5) days of the termination of this Agreement.

- 9.11 The Operator acknowledges and agrees that in the event that it does not collect any Vehicles being stored by a public authority (whether the Administrator, an Eligible Borough or the police service), having been notified in writing of such storage and the ten-day timescale for collection, that authority, without any further reference to the Operator, shall have the right to dispose of such uncollected Vehicles as it sees fit and retain any proceeds for its own use.

- 9.12 Interest shall accrue at the rate of two percent (2%) above the base rate of the Bank of England from time to time on all sums due and payable under this Agreement from the due date until the date of actual payment (both before and after judgement). All such interest shall be calculated on the basis of the actual number of days elapsed, over a three hundred and sixty five (365) day year and compounded at monthly intervals. The Parties agree that this provision constitutes a substantial remedy for late payment of any sum payable under the Contract in accordance with s8(2) of the Late Payment of Commercial Debts (Interest) Act 1998.

- 9.13 The Operator shall provide the Service in accordance with the agreed Low Income/Equitable Access Plans set out in Schedule 10.

- 9.14 Failure by the Operator to pay the Charges set out in this Clause 9 shall be deemed a material breach of this Agreement for the purposes of Clause 28.1.

## **10. WARRANTIES AND OBLIGATIONS**

10.1 Without prejudice to any other warranties expressed elsewhere in this Agreement or implied by law, the Operator warrants, represents and undertakes that:

10.1.1 the Operator:

10.1.1.1 has full capacity and authority and all necessary licences, permits, permissions, powers and consents (including, where its procedures so require, the consent of its Holding Company) to enter into and to perform this Agreement and any Operator Contract; and

10.1.1.2 is aware of the purposes for which the Service is required and acknowledges that the Administrator is and Participating Boroughs are reliant upon the Operator's expertise and knowledge in the provision of the Service; and

10.1.1.3 is entering into this Agreement and any Operator Contract as principal and not as agent for any person and that it will act as an independent contractor in carrying out its obligations under this Agreement or any Operator Contract;

10.1.2 the Agreement is executed by a duly authorised representative of the Operator;

10.1.3 all materials, equipment and goods, including the Vehicles supplied by the Operator pursuant to provision of the Service shall be of satisfactory quality within the meaning of the Sale of Goods Act 1979 (as amended), sound in design, in conformance in all respects with the Specification and fit for the purpose of the Service; and

10.1.4 all documents, drawings, computer software and any other material used by the Operator in the provision of the Service, including any application supplied to a User, and/or supplied to the Administrator or a Participating Borough whether under this Agreement or under an Operator Contract, including the Application Programming Interface (API), shall not infringe any Intellectual Property Rights or any other legal or equitable right of any person.

10.2 Each warranty and obligation in this Clause 10 shall be construed as a separate warranty or obligation (as the case may be) and shall not be limited or restricted by reference to, or reference from, the terms of any other such warranty or obligation or any other term of this Agreement.

## **11. MANAGEMENT OF THIS AGREEMENT**

- 11.1 The Administrator authorises the Procurement Manager to act as the Administrator's representative for all purposes of this Agreement and the Operator shall deal with the Procurement Manager (or his or her nominated representative) in respect of all matters arising under this Agreement, unless notified otherwise.
- 11.2 The Operator's Manager shall act as the Operator's representative for all purposes of this Agreement and any Operator Contract. The Operator's Manager and the Key Personnel shall:
- 11.2.1 attend all contract meetings pursuant to this Agreement or an Operator Contract; and
  - 11.2.2 be available to the Administrator and/or a Participating Borough to resolve any issues arising in connection with this Agreement or any Operator Contract.
- 11.3 The Operator may only make any changes to the Operator's Manager or Key Personnel (except in the event of sickness, incapacity or resignation) with the prior consent of the Administrator (which shall not be unreasonably withheld).
- 11.4 No act of or omission by or approval from either the Administrator or the Procurement Manager in performing any of their respective duties under or in connection with this Agreement shall in any way operate to relieve the Operator of any its duties, responsibilities, obligations or liabilities under this Agreement.
- 11.5 The Administrator shall notify the Operator of the Service Levels no later than seven (7) days from the Agreement Commencement Date or within such other time period as the Administrator may confirm in writing.
- 11.6 Notwithstanding any rights that the Administrator has under this Agreement, in the event that the Operator fails to meet a Service Level or has committed a breach of this Agreement, the Administrator shall have the right to require the Operator to prepare a Remedial Action Plan within three (3) days of being notified of such requirement by the Administrator, such Remedial Action Plan subject to the Administrator's approval and to set out the actions required to remedy the failure or breach as applicable, together with the Party responsible for the completion of such actions, and the date by which such actions must be completed.
- 11.7 In the event that the Parties, acting reasonably, cannot agree a Remedial Action Plan, or the Operator fails to prepare a Remedial Action Plan, the Administrator shall have the right to terminate this Agreement pursuant to 28.1.1.
- 11.8 The Parties shall implement any agreed Remedial Action Plan in accordance with its timescales and shall make reasonable efforts to

adhere to any improvements resulting from the Remedial Action Plan for the term of this Agreement.

## **12. OPERATOR PERSONNEL**

- 12.1 The Parties agree that the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended) do not apply on the Agreement Commencement Date or on the expiry or termination of this Agreement.
- 12.2 Nothing in this Agreement will render the Operator Personnel, an employee, agent or partner of the Administrator or of any member of the TfL Group by virtue of the provision of the Service by the Operator and the Operator shall be responsible for making appropriate deductions for tax and national insurance contributions from the remuneration paid to the Operator Personnel.
- 12.3 The Operator shall provide the Operator Personnel as necessary for the proper and timely performance and management of the Service in accordance with the relevant Operator Contract. All Operator Personnel deployed on work relating to an Operator Contract shall have the appropriate qualifications and competence, be properly managed and supervised and in these and any other respects be acceptable to the Administrator.
- 12.4 The Operator shall give the Authority, if so requested, full particulars of all persons who are or may be at any time employed in provision of the Service and shall take all reasonable steps to avoid changes to any of its staff designated as Key Personnel. The Operator shall give the Authority reasonable notice of any proposals to change Key Personnel and Clause 12.2 shall apply to the proposed replacement personnel.
- 12.5 The Operator shall pay to the Operator Personnel not less than the amounts declared to the Administrator (if any) as part of the tender process for the provision of the Service and not less than the amounts to which the Operator Personnel are contractually entitled.

## **13. SUB-CONTRACTING AND CHANGE OF OWNERSHIP**

- 13.1 The Operator shall not assign or sub-contract all or any part of the Service without the prior written consent of the Administrator which may be refused or granted subject to such conditions as the Administrator sees fit.
- 13.2 Where the Operator sub-contracts all or any part of the Service to any person, the Operator shall:
  - 13.2.1 ensure that such person is obliged to comply with all of the obligations and duties of the Operator under the relevant Operator Contract insofar as they relate to the Service or part of

them (as the case may be) which that sub-contractor is required to provide;

- 13.2.2 be responsible for payments to that person; and
- 13.2.3 remain solely responsible and liable to the Administrator or the relevant Participating Borough for any breach of this Agreement or the relevant Operator Contract or any performance, non-performance, part-performance or delay in performance of any of the Service by any sub-contractor to the same extent as if such breach, performance, non-performance, part-performance or delay in performance had been carried out by the Operator;
- 13.2.4 on or before the Agreement Commencement Date notify the Administrator in writing of the name, contact details and details of the legal representatives of any such sub-contractor (of any tier), to the extent that such information has not already been provided by the Operator to the Administrator under this Agreement;
- 13.2.5 promptly notify the Administrator in writing of any change to the information notified under Clause 13.2.4 and provide in writing the name, contact details and details of the legal representatives of each such sub-contractor (of any tier) who is engaged after the Agreement Commencement Date;
- 13.2.6 without prejudice to the provisions of Clause 15, ensure compliance with the Bribery Act 2010 and any guidance issued by the Secretary of State under it when appointing any such sub-contractor;
- 13.2.7 include a term in each sub-contract (of any tier):
  - 13.2.7.1 requiring payment to be made by the Operator, or (in respect of a sub-contract below the first tier) the payer under the relevant subcontract, to the sub-contractor within a specified period not exceeding thirty (30) days from receipt of a valid and undisputed invoice as defined by the sub-contract requirements;
  - 13.2.7.2 a requirement that any invoices for payment submitted by the sub-contractor are considered and verified by the Operator, or (in respect of a sub-contract below the first tier) the payer under the relevant sub-contract, in a timely manner and that any undue delay in doing so shall not in itself be sufficient justification for failing to treat an invoice as being valid and undisputed under the sub-contract requirements; and
  - 13.2.7.3 entitling the Operator or (in respect of a sub-contract below the first tier) the payer under the relevant subcontract to terminate that sub-contract if the

relevant sub-contractor fails to comply in the performance of its contract with legal obligations in the fields of environmental, social or labour law; and

13.2.7.4 a requirement that the sub-contractor includes a provision having the same effect as 13.2.7.3 above in any sub-contract it awards.

13.3 The Operator shall give notice to the Administrator within ten (10) Business Days where:

13.3.1 there is any change in the ownership of the Operator where such change relates to 50% or more of the issued share capital of the Operator; and

13.3.2 there is any change in the ownership of the Holding Company where such change relates to 50% or more of the issued share capital of the Holding Company, and

13.3.3 (in the case of an unincorporated Operator) give notice to the Administrator if there is any change in the management personnel of the Operator, which alone or taken with any other change in management personnel not previously notified to the Administrator, equates to a change in the identity of 50% or more of the management personnel of the Operator.

13.4 Upon the occurrence of any of the events referred to in Clause 13.3 above, the Authority shall have the right to terminate the Agreement and all Operator Contracts in existence, in accordance with Clause 28.1.3.

#### **14. CONFLICT OF INTEREST**

14.1 The Operator warrants that it does not and will not have any interest in any matter where there is or is reasonably likely to be a conflict of interest with the Service or any member of the TfL Group, save to the extent fully disclosed to and approved by the Administrator.

14.2 The Operator shall check for any conflict of interest at regular intervals throughout the term of this Agreement and in any event not less than once in every six months and shall notify the Administrator in writing immediately upon becoming aware of any actual or potential conflict of interest with the Service or any member of the TfL Group and shall work with the Administrator to do whatever is necessary (including the separation of staff working on, and data relating to, the Service from the matter in question) to manage such conflict to the Administrator's satisfaction, provided that, where the Administrator is not so satisfied, it may terminate this Agreement and all Operator Contracts, in existence, in accordance with Clause 28.1.4.

## **15. COMPLIANCE WITH POLICIES AND LAW**

### **15.1 The Operator, at no additional cost to the Administrator or any Participating Borough:**

15.1.1 undertakes to procure that all the Operator Personnel comply with all of the Administrator's policies and standards that are relevant to the performance of the Service, including those relating to safety, security, business ethics, drugs and alcohol and any other regulations specified by the Administrator (or its nominee) and in connection with access to the Data Platform, such policies and standards being made available to the Operator by the Administrator on request;

15.1.2 shall provide the Service in compliance with and shall ensure that the Operator Personnel comply with all requirements of all Acts of Parliament, statutory instruments, court orders, regulations, directives, European Community decisions (insofar as legally binding), bye-laws, treaties and other regulatory requirements relevant to either or both of the Operator's business or the Administrator's business, from time to time in force which are or may become applicable to the Service. The Operator shall promptly notify the Administrator if the Operator is required to make any change to the Service for the purposes of complying with its obligations under this Clause 15.1.2;

15.1.3 without limiting the generality of Clause 15.1.2, shall comply with all relevant enactments in force from time to time relating to discrimination in employment and the promotion of equal opportunities;

15.1.4 acknowledges that the Administrator is under a duty under section 159 of the Equality Act 2010 to have due regard to the need to eliminate unlawful discrimination on the grounds of sex, marital or civil partnership status, race, sexual orientation, religion or belief, age, pregnancy or maternity, gender reassignment or disability (a "Relevant Protected Characteristic") (as the case may be) and to promote equality of opportunity between persons who share a Relevant Protected Characteristic and persons who do not share it. In providing the Service, the Operator shall assist and cooperate with Administrator where possible in satisfying this duty;

15.1.5 where possible, shall provide the Service in such a manner as to:

15.1.5.1 promote equality of opportunity for all persons irrespective of their race, sex, disability, age, sexual orientation or religion;

15.1.5.2 eliminate unlawful discrimination; and

- 15.1.5.3 promote good relations between persons of different racial groups, religious beliefs and sexual orientation;
- 15.1.6 where applicable and without limiting the generality of Clause 15.1.2, shall comply with the Modern Slavery Act 2015 and any guidance issued by the Secretary of State under it;
- 15.1.7 without prejudice to any other provision of this Clause 15.1 or the Schedules, shall comply with any provisions set out in the Schedules that relate to traffic management and shall comply with the reasonable instructions of the Administrator's Traffic Manager as may be made available to the Operator from time to time. For the purposes of this Clause 15.1.7, "Traffic Manager" means TfL's traffic manager appointed in accordance with section 18 of the Traffic Management Act 2004; and
- 15.1.8 shall promptly notify the Operator Personnel and the Administrator of any health and safety hazards that exist or may arise in connection with the performance of the Service.

In all cases, the costs of compliance with this Clause 15.1 shall be borne by the Operator.

- 15.2 Without prejudice to Clause 15.1, the Operator shall comply with the Administrator's workplace harassment policy as updated from time to time (copies of which are available on request from the Administrator) and with the Administrator's Code of Conduct (which is available on the Administrator's website, [www.tfl.gov.uk](http://www.tfl.gov.uk)).
- 15.3 In providing the Service the Operator shall (taking into account best available techniques not entailing excessive cost and the best practicable means of preventing, or counteracting the effects of any noise or vibration) have appropriate regard (insofar as the Operator's activities may impact on the environment) to the need to:
  - 15.3.1 preserve and protect the environment and to the need to avoid, remedy and mitigate any adverse effects on the environment;
  - 15.3.2 enhance the environment and have regard to the desirability of achieving sustainable development;
  - 15.3.3 conserve and safeguard flora, fauna and geological or physiological features of special interest; and
  - 15.3.4 sustain the potential of natural and physical resources and the need to safeguard the life-supporting capacity of air, water, soil and ecosystems.

## **16. LONDON LIVING WAGE**

- 16.1 For the purposes of this Clause 16, the following expressions have the corresponding meanings:



**“CCSL”** the Centre for Civil Society Limited or any relevant replacement organisation as notified by the Administrator from time to time;

**“London Living Wage”** the London rate for the basic hourly wage as updated and published annually by the CCSL (or any relevant replacement organisation) on its website ([www.livingwage.org.uk](http://www.livingwage.org.uk));

**“Subcontractor”** a sub-contractor (of any tier) of the Operator.

16.2 The Operator acknowledges and agrees that the Mayor of London pursuant to section 165 of the Greater London Authority Act 1999 has directed that members of the TfL Group ensure that the London Living Wage be paid to anyone engaged by any member of the TfL Group who is required to discharge contractual obligations (whether as a direct contractor or a sub-contractor (of any tier) of that direct contractor) on the Administrator’s estate in the circumstances set out in Clause 16.3.1.

16.3 Without prejudice to any other provision of this Agreement and any Operator Contract, the Operator shall:

16.3.1 ensure that its employees and procure that the employees of its Sub-contractors engaged in the provision of the Service:

16.3.1.1 for two (2) or more hours of work in any given day in a week, for eight (8) or more consecutive weeks in a year;

16.3.1.2 on the Administrator’s estate including premises and land owned or occupied by the Administrator; and

16.3.1.3 on the estate of any Participating Borough with whom the Operator holds an Operator Contract including premises and land owned or occupied by the relevant Participating Borough,

be paid an hourly wage (or equivalent of an hourly wage) equivalent to or greater than the London Living Wage;

16.3.2 ensure that none of:

16.3.2.1 its employees; nor

16.3.2.2 the employees of its Sub-contractors;

engaged in the provision of the Service be paid less than the amount to which they are entitled in their respective contracts of employment;

16.3.3 provide to the Administrator such information concerning the London Living Wage as the Administrator or its nominees may reasonably require from time to time, including (without limitation):

16.3.3.1 all information necessary for the Administrator to confirm that the Operator is complying with its obligations under Clause 16; and

16.3.3.2 reasonable evidence that Clause 16.3.1 has been implemented;

16.3.4 disseminate on behalf of the Administrator to:

16.3.4.1 its employees; and

16.3.4.2 the employees of its Sub-contractors;

engaged in the provision of the Service such perception questionnaires as the Administrator may reasonably require from time to time and promptly collate and return to the Administrator responses to such questionnaires; and

16.3.5 cooperate and provide all reasonable assistance in monitoring the effect of the London Living Wage including:

16.3.5.1 allowing the CCSL to contact and meet with the Operator's employees and any trade unions representing the Operator's employees;

16.3.5.2 procuring that the Operator's Sub-contractors allow the CCSL to contact and meet with the Sub-contractors' employees and any trade unions representing the Sub-contractors' employees,

in order to establish that the obligations in Clause 16.3.1 have been complied with.

16.4 For the avoidance of doubt the Operator shall:

16.4.1 implement the annual increase in the rate of the London Living Wage; and

16.4.2 procure that its Sub-contractors implement the annual increase in the rate of the London Living Wage,

on or before 1 April in the year following the publication of the increased rate of the London Living Wage.

16.5 The Administrator reserves the right to audit (acting by itself or its nominee(s)) the provision of the London Living Wage to the Operator's staff and the staff of its Sub-contractors.

- 16.6 Breach of the provisions of this Clause 16 shall be deemed a material breach of this Agreement for the purposes of Clause 28.1.

## 17. CORRUPT GIFTS AND PAYMENT OF COMMISSION

The Operator shall not, and shall ensure that its employees, agents and sub-contractors do not, pay any commission, fees or grant any rebates to any employee, officer or agent of the Administrator or a Participating Borough, or any member of the TfL Group nor favour any employee, officer or agent of the Administrator or a Participating Borough, or any member of the TfL Group with gifts or entertainment of significant cost or value nor enter into any business arrangement with employees, officers or agents of the Administrator or a Participating Borough, or any member of the TfL Group other than as a representative of the Administrator, without the Administrator's or the relevant Participating Borough's prior written approval.

## 18. OPERATOR EQUIPMENT

- 18.1 The Operator shall ensure that all Operator's Equipment and all Materials meet all minimum safety standards required from time to time by law and conform strictly to the Specification, the provisions of the Administrative Order, and all statements and other requirements in this Agreement and any Operator Contract.

## 19. RECORDS, AUDIT AND INSPECTION

- 19.1 The Operator shall, and shall procure that its Sub-contractors shall:
- 19.1.1 maintain a complete and correct set of records pertaining to all activities relating to the performance of the Service and the Operator's obligations under this Agreement and any Operator Contract and all transactions entered into by the Operator for the purposes of this Agreement and an Operator Contract ("**Records**"); and
  - 19.1.2 retain all Records during the term of this Agreement for a period of not less than six (6) years (or such longer period as may be required by law), except Records containing Personal Data (as defined in Data Protection Legislation) which shall only be retained for as long as necessary following termination or expiry of this Agreement or an Operator Contract ("**Retention Period**").
- 19.2 The Administrator and any person nominated by the Administrator has the right to audit any and all Records at any time during the Retention Period on giving to the Operator what the Administrator considers to be reasonable notice (whether in writing or verbally) and at any reasonable time to inspect any aspect of the Operator's performance of the Service (including compliance with Clause 15.1) and the Operator shall give all reasonable assistance to the Administrator or its nominee in conducting

such inspection, including making available documents and staff for interview.

## **20. INDEMNITY**

20.1 Subject to Clause 20.2, the Operator shall indemnify, keep indemnified and hold harmless the Administrator, the other members of the TfL Group (including their respective employees, sub-contractors and agents), and each Participating Borough (each an “**Indemnified Party**”) against all Losses which the Indemnified Party incurs or suffers as a consequence of any direct or indirect breach or any negligent performance of this Agreement or any Operator Contract by the Operator (or any of its employees, agents or sub-contractors) (including in each case any non-performance or delay in performance of this Agreement or an Operator Contract) or of any breach of statutory duty, misrepresentation or misstatement by the Operator (or any of its employees or sub-contractors).

20.2 The Operator is not responsible for and shall not indemnify the Administrator or any Participating Borough for any Losses to the extent that such Losses are caused by any breach or negligent performance of any of its obligations under this Agreement or an Operator Contract as applicable by either the Administrator and/or any other member of the TfL Group, or by any Participating Borough, including by any of the employees or agents of the Administrator, any member of the TfL Group, or Participating Borough.

20.3 Neither the Administrator nor any Participating Borough shall have any liability for any Losses incurred or suffered by the Operator that arise under or in connection with this Agreement or any Operator Contract save to the extent that any such liability for such Losses cannot be excluded by law.

## **21. INSURANCE**

21.1 The Operator will at its sole cost maintain:

21.1.1 employer’s liability of not less than £5 million per occurrence;

21.1.2 motor liability insurance as required by law to cover the legal liability of the Operator and the User;

21.1.3 public liability insurance to cover the Operator’s legal liability for death or injury or property damage, such insurance to be in an amount of not less than £10 million per occurrence and shall extend to cover the legal liabilities of the User;

21.1.4 product liability insurance to cover legal liability for death or injury or property damage, such insurance to be in an amount of not less than £10 million per occurrence and in the aggregate per annum;

21.1.5 insurance to cover loss or damage to or theft of the Vehicles in an amount normal and customary for a business of similar nature and scale; and

21.1.6 professional indemnity insurance or, where professional indemnity insurance is not available, a “financial loss” extension to the product liability insurance referred to in Clause 21.1.4 or if applicable the public liability insurance referred to in Clause 21.1.3. Such insurance or “financial loss” extension shall be renewed for a period of six years (or such other period as the Administrator may stipulate) following the expiry or termination of the Agreement or relevant Operator Contract. Such insurance or “financial loss” extension shall be in an amount of not less than £5 million per occurrence”,

together the “**Insurances**”.

21.2 The public liability, product liability and employer’s liability insurances shall extend to indemnify the Administrator as principal.

21.3 The insurance cover will be maintained with a reputable insurer on terms which are normal and customary for the nature and scale of the Service.

21.4 The Operator will produce evidence to the Administrator and/or the Participating Borough on reasonable request of the insurance policies set out in Clause 21.1 and payment of all premiums due on each policy.

21.5 The Operator warrants that nothing has or will be done or be omitted to be done which may result in any of the insurance policies set out in Clause 21.1 being or becoming void, voidable or unenforceable.

21.6 In the event that any of the Insurances are cancelled or not renewed, the Operator shall immediately notify the Administrator and shall at its own cost arrange alternative Insurances with an insurer or insurers acceptable to the Administrator.

21.7 The Administrator shall have right at any point during the term of this Agreement to require the Operator to increase the level of insurance cover in respect of the Insurances.

## **22. THE ADMINISTRATOR’S DATA**

22.1 The Operator acknowledges the Administrator’s ownership of Intellectual Property Rights which may subsist in the Administrator’s data. The Operator shall not delete or remove any copyright notices contained within or relating to the Administrator’s data.

22.2 The Operator and the Administrator shall each take reasonable precautions (having regard to the nature of their other respective obligations under this Agreement) to preserve the integrity of the