

AGREEMENT FOR PROVISION OF CAR CLUB VEHICLES

PARTIES:

- 1) Plymouth City Council, an elected administrative body for Plymouth whose registered office address is Ballard House, Plymouth, Devon, PL1 3BJ, ("PCC");
- 2) [INSERT], (the "Car Club Operator"); and
- 3) [INSERT] (the "EV Charging Operator")

(each a "party" and together the "parties" unless the context otherwise includes the Landlord)

BACKGROUND

- A) PCC has entered into grant funding agreement(s) with its Funder(s) ("Funding Agreement") under which PCC is entitled to receive funding to procure the delivery of up to 40 Mobility Hubs within Plymouth. Each Mobility Hub will include a car share scheme.
- B) PCC has engaged the EV Charging Operator under a concession agreement to provide electric vehicle charge points and work together with operators providing other mobility services, including Car Club Vehicles and a car club at the Mobility Hubs.
- C) PCC wishes to engage the Car Club Operator, and the Car Club Operator wishes to supply, operate and maintain car club vehicles at a number of selected sites which form part of the PCC Mobility Hubs portfolio of properties ("Selected Sites").
- D) The Car Club Operator shall enter into a lease or licence with the Landlord for each Selected Site in respect of the area required for the car club parking bays.
- E) This Agreement sets out the legally binding terms under which the Car Club Operator will supply, operate and maintain car club schemes as part of the Mobility Hubs.

1 Definitions:

The following definitions apply in this Agreement:

Affected Party	has the meaning given to it under clause 21.1 of the Agreement.
Agreed Purposes	the performance by each party of its obligations under the Agreement and in the case of PCC, its Funding Agreement(s), and the promotion of the products and services that form the subject of this Agreement.
Agreement	the terms and Schedules set out in this agreement.
Agreement Term	the period commencing on the Commencement Date and ending on the earlier of the date when this Agreement is terminated or 4 years after the Commencement Date, subject to any extension agreed by the parties in accordance with clause 3.2.
App	the mobile application which Users access to book the use of a Car Club Vehicle.
Background IPR	all Intellectual Property Rights in and to information, data, techniques, know-how, inventions, discoveries, software, designs, models, databases and materials (regardless of the form or medium in which they are disclosed or stored) which are provided by one party (whether belonging to that party or to a third party) to the other party for use pursuant to this

	Agreement, and whether before or after the date of this Agreement, except any Foreground IPR.
Business Day	a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business
Business Hours	the times between 8:30am – 6pm (inclusive) on a Business Day.
Car Club	the scheme operated by the Car Club Operator which allows Users to hire a Car Club Vehicle for an agreed period.
Car Club Vehicle	a fully electric vehicle provided by the Car Club Operator to Mobility Hubs for Users.
Change of Control	means if a person or body which Controls any body corporate ceases to do so or if another person acquires Control of it, " Control " having the meaning given to it under Section 450 of the Corporation Tax Act 2010.
Charge Point	an EV charge point unit located within a Mobility Hub.
Commencement Date	the date that this Agreement has been signed by all parties.
Concession Agreement	the agreement entered into between PCC and the EV Charging Operator in respect of the Mobility Hubs dated on or around the date of this Agreement.
Confidential Information	all information or data (whether oral, visual or recorded in writing, in any other medium or by any other method) obtained by or disclosed to one party pursuant to or in connection with this Agreement (including, without limitation, any information relating to a party's operations, processes, services, materials, data, plans, ideas, intentions, proposals, market opportunities, terms of business, research, know-how, design rights, trade secrets, software, finances, customers, employees, students and business affairs or a party's or other party's Intellectual Property Rights).
Data Discloser	a party that discloses Shared Personal Data to the other party.
Data Protection Legislation	the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications); and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party.
Dedicated Charge Point	one of the designated EV charge points within or next to a Dedicated Charging Bay.
Dedicated Charging Bay	one of the designated EV charging bays within the Selected Sites allocated for the use of Car Club Vehicles, which will be marked on the ground as 'Car Club Only' so they can be identified by Users

E-Bike Share Operator	the operator responsible for providing the E-Bike sharing services at each Mobility Hub.
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.
Fault	<p>in respect of any Car Club Vehicle means any fault, breakdown, malfunction, loss, destruction, damage or other occurrence which results in a Car Club Vehicle or a part of it) no longer being in good repair or good working order, including circumstances in which:</p> <ul style="list-style-type: none"> (a) the relevant fault etc. constitutes or arises from any breach of the Agreement Services, standards and requirements; (b) the relevant fault etc. arises from a relevant part of a Charging Station or Charge Point wearing out; or (c) the relevant fault etc. arises from any misuse or damage by a User or other third party or from any other force majeure event.
FOIA	the Freedom of Information Act 2000 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 Event	<p>any circumstance not within a party's reasonable control or ability to avoid, including, <i>without limitation</i>:</p> <ul style="list-style-type: none"> (a) acts of God, flood, drought, earthquake or other natural disaster; (b) epidemic or pandemic; (c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations; (d) nuclear, chemical or biological contamination or sonic boom; (e) any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent (where such failure or action is not directly caused by any wrongful action, omission or delay by the party seeking to rely on a Force Majeure Event pursuant to clause 21);

- (f) collapse of buildings, fire, explosion or accident;
- (g) any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the party or employees of the party seeking to rely on this clause, or companies in the same group as the party seeking to rely on a Force Majeure Event pursuant to clause 21;
- (h) interruption or failure of utility service.

Foreground IPR

all Intellectual Property Rights in and to all information, data, techniques, know-how, results, inventions, discoveries, software, designs, databases, models and materials (regardless of the form or medium in which they are disclosed or stored) identified, created, discovered, developed or which arise in the course of and pursuant to the Agreement.

Funder(s)

the Department of Transport's Transforming Cities Fund who are providing funding to PCC pursuant to the Funding Agreement(s).

Good Industry Practice

the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company/service Car Club Operator within the relevant industry as the Car Club Operator.

Insolvency Event

A party suffers an Insolvency Event if:

- a. it 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 is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the IA 1986;
- b. it 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 any of its creditors other than for the sole purpose of a scheme for a solvent amalgamation with one or more other companies or a solvent reconstruction;
- c. a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with its winding up other than for the sole purpose of a scheme for a solvent amalgamation with one or more other companies or a solvent reconstruction;
- d. an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or an administrator is appointed, over it;
- e. the holder of a qualifying floating charge over its assets has become entitled to appoint or has appointed an administrative receiver;

- f. a person becomes entitled to appoint a receiver over all or any of its assets or a receiver is appointed over all or any of its assets;
- g. a creditor or encumbrancer of it 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 its assets and such attachment or process is not discharged within 14 days;
- h. any event occurs, or proceeding is taken, with respect to it 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); or
- i. it suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

Intellectual Property Rights

patents, rights to inventions, trademarks, service marks, registered designs, copyrights and related rights, database rights, design rights, rights to use and protect confidential information, in each case whether registered or unregistered, including rights to apply for and be granted applications for any of the above and any continuations, continuations-in-part, divisional applications, renewals or extensions of, and rights to claim priority from, those rights, and any similar right recognised from time to time in any jurisdiction, together with all rights of action in relation to the infringement of any of the above.

Journey Planner/MAAS App

a mobile application which will enable people to plan routes across a range of transport services and providers.

Journey Planner/MAAS App Operator

the person providing and operating the Journey Planner/MAAS App.

Journey Planner/MAAS App Platform

the software platform sitting behind the Journey Planner/MAAS App.

KPIs

the key performance indicators set out in Schedule 2.

Lease

a lease or if appropriate, a licence granted by the Landlord to the Car Club Operator in respect of a particular Selected Site, as amended from time to time, in order to enable the Car Club Operator to perform its obligations under this Agreement.

Lease Commencement Date

in respect of the Lease for a particular Selected Site, the date when the Lease for that Selected Site comes into force.

Landlord

PCC or other third-party landlord;

Management System

the management reporting system as described in Schedule 3.

Mobility Hub

a multi-modal mobility/journey hub designed to offer a variety of transport modes and provide connectivity to public transport networks.

Operation and Maintenance Services

those Services listed as operation and maintenance services in Schedule 1.

Permitted Recipients	the parties to this Agreement, the employees of each party, any third parties engaged to perform obligations in connection with this Agreement, the Funder and the Landlord.
Permitted Sponsorship	the sponsorship shown on the Car Club Vehicles which shall be approved by PCC in advance, acting reasonably.
Plymouth Policy Area	the administrative area controlled by Plymouth City Council along with Plymouth's urban fringe (https://www.plymouth.gov.uk/sites/default/files/PoliciesMapPPA.pdf).
Proposal	the proposal for the Services put forward by the Car Club Operator as part of its tender application to be awarded this Agreement.
Quarter Day	each of 1 January, 1 April, 1 July and 1 October.
Quarterly Report	the report to be provided in accordance with clause 22.
Shared Personal Data	<p>the personal data to be shared between the parties under this Agreement. Shared Personal Data shall include but not be confined to the following categories of information:</p> <ol style="list-style-type: none"> utilisation of each Charge Point and Charging Stations by any person; information in respect of payments made in respect of User Charging Services (anonymised where possible); names and job positions of personnel, employees or agents of the Car Club Operator who attend or are required to provide operation, maintenance or customer service obligations under the Agreement; and addresses and postcode areas of Users.
Selected Site	a particular site listed in Schedule 4, as amended from time to time in accordance with clause 3.4, which is within the PCC Mobility Hubs site portfolio and at which the Car Club Operator is required to provide car club vehicles under this Agreement (and all sites listed in Schedule 4 shall together be the " Selected Sites ").
Tenant	for any Selected Site (where applicable) any third-party tenant of the Landlord which operates the relevant site, property or premises on or at that Selected Site under the terms of a lease granted by the relevant Landlord.
UK Data Protection Legislation	all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation (EU) 2016/679; the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.
User	means a person who uses or (as the context requires) wishes to use a Car Club Vehicle and/or a Dedicated Charge Point for the purposes of charging a Car Club Vehicle.

User Charging Services services by which a User is allowed to use and draw electricity from a Charge Point for the purposes of charging a Car Club Vehicle.

Website the Car Club Operator's website for the Car Club

2 Interpretation

- 2.1 Unless otherwise expressly stated, the rules of interpretation set out in this clause 2 apply in this Agreement.
- 2.2 The contents page, headings and sub-headings in this Agreement are for ease of reference only and do not affect the meaning of Agreement.
- 2.3 Words in the singular include the plural and vice versa.
- 2.4 References to one gender include all genders.
- 2.5 Any words following the terms "include" and "including" or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.
- 2.6 General words do not have a restrictive meaning because they are preceded or followed by specific words indicating a particular type, class or category.
- 2.7 A reference to a person includes an individual, firm, partnership, company, association, organisation or trust (in each case whether or not having a separate legal personality).
- 2.8 A reference to a company includes any company, corporation or any other body corporate (wherever incorporated).
- 2.9 A reference to a clause, paragraph or Schedule is to a clause or paragraph of or schedule to this Agreement and a reference to this Agreement includes its Schedules and appendices.
- 2.10 A reference to legislation is a reference to all legislation having effect in the United Kingdom from time to time, including:
- (a) directives, decisions and regulations of the Council or Commission of the European Union (where this remains applicable to the law of the United Kingdom);
 - (b) Acts of Parliament;
 - (c) orders, regulations, consents, licences, notices and bye laws made or granted:
 - (i) under any Act of Parliament; or
 - (ii) under any directive, decision or regulation of the Council or Commission of the European Union; or
 - (iii) by a local authority or by a court of competent jurisdiction; and
 - (d) any mandatory codes of practice issued by a statutory body.
- 2.11 A reference to particular legislation is a reference to that legislation as amended, modified, consolidated, re-enacted or replaced from time to time and to all subordinate legislation made under it from time to time.
- 2.12 Obligations owed by or to more than one person are owed by or to them jointly and severally.

- 2.13 An obligation of any party not to do something includes an obligation not to cause or allow that thing to be done.
- 2.14 A reference to the consent or approval means the prior consent in writing of the relevant party, signed by or on behalf of the relevant party.
- 2.15 A reference to property includes any part or parts of that property.

3 Commencement and Term

- 3.1 This Agreement shall commence on Commencement Date and shall continue until the earlier of:
- (a) the termination or expiry of each and every Lease (whether such Leases come into force before, on or after the Commencement Date) that the Car Club Operator has entered into with a Landlord in respect of the Selected Sites; and
 - (b) the end of a period 4 years from the Commencement Date, or such extended period in accordance with clause 3.2 below ("**Term**").
- 3.2 Before the end of the fourth year of the Term, PCC may, at its sole discretion, offer to extend the Agreement Term by a further period of up to 3 years.
- 3.3 The Car Club Operator's rights and obligations under this Agreement in respect of each Selected Site shall commence upon the Lease Commencement Date and shall continue until the earlier of:
- (a) the expiry or earlier termination of the relevant Lease; and
 - (b) termination of the application of the Agreement to the relevant Selected Site in accordance with the terms of this Agreement.
- 3.4 The parties may agree, in writing, to vary the Selected Sites (including, for the avoidance of doubt, adding to, removing or substituting the sites comprising the Selected Sites). In the event that the parties agree to remove a particular site from the Selected Sites, the terms of this Agreement shall cease to apply to that particular site from the date agreed by the parties.

4 Mobilisation Period

- 4.1 The parties acknowledge and agree that the Car Club Operator is not expected to be able to provide the Car Club Vehicles on the Commencement Date and that the detail of the Services, including, for example, the Mobilisation Timetable, will be agreed during the Mobilisation Period.
- 4.2 The Car Club Operator will arrange and attend a meeting to discuss the Services within 2 weeks of the Commencement Date. At this meeting the Car Club Operator will present its proposed programme for the roll out of the Car Club Vehicles.
- 4.3 The parties will use all reasonable endeavours to agree the Mobilisation Timetable within 10 weeks of the Commencement Date. The parties will act reasonably and in good faith when discussing and seeking to reach agreement on the Mobilisation Timetable and any modification to this which may become necessary from time to time and, in particular, will not unreasonably withhold or delay its approval of proposals made by another party for these purposes.
- 4.4 During the Mobilisation Period and in accordance with the timescales set out in the Mobilisation Timetable the Car Club Operator will:
- (a) order the agreed number of Car Club Vehicles;

- (b) design and implement the Management System;
- (c) design and test all aspects of the Car Club;
- (d) finalise and agree the KPIs with PCC and the EV Charging Operator;
- (e) develop a marketing plan and commence marketing of the Scheme;
- (f) arrange and carry out a trial of the Car Club;
- (g) agree with PCC and the EV Charging Operator the locations of the Dedicated Charge Points;
- (h) agree with PCC the cleaning schedule for the Car Club Vehicles;
- (i) undertake public consultation events;
- (j) develop and launch the Website and the App;
- (k) complete testing, which shall include but shall not be limited to:
 - (i) registration of Users;
 - (ii) facilitation of payments;
 - (iii) the App and the Website, including the booking system;
 - (iv) logging of maintenance issues;
 - (v) automated time to execute tests for each webpage and the App;
 - (vi) user testing to understand narrative flow to ensure Website and App usability;
 - (vii) testing of transaction systems to ensure smooth payment operations.

5 Provision of Car Club Vehicles

- 5.1 The Car Club Operator will provide, operate and maintain the Car Club, including but not limited to undertaking front and back office administration at no cost to PCC.
- 5.2 The Car Club Operator will provide Car Club Vehicles for use as part of the Mobility Hubs. The Car Club Vehicles will be rolled out in phases, with up to 10 in the first phase, as shall be agreed in the Mobilisation Timetable.
- 5.3 For the avoidance of doubt, all Car Club Vehicles are, unless otherwise specifically agreed in writing by PCC to the contrary, to be of a type that is consistent and compliant with the particular requirements required by PCC, including as set out in:
 - (a) the Proposal;
 - (b) the Car Club Vehicle Specification at Schedule 2; and
 - (c) the Mobilisation Timetable.

6 Electricity Supply and Dedicated Charging Bays

- 6.1 The EV Charging Operator shall be responsible for the provision of Dedicated Charging Bays and Dedicated Charge Points in accordance with the Specification.
- 6.2 In respect of each Selected Site during the relevant Selected Site Term, the EV Charging Operator shall be responsible (subject to clause 6.2 below) at its own cost for the purchase and maintenance of electricity required for the operation of the Mobility Hubs, which shall include electricity required for charging of the Car Club Vehicles.
- 6.3 For each Dedicated Charge Point, the EV Charging Operator shall invoice the Car Club Operator for the electricity consumed for the charging of Car Club Vehicles on a monthly basis. The tariff applicable to such consumption shall be agreed between the Car Club Operator and the EV Charging Operator and shall be no more than is charged to the public for use of the charge points at the Selected Sites.
- 6.4 To ensure the ability to grow Car Club provision over time, within one month of the end of each financial year the EV Charging Operator will provide information on the average kWh used per day of operation of all charge points at Mobility Hubs over that year and the average kWh used per day of operation of all charge points at dedicated Car Club parking bays over that year.
- 6.5 If the average kWh at the dedicated car club bays is equal to, or above the average for all charge points then the Car Club Operator can at its discretion request (subject to agreement with PCC) that additional existing charge points are dedicated to Car Club vehicles within the next six months. This does not prevent the EV Charging Operator and Car Club Operator from agreeing additional increases in the number of dedicated bays with charge points at other times, subject to agreement with PCC.

7 Availability

- 7.1 All Car Club Vehicles will be made available to the general public for use 24 hours a day, 7 days a week, 365 days a year subject to any specific site restrictions which apply to any particular Selected Site (as set out in the relevant Lease) or any specific maintenance obligations which prevent the Car Club Operator from doing so.

8 Theft and Vandalism

- 8.1 The Car Club Operator takes full responsibility for minimising and managing any issues of theft, vandalism and recovery of abandoned Car Club Vehicles.
- 8.2 The Car Club Operator shall inform PCC and the police as soon as reasonably practicable following an incident of theft, vandalism or abandonment of a Car Club Vehicle, and shall submit individual crime reports for each incident within 12 hours of being informed of the incident.
- 8.3 Where a Car Club Vehicle has been lost, stolen or damaged and is unable to be recovered the Car Club Operator shall promptly provide a replacement Car Club Vehicle so that number of Car Club Vehicles provided under this Agreement remains at the agreed minimum number.
- 8.4 Where a Car Club Vehicle has been vandalised Schedule 1 shall apply in respect of repair of such Car Club Vehicle.

9 Payment for use of Car Club Vehicles

- 9.1 The Car Club Operator shall be responsible for collecting and processing all payments from Users and bears the risk of any shortfall of lost income.

10 User Support

- 10.1 The Car Club Operator will create and maintain separate customer service lines via the App, the Website and telephone in respect of each Selected Site for both Users, PCC and the EV Charging Operator in order to address questions, or queries or deal with issues experienced with the Car Club Vehicles by Users and/or PCC and/or the EV Charging Operator as appropriate. Such service lines shall be manned by personnel during Business Hours and the Car Club Operator will provide a response to any queries raised on the service lines within at least 48 hours of receipt. The availability of the User customer service line shall be clearly marked in each Car Club Vehicle for User convenience. The PCC and EV Charging Operator service line shall be manned directly by a member of the Car Club Operator's key personnel.
- 10.2 The Car Club Operator shall be responsible for setting out a clear complaints procedure for Users, which is in line with PCC's existing complaints procedure. The Car Club Operator shall display its complaints policy on its website and on the App, to include the procedure by which Users can raise complaints and contact details of both PCC and CoMoUK which a User can contact if he/she is dissatisfied with the response of the Car Club Operator.
- 10.3 The Car Club Operator shall provide quarterly reports to PCC detailing any complaint received, the steps taken to address it and any corrective actions to prevent similar complaints.
- 10.4 The EV Charging Operator will create and maintain separate customer service lines via the App, the Website and telephone in respect of each Selected Site for both Users, PCC and the Car Club Operator in order to address questions, or queries or deal with issues experienced with the Dedicated Charge Points by Users and/or PCC and/or the Car Club Operator as appropriate. Such service lines shall be manned by personnel during Business Hours and the EV Charging Operator will provide a response to any queries raised on the service lines within at least 24 hours of receipt. The availability of the User customer service line shall be clearly marked in each Car Club Vehicle for User convenience. The PCC and Car Club Operator service line shall be manned directly by a member of the EV Charging Operator's key personnel.

11 Communications and Marketing

- 11.1 The Car Club Operator shall work in partnership with PCC to market and promote the Car Club within the Plymouth Policy Area to encourage maximum growth of the membership base and Car Club usage.

12 Requirements for the App and the Website

- 12.1 The Car Club Operator will be responsible for developing, maintaining, managing and updating the App and Website (including the online payment system), which will provide information on the Car Club and enable Users to pay for the use of a Car Club Vehicle.
- 12.2 The Car Club Operator acknowledges and agrees that PCC has ambitions to provide a mobility as a service ("MAAS") offering to enable people to plan routes across a range of transport services and providers. The Car Club Operator agrees that, when required to do so, it shall take all reasonable steps to ensure that the Car Club and the App are fully integrated with the Journey Planner and/or MAAS Platform and the Journey Planner and/or MAAS App.

13 Service Standards

- 13.1 The Car Club Operator shall provide its obligations and Services under this Agreement in respect of each Selected Site and the Car Club in accordance with Good Industry Practice and in doing so shall:
- (a) comply with all applicable laws, grid requirements, industry standards and codes;
 - (b) make good, to the reasonable satisfaction of PCC and the Landlord, any damage caused to a Selected Site in the course of the Car Club Operator carrying out any

of its rights, obligations or otherwise, in undertaking any activities under the Agreement;

- (c) perform all Services and obligations in an efficient, professional manner and with due care and utmost diligence, as promptly as is practicable and in line with any and all applicable KPI response time requirements, including in response to requests made by PCC or the EV Charging Operator under the scope of this Agreement;
- (d) take all reasonable steps to ensure a clear and consistent User experience across the various Mobility Hubs;
- (e) diligently comply with all reasonable requirements, instructions or directions communicated by PCC or the EV Charging Operator in relation to the Car Club vehicles (except only where to do so would require the Car Club Operator to materially breach the terms of this Agreement or applicable law);
- (f) demonstrate how it considers sustainability in the operation of the Car Club;
- (g) pay special regard to the needs of vulnerable road users, adjusting operation, fleet management, onboard vehicle technologies and user guidance/training to address issues and concerns should these occur;
- (h) maintain full CoMoUK accreditation throughout the Agreement Term or, where the Car Club Operator only holds provisional accreditation on the Commencement Date achieve full CoMoUK accreditation by the end of the Mobilisation Period; and
- (i) minimise disruption to PCC, the Landlord, the EV Charging Operator and occupants of any neighbouring land.

13.2 The Car Club Operator shall:

- (a) obtain and maintain in force (or where applicable, procure that others obtain and maintain) during the continuance of the Agreement Term all licences, permits and consents which are necessary for the provision of the Services and Car Club Operator's obligations under this Agreement (excepting planning permissions and section 50 Highways Licences which shall be the responsibility of PCC), achievement of the KPIs and the timetables set by the parties and shall perform its Services and obligations in accordance with the same;
- (b) ensure that, throughout the Agreement Term it has the right to perform its Services and obligations imposed on it under this Agreement;
- (c) commit and deploy sufficient resources (including materials, equipment, services, financial, administrative and personnel) in order to fulfil its Services and obligations under this Agreement promptly, effectively and in accordance with the requirements and standards required of it under this Agreement;
- (d) ensure that it co-operates at all times with all other parties engaged by or with PCC in relation to the development of the Mobility Hubs (including the Funder, Landlords, EV Charging Operator, E-Bike Share Operator, Journey Planner/MAAS App Operator and all relevant third parties) and shall perform its obligations and Services in accordance with all reasonable directions issued by PCC (and/or PCC's nominee(s)).

13.3 All Services and obligations of the Car Club Operator under this Agreement shall be undertaken by properly authorised, experienced, qualified and, where relevant, certified personnel. The Car Club Operator shall remain responsible for all acts and breaches committed by any of its personnel, agents, representative or contractors pursuant to this Agreement.

14 KPIs

- 14.1 The Car Club Operator shall meet or exceed all KPIs.
- 14.2 The Car Club Operator shall retain records, communications and documents in relation to its responses to queries, issues, performance of Services, responses to Faults and any other event for which a KPI applies during the Agreement Term, including receipt and response times, manner of communications, records of any information or documents requested and shall keep such records and materials available for review by PCC and its auditors during the Agreement Term and for a period of 2 years thereafter.
- 14.3 The Car Club Operator shall prioritise all communications, Faults and Services based on the response times and requirements specified within the KPIs or, where no urgency level has been expressly assigned to it, the Car Club Operator shall prioritise based on its reasonable assessment of the urgency level of the event or circumstances.
- 14.4 The parties may, on a case-by-case basis, agree in writing to a reasonable extension or amendment to any particular response or responses or to the severity level service credit amounts attributable to the KPIs.
- 14.5 The Car Club Operator shall, acting in good faith, provide PCC with monthly reports setting out its performance in respect of KPIs.
- 14.6 Persistent breach by the Car Club Operator of KPIs shall be considered a material breach of this contract for the purposes of Clause 26 (Suspension and Termination) of this Agreement.

15 Management Information

The Car Club Operator shall provide a Management System for the duration of this Agreement in accordance with Schedule 3.

16 PCC responsibilities

- 16.1 PCC shall:
- (a) provide dedicated parking bays for Car Club Vehicles in accordance with Schedule 4, as may be updated or amended from time to time;
 - (b) provide Car Club parking permits free of charge where required (and provided this is deemed acceptable in accordance with relevant regulatory requirements);
 - (c) ensure that Car Club dedicated parking bays are clearly marked to help prevent the use of Car Club dedicated parking bays by other vehicles;
 - (d) provide reasonable support with the marketing and promotion of the car Club to encourage maximum use of the car Club;
 - (e) provide support in progressing opportunities with private developers, potential business users and other key markets;
 - (f) provide support overseeing the planning and integration of different service providers and companies providing design and build services for the Mobility Hubs.

17 Data Protection

- 17.1 The Car Club Operator shall implement appropriate technical and organisational security measures designed to protect the security of any personal and other information and data collected and/or processed from Users and Car Club Vehicles.

- 17.2 The Car Club Operator will ensure that it has in place and maintains a clear and comprehensive privacy policy which has been approved by PCC. Upon PCC's approval of the Car Club Operator's privacy policy, the Car Club Operator shall make it available online for review by any Users and members of the public at all times. Such privacy policy shall set out the information collected by the Car Club Scheme, whether through the booking system or otherwise, how it is used, why it is collected, who it is shared with, how long it is retained, measures taken to ensure the information is kept safe and what rights Users have in relation to it. The Car Club Operator will comply with its privacy policy throughout the Agreement Term.
- 17.3 Each party acknowledges that one party will be a Data Discloser and will regularly disclose to the other parties Shared Personal Data collected by the Data Discloser for the Agreed Purposes.
- 17.4 Each party shall comply with all the obligations imposed on a controller under the UK Data Protection Legislation, and any material breach of the UK Data Protection Legislation by one party shall, if not remedied within 30 days of written notice from another party, give grounds to such other party to terminate its involvement in this Agreement with immediate effect. In such an event the Agreement would remain effective for the two remaining parties unless the terminating party is the Car Club Operator in which case the whole Agreement would terminate.
- 17.5 Each party shall:
- (a) ensure that it has all necessary notices and consents in place to enable lawful transfer of the Shared Personal Data to the Permitted Recipients for the Agreed Purposes;
 - (b) give full information to any data subject whose personal data may be processed under this Agreement on the nature of such processing. This includes giving notice that, on the termination of this Agreement, personal data relating to them may be retained by or, as the case may be, transferred to one or more of the Permitted Recipients, their successors and assignees;
 - (c) process the Shared Personal Data only for the Agreed Purposes;
 - (d) not disclose or allow access to the Shared Personal Data to anyone other than the Permitted Recipients;
 - (e) ensure that all Permitted Recipients are subject to written contractual obligations concerning the Shared Personal Data (including obligations of confidentiality) which are no less onerous than those imposed by this Agreement;
 - (f) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the other parties, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, including but not limited to:
 - (i) any systems used to process personal data are fully tested and accredited by an authorised company on an annual basis;
 - (ii) any systems used have proactive monitoring in place to identify any breach proactively; and
 - (iii) there is a procedure in place to secure and supply any audit information or log files associated with any breach
 - (g) not transfer any personal data received from the Data Discloser outside the European Economic Area unless the transferor:

- (i) complies with the provisions of Articles 26 of the GDPR (in the event the third party is a joint controller); and
- (ii) ensures that:
 - (A) the transfer is to a country approved by the European Commission as providing adequate protection pursuant to Article 45 of the GDPR; or
 - (B) there are appropriate safeguards in place pursuant to Article 46 GDPR; or
 - (C) binding corporate rules are in place; or
 - (D) one of the derogations for specific situations in Article 49 GDPR applies to the transfer.

17.6 Each party shall assist the others in complying with all applicable requirements of the UK Data Protection Legislation. In particular, each party shall:

- (a) consult with the other parties about any notices given to data subjects in relation to the Shared Personal Data;
- (b) promptly inform the other parties about the receipt of any data subject access request;
- (c) provide the other parties with reasonable assistance in complying with any data subject access request;
- (d) not disclose or release any Shared Personal Data in response to a data subject access request without first consulting the other parties wherever possible;
- (e) assist another party, at the cost of such other party, in responding to any request from a data subject and in ensuring compliance with its obligations under the UK Data Protection Legislation with respect to security, personal data breach notifications, data protection impact assessments and consultations with supervisory authorities or regulators;
- (f) notify the other parties without undue delay on becoming aware of any breach of the UK Data Protection Legislation;
- (g) at the written direction of the Data Discloser, delete or return Shared Personal Data and copies thereof to the Data Discloser on termination of this Agreement unless required by law to store the personal data;
- (h) use compatible technology for the processing of Shared Personal Data to ensure that there is no lack of accuracy resulting from personal data transfers;
- (i) maintain complete and accurate records and information to demonstrate its compliance with this clause 17 and allow for audits by the other parties or the other parties' designated auditor; and
- (j) provide the other parties with contact details of at least one employee as point of contact and responsible manager for all issues arising out of the UK Data Protection Legislation, including the joint training of relevant staff, the procedures to be followed in the event of a data security breach, and the regular review of the parties' compliance with the UK Data Protection Legislation.

17.7 Each party shall indemnify the others against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit,

loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the indemnified party arising out of or in connection with the breach of the UK Data Protection Legislation by the indemnifying party, its employees or agents, provided that the indemnified party gives to the indemnifier prompt notice of such claim, full information about the circumstances giving rise to it, reasonable assistance in dealing with the claim and sole authority to manage, defend and/or settle it.

18 Provision of information

- 18.1 PCC and the EV Charging Operator will provide such information and other co-operation as the Car Club Operator may reasonably request for the purposes of complying with its obligations under this Agreement. This includes information relating to access details and key points of contact. However, it would not be considered reasonable for these purposes for the Car Club Operator to request that PCC or the EV Charging Operator do anything that would require PCC or the EV Charging Operator to incur any external cost (including the cost of engaging any contractor or consultant) unless the Car Club Operator agrees to reimburse such costs.

19 Payments

- 19.1 No fees or charges will be payable by PCC or the EV Charging Operator to the Car Club Operator unless expressly set out under this Agreement or otherwise separately agreed in writing by the parties.
- 19.2 The Car Club Operator shall be entitled to generate revenue from sponsorship shown on the Car Club Vehicles by way of the provision of Permitted Sponsorship in accordance with the obligations and restrictions under this Agreement.
- 19.3 For the avoidance of doubt, the Car Club Operator shall be entitled to all revenue generated by the Car Club Vehicles and there will be no ongoing financial contribution available from PCC for the provision of the Services.

20 Liability & Insurance

- 20.1 The Car Club Operator will indemnify PCC and the EV Charging Operator against any third-party claims (including User claims) arising out of or connected to the Services (including the operation, maintenance or use of any Car Club Vehicle), provided that:
- (a) the Car Club Operator shall be entitled to recover from PCC any amount paid to PCC under this indemnity to the extent that any such amounts were caused by the wilful misconduct or negligence by PCC or any of its personnel and/or any breach of this Agreement by PCC;
 - (b) the Car Club Operator shall be entitled to recover from the EV Charging Operator any amount paid to the EV Charging Operator under this indemnity to the extent that any such amounts were caused by the wilful misconduct or negligence by the EV Charging Operator or any of its personnel and/or any breach of this Agreement by the EV Charging Operator; and
 - (c) the Car Club Operator will have the right to take over the conduct of any third-party claim of this kind, subject to obtaining prior approval from PCC or the EV Charging Operator (not to be unreasonably withheld or delayed) before agreeing any settlement.
- 20.2 No party (the "defaulting party") will be liable for any indirect or consequential economic loss or loss of business, revenue or opportunity which another party suffers as a result of any negligence or breach by the defaulting party.

- 20.3 Where a party suffers loss (other than loss excluded by clause 20.2) as a result of any negligence or breach by another party (the defaulting party), the defaulting party's liability for that loss will be limited as follows:
- (a) where the Car Club Operator is the defaulting party, no limitation will apply in respect of its liability to indemnify PCC or the EV Charging Operator in respect of any third party claim as referred to in paragraph 20.1;
 - (b) for loss in respect of physical damage to property, liability will be limited to £5 million per occurrence or series of related occurrences;
 - (c) for any other loss, liability will be limited to £5 million per occurrence or series of related occurrences.
- 20.4 The Car Club Operator will be required to maintain appropriate insurance policies as follows:
- (a) public liability insurance with a level of cover not less than £5 million per occurrence;
 - (b) employers' liability insurance with a level of cover not less than £5 million per occurrence;
 - (c) professional indemnity insurance with a level of cover not less than £2 million per occurrence and in the aggregate.
- 20.5 To the extent that any insurance policy premium of the Landlord, or PCC is, as a result of the operation of the Car Club, increased by the relevant insurance Operator, the Car Club Operator shall be responsible to pay PCC the additional cost increase to such insurance policy or policies.
- 20.6 Nothing in this Agreement is intended to limit or exclude a party's liability in respect of:
- (a) death or personal injury;
 - (b) fraud or fraudulent misstatement;
 - (c) anything which by law cannot be limited or excluded.

21 Force Majeure

- 21.1 Subject to clause 21.4 and provided it has complied with 21.2, if a party ("**Affected Party**") is prevented, hindered or delayed from performing any of its obligations under this Agreement by a Force Majeure Event the Affected Party shall not be in breach of this Agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.
- 21.2 The Affected Party shall:
- (a) as soon as reasonably practicable after the start of the Force Majeure Event but no later than 2 days from its start, notify the other parties in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the Agreement; and
 - (b) use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.
- 21.3 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than 12 weeks in respect of any particular Selected Sites, PCC may elect to remove the relevant site affected by the Force Majeure as a Selected

Site by giving written notice to the other parties, or where the Force Majeure event affects all Selected Sites, terminate the Agreement, by giving 2 weeks' written notice to the other parties.

21.4 The Car Club Operator warrants that:

- (a) on the Commencement Date it is aware of events which have been or continue to occur which could be construed to be a Force Majeure Event but that it has taken all reasonably practicable steps to ensure that there will be no negative effect or non-performance of the Agreement as a result of any such event; and
- (b) as such, any such event set out under sub-clause 21.4(a) which continues or return at or after the Commencement Date shall not be considered to be a Force Majeure Event for the purposes of this Agreement.

The parties agree that the above warranty includes and relates to, without limitation, the Coronavirus disease (also known as COVID-19) and circumstances in which the effect of Coronavirus would have the effect of preventing the Car Club Operator's ability to source resources and perform its obligations under this agreement.

21.5 For the avoidance of doubt the Car Club Operator's responsibility for responding to and fixing Faults and undertaking repairs, replacements and maintenance of the Car Club Vehicles at its own cost shall include circumstances where the need for such remedy, repair or replacement has been caused by a Force Majeure Event.

22 Meetings and Amendments

22.1 The parties shall meet within two weeks of each Quarter Day (or such other frequency of meetings required by PCC) ("**Check-in Meeting**"). To fulfil the objectives of this clause each party shall ensure that the Check-in Meeting is attended by the appropriate people in order to efficiently discuss the operation and management of the Services. The objectives of the Check-In Meeting are to:

- (a) inform PCC of any other material progress or delays;
- (b) review the Car Club Operator's performance against KPIs; and
- (c) present the latest Quarterly Report, a copy of which shall be provided to PCC one week in advance of the scheduled meeting.

22.2 The Car Club Operator shall also provide an annual report which shall be submitted to PCC within 5 Business Days of 31 March in each year which shall collate the information provided in the Quarterly Report to give annual figures and include a section on lessons learned during that year.

23 Compliance with Instructions

During the Agreement Term the Car Club Operator shall follow the reasonable guidelines and instructions issued by PCC and/or the EV Charging Operator in relation to the Services and obligations under this Agreement where such instructions or guidance are reasonably connected to the Agreement and would not cause a conflict with or breach of any applicable laws.

24 PCC's Rights of Remediation

24.1 In the event of any breach by the Car Club Operator (including a failure to comply with relevant KPIs in respect of the fixing of Faults), PCC will have the right to provide a warning notice to the Car Club Operator requiring it to remedy the breach or Faults within a reasonable timeframe (taking into account the severity of the breach and requirement for action) as specified by PCC in its warning notice. If the Car Club Operator fails to remedy such Fault within the timeframe given, PCC may:

- (a) recover from the Car Club Operator any costs reasonably incurred by PCC in taking such action, including reasonable costs incurred in engaging a third party to fix a relevant Fault, breach or perceived hazard; and
- (b) in no circumstances shall PCC be liable to the Car Club Operator for any breach of the Car Club Operator's insurance, warranties, guarantees or third-party agreements as a result of PCC taking such action.

24.2 Where PCC wishes to exercise rights referred to above, the Car Club Operator will provide such reasonable support as PCC may request for these purposes.

25 Exit Strategy

25.1 The Car Club Operator shall have a clearly defined exit strategy which covers removal of Car Club Vehicles where requested by PCC ("**Exit Strategy**").

25.2 Following a request to remove the Car Club Vehicles, the Car Club Operator and PCC shall agree a timescale for removal.

25.3 The Car Club Operator shall bear all costs associated with the Exit Strategy.

25.4 For the avoidance of doubt, PCC shall hold no responsibility for any costs associated with the Exit Strategy.

26 Suspension and Termination

26.1 If PCC reasonably considers that:

- (a) the Car Club Operator has committed a material breach of this Agreement (including in respect of any one or more Car Club Vehicles or Dedicated Charge Points); and/or
- (b) there is a material risk of damage to PCC's reputation or goodwill by continuing with the Agreement,

PCC may, at its sole discretion, by giving written notice to the Car Club Operator, suspend the Car Club Operator's provision of the Services (including the Car Club Operator's operation and maintenance of the Car Club Vehicles) at the affected Dedicated Charge Points for a reasonable period of time while PCC investigates and considers the most appropriate course of action.

26.2 Without prejudice to any other rights and remedies available to any party under the Agreement:

- (a) PCC may terminate this Agreement in respect of any or all of the Selected Site(s) immediately on notice in the event that there has been a material breach of this Agreement by the Car Club Operator in relation to any of the Selected Site(s) which is not capable of remedy or, being capable of remedy, has not been remedied by the Car Club Operator within either the timeframe for remedy set by PCC under this Agreement or, where not stipulated, within twenty Business Days;
- (b) PCC may terminate this Agreement in its entirety immediately in the event that:
 - (i) there has been a material breach or breaches of this Agreement by the Car Club Operator in relation to 3 or more Selected Sites which is not capable of remedy or, being capable of remedy, has not been remedied by the Car Club Operator within either the timeframe for remedy set by PCC under this Agreement or, where not stipulated, within 20 Business Days in each case;

- (ii) subject to clause 29 the Car Club Operator assigns the benefit of this Agreement or sub-contracts the whole or part of the Car Club Operator's rights and obligations without PCC's prior written consent;
- (iii) there has been a material breach in relation to persistent failure to meet KPIs in relation to 10% or more of the total number of operational Selected Sites as determined by PCC or the Landlord acting reasonably;
- (iv) the Car Club Operator is subject to an Insolvency Event;
- (v) the Car Club Operator undergoes a Change of Control.

26.3 On termination of the Agreement (whether in relation to 1 or more Selected Sites):

- (a) the Car Club Operator shall remove its branding and equipment situated at the relevant Selected Site(s);
- (b) each party shall, as soon as possible, return to the relevant party(ies) all Confidential Information it holds with regard to such party(ies) in respect of the Agreement; and
- (c) where applicable, the Car Club Operator will provide PCC with all reasonable assistance, information and documentation required by PCC for the effective and smooth handover of the Car Club Operator's Services and obligations under the Agreement (where necessary), taking all reasonable care and skill to ensure that there is minimal disruption to PCC, the Landlord and the operation of the relevant Mobility Hub(s) or the public.

27 Intellectual Property

- 27.1 Each party shall retain ownership of the Intellectual Property Rights in its Background IPR. No licence to use any Intellectual Property Rights is granted or implied by this Agreement except the rights expressly set out in this Agreement.
- 27.2 The Car Club Operator warrants that it holds all licences, grants and rights (including Intellectual Property Rights) necessary in the Car Club Vehicles, the App and data shared under this Agreement.
- 27.3 All Foreground IPR produced by the Car Club Operator shall vest in the Car Club Operator. The Car Club Operator hereby grants a licence, or shall procure the direct grant of a licence to PCC and the EV Charging Operator, of a fully paid-up, worldwide, non-exclusive, royalty-free, perpetual and irrevocable licence to PCC and the EV Charging Operator to use and publish the Car Club Operator's Background IPR and Foreground IPR for the purposes of receiving and using the Services provided under this Agreement and in order to comply with its obligations under the Funding Agreement(s).
- 27.4 The Car Club Operator warrants that the receipt, use and onward supply or sharing of the Car Club Operator's Services, obligations and data (including any Background IPR and the Foreground IPR) by PCC or the EV Charging Operator in accordance with this Agreement shall not infringe the rights, including any Intellectual Property Rights, of any third party.
- 27.5 The Car Club Operator shall indemnify PCC and the EV Charging Operator in full against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by PCC or the EV Charging Operator arising out of, or in connection with any claim brought against PCC and the EV Charging Operator (as applicable) for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the receipt, supply or correct use of the Services, Background IPR and Foreground IPR.

28 Confidential Information

28.1 Each party (the "**Receiving Party**") will keep confidential, and will not disclose, any and all Confidential Information of another party ("**Disclosing Party**") which is disclosed to or obtained by it under or as a result of or in connection with this Agreement and will not use such Confidential Information or divulge it to any third party or employee without the Disclosing Party's prior written consent except:

- (a) in the case of disclosure by PCC:
 - (i) where it is required to be disclosed due to the statutory obligations imposed on PCC as a county council, including but not limited to those obligations imposed under FOIA and the EIRs;
 - (ii) where it is required to be disclosed to the Funder or to any other third party pursuant to the Funding Agreement; and
- (b) in the case of disclosure by any party:
 - (i) where it is required to be disclosed for the purposes of performing its obligations or pursuing its rights under this Agreement;
 - (ii) where such information was disclosed to the Receiving Party lawfully and without restriction as to its disclosure by a third party who did not obtain it (whether directly or indirectly) from the Disclosing Party and did not breach any confidentiality obligations by making such disclosure;
 - (iii) where such information was in the public domain at the time the Receiving Party received it or has subsequently entered the public domain other than because of a breach of this clause 28 or of any obligation of confidentiality owed by the Receiving Party or by any of its employees or agents to the Disclosing Party; or
 - (iv) where it is required to be disclosed by the applicable laws or by order or regulation of a court or regulatory body of competent jurisdiction.

28.2 The Receiving Party must ensure that its employees, officers and agents and any relevant third parties to whom it discloses Confidential Information in accordance with clause 28.1 are aware of the confidential nature of the Confidential Information and comply with the provisions of this clause 28 as if they were the Receiving Party under this clause.

28.3 Any information disclosed orally that is identified by the Disclosing Party as or is reasonable to assume would reasonably be considered to be held as Confidential Information shall be treated as Confidential Information in the same way as if it had been reduced to writing at the time of disclosure to the Receiving Party.

28.4 The Receiving Party shall not, during a period of two (2) years after the termination or expiry of this Agreement use or disclose any such Confidential Information for any purpose other than set out under clause 28.1 or for which the Disclosing Party has expressly provided consent for in writing.

29 Assignment

29.1 No party shall assign or transfer its rights and obligations under the Agreement to any third party without the express written approval of the other parties, such approval not to be unreasonably withheld or delayed, provided that:

- (a) PCC may assign or transfer its rights and obligations under this Agreement without the prior approval of the Car Club Operator to:

- (i) its Funder; or
 - (ii) in respect of any particular Selected Site, the relevant Landlord of that Selected Site, and
- (b) the Car Club Operator shall be entitled to assign its benefit under the Agreement by way of security in favour of a funder subject to notice of this being promptly provided to PCC and the EV Charging Operator.

30 Statements and Warranties

- 30.1 The Car Club Operator warrants that it holds all the skills, knowledge and abilities necessary to carry out this Agreement in accordance with the terms included herein.
- 30.2 Each party confirms that:
- (a) it holds all the powers and faculties necessary to enter into this Agreement and to perform the obligations and fulfil its warranties hereunder; and
 - (b) it will act in accordance with all applicable laws throughout the Agreement Term.

31 Notices

- 31.1 Any notice given to a party under or in connection with this Agreement shall be given in writing and shall be delivered by hand or by pre-paid first class post or other next day delivery service.
- 31.2 Addresses for notification purposes

Any notice sent by post shall be sent to the addresses that appear as follows:

PCC

Attn: [INSERT]

Email: [INSERT]

Address: [INSERT]

EV Charging Operator

Attn: [INSERT]

Email: [INSERT]

Address: [INSERT]

CAR CLUB OPERATOR

Attn: [INSERT]

Email: [INSERT]

Address: [INSERT]

or such other address as a party has notified the other parties by notice in writing.

- 31.3 A notice will be deemed delivered and effective:

- (a) where sent by post, the second Business Day after the date on which it is sent; and

- (b) where sent by recorded delivery or courier or otherwise hand-delivered, upon the delivery confirmation; and

For the avoidance of doubt, any such date of effectiveness of any notice shall not affect the legal date of receipt or effectiveness of notices served in accordance with a legal procedure or claims process pursuant to a dispute.

32 Severability

If any part of this Agreement is found by any court or other competent authority to be invalid, unlawful or unenforceable then such part shall be severed from the remainder of this Agreement which shall continue to be valid and enforceable to the fullest extent permitted by law.

33 Costs and Expenses

Each party shall pay its own expenses (including legal costs) incurred in the preparation and execution of this Agreement.

34 Contracts (Rights of Third Parties) Act 1999

- 34.1 Subject to clause 34.2, this Agreement does not give rise to any rights under Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement unless otherwise expressly stated in this Agreement.

- 34.2 Where a Landlord is not the EV Charging Operator or PCC, each Landlord of a Selected Site shall be entitled to enforce the its relevant rights provided in respect of the relevant Selected Site as if it were a party to this Agreement.

35 Key Personnel

- 35.1 The Car Club Operator shall appoint a suitably experienced, skilled and qualified person to liaise and correspond with PCC and the EV Charging Operator in respect of the Car Clubs and this Agreement and shall immediately notify the Car Club Operator of such person, providing appropriate and direct contact details ("**Contract Manager**").
- 35.2 Where PCC and/or the EV Charging Operator reasonably believes that the Contract Manager is not suitable for the role of key personnel, whether due to their experience, failure to oversee the Services and obligations of the Car Club Operator under this Agreement or due to failure to promptly and diligently correspond, cooperate and assist PCC or the EV Charging Operator to PCC's or the EV Charging Operator's reasonable satisfaction, PCC and/or the EV charging Operator shall be entitled to require the Car Club Operator to remove such individual from their role as Contract Manager and/or their role in relation to the Car Club Operator's performance of the Agreement and to replace such individual immediately.
- 35.3 In the event that any Contract Manager ceases to be the Contract Manager, the Car Club Operator shall immediately inform PCC and the EV Charging Operator of this and notify PCC and the EV Charging Operator of any interim or permanent replacement personnel who shall take on the role of Contract Manager, providing direct contact details for such individual.

36 Entire Agreement

This Agreement constitutes the entire agreement between the parties and supersedes any agreements relating to the subject matter of this Agreement made or existing between the parties before or simultaneously with this Agreement.

37 Variation

Except as otherwise permitted by this Agreement, no change to its terms shall be effective unless it is in writing and signed by or on behalf of all parties.

38 Exclusion of Warranties

In entering into this Agreement, each party acknowledges that it does not do so on the basis of, and does not rely on, any representation, warranty or other provision except as expressly provided in this Agreement and all conditions, warranties or other terms implied by law are excluded to the fullest extent permitted by law.

39 No agency

The Car Club Operator acknowledges that it is acting as an independent contractor and not as an agent or fiduciary of PCC or the EV Charging Operator and it will not hold itself out to be acting in either such capacity and, save as otherwise expressly provided in this Agreement, shall have no authority to act on behalf of PCC and the EV Charging Operator for any purpose relating to the Agreement, shall not be entitled to enter into contractual arrangements on behalf of, or otherwise bind, PCC or the EV Charging Operator without PCC's or the EV Charging Operator's prior written consent.

40 Governing Law, Jurisdiction and Disputes

- 40.1 This Agreement and any disputes arising out of it (including non-contractual disputes or claims) shall be governed by the laws of England and Wales and each party irrevocably agrees that the courts of England and Wales 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.
- 40.2 Notwithstanding any other provision of this Agreement, the parties each have the right to refer a dispute arising under this Agreement to adjudication, and any party may at any time give to the others notice in writing of his intention to do so. Any information submitted by the referring party to the adjudicator shall be copied at the same time to the other Parties.

THIS **AGREEMENT** has been signed on the date stated at the beginning of it.

Executed by **Plymouth City Council**
acting
by
:_____

Signature

Executed by **[INSERT]** acting
by
:_____

Signature.....

Executed by **[INSERT]**
acting by
:_____

Signature

Schedule 1

Services

The Operator must provide a membership-based pay as you go round-trip EV Car Club within the Plymouth City Council (PCC) area, located at a range of Mobility Hubs.

The cars must be located in dedicated parking bays with dedicated EV infrastructure for each parking bay.

In addition to the standards required by CoMoUK accreditation the Car Club must meet the following minimum standards:

- Car Club vehicles must be available for hire 24 hours a day, seven days a week.
- Car Club members must be able to make a booking on a mobile app, or via an online booking service.
- An emergency phone line must be available 24 hours a day, seven days a week.
- All vehicles must be Battery Electric Vehicles (BEVs) with zero-emission at tailpipe.
- The Car Club Operator must work with the Council to integrate the service into the forthcoming Journey Planning app.
- The selected Car Club Operator will be responsible for matters including but not limited to the following indicative list of major responsibilities:
 - All vehicle and technology purchases, leasing, ownership, maintenance and insurance of the Car Club fleet.
 - Establishing and running a membership and booking system which will include a procedure for verifying prospective Car Club members.
 - Day to day operation and management of the Car Club.
 - Providing staff to manage the Car Club vehicles and respond to any site or vehicle-specific incidents.
 - In partnership with PCC, marketing and promoting the Car Club to encourage maximum growth of membership base, and Car Club usage.
 - Working with private developers to identify and deliver opportunities for the Car Club to address car-parking needs associated with new and existing developments
 - Actively pursuing opportunities to integrate the Car Club with wider public transport network and walking / cycling facilities.
 - Actively pursuing opportunities to integrate the Car Club with local tourism offerings including accommodation providers and tourism attractions. Exploring opportunities to develop a visitor model, looking to provide instant sign up, discounted offers with local attractions, etc.
 - Satisfying the national CoMoUK Car Club Accreditation criteria, and maintaining full accredited status throughout the contract period.
 - Providing management information to the Council for all vehicles used as part of the scheme such as vehicle utilisation and mileage.
 - All other necessary financial, accounting and legal obligations associated with the operation of the Car Club.
 - Participating in the national CoMoUK Car Club annual member and operator survey to provide information on changes in travel behaviour, i.e. reduction in car owner, increase in active travel, etc.
 - Working closely with other Operators and suppliers providing other elements of the Mobility Hubs.
- The EV Charging Operator will be responsible for:

- Providing 10 dedicated charging bays and associated charging infrastructure (minimum 22kW) for usage by the EV Car Club by 31st March 2024 for the operation of the Car Club Operator.
- Providing one of these dedicated charging bays with a rapid charger if required by the Car Club Operator.

All energy costs in respect of usage must be paid for by the Car Club Operator, with tariffs to be negotiated between both parties, at a tariff no greater than available to the general public. Siting of dedicated bays will only be provided in locations where public charging infrastructure will also be provided.

It is envisaged that 50 Mobility Hubs are fully operational by 31st December 2024 and that:

- The first batch of 10 Mobility Hubs will be operational by 31 March 2023
- The second batch 10 Mobility Hubs will be operational by 30 September 2023
- The third batch 10 Mobility Hubs will be operational by 31 March 2024
- The fourth batch 10 Mobility Hubs will be operational by 30 September 2024
- The fifth batch 10 Mobility Hubs will be operational by 31st December 2024

Beyond the initial 10 dedicated charging bays, additional provision of dedicated EV Car Club bays and infrastructure will be in accordance with Clause 6 of this Agreement.

Schedule 2

KPIs

The Car Club Operator must meet the following KPIs which will be evaluated on an annual basis:

- Car Club Vehicles must be available 24 hours a day, 7 days a week.
- Car Club Vehicles with a fault must be removed from the fleet immediately and returned to the fleet once the fault has been resolved.
- Car Club Vehicles must be cleaned on a specified routine schedule. Where a Car Club Vehicle falls below standard and is reported to PCC, PCC will notify the Car Club Operator and it must be cleaned within 48 hours.
- Fulfilment of a Car Club Vehicle fleet size as proposed in the tender.
- Growing annual utilisation rates across the network.
- Not exceeding the maximum of tendered pricing levels (to be stated in the Tender response) charged to Users for a minimum of 24 months after the Commencement Date.
- Strong and continued membership growth.
- No more than 5 complaints per quarter received by PCC regarding the Car Club from users or non-users.

Quarterly performance meetings will be held, and the performance will be scored on an annual basis. Each KPI will be scored using the following scoring guidance:

Subjective score	Rating
Excellent	5
Good	4
Acceptable	3
Poor	2
Very Poor	1

Performance against these KPIs will be monitored and used to inform a decision on provision of additional Car Club Vehicles during the Agreement Term and any extension in accordance with clause 3.2.

Schedule 3

Management Information

Regular performance data will be required in the form of:

A quarterly report on:

- Number of members (private and corporate)
- Anonymised location data for members
- Utilisation / occupancy rates of each vehicle
- Total distance travelled by each vehicle
- Average time and distance of each booking

A yearly report (which can be based on data from the CoMoUK annual member and operator survey) on:

- Average miles per member per year
- Average miles per trip
- Total distance travelled by each Car Club Vehicle
- Number of members in the last twelve months who have given up a car or deferred a car purchase
- Changes in overall travel behaviour for all journeys since joining the Car Club
- Changes in personal car mileage driven since joining the Car Club
- User satisfaction data
- Modal split of all journeys undertaken by members

and any other information reasonably requested by PCC from time to time.

PCC has ambitions to provide journey planning and mobility as a service to enable people to plan routes across a range of transport services and providers. For this to work it requires all parties in transport provision to make their data open and accessible. PCC therefore requires that all relevant data which is held and/or processed by the Car Club Operator, and any other datasets which are agreed between PCC and the Car Club Operator, be supplied by the Car Club Operator to PCC in an agreed open data format, at intervals to also be agreed, with a view to PCC publishing this data through an API, for research purposes and to encourage greater use of sustainable modes of transport.

Schedule 4

Selected Sites

Site Name and Address	Landlord	Dedicated Charge Points	Number of dedicated parking bays