

Dated

[ ] 2022

DYNAMIC DEMAND RESPONSIVE TRANSPORT (DDRT) AGREEMENT

between

WEST OF ENGLAND COMBINED AUTHORITY

and

[INSERT NAME OF SERVICE PROVIDER]

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**THIS DEED** is dated

Parties

1. West of England Combined Authority of 3 Rivergate, Temple Quay, Bristol BS1 6EW (the “**Authority**”); and
2. [Insert company name] with Registered Number [number] whose registered office is situated at [insert address] (the “**Service Provider**”).

Background

1. The Authority sought proposals for the provision of DDRT bus services to operate in set Operational Zones by means of a public tender exercise. The Authority placed a contract notice DN 610749 dated 25/05/2022 in Find a Tender seeking expressions of interest from potential providers for the provision of these bus services.
2. The Authority has, through a competitive process, selected the Service Provider to provide these Services in relation to the Operational Zones and the Service Provider is willing and able to provide the Services in accordance with the terms and conditions of this agreement.

Agreed terms

# Definitions and Interpretation

## The definitions and rules of interpretation in this clause apply in this agreement.

Additional Vehicle: each vehicle brought into operation by the Service Provider pursuant to clause 5.2.

**Additional Vehicle Supplement**: the part of the Charges payable by the Authority in relation to each Additional Vehicle, as specified in Annexure 3.

Agreement Date: the date stated at the top of this agreement.

API: application programming interface software which serves as an intermediary to allow different applications to communicate and share information.

Applicable Laws: all applicable laws, statutes, regulations from time to time in force.

Associated Company**:** any holding company from time to time of the Service Provider and any subsidiary from time to time of the Service Provider, or any subsidiary of any such holding company.

Authorised Representatives**:** the persons respectively designated as such by the Authority and the Service Provider, the first such persons being set out in Annexure 4.

Authority Intellectual Property: the intellectual property which must be reproduced by the Service Provider in order to satisfy the Branding Requirements.

Best Industry Practice**:** the standards which fall within the upper quartile in the relevant industry for the provision of comparable services which are substantially similar to the Services or the relevant part of them, having regard to factors such as the nature and size of the parties, the term, the pricing structure, and any other relevant factors.

Branding Requirements: the obligations on the Service Provider in connection with branding for the DDRT scheme, as set out at paragraph 3.7 of the Specification.

Bribery Act**:** the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation.

**Business Hours:**the period from 9.00 am to 5.00 pm on any Working Day.

**Bus Services:** the part of the Services comprising the operation of buses for use by the public.

Catastrophic Failure: any action by the Service Provider, whether in relation to the Services and this agreement or otherwise, which in the reasonable opinion of the Authority’s Authorised Representative has or may cause significant harm to the reputation of the Authority.

Change**:** any change to this agreement including to any of the Services.

Change Control Note**:** the written record of a Change agreed or to be agreed by the parties pursuant to the Change Control Procedure.

Change Control Procedure**:** the procedure for changing this agreement, as set out in Annexure 5.

Charges**:** the charges which shall become due and payable by the Authority to the Service Provider in respect of the Services in accordance with the provisions of this agreement, as such charges are set out in Annexure 3.

Commencement Date**:** in respect of each Trial, the date upon which the relevant Bus Services commence.

Conditions Precedent: the pre-commencement obligations of the Service Provider, as set out in Annexure 6.

**Conditions Precedent Satisfaction Date**: in respect of each Trial, the date on which the Service Provider satisfies the Conditions Precedent in accordance with clause 3.1.1.

Contract Year**:** a period of 12 months, commencing on the Date of Agreement.

Data Protection Legislation**:** means:

a) to the extent the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of Personal Data; and

b) to the extent the EU GDPR applies, the law of the European Union or any member state of the European Union to which the Service Provider is subject, which relates to the protection of Personal Data.

**DDRT Platform:** means the application to be developed, maintained and operated by the Service Provider pursuant to this agreement.

**DDRT Platform Data:** means all data, including Personal Data (in any form and whether anonymised or pseudonymised), that is:

(a) processed by the Service Provider; or

(b) derived or generated

from or in connection with the DDRT Platform or the provision of the Services.

Default Notice**:** is defined in clause 5.10.

Dispute Resolution Procedure**:** the procedure set out in clause 13.

EIRs**:** the Environmental Information Regulations 2004 (SI 2004/3391) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

FOIA**:** the Freedom of Information Act 2000, and any subordinate legislation made under the Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

Force Majeure**:** any cause affecting the performance by a party of its obligations under this agreement arising from acts, events, omissions or non-events beyond its reasonable control, including acts of God, riots, war, acts of terrorism, fire, flood, storm or earthquake and any disaster, but excluding any industrial dispute relating to the Service Provider, the Service Provider's Personnel or any other failure in the Service Provider's supply chain.

Future Transport Zone: the programme, of which DDRT forms part, running from July 2020 to March 2024, operated by the Authority and funded by the Department for Transport to trial novel public transport solutions and collect data on their success.

Information**:** has the meaning given under section 84 of FOIA.

Insolvency Event**:** where:

### the Service Provider suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 OR (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 OR (being a partnership) has any partner to whom any of the foregoing apply;

### the Service Provider commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of the Service Provider with one or more other companies or the solvent reconstruction of that other party;

### a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

### an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Service Provider (being a company);

### the holder of a qualifying floating charge over the assets of the Service Provider (being a company) has become entitled to appoint or has appointed an administrative receiver; (i) a person becomes entitled to appoint a receiver over the assets of the Service Provider or a receiver is appointed over the assets of the Service Provider;

### a creditor or encumbrancer of the Service Provider attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;

### any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in (a) to (g) (inclusive);

### the Service Provider suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;

**Intellectual Property Rights:** patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

MaaS: the Mobility as a Service (MaaS) Platform procured or to be procured by the Authority as part of the Future Transport Zone, through which members of the public will be able to access public transport information and book tickets across a range of transport providers.

Necessary Consents**:** all approvals, certificates, authorisations, permissions, licences, permits, regulations and consents necessary from time to time for the performance of the Services including without limitation a Public Service Vehicle Operator Licence and appropriate registration with the Traffic Commissioner to provide the Services.

**Net Monthly Charge:** has the meaning given in Annexure 3.

**Operating Hours**: the hours of each day during which the Service Provider is required to operate the Bus Services as specified in section [ 3.2 ] of the Specification, and as may be changed from time to time pursuant to clause 5.6.

Operational Zone: each of the two areas of operation for the Services as described in the Specification.

Personal Data**:** means any personal data as defined in the Data Protection Legislation including (as appropriate) any Personal Data that reveals such special categories of data as are listed in Article 9(1) of the UK GDPR, or Personal Data relating to criminal convictions and offences or related security measures.

**Planned Commencement Date:** means:

(a) for Trial 1, [INSERT] 2022;

(b) for Trial 2, the date specified as such by the Authority in accordance with clause 3.3.Public Service Vehicles: shall have the same meaning as set out in the Public Passenger Vehicles Act 1981.

Public Service Vehicle Operator Licence: a licence to provide a Registered Local Service or a licence for any Public Service Vehicle operation which is not a local service issued by the Traffic Commissioner in the area in which the vehicle’s operating centre lies.

Prohibited Act**:** the following constitute Prohibited Acts:

### to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage to:

#### induce that person to perform improperly a relevant function or activity; or

#### reward that person for improper performance of a relevant function or activity;

### to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this agreement;

### committing any offence:

#### under the Bribery Act;

#### under legislation or common law concerning fraudulent acts;

### defrauding, attempting to defraud or conspiring to defraud the Authority.

### any activity, practice or conduct which would constitute one of the offences listed under clause 1.1(c), if such activity, practice or conduct had been carried out in the UK.

Registered Local Service: means any service at separate fares, and operated by a Passenger Service Vehicle allowing passengers to make journeys on it of less than 15 miles measured in a straight line or circumstances in which a passenger destination may be less than 15 miles measured in a straight line and where the route taken means that there are points or places en route which are more than 15 miles measured in a straight line.

Relevant Transfer**:** a relevant transfer for the purposes of TUPE.

Remediation Notice**:** a notice served by the Authority in accordance with clause 23.1(a).

Replacement Services**:** any services that are identical or substantially similar to any of the Services and which the Authority receives in substitution for any of the Services following the termination or expiry of this agreement, whether those services are provided by the Authority internally or by any Replacement Service Provider.

Replacement Service Provider**:** any third-party Service Provider of Replacement Services appointed by the Authority from time to time.

Request for Information**:** a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the EIRs.

Revenue: income received by the Service Provider from the sales of bus tickets.

Service Provider Party**:** the Service Provider's agents and contractors, including each Subcontractor.

Service Provider's Personnel**:** all employees, staff, other workers, agents and consultants of the Service Provider and of any Subcontractors who are engaged in the provision of the Services from time to time.

Service Provider's Tender**:** the tender submitted by the Service Provider and other associated documentation set out in Annexure 2.

Services**:** the services to be delivered by or on behalf of the Service Provider under this agreement, as more particularly described in the Specification.

Specification: the Authority’s requirements in respect of the Services set out in Annexure 1.

Subcontract**:** any contract between the Service Provider and a third party pursuant to which the Service Provider agrees to source the provision of any of the Services from that third party.

Subcontractor**:** the contractors that enter into a Subcontract with the Service Provider.

Supporting Data: the passenger, revenue and journey operation data as specified in detail in paragraph 3.9 of the Specification.

Term**:** the period from the date of this agreement until:

### the date upon which the last of the two Trials expires; or

### the earlier termination of this agreement in accordance with its terms.

Termination Date**:** the date of expiry or termination of this agreement.

Termination Payment Default**:** is defined in Annexure 3.

Traffic Commissioner: the individual responsible for the control and licensing of Public Service Vehicles for Great Britain and any persons carrying out duties on the Traffic Commissioner’s behalf with regard to these duties.

Traveline: the public transport route planner service which the Services must be registered with in accordance with clause 8.15.

Trial: Trial 1 or Trial 2, and “Trials” shall mean both of them.

Trial End Date: in respect of each Trial, the date falling 12 months after the Planned Commencement Date (or such other date specified by the Authority pursuant to clause 3.2 or otherwise as may be agreed by the parties).

Trial 1: 12 month trial in location 1 – refer to 2.1 in specification

Trial 2: 12 month trial in location 2 – refer to 2.1 in specification.

TUPE**:** the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246), as amended.

UK GDPR: has the meaning given in the Data Protection Act 2018.

Working Day**:** Monday to Friday, excluding any public holidays in England and Wales.

## Clause, annexure and paragraph headings shall not affect the interpretation of this agreement.

## A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

## The annexures form part of this agreement and shall have effect as if set out in full in the body of this agreement and any reference to this agreement includes the annexures.

## A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.

## Words in the singular shall include the plural and vice versa.

## A reference to one gender shall include a reference to the other genders.

## A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.

## A reference to **writing** or **written** includes faxes and e-mail.

## Any obligation in this agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.

## A reference to a document is a reference to that document as varied or novated (in each case, other than in breach of the provisions of this agreement) at any time.

## References to clauses and annexures are to the clauses and annexures of this agreement; references to paragraphs are to paragraphs of the relevant annexure.

## Where there is any conflict or inconsistency between the provisions of the agreement, such conflict or inconsistency shall be resolved according to the following order of priority:

### the clauses of the agreement;

### Annexure 1 to this agreement;

### the remaining annexures to this agreement other than Annexure 2;

### Annexure 2 to this agreement.

Commencement and duration

# Term

This agreement shall take effect on the date of the agreement and shall continue for the Term.

# commencing and extending the Trials

##

## Each Trial will commence on the relevant Planned Commencement Date unless:

## the Service Provider fails to satisfy each Condition Precedent to the reasonable satisfaction of the Authority at least ten (10) Working Days prior to the Planned Commencement Date; or

## for any other reason the Authority notifies the Service Provider prior to the Planned Commencement Date that the start of the Trial will be delayed.

## If a Trial does not start on the relevant Planned Commencement Date, it shall commence on such subsequent date as the Authority may specify to the Service Provider in writing, providing at least ten (10) Working Days’ notice.

## The Authority shall notify the Service Provider of the Planned Commencement Date for Trial 2 in writing no later than [INSERT]. Such date must fall within the period of [13 to 26 weeks] after the Planned Commencement Date for Trial 1. In the event the Authority fails to notify such date to the Service Provider in accordance with this clause 3.3, the Planned Commencement Date for Trial 2 shall be the date falling six months after the Planned Commencement Date for Trial 1.

## In the event that the Authority delays the start of a Trial beyond the later of (i) the applicable Planned Commencement Date and (ii) the date which falls 14 days after the Conditions Precedent Satisfaction Date, the Authority shall:

## pay the Service Provider its reasonable losses from the date referred to in (i) or (ii) above (as applicable) until the Commencement Date, with such losses to be calculated in accordance with clause 3.5; and/or

## agree with the Service Provider an extension to the Trial End Date to compensate for the delay.

## In the circumstances set out in clause 3.4, the Service Provider shall take reasonable steps to mitigate its losses. In no circumstances shall the Authority be obliged to pay an amount greater than the Charges that it would have paid had the Trial already commenced.

## The Authority may extend either Trial by a further period or periods of up to 12 months (“**Extension Period**”). If the Authority wishes to extend a Trial, it shall give the Service Provider at least six months' written notice of such intention before the expiry of the relevant Trial or Extension Period.

## If the Authority gives such notice then the Trial shall be extended by the period set out in the notice. Unless otherwise agreed, the terms set out in this agreement shall apply in full to any extension.

# Due diligence and Service Provider's warranty

## The Service Provider acknowledges and confirms that:

### it has had an opportunity to carry out a thorough due diligence exercise in relation to the Services and has asked the Authority all the questions it considers to be relevant for the purpose of establishing whether it is able to provide the Services in accordance with the terms of this agreement;

### it has received all information requested by it from the Authority pursuant to clause 4.1(a) to enable it to determine whether it is able to provide the Services in accordance with the terms of this agreement;

### it has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Authority pursuant to clause 4.1(b);

### it has raised all relevant due diligence questions with the Authority before the Date of Agreement; and

### it has entered into this agreement in reliance on its own due diligence.

## Save as provided in this agreement, no representations, warranties or conditions are given or assumed by the Authority in respect of any information which is provided to the Service Provider by the Authority and any such representations, warranties or conditions are excluded, save to the extent that such exclusion is prohibited by law.

## The Service Provider:

### warrants and represents that all information contained in the Service Provider's Tender remains true, accurate and not misleading as at the Date of Agreement, save as may have been specifically disclosed in writing to the Authority prior to execution of the agreement; and

### shall promptly notify the Authority in writing if it becomes aware during the performance of this agreement of any inaccuracies in any information provided to it by the Authority during such due diligence which materially and adversely affects its ability to perform the Services.

## The Service Provider shall not be entitled to recover any additional costs from the Authority which arise from, or be relieved from any of its obligations as a result of, any matters or inaccuracies notified to the Authority by the Service Provider in accordance with clause 4.3(b) save where such additional costs or adverse effect on performance have been caused by the Service Provider having been provided with fundamentally misleading information by or on behalf of the Authority and the Service Provider could not reasonably have known that the information was incorrect or misleading at the time such information was provided. If this exception applies, the Service Provider shall be entitled to recover such reasonable additional costs from the Authority or shall be relieved from performance of certain obligations as shall be determined by the Change Control Procedure.

## Nothing in this clause 4 shall limit or exclude the liability of the Authority for fraud or fraudulent misrepresentation.

The services

# Supply of services

## The Service Provider shall:

## provide the Services in accordance with the provisions of this agreement and the Annexures;

## operate the Bus Services comprising each Trial, as detailed in the Specification, from the Commencement Date of each Trial until the applicable Trial End Date;

## operate the Bus Services using three vehicles for each Trial, or such greater number as may be required by the Authority pursuant to clause 5.2;

## charge passengers such fares as are notified by the Authority to the Service Provider’s Authorised Representative from time to time;

## implement any concessionary fare schemes as directed by the Authority from time to time; and

## provide the Services in accordance with Best Industry Practice.

## In respect of each Trial, the Authority may, at any time (including prior to the relevant Commencement Date), require the Service Provider to deploy Additional Vehicles for the provision of the relevant Bus Services, provided that:

## the Authority must provide the Service Provider with at least [10] Working Days’ notice of its requirement; and

## the Authority may not require the Service Provider to deploy more than five vehicles in total on each Trial.

## The Service Provider shall comply with each request received from the Authority pursuant to clause 5.2. Each Additional Vehicle deployed by the Service Provider shall comply with the Specification and the Service Provider’s Tender.

## The Authority shall pay the Service Provider the Additional Vehicle Supplement in respect of each Additional Vehicle from the date on which such Additional Vehicle commences operation.

## In respect of each Trial, the Authority may, at any time (including prior to the relevant Commencement Date), request an increase in the Operating Hours, providing the Service Provider with at least fifteen (15) Working Days’ written notice.

## The Service Provider shall comply with each request received from the Authority pursuant to clause 5.6. The Charges shall be adjusted to reflect any increase in Operating Hours in accordance with Annexure 3.

## Both parties shall act reasonably in relation to requests for changes in Operating Hours.

## The Authority shall give the Service Provider at least [five] Working Days’ written notice of any change in fares or concessionary fare schemes that it requires the Service Provider to implement.

## The parties acknowledge that it is their collective intention that the Bus Services provided by the Service Provider pursuant to this agreement will be made available to the public through the MaaS Platform (in addition to the DDRT Platform and the Service Provider’s telephone booking service). Accordingly, the Service Provider shall:

## develop an API which will permit the integration of its passenger information and ticket booking system with the MaaS Platform, collaborating with the Authority and the MaaS Platform supplier appointed by the Authority with a view to ensuring ticket booking is available to the public through the MaaS Platform by no later than [the end of February 2023]; and

## otherwise provide such cooperation as is reasonably requested by the Authority to support the successful integration of the Services with the MaaS Platform.

## In the event that the Service Provider does not comply with the provisions of clauses 5.1 to 5.9 in any way, the Authority may serve the Service Provider with a notice in writing setting out the details of the Service Provider's default (a Default Notice). A failure to take the steps detailed in a Default Notice within 7 Working Days shall be deemed to be a breach of a material obligation.

# Service standards

The Service Provider shall provide the Services, or procure that they are provided:

### in accordance with the Specification and the Service Provider’s Tender;

### in all respects in accordance with the Authority’s policies set out in the Specification; and

### in accordance with all Applicable Laws.

# Compliance

## The Service Provider shall ensure that all Necessary Consents are in place to provide the Services and the Authority shall not (unless otherwise agreed) incur any additional costs associated with obtaining, maintaining or complying with the same.

## The Service Provider shall, upon request, provide the Authority with evidence that it has obtained the Necessary Consents and shall notify the Authority immediately in the event that any of the Necessary Consents are no longer held for any reason.

## Where there is any conflict or inconsistency between the provisions of this agreement and the requirements of a Necessary Consent, then the latter shall prevail, provided that the Service Provider has made all reasonable attempts to obtain a Necessary Consent in line with the requirements of this agreement.

## The Service Provider shall perform its obligations under this agreement (including those in relation to the Services) in accordance with all Applicable Law regarding health and safety.

## Without limiting the general obligation set out in clause 6, the Service Provider shall (and shall procure that the Service Provider's Personnel shall):

### perform its obligations under this agreement (including those in relation to the Services) in accordance with:

#### all applicable equality law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);

#### any other requirements and instructions which the Authority reasonably imposes in connection with any equality obligations imposed on the Authority at any time under applicable equality law; and

### take all necessary steps, and inform the Authority of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation); and

### at all times comply with the provisions of the Human Rights Act 1998 in the performance of this agreement. The Service Provider shall also undertake, or refrain from undertaking, such acts as the Authority requests so as to enable the Authority to comply with its obligations under the Human Rights Act 1998.

## The Contractor shall deal with lost property in accordance with the Public Service Vehicles (Lost Property) Regulations 1978 as amended by the Public Service Vehicles (Lost Property) Regulations (Amendment) 1995.

Charges and payment

# Charges and Revenue

## In consideration of the provision of the Services by the Service Provider in accordance with the terms and conditions of this agreement, the Authority shall pay the Net Monthly Charge to the Service Provider in respect of each Trial.

## The Authority shall pay the Net Monthly Charge in respect of each Trial in arrears on a monthly basis as from the Commencement Date of that Trial. The Net Monthly Charge will be calculated in accordance with Annexure 3.

## The Service Provider shall pay to the Authority all Revenue arising in relation to a Trial in arrears on a monthly basis as from the Commencement Date of that Trial. The Authority shall be entitled to set off any Revenue due to it against the Charges payable.

## The Service Provider shall invoice the Authority for payment of the Net Monthly Charge in respect of a calendar month within 14 days of the end of that calendar month. Each invoice shall be sent to the Authority’s Authorised Representative.

## The Service Provider shall ensure that each invoice:

### states the amount of the Charges due to the Service Provider in respect of the relevant month;

### states the amount of Revenue collected by the Service Provider during the relevant month and due to the Authority;

### states the net amount to be paid to the Service Provider or to the Authority as relevant; and

### is accompanied by the Supporting Data.

## Subject to clause 8.8, where an invoice shows that sums are due from:

### the Authority, the Authority shall pay such sums to the Service Provider no later than 30 days from the date of receipt of the invoice;

### the Service Provider, the Service Provider shall pay such sums to the Authority no later than 7 days from the date of issue of the invoice.

## Where the Service Provider enters into a Subcontract, the Service Provider shall include in that Subcontract:

### provisions having the same effect as clause 8.6 of this agreement; and

### a provision requiring the counterparty to that Subcontract to include in any Subcontract which it awards provisions having the same effect as clause 8.6 of this agreement.

## 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 13. Provided that the sum has been disputed in good faith, interest due on any sums in dispute shall not start to accrue until the date falling 14 days after resolution of the dispute between the parties.

## Subject to clause 8.8, interest shall be payable on the late payment of any undisputed Charges 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 if any payment is overdue.

## The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Authority following delivery of a valid VAT invoice. The Service Provider shall indemnify the Authority against any liability (including any interest, penalties or costs incurred) which is levied, demanded or assessed on the Authority at any time in respect of the Service Provider's failure to account for, or to pay, any VAT relating to payments made to the Service Provider under this agreement.

## The Service Provider shall maintain complete and accurate records of, and supporting documentation for:

### all amounts which may be chargeable to the Authority; and

### all Revenue.

### Such records shall be retained for inspection by the Authority for twelve years from the end of the Contract Year to which the records relate.

## The Authority 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 the Authority.

## If the Authority wishes to set off any amount owed by the Service Provider against any amount due to the Service Provider pursuant to clause 8.12 it shall give notice to the Service Provider within 30 days of receipt of the relevant invoice, setting out the Authority’s reasons for withholding or retaining the relevant Charges.

## The Service Provider shall make any payments due to the Authority 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 the Authority to the Service Provider.

## The Service Provider shall register the Services with Traveline prior to the Commencement Date for Trial 1. The Authority shall reimburse all Traveline costs associated with registration. The Service Provider shall pay the Traveline costs directly, and shall be entitled to set off any such sums against Revenue payable to the Authority.

Staff

# Personnel used to provide the services

## At all times, the Service Provider shall ensure that:

### each of the Service Provider's Personnel is suitably licensed, adequately trained and capable of providing the applicable Services in respect of which they are engaged;

### there is an adequate number of Service Provider's Personnel to provide the Services properly; and

### all of the Service Provider's Personnel comply with all of the requirements set out in the Specification.

## The Authority may require the removal from the Contract of any person employed by the Service Provider where in the opinion of the Authority such person is not suitable. The Service Provider shall immediately comply with such instruction and as soon as it is reasonably practicable thereafter provide a substitute in order to ensure that the Services are provided in accordance with the Specification. Any member of the Service Provider’s staff removed from work under the provision of this paragraph shall not be re-engaged in the delivery of Services without the written consent of the Authority. The Authority shall in no circumstances be liable either to the Service Provider or the employee in respect of any liability, loss or damage occasioned by such withdrawal, suspension or removal and the Service Provider shall fully indemnify the Authority against any claim made by such employees. The Authority shall not be obliged to divulge any information relating to any person affected by this clause.

## The Service Provider represents and warrants that it is compliant with its obligations under the Modern Slavery Act 2015 and that neither the Service Provider nor any of its officers, employees or other persons associated with it has been convicted of any offence involving slavery and human trafficking; or has been or is the subject of investigation, inquiry or enforcement proceedings by any governmental administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking.  The Service Provider shall implement due diligence procedures for its own suppliers, subcontractors or other participants in its supply chains, to ensure that there is no slavery or human trafficking in its supply chains.

## The Service Provider shall not employ in the provision of the Services any ex-employee of the Authority who has been dismissed on disciplinary grounds without the express written consent of the Authority.

## The Service Provider shall maintain up-to-date personnel records on the Service Provider's Personnel engaged in the provision of the Services and shall provide information to the Authority as the Authority reasonably requests on the Service Provider's Personnel. The Service Provider shall ensure at all times that it has the right to provide these records in compliance with the applicable Data Protection Legislation.

## **EQUAL OPPORTUNITIES**

## The Service Provider shall:

9.6.1 not unlawfully discriminate either directly or indirectly or victimise or harass any person on such grounds as age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex or sexual orientation, and without prejudice to the generality of the foregoing the Service Provider shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010 (or any statutory modification or re-enactment thereof);

9.6.2 take all reasonable steps to secure the observance of this clause by its employees;

9.6.3 co-operate with the Authority in monitoring the Service Provider’s compliance with this clause including providing such information as the Authority may reasonably request;

9.6.4 not knowingly do anything in the performance of this agreement which might place the Authority in breach of the Authority’s duties and obligations under the Equality Act 2010; and

9.6.5 indemnify the Authority against any costs, claims and expenses the Authority may incur as a consequence of the Service Provider’s (or its employees) breach of this clause 9.6.

9.7 The Service Provider shall:

9.7.1 have an equal opportunities, or equality and diversity, policy in respect of the protected characteristics of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity race, religion or belief, sex and sexual orientation;

9.7.2 demonstrate effective implementation of its policies in relation to recruitment practices including evidence of open recruitment methods such as use of the Job Centre or press advertisements;

9.7.3 regularly review the full range of equality policies and procedures and take specific action to make any necessary changes;

9.7.4 support the Authority in monitoring from different ‘protected characteristic’ groups issues such as access to services, satisfaction with services and complaints including how the monitoring process impacts upon the development of policy and practice;

9.7.5 regularly monitor the composition of its workforce, (including training and development opportunities, promotions and disciplinary action), and monitor job applicants from ‘protected’ groups; and

9.7.6 collect, collate and provide any equalities monitoring information requested by the Authority.

9.8 In the event that the Service Provider enters into any Subcontract it shall impose obligations on its Subcontractors in terms substantially similar to those imposed on it pursuant to this Clause 9.

Contract management

# Meetings

## The Authorised Representatives shall meet in accordance with the details set out in Annexure 4 and at other times during the Term as requested on reasonable notice by either party.

# Monitoring

## The Authority will monitor the performance of the Services by the Service Provider.

## The Service Provider shall allow an authorised officer or agent of the Authority to use the Services without charge from time to time for the purposes of monitoring performance.

## The Service Provider shall cooperate, and shall procure that its Subcontractors cooperate, with the Authority in carrying out the monitoring referred to in clause 11.1 at no additional charge to the Authority.

## The Service Provider shall send to the Authority, within 7 days of receipt, all comments or complaints received about the Services or their performance. A copy of the written reply to a complaint must be forwarded to the Authority within 21 days of the receipt of the original complaint.

## When the Authority seeks written comments following a complaint, the Service Provider shall send a detailed response in writing to the Authority within 10 days of the receipt of notification of the complaint. If the Service Provider does not respond within 10 days the Service Provider shall be deemed to accept the validity of the complaint.

# Change control and continuous improvement

## Any requirement for a Change shall be subject to the Change Control Procedure.

## The Service Provider shall have an ongoing obligation throughout the Term to identify new or potential improvements to the Services. As part of this obligation the Service Provider shall identify and report to the Authority’s Authorised Representative monthly during the Term:

### the emergence of new and evolving relevant technologies which could improve the Services;

### new or potential improvements to the Services including the quality, responsiveness, procedures, performance mechanisms and customer support services in relation to the Services;

### new or potential improvements to the interfaces or integration of the Services with other services provided by third parties or the Authority which might result in efficiency or productivity gains or in reduction of operational risk; and

### changes in ways of working that would enable the Services to be delivered at lower costs and/or bring greater benefits to the Authority.

## If agreed by the parties, any potential Changes highlighted as a result of the Service Provider's reporting in accordance with clause 12.2 shall be addressed using the Change Control Procedure.

## The Service Provider acknowledges that the Authority is, as at the date of this agreement, considering the procurement of other demand responsive bus services. The Service Provider will, if so requested by the Authority, collaborate with the Authority to explore the extent to which the DDRT Platform could be used for those other services, regardless of whether the Service Provider (or any of its Sub-Contractors) is appointed by the Authority to operate them, provided that compliance with this clause 12.4 shall not require the Service Provider to incur any material cost. The Authority shall implement any proposed extension of the DDRT Platform to other bus services through the Change Control Procedure.

# Dispute resolution

## If a dispute arises out of or in connection with this agreement or the performance, validity or enforceability of it (**Dispute**) then except as expressly provided in this agreement, the parties shall follow the procedure set out in this clause:

### either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, the Authorised Representatives shall attempt in good faith to resolve the Dispute;

### if the Authorised Representatives are for any reason unable to resolve the Dispute within 14 days of service of the Dispute Notice, the Dispute shall be referred to the Authority’s Head of Transport Integration who shall attempt in good faith to resolve it; and

### if the Authority’s Head of Transport Integration is for any reason unable to resolve the Dispute within 14 days of it being referred to them, the parties may commence court or arbitration proceedings in relation to the Dispute under clause 39 which clause shall apply at all times.

# Subcontracting and assignment

## Subject to clause 14.3, neither party shall assign, novate or otherwise dispose of any or all of its rights and obligations under this agreement without the prior written consent of the other party, neither may the Service Provider sub-contract the whole or any part of its obligations under this agreement except with the express prior written consent of West of England Combined Authority, such consent not to be unreasonably withheld.

## In the event that the Service Provider enters into any Subcontract in connection with this agreement it shall:

### remain responsible to the Authority for the performance of its obligations under the agreement notwithstanding the appointment of any Subcontractor and be responsible for the acts omissions and neglects of its Subcontractors;

### impose obligations on its Subcontractor in the same terms as those imposed on it pursuant to this agreement and shall procure that the Subcontractor complies with such terms; and

### provide a copy, at no charge to the Authority, of any such Subcontract on receipt of a request for such by the Authority’s Authorised Representative.

## The Authority shall be entitled to novate or assign the agreement to any other body which substantially performs any of the functions that previously had been performed by the Authority.

## Provided that the Authority has given prior written consent, the Service Provider shall be entitled to novate the agreement where:

### the specific change in contractor was provided for in the procurement process for the award of this agreement; or

### there has been a universal or partial succession into the position of the Service Provider, following a corporate restructuring, including takeover, merger, acquisition or insolvency, by another economic operator that meets the criteria for qualitative selection applied in the procurement process for the award of this agreement.

Liability

# Indemnities

The Service Provider shall indemnify and keep indemnified the Authority against all actions, proceedings, costs, claims, demands, liabilities, losses and expenses whatsoever whether arising in tort (including negligence) default or breach of this agreement, to the extent that any such loss or claim is due to the breach of contract, negligence, wilful default or fraud of itself or of its employees or of any of its Representatives or subcontractors save to the extent that the same is directly caused by or directly arises from the negligence, breach of this agreement or applicable law by the Authority or its Representatives (excluding any Service Provider's Personnel).

# Limitation of liability

## Subject to clause 16.3, neither party shall be liable to the other party (as far as permitted by law) for indirect special or consequential loss or damage in connection with the agreement which shall include, without limitation, any loss of or damage to profit, revenue, contracts, anticipated savings, goodwill or business opportunities whether direct or indirect.

## Each party shall at all times take all reasonable steps to minimise and mitigate any loss or damage for which the relevant party is entitled to bring a claim against the other party pursuant to this agreement.

## Subject to clause 16.5, the Service Provider's total aggregate liability:

### is unlimited in respect of any breach of clause 26:

### in respect of all other claims, losses or damages, whether arising from tort (including negligence), breach of contract or otherwise under or in connection with this agreement, shall in no event exceed the aggregate Charges paid or payable by the Authority pursuant to this agreement during the Term.

## Subject to clause 16.5, the Authority’s maximum aggregate liability to the Service Provider for all claims arising during the Term (other than a failure to pay any of the Charges that are properly due and payable and for which the Authority shall remain fully liable) shall not in any circumstances exceed the aggregate Charges paid or payable by the Authority pursuant to this agreement during the Term.

## Notwithstanding any other provision of this agreement neither party limits or excludes its liability for:

### fraud or fraudulent misrepresentation;

### death or personal injury caused by its negligence;

### breach of any obligation as to title implied by statute; or

### any other act or omission, liability for which may not be limited under any Applicable Law.

# Insurance

## The Service Provider shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance providing as a minimum the following levels of cover:

### public liability insurance to a minimum level of five million pounds (£5,000,000) in respect of each claim, with no limit on the number of claims, or as required by Applicable Laws;

### employer's liability insurance to a minimum level of ten million pounds (£10,000,000) in respect of each claim, with no limit on the number of claims or as required by Applicable Laws; and

### motor vehicle insurance in line with Best Industry Practice;

### product liability insurance to a minimum level of two million pounds (£2,000,000) in respect of each claim, with no limit on the number of claims; and

### cyber insurance to a minimum level of five million pounds (£5,000,000) in respect of each claim, with no limit on the number of claims;

(the Required Insurances). The cover shall be in respect of all risks which may be incurred by the Service Provider, arising out of the Service Provider's performance of the agreement, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Service Provider.

## The Service Provider shall give the Authority copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the Required Insurances are in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

## If, for whatever reason, the Service Provider fails to give effect to and maintain the Required Insurances, the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Service Provider.

## The terms of any insurance or the amount of cover shall not relieve the Service Provider of any liabilities under the agreement.

## The Service Provider shall hold and maintain the Required Insurances during the Term and for a minimum of six years following the expiration or earlier termination of the agreement.

Information

# Freedom of information

## The Service Provider acknowledges that the Authority is subject to the requirements of the FOIA and the EIRs or any other applicable legislation or codes governing access to information. The Service Provider shall:

### provide all necessary assistance and cooperation as reasonably requested by the Authority to enable the Authority to comply with its obligations under the FOIA and EIRs;

### transfer to the Authority all Requests for Information relating to this agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;

### provide the Authority with a copy of all Information belonging to the Authority requested in the Request for Information which is in its possession or control in the form that the Authority requires within 5 Working Days (or such other period as the Authority may reasonably specify) of the Authority’s request for such Information; and

### not respond directly to a Request for Information unless authorised in writing to do so by the Authority.

## The Service Provider acknowledges that the Authority may be required under the FOIA and EIRs or any other applicable legislation or codes governing access to information to disclose Information without consulting or obtaining consent from the Service Provider. the Authority shall take reasonable steps to notify the Service Provider of a Request for Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this agreement) the Authority shall be responsible for determining in its absolute discretion whether any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs or any other applicable legislation or codes governing access to information.

# Data protection

## Each party undertakes to comply with the provisions set out in Annexure 7 (Data Protection) with regard to its data protection obligations in relation to Personal Data.

## DDRT Platform Data shall be and remain the property of the Authority and the Service Provider shall not delete or remove any proprietary notices or other notices contained within or relating to DDRT Platform Data.

## At the Authority’s request and in accordance with its obligations under the Data Protection Legislation, the Service Provider shall provide the Authority with a complete and secure encrypted and appropriately authenticated download file of all DDRT Platform Data held by the Service Provider in the format, and on the media, reasonably specified by the Authority.

## The Service Provider shall perform secure backups of all DDRT Platform Data in accordance with the requirements set out within:

### the Specification; and

### the Authority’s Information Security Policy and Information Security Classification Policy referred to in 2.17 in the specification,

 and shall ensure that such backups are available to the Authority at all times upon request.

## The Service Provider shall prevent data commingling and server commingling with respect to DDRT Platform Data.

## In the event of any conflict between this clause 19 and Annexure 7 (Data Protection), the provisions (and parts thereof) which most restrict the disclosure or use of Personal Data and which require the greatest level of security to be applied by the Service Provider shall prevail.

## The provisions of this clause 19 shall apply during the continuance of this agreement and indefinitely after its expiry or termination.

# Intellectual property

## The Authority grants to the Service Provider, or shall procure the direct grant to the Service Provider of, a fully paid-up, worldwide, non-exclusive, royalty-free licence during the Term to copy and reproduce the Authority Intellectual Property solely for the purpose of satisfying the Branding Requirements.

## The Service Provider shall not sub-license, assign or otherwise transfer the rights granted by clause21.1.

## All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Service Provider) shall be owned by the Authority.

# Confidentiality

## Subject to clause 21.2, the parties shall keep confidential all matters relating to this agreement and shall use all reasonable endeavours to prevent their Representatives from making any disclosure to any person of any matters relating hereto.

## Clause 21.1 shall not apply to any disclosure of information:

### required by any Applicable Law, provided that clause 18.2 shall apply to any disclosures required under the FOIA or the EIRs;

### that is reasonably required by persons engaged by a party in the performance of such party's obligations under this agreement;

### where a party can demonstrate that such information is already generally available and in the public domain otherwise than as a result of a breach of clause 21.1;

### by the Authority of any document to which it is a party and which the parties to this agreement have agreed contains no commercially sensitive information;

### by the Authority to any third party in the DDRT or MaaS schemes, as well as their professional advisors, for the purpose of monitoring and evaluating the success of the schemes;

### to enable a determination to be made under clause 13;

### which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party;

### by the Authority to any other department, office or agency of the Government; and

### by the Authority relating to this agreement and in respect of which the Service Provider has given its prior written consent to disclosure.

## On or before the Termination Date the Service Provider shall ensure that all documents and/or computer records in its possession, custody or control which relate to personal information of the Authority’s employees, Council Tax payers or service users, are delivered up to the Authority.

# Audit

## During the Term and for a period of 12 years after the Termination Date, the Authority may conduct an audit for the following purposes:

### to verify the accuracy of Charges (and proposed or actual variations to them in accordance with this agreement) and/or the costs of the Service Provider (including Subcontractors) of the Services;

### to verify the accuracy of Revenue declared as being due by the Service Provider and accounted to the Authority pursuant to clause 8.2;

### to review the integrity, confidentiality and security of any data relating to the Authority or any service users;

### to review the Service Provider's compliance with the DPA, the FOIA, in accordance with clause 19 (Data Protection) and clause 18 (Freedom of Information) and any other legislation applicable to the Services;

### to review any records created during the provision of the Services;

### to review any books of account kept by the Service Provider in connection with the provision of the Services;

###  to carry out the audit and certification of the Authority’s accounts;

###  to carry out an examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources; or

### to verify the accuracy and completeness of the Management Reports delivered or required by this agreement.

## Except where an audit is imposed on the Authority by a regulatory body, the Authority will not conduct an audit on a set frequency.

## The Authority shall not undertake an audit pursuant to clause 22 more than twice in any calendar year.

## The Authority shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Service Provider or delay the provision of the Services.

## Subject to the Authority’s obligations of confidentiality, the Service Provider shall on demand provide the Authority and any relevant regulatory body (and/or their agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including:

### all information requested by the above persons within the permitted scope of the audit;

### reasonable access to any sites controlled by the Service Provider and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services; and

### access to the Service Provider's Personnel.

## The Authority shall endeavour to (but is not obliged to) provide at least 15 days’ notice of its or, where possible, a regulatory body's, intention to conduct an audit.

## The parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause, unless the audit identifies a material failure to perform its obligations under this agreement in any material manner by the Service Provider in which case the Service Provider shall reimburse the Authority for all the Authority’s reasonable costs incurred in the course of the audit.

##  If an audit identifies that:

### the Service Provider has failed to perform its obligations under this agreement in any material manner, the parties shall agree and implement a remedial plan. If the Service Provider's failure relates to a failure to provide any information to the Authority about the Charges, proposed Charges, the Service Provider's costs, or the amount of Revenue then the remedial plan shall include a requirement for the provision of all such information;

### the Authority has overpaid any Charges, the Service Provider shall pay to the Authority the amount overpaid within 20 days. The Authority may deduct the relevant amount from any payable Charges if the Service Provider fails to make this payment;

### the Authority has underpaid any Charges, the Authority shall pay to the Service Provider the amount of the under-payment less the cost of audit incurred by the Authority if this was due to a default by the Service Provider in relation to invoicing within 20 days.

### the Service Provider has failed to pay all of the Revenue received from the service users to the Authority which are payable following set-off of Charges, the Service Provider shall pay to the Authority the amount underpaid within 10 days.

Termination

# Termination for breach

## The Authority may terminate this agreement with immediate effect by the service of written notice on the Service Provider in the following circumstances:

### if the Service Provider is in breach of any material obligation under this agreement provided that if the breach is capable of remedy, the Authority may only terminate this agreement under this clause 23.1 if the Service Provider has failed to remedy such breach within 28 days of receipt of notice from the Authority (a Remediation Notice) to do so;

### if a Catastrophic Failure has occurred;

### if a Necessary Consent is no longer held by the Service Provider;

### if there is an Insolvency Event;

### if there is a change of control of the Service Provider within the meaning of section 1124 of the Corporation Tax Act 2010;

### if any of the provisions of Regulation 73(1) of the Public Contracts Regulations 2015 apply.

## The Authority may terminate this agreement in accordance with the provisions of clause 25 and clause 26.

## If this agreement is terminated by the Authority the Service Provider hereby indemnifies the Authority against any such losses or costs which the Authority may suffer as a result of any such termination for cause.

## The Service Provider may terminate this agreement in the event that the Authority commits a Termination Payment Default by giving 30 days' written notice to the Authority. In the event that the Authority remedies the Termination Payment Default in the 30 day notice period, the Service Provider's notice to terminate this agreement shall be deemed to have been withdrawn.

# Termination on notice

Without affecting any other right or remedy available to it, the Authority may terminate this agreement at any time by giving six months' written notice to the Service Provider.

# Force majeure

## Subject to the remaining provisions of this clause 25, neither party to this agreement shall be liable to the other for any delay or non-performance of its obligations under this agreement to the extent that such non-performance is due to a Force Majeure Event.

## In the event that either party is delayed or prevented from performing its obligations under this agreement by a Force Majeure Event, such party shall:

### give notice in writing of such delay or prevention to the other party as soon as reasonably possible, stating the commencement date and extent of such delay or prevention, the cause thereof and its estimated duration;

### use all reasonable endeavours to mitigate the effects of such delay or prevention on the performance of its obligations under this agreement; and

### resume performance of its obligations as soon as reasonably possible after the removal of the cause of the delay or prevention.

## A party cannot claim relief if the Force Majeure Event is attributable to that party's wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event.

## The Service Provider cannot claim relief if the Force Majeure Event is one where a reasonable Service Provider should have foreseen and provided for the cause in question.

## As soon as practicable following the affected party's notification, the parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this agreement. Where the Service Provider is the affected party, it shall take and/or procure the taking of all steps to overcome or minimise the consequences of the Force Majeure Event in accordance with Best Industry Practice.

## The affected party shall notify the other party as soon as practicable after the Force Majeure Event ceases or no longer causes the affected party to be unable to comply with its obligations under this agreement. Following such notification, this agreement shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the parties.

## The Authority may, during the continuance of any Force Majeure Event, terminate this agreement by written notice to the Service Provider if a Force Majeure Event occurs that affects all or a substantial part of the Services and which continues for more than 30 Working Days.

# Prevention of bribery

## The Service Provider represents and warrants that neither it, nor to the best of its knowledge any Service Provider's Personnel, have at any time prior to the Date of Agreement:

### committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or

### been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.

## During the Term, the Service Provider shall not:

### commit a Prohibited Act; and/or

### do or suffer anything to be done which would cause the Authority or any of the Authority’s employees, consultants, contractors, subcontractors or agents to contravene any of the Bribery Act or otherwise incur any liability in relation to the Bribery Act.

## During the Term, the Service Provider shall:

### establish, maintain and enforce, and require that its Subcontractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Bribery Act and prevent the occurrence of a Prohibited Act; and

### keep appropriate records of its compliance with its obligations under clause 26.3(a) and make such records available to the Authority on request.

## The Service Provider shall immediately notify the Authority in writing if it becomes aware of any breach of clause 26.1 and/or clause 26.2, or has reason to believe that it has or any of the Service Provider's Personnel have:

### been subject to an investigation or prosecution which relates to an alleged Prohibited Act;

### been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or

### received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this agreement or otherwise suspects that any person or Party directly or indirectly connected with this agreement has committed or attempted to commit a Prohibited Act.

## If the Service Provider makes a notification to the Authority pursuant to clause 26.4, the Service Provider shall respond promptly to the Authority’s enquiries, co-operate with any investigation, and allow the Authority to audit any books, records and/or any other relevant documentation in accordance with clause 22.

## If the Service Provider is in Default under clause 26.1 and/or clause 26.2, the Authority may by notice:

### require the Service Provider to remove from performance of this agreement any Service Provider's Personnel whose acts or omissions have caused the Default; or

### immediately terminate this agreement.

## Any notice served by the Authority under clause 26.6 shall specify the nature of the Prohibited Act, the identity of the Party who the Authority believes has committed the Prohibited Act and the action that the Authority has elected to take (including, where relevant, the date on which this agreement shall terminate).

# Consequences of termination

## On the expiry of the Term or if this agreement is terminated in whole or in part for any reason the Service Provider shall, if requested by the Authority, co-operate fully with the Authority to ensure an orderly migration of the Services to the Authority or a Replacement Service Provider.

## On termination of this agreement the Service Provider shall procure that all data and other material belonging to the Authority (and all media of any nature containing information and data belonging to the Authority or relating to the Services), shall be delivered to the Authority forthwith and the Service Provider's Authorised Representative shall certify full compliance with this clause.

## The provisions of clause 15 (Indemnities), clause 17 (Insurance), clause 18 (Freedom of Information), clause 19 (Data Protection), clause 22 (Audit), clause 23 (Termination for Breach) and this clause 27 (Consequences of termination) shall survive termination or expiry of this agreement.

General provisions

# Non-solicitation

Neither party shall (except with the prior written consent of the other) during the Term, and for a period of one year thereafter, solicit the services of any senior staff of the other party who have been engaged in the provision of the Services or the management of this agreement or any significant part thereof either as principal, agent, employee, independent contractor or in any other form of employment or engagement other than by means of an open national advertising campaign and not specifically targeted at such staff of the other party.

# Waiver

No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

# Rights and remedies

The rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

# Severability

## If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this agreement.

## If one party gives notice to the other of the possibility that any provision or part-provision of this agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

# Partnership or agency

## Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

## Each party confirms it is acting on its own behalf and not for the benefit of any other person.

# Third party rights

## No one other than a party to this agreement, their successors and permitted assignees, shall have any right to enforce any of its terms.

## The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this agreement are not subject to the consent of any other person.

# Publicity

The Service Provider shall not:

### make any press announcements or publicise this agreement or its contents in any way; or

### use the Authority’s name or logo in any promotion or marketing or announcement of orders without the prior written consent of the Authority;

except as required by law, any government or regulatory Council, any court or other Council of competent jurisdiction, without the prior written consent of the Authority.

# Notices

## Any notice given to a party under or in connection with this contract shall be in writing marked for the attention of the party's Authorised Representative and shall be:

## (a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or

## (b) sent by email to the following addresses (or an address substituted in writing by the party to be served):

## (i) the Authority: [insert email address].

## (ii) the Service Provider: [insert email address].

## Any notice shall be deemed to have been received:

### if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;

### if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Working Day after posting or at the time recorded by the delivery service; or

### if sent by email, at the time of transmission, or, if this time falls outside Business Hours in the place of receipt, when Business Hours resume.

## This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution. For the purposes of this clause, "writing" shall not include e-mail.

# Variations to agreement

## Any variations to this agreement must be in writing and agreed by both parties, subject to clause 36.2.

## The Authority may vary this agreement to alter the Operational Zones detailed in Annexure 1 at any time by giving six months' written notice to the Service Provider. The Service Provider’s consent is not required for this variation. The provisions of clause 27 shall apply in relation to any part of an Operational Zone removed from the agreement in accordance with this sub-clause.

# Entire agreement

## This agreement, the annexures and the documents annexed to it or otherwise referred to in it constitute the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

## Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

# Counterparts

This agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this agreement, but all the counterparts shall together constitute the same agreement. No counterpart shall be effective until each party has executed at least one counterpart.

# Governing law

This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England.

# Jurisdiction

Each party irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

**IN WITNESS** whereof the parties have executed this contract as a deed the day and year first before written

The Common Seal of the Authority was hereunto affixed in the presence of:

Authorised signatory

Executed as a deed by

Acting by:

|  |  |
| --- | --- |
| Name IN CAPITALS | Signature |
| **Position in organisation** |

|  |  |
| --- | --- |
| Name IN CAPITALS | Signature |
| **Position in organisation** |

1. Specification

[To be added]

1. Service Provider's Tender
2. Charges and payment
3. Definitions

The following definitions shall apply in this Annexure 3:

**Additional Hours Supplement:** in respect of each Trial, [£INSERT]

***[Note to Bidders: The Additional Hours Supplement will be taken from the successful bidder’s tender]***

**Additional Service Period:** any Service Periods operated by Additional Vehicles deployed in accordance with clause 5.2.

**Additional Vehicle Supplement:** in respect of each Trial, [£INSERT]

***[Note to Bidders: The Additional Vehicle Supplement will be taken from the successful bidder’s tender]***

**Adjusted Base Monthly Charge**: the Base Monthly Charge adjusted to take account of:

(a) any Additional Hours Supplement payable in respect of the month;

(b) any Additional Vehicle Supplement payable in respect of the month; and

(c) any sums due from the Authority under clause 8.15 in respect of the month.

**Base Monthly Charge**: in respect of each Trial, [£INSERT]

***[Note to Bidders: The Base Monthly Charge will be taken from the successful bidder’s tender, being the total price proposed for each trial divided by 12 to provide a monthly fee]***

**Charge Reduction**: any reduction in the Service Provider’s Charges, calculated in accordance with paragraph 2.

**Net Monthly Charge**: in respect of each Trial, the monthly payment due from the Authority to the Service Provider, being the Adjusted Base Monthly Charge less any applicable Charge Reduction.

**Service Period**: half of any operating day, being the first or second half of the Operating Hours in such day.

**Service Unavailability:** any cumulative period of 30 minutes or more during the Operating Hours on any particular day, during which a Vehicle is not in operation, and/or during which the public is unable to purchase tickets for Bus Services via the DDRT Platform or via telephone.

1. Calculation of Charge Reduction

The Charge Reduction applicable in any month shall be calculated according to the formula below.

|  |  |  |
| --- | --- | --- |
| **Step** | **Calculation** | **Key** |
| **1)** | A × 2 = B | A – Number of days in the month.B – Service Periods in the month. |
| **2)** | (B × C) + D = E | C – Number of vehicles in operation at the start of the month.D – Additional Service Periods.E – Total Service Periods across all vehicles. |
| **3)**  | F ÷ E = G | F – Service Periods incurring Service Unavailability.G – Reduction margin (rounded to 2 decimal places).  |
| **4)** | H × G = I | H – Adjusted Base Monthly Charge.I – Charge Reduction. |

**Example:**

Three vehicles operate during a 30 day month. Two of the vehicles are unavailable for four whole days. One Additional Vehicle is deployed at the request of the Authority for five days of the month. The Adjusted Base Monthly Charge is £100,000. The Authority will calculate the Charge Reduction in the following way:

|  |  |
| --- | --- |
| **Step** | **Calculation** |
| **1)** | 30 × 2 = 60 |
| **2)** | (60 × 3) + 10\* = 190 |
| **3)** | 16\*\* ÷ 190 = 0.08 |
| **4)** | 0.08 × £100,000 = £8000 |
|  | Charge Reduction is £8000. |

\* 10 (Additional Service Periods) is arrived at because one Additional Vehicle would complete 10 service periods over five days (1 × 5 × 2).

\*\*16 (Service Periods incurring Service Unavailability) is arrived at using 4 × 2 × 2. (Two vehicles unavailable for two Service Periods across four days).

1. Termination Payment Default

In the event that at any time undisputed Charges of at least £20,000 have been overdue for payment for a period of 60 days or more, the Authority will have committed a Termination Payment Default.

1. Contract management
2. Authorised representatives
	1. the Authority’s initial Authorised Representative:
	2. The Service Provider's initial Authorised Representative:
3. Meetings
	1. Type – Performance Monitoring and Evaluation Framework Meetings
	2. Frequency - Monthly
	3. Agenda - operation of service and complaints, defaults, quality assurance, reliability and punctuality, health and safety, innovation, equality and diversity, environmental policies, service improvements identified in accordance with clause 12.2 (other items may be added to the agenda as necessary and will be notified in advance of the meeting)
4. Change control
5. General principles
	1. Where the Authority or the Service Provider sees a need to change this agreement, the Authority may at any time request, and the Service Provider may at any time recommend, such Change only in accordance with the Change Control Procedure set out in paragraph 2 of this Annexure 5.
	2. Until such time as a Change is made in accordance with the Change Control Procedure, the Authority and the Service Provider shall, unless otherwise agreed in writing, continue to perform this agreement in compliance with its terms before such Change.
	3. Any discussions which may take place between the Authority and the Service Provider in connection with a request or recommendation before the authorisation of a resultant Change shall be without prejudice to the rights of either party.
	4. Any work undertaken by the Service Provider and the Service Provider's Personnel which has not been authorised in advance by a Change, and which has not been otherwise agreed in accordance with the provisions of this Annexure 5, shall be undertaken entirely at the expense and liability of the Service Provider.
6. Procedure
	1. Discussion between the Authority and the Service Provider concerning a Change shall result in any one of the following:
		1. no further action being taken; or
		2. a request to change this agreement by the Authority; or
		3. a recommendation to change this agreement by the Service Provider.
	2. Where a written request for an amendment is received from the Authority, the Service Provider shall, unless otherwise agreed, submit two copies of a Change Control Note signed by the Service Provider to the Authority within three weeks of the date of the request.
	3. A recommendation to amend this agreement by the Service Provider shall be submitted directly to the Authority in the form of two copies of a Change Control Note signed by the Service Provider at the time of such recommendation.
	4. Each Change Control Note shall contain:
		1. the title of the Change;
		2. the originator and date of the request or recommendation for the Change;
		3. the reason for the Change;
		4. full details of the Change, including any specifications;
		5. the price, if any, of the Change;
		6. a timetable for implementation, together with any proposals for acceptance of the Change;
		7. an Annexure of payments if appropriate;
		8. details of the likely impact, if any, of the Change on other aspects of this agreement including:
			1. the timetable for the provision of the Change;
			2. the personnel to be provided;
			3. the Charges;
			4. the Documentation to be provided;
			5. the training to be provided;
			6. working arrangements;
			7. other contractual issues;
		9. the date of expiry of validity of the Change Control Note;
		10. provision for signature by the Authority and the Service Provider; and
		11. details of how the costs that would be incurred by the parties if the Change subsequently results in the termination of this agreement under clause 23.1(f) will be apportioned.
	5. For each Change Control Note submitted by the Service Provider the Authority shall, within three weeks of receipt of the Change Control Note:
		1. allocate a sequential number to the Change Control Note; and
		2. evaluate the Change Control Note and, as appropriate:
			1. request further information;
			2. accept the Change Control Note by arranging for two copies of the Change Control Note to be signed by or on behalf of the Authority and return one of the copies to the Service Provider; or
			3. notify the Service Provider of the rejection of the Change Control Note.
	6. A Change Control Note signed by the Authority and by the Service Provider shall constitute an amendment to this agreement.
	7. If the Authority fails to respond to a Change Control Note in accordance with paragraph 2.5(b)(i), (ii) or (iii) within the stipulated time period, the Authority shall be deemed to have rejected the Change Control Note, unless the parties agree otherwise.
7. Conditions Precedent

The Service Provider shall demonstrate, to the reasonable satisfaction of the Authority:

1. that the system is ready, with the DDRT Platform and vehicle systems integrated and ready to launch (demonstrated at an in-person meeting);
2. if customer support services are to be provided by the Service Provider, that the customer support system is capable of meeting the requirements set out in the Specification (demonstrated at an in-person meeting);
3. that pre-driver checks have been completed in line with clause 9, and driver licence documents have been obtained and shared with the Authority;
4. that the Service Provider has obtained the Necessary Consents to provide the Services;
5. that the drivers have been trained in how to deliver the Services and operate the DDRT Platform, (with relevant training plans and documentation shared with the Authority); and
6. that the vehicles are available and carry the appropriate branding (via the provision of images or by arranging an in person viewing).

**Annexure 7 Data protection**

1. **Definitions**

In this Annexure 7 the following definitions shall apply in addition to the definitions contained in clause 1.

|  |  |
| --- | --- |
| **"Controller", "Processor" and "Data Subject"**  | shall have the meaning given to those terms in the Data Protection Legislation; |
| **“Data Discloser”** | a party that shares Personal Data with the other, which includes both the Service Provider and the Authority from time to time; |
| **"Data Protection Impact Assessment"**  | means an assessment of the impact of the envisaged Processing operations on the protection of Personal Data, as required by Article 35 of the UK GDPR;  |
| **"Data Processing Particulars"** | means the particulars set out in Appendix 1 (Data Processing Particulars) which sets out the scope, nature and purpose of the Processing by the Service Provider, the duration of the Processing and the types of Personal Data and categories of Data Subject; |
|  |
| **"Data Subject Request"** | means an actual or purported request or notice or complaint from or on behalf of a Data Subject exercising his rights under the Data Protection Legislation in relation to Personal Data including: the right of access by the Data Subject, the right to rectification, the right to erasure, the right to restriction of Processing, the right to data portability and the right to object; |
| **"EU GDPR"** | means the General Data Protection Regulation (EU) 2016/679; |
| **"ICO"** | means the UK Information Commissioner's Office, or any successor or replacement body from time to time;  |
| **"ICO Correspondence"** | means any correspondence or communication (whether written or verbal) from the ICO in relation to the Processing of Personal Data;  |
| **“LED”** | means the Law Enforcement Directive (Directive (EU) 2016/680); |
| **"Permitted Purpose"** | means the purpose of the Processing as specified in the Data Processing Particulars and (as appropriate) the Processing of Personal Data strictly for the purposes of, and in accordance with, this agreement;  |
| **"Personal Data Breach"** | has the meaning set out in the Data Protection Legislation; |
| **"Personal Data Breach Particulars"** | means the information that must be included in a Personal Data Breach notification, as set out in Article 33(3) of the UK GDPR; |
| **"Processing"** | has the meaning set out in the Data Protection Legislation (and "Process" and "Processed" shall be construed accordingly); |
| **“Privacy Policy”** | means the privacy policy provided to the Service Provider for the purposes of the DDRT Platform as stipulated by the Authority from time to time;  |
| **“Regulator”** | means the ICO or an equivalent body in another country, territory or jurisdiction; |
| **“SCC”** | means the EU model contractual clauses (controller to controller transfers) as set out in Decision 2004/915/EC and (controller to processor transfers) as set out in Decision 2010/87/EU (or, at the Authority’s option, any alternative version of those clauses issued by the European Commission or a Regulator from time to time); |

1. **Privacy Policy**
2. The Service Provider shall promptly comply with any instructions received from the Authority to display or otherwise make available the Privacy Policy via the DDRT Platform. Such instructions may include implementing a reasonable process to certify that the Data Subject has acknowledged its terms.
3. Without prejudice to the generality of paragraph 3.1.4, the Service Provider shall Process all DDRT Platform Data in accordance with the Privacy Policy.
4. The Service Provider shall not amend the Privacy Policy without the Authority’s prior written consent.
5. The Service Provider shall promptly comply with all reasonable instructions of the Authority in connection with the Privacy Policy including making this available to any applicable Data Subjects.
6. The Service Provider is solely responsible for ensuring that the Processing of DDRT Platform Data complies with Data Protection Legislation, and in particular, that all required fair Processing information is provided to the relevant Data Subjects.
7. In the event of any inconsistency or conflict between the terms of the Privacy Policy and this agreement, this agreement will take precedence.
8. **Data Protection**
9. Arrangements between the Parties
	* 1. The parties shall each Process the DDRT Platform Data. The Parties acknowledge that the arrangements between them in relation to this agreement dictate the classification of each party in respect of the Data Protection Legislation. Notwithstanding this, the parties anticipate that, in respect of the DDRT Platform Data, as between the Authority and the Service Provider for the purposes of this agreement and the Data Protection Legislation:
			1. the Service Provider shall Process the DDRT Platform Data set out in Appendix 1 as a Processor on behalf of the Authority; and
			2. the Service Provider shall act as the Controller of the DDRT Platform Data set out in Appendix 2.
		2. Should the determination in paragraph 3.1.1 change then the parties shall work together in good faith to make any changes which are necessary to this paragraph 3 or the related Appendices.
		3. Both parties will comply with all applicable requirements of Data Protection Legislation. This clause 3 is in addition to, and does not relieve, remove or replace a party’s obligations or rights under Data Protection Legislation.
		4. The Service Provider undertakes to the Authority that it will take all necessary steps to ensure that it operates at all times in accordance with the requirements of the Data Protection Legislation and the Service Provider will, at its own expense, assist the Authority in discharging its obligations under the Data Protection Legislation as more particularly detailed in this Annexure 7. The Service Provider shall not, whether by act or omission, cause the Authority to breach any of its obligations under the Data Protection Legislation.

 3.2 Controller Obligations

* + 1. Each party shall comply with all the obligations imposed on a Controller under the Data Protection Legislation and shall Process the DDRT Platform Data only for the Permitted Purpose.
		2. Each party acknowledges that it shall, as Data Discloser, regularly disclose to the other DDRT Platform Data collected by it as Data Discloser for the Permitted Purpose in accordance with the terms and conditions of this Agreement.
		3. Each party shall:
			1. ensure that it has all necessary notices and consents and lawful bases in place to enable lawful transfer of the DDRT Platform Data to the other for the Permitted Purpose; and
			2. give full information to any Data Subject whose Personal Data may be Processed under this agreement of the nature of such Processing.

3.3 Service Provider Obligations

1. Without prejudice to the foregoing, the Service Provider shall:
	* + - 1. to the extent that the Service Provider Processes any DDRT Platform Data as a Processor, only Process the DDRT Platform Data for and on behalf of the Authority for the Permitted Purpose, and only in accordance with the terms of this agreement and any documented instructions from the Authority, unless the Service Provider is required by Data Protection Legislation to otherwise Process the DDRT Platform Data. Where the Service Provider is relying upon Data Protection Legislation as the basis for Processing DDRT Platform Data it shall immediately notify the Authority of this before performing the Processing required by the Data Protection Legislation, unless Data Protection Legislation prohibits the Service Provider from so notifying the Authority on important grounds of public interest;
				2. take, implement and maintain appropriate technical and organisational security measures to protect the DDRT Platform Data against accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, DDRT Platform Data Processed by it, including where appropriate:

compliance with the obligations imposed on the Service Provider by the Specification;

the pseudonymisation and encryption of the DDRT Platform Data;

the ability to ensure ongoing confidentiality, integrity, availability and resilience of Processing systems and services;

the ability to restore the availability and access to the DDRT Platform Data in a timely manner in the event of a physical or technical incident; and

regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the Processing.

In assessing the appropriate level of security, the Service Provider shall take into account the risks that are presented by the Processing, in particular from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, DDRT Platform Data transmitted, stored or otherwise Processed. In doing so, the Service Provider shall also consider the nature and the volume of the data to be protected, the harm that might result, the state of technological development concerning security measures available and the cost of implementing any measures. The Authority may request a written description of the technical and organisational methods employed by the Service Provider pursuant to this paragraph 3.3.1(b) and the Service Provider shall supply the written particulars within no more than ten (10) Working Days of the Authority’s request.

* + - * 1. promptly comply with any request from the Authority to amend, transfer or delete any DDRT Platform Data on termination or expiry of this agreement, and certify to the Authority in writing it has done so, unless the Service Provider is required by Data Protection Legislation to continue to Process any DDRT Platform Data, in which case the Service Provider shall promptly notify the Authority, in writing, of what that Data Protection Legislation is and shall only be permitted to Process that DDRT Platform Data for the specific purpose so-notified. All other requirements set out in this paragraph 3 shall continue to apply to such DDRT Platform Data notwithstanding the termination or expiry of this agreement for as long as such DDRT Platform Data is Processed by the Service Provider. For the purposes of this paragraph 3.3.1(c) the obligation to "delete" DDRT Platform Data includes the obligation to delete data from back-up systems as well as live systems;
				2. immediately inform the Authority if, in the opinion of the Service Provider, the instructions of the Authority infringe Data Protection Legislation;
				3. notify the Authority promptly (and in any event within twenty-four (24) hours) following its receipt of any Data Subject Request or ICO Correspondence and shall:

not disclose any DDRT Platform Data in response to any Data Subject Request or ICO Correspondence without first consulting with and obtaining the Authority’s prior written consent; and

at the Service Provider’s expense provide the Authority with all reasonable co-operation and assistance required by the Authority in relation to any such Data Subject Request or ICO Correspondence to enable it to meet its obligations under the Data Protection Legislation;

* + - * 1. notify the Authority promptly (and in any event within twenty-four (24) hours) upon becoming aware of any actual Personal Data Breach and upon suspecting the same, the Service Provider shall conduct an initial assessment to determine with a reasonable degree of certainty whether the event or incident qualifies for notification to the Authority under this paragraph 3.3.1(f) and shall provide a copy of the initial assessment along with such notification. The Service Provider shall also:

conduct or support the Authority in conducting such investigations and analysis that the Authority reasonably requires in respect of such Personal Data Breach;

implement any actions or remedial measures necessary to restore the security of compromised Personal Data;

assist the Authority to make any notifications to the ICO and affected Data Subjects, in particular, in providing the Personal Data Breach Particulars;

provide any other reasonable assistance to the Authority that it requires to enable it to meet its obligations under the Data Protection Legislation; and

fully comply with any Data Breach Policy as stipulated by the Authority from time to time.

to the extent that the Service Provider Processes any DDRT Platform Data as a Processor, comply with the obligations imposed upon a Processor under the Data Protection Legislation; and

not make (or instruct a third party to make) a transfer of any DDRT Platform Data outside the United Kingdom except without the prior written consent of the Authority and in accordance with any terms the Authority may impose on such transfer as it deems necessary to satisfy the requirements of the Data Protection Legislation. This includes, but is not limited to, the Service Provider ensuring the following conditions are fulfilled prior to any transfer of DDRT Platform Data to which the Authority has provided its written consent:

the transfer is to a country approved under the applicable Data Protection Legislation as providing adequate protection; the Service Provider has provided appropriate safeguards in relation to the transfer (whether in accordance with Art 46 UK GDPR or Art 37 LED (if appropriate) or the Service Provider otherwise complies with its obligations under the applicable Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred); or one of the derogations for specific situations in the applicable Data Protection Legislation applies to the transfer;

the Data Subject has enforceable rights and effective legal remedies; and

the Service Provider shall retain DDRT Platform Data only for as long as necessary to serve the Permitted Purpose or as may be required by Data Protection Legislation.

3.3.2 If any transfer of DDRT Platform Data between the Authority and the Service Provider requires execution of a SCC in order to comply with Data Protection Legislation (where the Authority is the entity exporting DDRT Platform Data to the Service Provider), the Service Provider shall complete and execute the relevant SCC and take all other actions required to legitimise the transfer.

3.3.3 Without prejudice to any other obligations of the Service Provider or any other rights or remedies of the Authority under this agreement and/or Data Protection Legislation, the Service Provider shall in accordance with good industry practice, assist the Authority to comply with the obligations imposed on the Authority by the Data Protection Legislation in relation to the Services, including:

obligations relating to notifications required by the Data Protection Legislation to the ICO and/ or any relevant Data Subjects;

assisting the Authority regarding any Data Protection Impact Assessments of any aspect of Processing as the DDRT Platform is rolled out and evolves.

3.3.4 The Service Provider shall not, without the prior written consent of the Authority (and in any event subject to the Service Provider providing the Authority with reasonable evidence that such activity is being undertaken in full compliance with Data Protection Legislation):

appoint or replace (or change the terms of the appointment of) any other sub-processor in relation to DDRT Platform Data or transfer any DDRT Platform Data to the same; or

carry out, via itself or via any other sub-processor, any Processing of DDRT Platform Data, or transfer of DDRT Platform Data on equipment situated outside of the UK.

3.3.5 If the Authority consents to the appoint or replacement of any sub-processor pursuant to paragraph 3.3.4(a), the Service Provider shall:

* 1. ensure that the sub-processor is employed under the Authority’s written authorisation and the Service Provider shall inform the Authority of any intended changes to give the Authority the chance to object to the same; and
	2. if the Service Provider employs a sub-processor it must ensure that a written contract is entered into with the sub-processor which provides as a minimum the obligations set out in clause 19 and this Annexure 7.

3.3.6 Notwithstanding any written consent given by the Authority under paragraph 3.3.4, the Service Provider shall remain primarily liable for the acts, errors and omissions of any other Processor and/or sub-processor to whom it discloses DDRT Platform Data and shall be responsible to the Authority for the acts, errors or omissions of such other Processor and/or sub-processor (as appropriate) as if they were the Service Provider’s own acts, errors or omissions to the same extent that the Service Provider would be liable to the Authority under this agreement.

1. The Service Provider shall ensure that access to DDRT Platform Data is limited to those of the Service Provider’s Personnel who need access to DDRT Platform Data to meet the Service Provider’s obligations under this agreement and shall ensure that each member of the Service Provider’s Personnel who has access to DDRT Platform Data:

4.1 is informed of the confidential nature of DDRT Platform Data and does not publish, disclose or divulge any of the DDRT Platform Data to any third party unless directed in writing to do so by the Authority;

4.2 only uses DDRT Platform Data to the extent strictly necessary for the performance of that individual’s duties;

 4.3 is aware of the Service Provider’s obligations with regard to DDRT Platform Data under this agreement;

 4.4 is trained in all relevant procedures and guidelines with regard to the Processing of DDRT Platform Data.

1. The Authority may at any time on not less than twenty (20) Working Days' notice amend this Annexure 7 and any SCC in place by replacing them (in whole or part) with any applicable standard clauses approved by the ICO or another Regulator forming part of an applicable certification scheme or code of conduct (“Amended Terms”). Such Amended Terms shall apply when replaced by attachment to this agreement, but only in respect of such matters which are within the scope of the Amended Terms.
2. Except as otherwise provided, this agreement does not transfer ownership of, or create any licences (implied or otherwise) in, any Intellectual Property Rights in any DDRT Platform Data.
3. **Indemnity**
4. The Service Provider shall indemnify on demand and keep indemnified the Authority from and against any and all Losses arising from any claim or demand brought by any person, Data Subject, Commissioner or supervisory authority as a result of any breach or alleged breach by the Service Provider of any Data Protection Legislation or its obligations under this agreement. This indemnity shall not be subject to any limits or exclusions of liability that may otherwise apply, or be imposed, under this agreement.
5. Nothing in this agreement shall operate to exclude, limit or restrict the Service Provider's liability for:
6. any of its direct statutory obligations under the Data Protection Legislation; or
	* 1. any liability imposed under Art 82 UK GDPR.
		2. Notwithstanding anything in this agreement to the contrary, this Annexure 7 shall continue in full force and effect for so long as the Service Provider Processes any relevant DDRT Platform Data. The parties shall retain DDRT Platform Data only for as long as necessary to serve the purposes of Processing or as may be required by Data Protection Legislation.

**APPENDIX 1 - DATA PROTECTION PARTICULARS**

|  |  |
| --- | --- |
| Subject matter of the Processing |  |
| Duration of the Processing |  |
| The location of the Processing |  |
| The nature and purpose of the Processing |  |
| The type of Personal Data being Processed |  |
| The categories of Data Subjects |  |

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**APPENDIX 2 – SERVICE PROVIDER AS CONTROLLER**