DATED 2020

CASHLESS PARKING SOLUTIONS AGREEMENT

Between:

BOURNEMOUTH CHRISTCHURCH AND POOLE COUNCIL

and

Party 2

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This Agreement is dated [DATE]

Parties

(1) **BOURNEMOUTH CHRISTCHURCH AND POOLE COUNCIL** of Town Hall, Bourne Avenue, Bournemouth, BH2 6 DDY (**"Council**")

(2) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] ("**Service Provider**")

Each a "**Party**" and together the "**Parties**".

BACKGROUND

The Council placed a contract notice [REFERENCE] on [DATE] in the Official Journal of the European Union seeking expressions of interest from potential providers for the provision of cashless parking solutions.

(A) The Council has, through a competitive process, selected the Service Provider to provide these services and the Service Provider is willing and able to provide the services in accordance with the terms and conditions of this Agreement.

Agreed terms

1. Definitions and Interpretation

1.1 The following definitions and rules of interpretation in this clause apply in this Agreement.

Achieved KPI's: in respect of any Service in any measurement period, the standard of performance actually achieved by the Service Provider in the provision of that Service in the measurement period in question (calculated and expressed in the same way as the KPI for that Service is calculated and expressed in Schedule Schedule 2).

Applicable Laws: all laws, regulations, directives, statutes, subordinate legislation, common law and civil codes of any jurisdiction together with all codes of practice having force of law, statutory guidance, regulatory policy or guidance and industry codes of practice.

Authorised Representatives: the persons respectively designated as such by the Council and the Supplier, the first such persons being set out in Schedule Schedule 5.

Council Assets: any materials, plant or equipment owned or held by the Council and provided by the Council to the Service Provider for use in providing the Services as identified in Schedule 7

Council's Premises: the premises identified in Schedule 7 which are to be made available for use by the Service Provider for the provision of the Services on the terms set out in this Agreement.

Bribery Act: the Bribery Act 2010 together with any guidance or codes of practice issued by the relevant government department concerning the legislation.

Catastrophic Failure: any action by the Supplier, whether in relation to the Services and this Agreement or otherwise, which in the reasonable opinion of the Council has or may cause significant harm to the reputation of the Council;

Charges: the charges which shall become due and payable by the Council to the Service Provider in respect of the Services in accordance with the provisions of this Agreement, as such charges are set out in Schedule Schedule 4.

Commencement Date: the date of this Agreement.

Confidential Information: means all confidential information (however recorded or preserved) disclosed by a Party or its Representatives to the other Party and that Party's Representatives in connection with this Agreement, including but not limited to:

a) any information that would be regarded as confidential by a reasonable business person relating to: (i) the business, affairs, customers, suppliers or plans of the disclosing Party; and (ii) the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing Party;

b) any information developed by the Parties in the course of carrying out this Agreement;

c) Personal Data;

Consistent Failure: shall have the meaning set out in Part 0 of Schedule Schedule 2.

Contracts Finder: the government's publishing portal for public sector procurement opportunities.

Contract Year: any 12-month period starting on the Commencement Date and on each anniversary of the Commencement Date.

Controller: as defined in the Data Protection Legislation.

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 the privacy of electronic communications) and the

guidance and codes of practice issued by the relevant data protection or supervisory Council and applicable to a Party.

Data Subject: as defined in the Data Protection Legislation.

Default: any breach of the obligations of the relevant Party (including abandonment of this Agreement in breach of its terms, repudiatory breach or breach of a fundamental term) or any other default, act, omission, negligence of statement:

a) in the case of the Council, of its employees, servants, agents;

b) in the case of the Supplier, of its Sub-contractors or any Service Provider Personnel,

in connection with or in relation to this Agreement and in respect of which such Party is liable to the other.

Default Notice: is defined in clause 5.2.

Dispute Resolution Procedure: the procedure set out in clause 15.

EIR's: 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.

Extension period: shall have the meaning given to it in clause 3.1.

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: any circumstance not within a Party's reasonable control including:

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 action taken by a government or public Council, including imposing an export or import restriction, quota or prohibition;

f) collapse of buildings, fire, explosion or accident; and

g) any labour or trade dispute, strikes, industrial action or lockouts (excluding any labour or trade dispute, strike, industrial action or lockout confined to the Service Provider's workforce or the workforce of any Subcontractor of the Supplier).

Good Industry Practice: the exercise of that degree of skill, diligence, prudence, foresight and operating practice, which, at the relevant time, would reasonably and ordinarily be expected from a skilled and experienced person engaged in the same or similar business.

Health and Safety Policy: the health and safety policy of the Council as provided to the Service Provider on or before the Commencement Date and as subsequently provided to the Service Provider from time to time except any provision of any such subsequently provided policy that cannot be reasonably reconciled to ensuring compliance with Applicable Laws.

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

Initial Term: the period commencing on the Commencement Date and ending on the 3 years of anniversary of the Commencement Date.

Insolvency Event: where:

a) 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, in either case, within the meaning of section 268 of the Insolvency Act 1986;

b) 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;

c) 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 the Service Provider (being a company, limited liability partnership or partnership) 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;

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 if an administrator is appointed, over the Service Provider(being a company, partnership or limited liability partnership);

e) the holder of a qualifying floating charge over the assets of the Service Provider(being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;

f) 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 Supplier;

g) 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;

h) any event occurs, or proceeding is taken, with respect to the Service Provider 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) 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 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, 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.

KPI's: the key performance indicators set out in Schedule Schedule 2.

Law: means any legal provision the Service Provider must comply with including any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body, whether in the UK or elsewhere.

Management Reports: the reports to be prepared and presented by the Service Provider in accordance with clause 13 and Schedule Schedule 5 to include a comparison of Achieved KPI's with the Target KPI's in the measurement period in question and measures to be taken to remedy any deficiency in Achieved KPI's.

Necessary Consents: all approvals, certificates, authorisations, permissions, licences, permits, regulations and consents necessary from time to time for the performance of the Services.

Payment Plan: the plan for payment of the Charges as set out in Schedule Schedule 4.

Personal Data: as defined in the Data Protection Legislation.

Processor: as defined in the Data Protection Legislation.

Prohibited Act: the following constitute Prohibited Acts:

a) to directly or indirectly offer, promise or give any person working for or engaged by the Council a financial or other advantage as an inducement or reward for any improper performance of a relevant function of activity;

b) 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;

c) committing any offence: (i) under the Bribery Act; (ii) under legislation or common law concerning fraudulent acts; or (iii) of defrauding, attempting to defraud or conspiring to defraud the Council;

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

Remediation Notice: a notice served by the Council in accordance with clause 25.1(a).

Replacement Services: any services that are identical or substantially similar to any of the Services and which the Council receives in substitution for any of the Services following the termination or expiry of this Agreement, whether those services are provided by the Council internally or by any Replacement Supplier.

Replacement Supplier: any third party supplier of Replacement Services appointed by the Council from time to time.

Representatives: means, in relation to a Party, its employees, officers, contractors, subcontractors, representatives and advisors.

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

Services: the services to be delivered by or on behalf of the Service Provider under this Agreement, as more particularly described in Schedule Schedule 1.

Service Provider Personnel: all employees, staff, other workers, agents and consultants of the Service Provider and of any Sub-Contractors 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 Schedule Schedule 3.

Sub-Contract: any contract or Agreement, or proposed contract or Agreement, between the Service Provider and a third party pursuant to which that third party agrees to provide to the Service Provider the Services or any part of the Services.

Sub-Contractor: the third Parties that enter into a Sub-Contract with the Supplier.

Target KPI: the minimum level of performance for a KPI which is required by the Council as set out against the relevant KPI in Schedule Schedule 2.

Term: the period of the Initial Term as may be varied by:

a) any Extension Period; or

b) the earlier termination of this Agreement in accordance with its terms.

Termination Date: the date of expiry or termination of this Agreement.

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.

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

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

1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement.

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

1.4 The schedules 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 schedules.

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

1.6 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

1.7 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

1.8 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and includes any subordinate legislation for the time being in force made under it.

1.9 A reference to **writing** or **written** includes email.

1.10 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.

1.11 A reference to this Agreement or to any other Agreement or document is a reference to this Agreement or such other Agreement or document as varied from time to time.

1.12 References to clauses and schedules are to the clauses and schedules of this Agreement and references to paragraphs are to paragraphs of the relevant schedule.

1.13 Any words following the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

1.14 If there is any conflict or inconsistency between the provisions in the main body of this Agreement and the schedules, such conflict or inconsistency shall be resolved according to the following order of priority:

(a) the clauses of the Agreement;

(b) Schedule Schedule 1 to this Agreement;

(c) the remaining schedules to this Agreement other than Schedule Schedule 3;

(d) Schedule Schedule 3 to this Agreement.

Commencement and duration

2. Term

2.1 This Agreement shall take effect on the Commencement Date and shall continue for the Term.

3. Extending the initial term

3.1 The Council may extend this Agreement beyond the Initial Term by a further period or succession of consecutive periods [each to be 1 year in duration] in total not exceeding 2 years in total (each such extension together with any such extensions, being the "**Extension Period**"). If the Council wishes to extend this Agreement, it shall give the Service Provider at least 6 months' written notice of such intention before the expiry of the Initial Term or Extension Period.

3.2 If the Council gives such notice then the Term shall be extended by the period set out in the notice.

3.3 If the Council does not wish to extend this Agreement beyond the Initial Term this Agreement shall expire on the expiry of the Initial Term and the provisions of clause 28 shall apply.

4. Due diligence and Service Provider's warranty

4.1 The Service Provider acknowledges and confirms that:

(a) the Council has delivered or made available to the Service Provider all of the information and documents that the Service Provider considers necessary or relevant for the performance of its obligations under this Agreement;

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

(c) it has satisfied itself (whether by inspection or having raised all relevant due diligence questions with the Council before the Commencement Date) of all relevant details relating to the performance of its obligations under this Agreement (including the suitability of Council Premises); and

(d) it has entered into this Agreement in reliance on its own due diligence.

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

4.3 The Supplier:

(a) warrants and represents that all information and statements made by the Service Provider as a part of the procurement process, including the Service Provider's Tender or response to any pre-qualification questionnaire (if applicable), remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Council prior to execution of the Agreement; and

(b) shall promptly notify the Council in writing if it becomes aware during the performance of this Agreement of any inaccuracies in any information provided to it by the Council during such due diligence which materially and adversely affects its ability to perform the Services or meet any Target KPI's.

4.4 The Service Provider shall not be entitled to recover any additional costs from the Council which arise from, or be relieved from any of its obligations as a result of, any matters or inaccuracies notified to the Council 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 Council 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 Council.

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

The services

5. Supply of services

5.1 The Service Provider shall provide the Services to the Council with effect from the Commencement Date and for the duration of this Agreement in accordance with the provisions of this Agreement, including Schedule 1 and Schedule 2.

5.2 In the event that the Service Provider does not comply with the provisions of clause 5.1 in any way, the Council may serve the Service Provider with a notice in writing setting out the details of the Service Provider's default (a **Default Notice**).

6. KPI's

6.1 Where any Service is stated in Schedule Schedule 2 to be subject to a specific KPI, the Service Provider shall provide that Service in such a manner as will ensure that the Achieved KPI in respect of that Service is equal to or higher than the corresponding Target KPI to such specific KPI.

6.2 If the existing Services are varied or new Services are added, Target KPI's for the same will be determined and included within Schedule Schedule 2.

6.3 The Service Provider shall provide records of and Management Reports summarising the Achieved KPI's as provided for in clause 13.

6.4

7. Service standards

Without prejudice to **Error! Bookmark not defined.Error! Reference source not found.**, the Service Provider shall provide the Services, or procure that they are provided:

(a) with reasonable skill and care and in accordance with Good Industry Practice;

(b) in all respects in accordance with the Council's policies set out in Schedule Schedule 1; and

(c) in accordance with all Applicable Laws.

8. Compliance

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

8.2 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 the Services and the Service Provider has notified the Council in writing.

8.3 The Service Provider shall (and shall procure that the Service Provider Personnel shall) perform its obligations under this Agreement (including those in relation to the Services) in accordance with:

(a) all Applicable Laws; and

(b) the Health and Safety Policy whilst at the Council Premises.

8.4 Each Party shall notify the other as soon as practicable of any health and safety incidents or material health and safety hazards at the Council Premises of which it becomes aware and which relate to or arise in connection with the performance of this Agreement. The Service Provider shall instruct the Service Provider Personnel to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.

8.5 Without limiting the general obligation set out in clause 7, the Service Provider shall (and shall procure that the Service Provider Personnel shall):

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

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

(ii) the Council's equality and diversity policy as provided to the Service Provider from time to time;

(iii) any other requirements and instructions which the Council reasonably imposes in connection with any equality obligations imposed on the Council at any time under applicable equality law;

(b) take all necessary steps, and inform the Council 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

(c) 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 Council requests so as to enable the Council to comply with its obligations under the Human Rights Act 1998.

9. Council's Premises and Assets

9.1 The Council shall, subject to clause 8 and **Error! Bookmark not defined.Error! Reference source not found.** provide the Service Provider(and its Sub-Contractors) with access to such parts of the Council's Premises as the Service Provider reasonably requires for the purposes only of providing the Services. The Service Provider's right of access will terminate upon termination of this Agreement, subject to clause 9.3.

9.2 The Council shall provide the Service Provider with such accommodation and facilities in the Council's Premises as is specified in Schedule 6 or which is otherwise agreed by the Parties from time to time.

9.3 Subject to the requirements of clause 28, in the event of the expiry or termination of the Agreement, the Council shall on reasonable notice provide the Service Provider with such access as the Service Provider reasonably requires to the Council's Premises to remove any of the Service Provider's equipment. All such equipment shall be promptly removed by the Supplier.

9.4 The Service Provider shall ensure that:

(a) where using the Council's Premises and any Council Assets they are kept properly secure and it will comply and cooperate with the Council's security requirements from time to time regarding the security of the same;

(b) only those of the Service Provider Personnel that are duly authorised to enter upon the Council's Premises for the purposes of providing the Services, do so;

(c) any Council Assets used by the Service Provider are maintained (or restored at the end of the Term) in the same or similar condition as at the Commencement Date (fair wear and tear excepted) and are not removed from Council Premises unless expressly permitted under this Agreement or by the Council's Authorised Representative; and

(d) any Council Assets are used with all reasonable care and skill and in accordance with any manufacturer guidelines or instructions.

9.5 The Council shall maintain and repair the Council Assets, however, where such maintenance or repair arises directly from the act, omission, default or negligence of the Service Provider or its representatives (fair wear and tear excluded) the costs incurred by the Council in maintaining and repairing the same shall be recoverable from the Service Provider as a debt.

9.6 The Service Provider shall notify the Council immediately on becoming aware of any damage caused by the Supplier, its agents, employees or Sub-Contractors to any property of the Council, to any of the Council's Premises or to any property of any other recipient of the Services in the course of providing the Services.

9.7 The Service Provider shall indemnify the Council against all and any damage to the Council Premises and the Council Assets caused by the same.

10. Payment

10.1 In consideration of the provision of the Services by the Service Provider in accordance with the terms and conditions of this Agreement, the Council shall pay the Charges to the Service Provider in accordance with the Payment Plan.

10.2 Unless otherwise stated in Schedule Schedule 4, the Charges:

(a) shall remain fixed during the Term; and

(b) is the entire price payable by the Council to the Service Provider in respect of the Services and includes any royalties, licence fees, supplies and all consumables used by the Supplier, travel costs, accommodation expenses and the cost of Service Provider Personnel.

10.3 The Service Provider shall invoice the Council for payment of the Charges in accordance with the written terms of the Specification and the Payment Plan. All invoices shall be directed to the Council and shall contain such information as the Council may inform the Service Provider from time to time.

10.4 The Council shall accept and process an electronic invoice submitted by the Supplier, where it complies with the standard on electronic invoicing and is undisputed. For these purposes, an electronic invoice complies with the standard of electronic invoicing where it complies with the standard referred to in the Public Procurement (Electronic Invoices etc.) Regulations 2019 (2019/624).

10.5 Where the Service Provider submits an invoice to the Council in accordance with clause 10.310.3, the Council will consider and verify that invoice in a timely fashion.

10.6 The Council shall pay the Service Provider any sums due under such an invoice no later than a period of 30 days from the date on which the Council has determined that the invoice is valid and undisputed.

10.7 Where the Service Provider enters into a Sub-Contract, the Service Provider shall include in that Sub-Contract:

(a) provisions having the same effect as clause 10.5 to **Error! Bookmark not defined.**10.6 of this Agreement; and

(b) a provision requiring the counterparty to that Sub-Contract to include in any Sub-Contract which it awards provisions having the same effect as clause 10.5 to **Error! Bookmark not defined.**10.6 of this Agreement.

In this clause 10.7, "Sub-Contract" means a contract between two or more suppliers, at any stage of remoteness from the Council in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Agreement.

10.8 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 15. Provided that the sum has been disputed in good faith, interest due on any sums in dispute shall not accrue until 14 days after resolution of the dispute between the Parties.

10.9 Subject to clause 10.8, interest shall be payable on the late payment of any undisputed Charges properly invoiced under this Agreement in accordance with clause 11. The Service Provider shall not suspend the supply of the Services if any payment is overdue.

10.10 The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Council following delivery of a valid VAT invoice. The Service Provider shall indemnify the Council against any liability (including any interest, penalties or costs incurred) which is levied, demanded or assessed on the Council 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.

10.11 The Service Provider shall maintain complete and accurate records of, and supporting documentation for, all amounts which may be chargeable to the Council pursuant to this Agreement. Such records shall be retained for inspection by the Council for 7 years from the end of the Contract Year to which the records relate.

10.12 The Council may at any time, set off any liability of the Service Provider to the Council against any liability of the Council to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this Agreement. Any exercise by the Council of its rights under this clause shall not limit or affect any other rights or remedies available to it under this Agreement or otherwise.

10.13 All amounts due under this Agreement from the Service Provider to the Council shall be paid in full without any set-off, counterclaim, deduction or withholding (other than deduction or withholding tax as required by law).

11. Interest

11.1 Each Party shall pay interest on any sum due under this Agreement, calculated as follows:

(a) Rate. 2% a year above the Bank of England's base rate from time to time, but at 2% a year for any period when that base rate is below 0%.

(b) Period. From when the overdue sum became due, until it is paid.

12. Not used

Contract management

13. Reporting and meetings

13.1 The Service Provider shall provide the Management Reports in the form and at the intervals set out in Schedule Schedule 5.

13.2 The Authorised Representatives shall meet in accordance with the details set out in Schedule Schedule 5 and the Service Provider shall, at each meeting, present its previously circulated Management Reports in the format set out in that Schedule.

14. Monitoring

14.1 The Council may monitor the performance of the Services by the Supplier.

14.2 The Service Provider shall co-operate, and shall procure that its Sub-Contractors co-operate, with the Council in carrying out the monitoring referred to in clause 14.1 at no additional charge to the Council.

15. Dispute resolution

15.1 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:

(a) 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;

(b) if the Authorised Representatives are for any reason unable to resolve the Dispute within 30 days of service of the Dispute Notice, the Dispute shall be referred to the Council's Parking Manager and the Service Provider's Director who shall attempt in good faith to resolve it; and

(c) if the Council's Parking Manager and the Service Provider's Director are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the Parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the Parties, the mediator shall be nominated by CEDR. To initiate the mediation, a Party must serve notice in writing (ADR notice) to the other Party to the Dispute, requesting a mediation. The mediation will start not later than 30 days after the date of the ADR notice.

15.2 The commencement of mediation shall not prevent the Parties commencing or continuing court proceedings in relation to the Dispute under clause 39 which clause shall apply at all times.

16. Sub-Contracting and assignment

16.1 Subject to clause 16.3, neither Party shall assign, novate, subcontract 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 the Council, such consent not to be unreasonably withheld.

16.2 In the event that the Service Provider enters into any Sub-Contract in connection with this Agreement it shall:

(a) remain responsible to the Council for the performance of its obligations under the Agreement notwithstanding the appointment of any Sub-Contractor and be responsible for the acts omissions and neglects of its Sub-Contractors;

(b) impose obligations on its Sub-Contractor in the same terms as those imposed on it pursuant to this Agreement and shall procure that the Sub-Contractor complies with such terms; and

(c) provide a copy, at no charge to the Council, of any such Sub-Contract on receipt of a request for such by the Council's Authorised Representative.

16.3 The Council shall be entitled to novate (and the Service Provider shall be deemed to consent to any such novation) the Agreement to any other body which substantially performs any of the functions that previously had been performed by the Council.

16.4 Provided that the Council has given prior written consent, the Service Provider shall be entitled to novate the Agreement where:

(a) the specific change in contractor was provided for in the procurement process for the award of this Agreement;

(b) there has been a universal or partial succession into the position of the Supplier, 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

17. Indemnities

17.1 Subject to clause 17.2, the Service Provider shall indemnify and keep indemnified the Council against all liabilities, costs, expenses, damages and losses incurred by the Council arising out of or in connection with:

(a) the Service Provider’s breach or negligent performance or non-performance of this Agreement;

(b) any claim made against the Council arising out of or in connection with the provision of the Services, to the extent that such claim arises out of the breach,

negligent performance or failure or delay in performance of this Agreement by the Service Provider and/or Service Provider Personnel;

(c) the enforcement of this Agreement.

17.2 The indemnity under clause 17.1 shall apply except insofar as the liabilities, costs, expenses, damages and losses incurred by the Council are directly caused (or directly arise) from the negligence or breach of this Agreement by the Council or its Representatives.

18. Limitation of liability

18.1 Neither Party shall be liable to the other Party, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any indirect or consequential loss arising under or in connection with this Agreement.

18.2 Notwithstanding the provisions of clause 18.1, but subject to clause 18.4, the Service Provider assumes responsibility for and acknowledges that the Council may, amongst other things, recover:

(a) sums paid by the Council to the Service Provider pursuant to this Agreement, in respect of any Services not provided in accordance with the Agreement;

(b) wasted expenditure;

(c) additional costs of procuring and implementing replacements for, or alternatives to, the Services, including consultancy costs, additional costs of management time and other personnel costs and costs of equipment and materials;

(d) losses incurred by the Council arising out of or in connection with any claim, demand, fine, penalty, action, investigation or proceeding by any third party (including any Subcontract, Service Provider Personnel, regulator or customer of the Council) against the Council caused by the act or omission of the Supplier; and/or

(e) any anticipated savings.

18.3 Each Party shall at all times take all reasonable steps to minimise and mitigate any loss or damage arising out of or in connection with this Agreement, including any losses for which the relevant Party is entitled to bring a claim against the other Party pursuant to the indemnities in this Agreement.

18.4 Subject to clause 18.1 and clause 18.6, the Service Provider’s aggregate liability:

(a) in respect of all other claims, losses or damages, whether arising from tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with this Agreement, shall be limited in each Contract Year to £5 million.

18.5 Subject to clause 18.1 and clause 18.6, the Council's total aggregate liability to the Service Provider for all claims, losses or damages, whether arising from tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with this Agreement (other than a failure to pay any of the Charges that are properly due and payable and for which the Council shall remain fully liable), shall be limited in aggregate to £25,000.

18.6 Notwithstanding any other provision of this Agreement neither Party limits or excludes its liability for:

(a) fraud or fraudulent misrepresentation;

(b) death or personal injury caused by its negligence (or the negligence of its personnel, agents or subcontractors);

(c) breach of any obligation as to title implied by statute; or

(d) any other act, omission or matter, liability for which may not be excluded or limited under any Applicable Laws.

19. Insurance

19.1 The Service Provider shall (at its own expense) throughout the Initial Term and the Extension Period maintain insurance to cover the Service Provider's liability to the Council pursuant to, or in connection with, this Agreement in accordance with Good Industry Practice such insurance including:

(a) public liability insurance with a limit of indemnity of not less than £5 million in relation to any one claim or series of claims arising from one cause in a single calendar year;

(b) employer's liability insurance with a limit of indemnity of not less than £5 million in relation to any one claim or series of claims arising from one cause in a single calendar year;

(c) professional indemnity insurance with a limit of indemnity of not less than £2 million in relation to any one claim or series of claims arising from one cause in a single calendar year;

(d) product liability insurance with a limit of indemnity of not less than £5 million in relation to one claim or a series of claims arising from one cause in a calendar year.

Information

20. Freedom of information

20.1 The Service Provider acknowledges that the Council is subject to the requirements of the FOIA and the EIR's. The Service Provider shall:

(a) provide all necessary assistance and cooperation as reasonably requested by the Council to enable the Council to comply with its obligations under the FOIA and EIR's;

(b) transfer to the Council 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;

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

(d) not respond directly to a Request For Information unless authorised in writing to do so by the Council.

20.2 The Service Provider acknowledges that the Council may be required under the FOIA and EIR's to disclose Information without consulting or obtaining consent from the Supplier. The Council shall take reasonable steps to notify the Service Provider of a Request For Information (in accordance with the Cabinet Office's Freedom of Information Code of Practice issued under section 45 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 Council 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 EIR's.

20.3 Notwithstanding any other term of this Agreement, the Service Provider consents to the publication of this Agreement in its entirety (including variations), subject only to the redaction of information that is exempt from disclosure in accordance with the provisions of the FOIA and EIR's.

20.4 The Council shall, prior to publication, consult with the Service Provider on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decisions in its absolute discretion. The Service Provider shall assist and co-operate with the Council to enable the Council to publish this Agreement.

21. Data processing

21.1 Both Parties will comply with all applicable requirements of the Data Protection Legislation. This clause 21 is in addition to, and does not relieve, remove or replace, a Party's obligations or rights under the Data Protection Legislation.

21.2 The Parties acknowledge and agree that the Data Protection Legislation will determine whether the Council or the Service Provider is the Controller or the Processor at any particular point in time during the Term. Schedule 7 sets out the scope, nature and purpose of processing by the Supplier, the duration of the processing and the types of Personal Data and categories of Data Subject.

21.3 Without prejudice to the generality of **Error! Bookmark not defined.Error! Reference source not found.**, the Council will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Service Provider for the duration and purposes of this Agreement.

21.4 Without prejudice to the generality of **Error! Bookmark not defined.Error! Reference source not found.**, the Service Provider shall, in relation to any Personal Data processed in connection with the performance by the Service Provider of its obligations under this Agreement:

(a) process that Personal Data only on the documented written instructions of the Council which are set out in Schedule 7 unless the Service Provider is required by Applicable Laws to otherwise process that Personal Data;

(b) ensure that it has in place appropriate technical and organisational measures (as defined in the Data Protection Legislation), reviewed and approved by the Council, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

(c) not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Council has been obtained and the following conditions are fulfilled:

(i) the Council or the Service Provider has provided appropriate safeguards in relation to the transfer;

(ii) the Data Subject has enforceable rights and effective remedies;

(iii) the Service Provider complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and

(iv) the Service Provider complies with the reasonable instructions notified to it in advance by the Council with respect to the processing of the Personal Data;

(d) notify the Council immediately if it receives:

(i) a request from a Data Subject to have access to that person's Personal Data;

(ii) a request to rectify, block or erase any Personal Data;

(iii) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation (including any communication from the Information Commissioner);

(e) assist the Council in responding to any request from a Data Subject and in ensuring compliance with the Council's obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

(f) notify the Council without undue delay on becoming aware of a Personal Data breach including any event that results, or may result, in unauthorised access, loss, destruction, or alteration of Personal Data in breach of this Agreement;

(g) at the written direction of the Council, delete or return Personal Data and copies thereof to the Customer on termination or expiry of the Agreement unless required by the Applicable Laws to store the Personal Data;

(h) maintain complete and accurate records and information to demonstrate its compliance with this clause 21 and allow for audits by the Council or the Council's designated auditor pursuant to clause 23 and immediately inform the Customer if, in the opinion of the Supplier, an instruction infringes the Data Protection Legislation.

21.5 The Service Provider shall indemnify the Council against any losses, damages, cost or expenses incurred by the Council arising from, or in connection with, any breach of the Service Provider’s obligations under this clause 21.

21.6 Where the Service Provider intends to engage a Sub-Contractor pursuant to clause 16 and intends for that Sub-Contractor to process any Personal Data relating to this Agreement, it shall:

(a) notify the Council in writing of the intended processing by the Sub-Contractor;

(b) obtain prior written consent from the Council to the processing;

(c) enter into a written Agreement incorporating terms which are substantially similar to those set out in this clause 21.

21.7 Either Party may, at any time on not less than 30 Working Days' written notice to the other Party, revise this clause 21 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this Agreement).

21.8 The provisions of this clause shall apply during the continuance of the Agreement and indefinitely after its expiry or termination.

22. Confidentiality

22.1 Subject to clause 22.222.2, each Party shall keep the other Party's Confidential Information confidential and shall not:

(a) use such Confidential Information except for the purpose of performing its rights and obligations under or in connection with this Agreement; or

(b) disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this clause 22.

22.2 The obligation to maintain confidentiality of Confidential Information does not apply to any Confidential information:

(a) which the other Party confirms in writing is not required to be treated as Confidential Information;

(b) which is obtained from a third party who is lawfully authorised to disclose such information without any obligation of confidentiality;

(c) which a Party is required to disclose by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by Applicable Laws;

(d) which is in or enters the public domain other than through any disclosure prohibited by this Agreement;

(e) which a Party can demonstrate was lawfully in its possession prior to receipt from the other Party; or

(f) which is disclosed by the Council on a confidential basis to any central government or regulatory body.

22.3 A Party may disclose the other Party's Confidential information to those of its Representatives who need to know such Confidential Information for the purposes of performing or advising on the Party's obligations under this Agreement, provided that:

(a) it informs such Representatives of the confidential nature of the Confidential Information before disclosure; and

(b) it procures that its Representatives shall, in relation to any Confidential Information disclosed to them, comply with the obligations set out in this clause as if they were a party to this Agreement,

(c) and at all times, it is liable for the failure of any Representatives to comply with the obligations set out in this clause 22.3.

22.4 The provisions of this clause 22 shall survive for a period of 3 years from the Termination Date.

23. Audit

23.1 During the Term and for a period of 6 years after the Termination Date, the Council (acting by itself or through its Representatives) may conduct an audit of the Supplier, including for the following purposes:

(a) to verify the accuracy of Charges (and proposed or actual variations to them in accordance with this Agreement) and/or the costs of all suppliers (including Sub-Contractors) of the Services;

(b) to review the integrity, confidentiality and security of any data relating to the Council or any service users;

(c) to review the Service Provider’s compliance with Applicable Laws applicable to the Services;

(d) to review any records created during the provision of the Services;

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

(f) to carry out the audit and certification of the Council's accounts;

(g) 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 Council has used its resources;

(h) to verify the accuracy and completeness of the Management Reports delivered or required by this Agreement.

23.2 Except where an audit is imposed on the Council by a regulatory body or where the Council has reasonable grounds for believing that the Service Provider has not complied with its obligations under this Agreement, the Council may not conduct an audit under this clause 23 more than twice in any calendar year.

23.3 The Council 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.

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

(a) all information requested by the above persons within the permitted scope of the audit;

(b) reasonable access to any sites and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services; and

(c) access to the Service Provider Personnel.

23.5 The Council shall endeavour to (but is not obliged to) provide at least 15 Working Days' notice of its intention or, where possible, a regulatory body's intention, to conduct an audit.

23.6 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 Council for all the Council's reasonable costs incurred in the course of the audit.

23.7 If an audit identifies that:

(a) 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 Council about the Charges, proposed Charges or the Service Provider's costs, then the remedial plan shall include a requirement for the provision of all such information;

(b) the Council has overpaid any Charges, the Service Provider shall pay to the Council the amount overpaid within 20 days. The Council may deduct the relevant amount from the Charges if the Service Provider fails to make this payment; and

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

24. Intellectual property

24.1 In the absence of prior written Agreement by the Council to the contrary, all Intellectual Property Rights created by the Service Provider or Service Provider Personnel:

(a) in the course of performing the Services; or

(b) exclusively for the purpose of performing the Services,

shall vest in the Council on creation.

24.2 The Service Provider shall indemnify the Council against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right by the availability of the Services, except to the extent that they have been caused by or contributed to by the Council's acts or omissions.

Termination

25. Termination for breach

25.1 The Council may terminate this Agreement in whole or part with immediate effect by the service of written notice on the Service Provider in the following circumstances:

(a) if the Service Provider is in breach of any material obligation under this Agreement provided that if the breach is capable of remedy, the Council may only terminate this Agreement under this clause 25.1 if the Service Provider has failed to remedy such breach within 28 days of receipt of notice from the Council (a **Remediation Notice**) to do so;

(b) if a Consistent Failure has occurred;

(c) if a Catastrophic Failure has occurred;

(d) if there is an Insolvency Event.

(e) if there is a change of control of the Service Provider within the meaning of section 1124 of the Corporation Tax Act 2010.

(f) the Council reasonably believes that the circumstances set out in regulation 73(1) of the Public Contracts Regulations 2015 apply.

25.2 The Council may terminate this Agreement in accordance with the provisions of clause 26 and/or clause 27.

25.3 If this Agreement is terminated by the Council pursuant to this clause 25, such termination shall be at no loss or cost to the Council and the Service Provider hereby indemnifies the Council against any such losses or costs which the Council may suffer as a result of any such termination.

26. Force majeure

26.1 Provided it has complied with the remaining provisions of this Clause 26, if a Party is prevented, hindered or delayed in or from performing any of its obligations under this Agreement by a Force Majeure Event (**Affected Party**), 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.

26.2 The corresponding obligations of the other Party will be suspended to the same extent as those of the Affected Party.

26.3 The Affected Party shall:

(a) as soon as reasonably practicable after the start of the Force Majeure Event but not later than 2 Working Days from its start, notify the other Party in writing of the Force Majeure Event, the date on which it started, its likely 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.

26.4 An Affected Party cannot claim relief if the Force Majeure Event is attributable to the Affected 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 which, in accordance with Good Industry Practice, the Service Provider should have foreseen and provided for the cause in question.

26.5 The Affected Party shall notify the other Party in writing 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.

26.6 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than 21 days, the Party not affected by the Force Majeure Event may terminate this Agreement by giving at least 14 days' notice to the Affected Party.

27. Prevention of bribery

27.1 The Service Provider represents and warrants that neither it, nor any Service Provider Personnel:

(a) has committed a Prohibited Act;

(b) to the best of its knowledge has been or is subject to an investigation, inquiry or enforcement proceedings by a governmental, administrative or regulatory body regarding any Prohibited Act or alleged Prohibited Act; or

(c) has 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.

27.2 The Service Provider shall promptly notify the Council if, at any time during the Term, its circumstances, knowledge or awareness changes such that it would not be able to repeat the warranties set out in clause 27.1 at the relevant time.

27.3 The Suppler shall (and shall procure that its Service Provider Personnel shall) during the Term:

(a) not commit a Prohibited Act; and/or

(b) not do or omit to do anything that would cause the Council or any of the Council's employees, consultants, contractors, sub-contractors or agents to contravene any or all Applicable Laws or otherwise incur any liability in relation to Applicable Laws.

(c) have and maintain in place its own policies and procedures to ensure compliance with any or all Applicable Laws and prevent occurrence of a Prohibited Act;

(d) notify the Council (in writing) if it becomes aware of any breach of clause 27.3(a)or clause 27.3(b), or has reason to believe that it or any person associated with it has received a request or demand for any undue financial or other advantage in connection with performance of this Agreement.

27.4 The Service Provider shall maintain appropriate and up to date records showing all payments made by the Service Provider in connection with this Agreement and the steps taken to comply with its obligations under clause 27.3.

27.5 The Service Provider shall allow the Council and its third party representatives to audit any of the Service Provider's records and any other relevant documentation in accordance with clause 27.

27.6 If the Service Provider is in Default under this clause 27 the Council may by notice:

(a) require the Service Provider to remove from performance of this Agreement any Service Provider Personnel whose acts or omissions have caused the Default; or

(b) immediately terminate this Agreement.

27.7 Any notice served by the Council under clause 27.6 shall specify the nature of the Prohibited Act, the identity of the party who the Council believes has committed the Prohibited Act and the action that the Council has elected to take (including, where relevant, the date on which this Agreement shall terminate).

28. Consequences of termination or expiry

28.1 On the expiry of the Term or if this Agreement is terminated in whole or in part for any reason, the Service Provider shall retain all relevant records in relation to this Agreement and the associated Services and shall co-operate fully with the Council and at no cost to the Council shall provide all assistance reasonably required by the Council to ensure an orderly migration of the Services to the Council or, at the Council's request, a Replacement Supplier. The Service Provider shall ensure that the provision of the Services remain unaffected during the exit/transition phase such that there is no discernible impact on any person being able to pay for his parking costs.

28.2 On termination or expiry of this Agreement the Service Provider shall procure that all data and other material belonging to the Council (and all media of any nature

containing information and data belonging to the Council or relating to the Services), shall be delivered to the Council forthwith and dispose of any such items in accordance with the reasonable instructions of the other Party and the Service Provider's Authorised Representative shall certify full compliance with this clause.

28.3 Any provision of this Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry, including clause 6.3 (provision of records), clause 17 (Indemnities), clause 18 (Limitation of Liability), clause 19 (Insurance), clause 20 (Freedom of Information), clause 21 (Data Protection), clause 22 (Confidentiality), clause 22 (Audit), clause 25 (Termination for Breach) and this clause 28 (Consequences of termination), shall remain in full force and effect.

28.4 Termination or expiry of this Agreement shall not affect any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Agreement which existed at or before the Termination Date.

General provisions

29. Variation

No variation of this Agreement shall be effective unless it is in writing and signed by both Parties.

30. 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.

31. 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.

32. Severability

32.1 If any provision, or part of a provision, of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not affect the other provisions of this Agreement, which shall remain in full force and effect.

33. Partnership or agency

33.1 This Agreement does not constitute, establish or imply any partnership, joint venture, agency, employment or fiduciary relationship between the Parties

33.2 Neither Party shall have, nor represent that it has, any authority to make or enter into any commitments on the other Party's behalf or otherwise bind the other Party in any way (including the making of any representation or warranty, the assumption of any obligation or liability or the exercise of any right or power.

34. Third party rights

34.1 Unless it expressly states otherwise, this Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

35. Publicity

The Service Provider shall not:

(a) make any press announcements or publicise this Agreement or its contents in any way; or

(b) use the Council's name or logo in any promotion or marketing or announcement of orders,

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 Council, which shall not be unreasonably withheld or delayed.

36. Notices

36.1 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 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 address specified as follows:

For the Council:

Name: Helen Taverner

Job Title: Parking Manager

Email address: helen.taverner@bcpcouncil.gov.uk

For the Service Provider:

Name:

Job Title:

Email Address:

36.2 Any notice shall be deemed to have been received:

(a) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the 2nd Working Day after posting; or

(b) if sent by email, at the time of transmission; or if this time falls outside Working Hours in the place of receipt, the next Working Day.

36.3 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

37. Entire Agreement

37.1 This Agreement and the documents referred to in it constitutes 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.

37.2 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.

38. Counterparts

This Agreement may be executed in any number of counterparts, each of which shall constitute a duplicate original of this Agreement, but all the counterparts shall together constitute the one Agreement.

39. Governing law

This Agreement and any dispute, disagreement or claim arising out of or in connection with this Agreement 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 and Wales.

40. Jurisdiction

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 (including non-contractual disputes or claims).

This Agreement has been entered into on the date stated at the beginning of it.

The Common Seal of BOURNEMOUTH CHRISTCHURCH AND POOLE COUNCIL	..... Monitoring/Deputy Monitoring Officer
Signed by [NAME OF DIRECTOR] duly authorised for and on behalf of [NAME OF SERVICE PROVIDER]	..... Director

Schedule 1 Specification

Schedule 2 Performance regime

Part 1 KPI's

1. The KPI's

1.1 The KPI's which the Parties have agreed shall be used to measure the performance of the Services by the Service Provider are contained in writing in the Specification.

1.2 The Service Provider shall monitor its performance against each Target KPI and shall send the Council a report detailing the Achieved KPI's in accordance with Schedule Schedule 5.

Part 2 Consistent failure

2. Consistent failure

In this Agreement, **Consistent Failure** shall mean:

(a) the Service Provider repeatedly breaching any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement.

Schedule 3 Service Provider's Tender

Schedule 4 Charges and payment

1. Calculation of the Charges

The Charges shall be calculated on the basis of the rates and prices set out in this Schedule.

2. Charges based on a fixed price

Service	Monthly cost (£)
[INSERT RELEVANT PART OF SERVICES]	[INSERT FIGURE TO BE CHARGED TO COUNCIL]
[INSERT RELEVANT PART OF SERVICES]	[INSERT FIGURE TO BE CHARGED TO COUNCIL]
[INSERT RELEVANT PART OF SERVICES]	[INSERT FIGURE TO BE CHARGED TO COUNCIL]
TOTAL	[INSERT FIGURE TO BE CHARGED TO COUNCIL]

3. Charges based on hourly rates

Hours of service in invoice period	Hourly rate (£)
[Up to 100]	[INSERT FIGURE PER HOUR TO BE CHARGED TO COUNCIL]
[101-200]	[INSERT FIGURE PER HOUR TO BE CHARGED TO COUNCIL]
[201-300]	[INSERT FIGURE PER HOUR TO BE CHARGED TO COUNCIL]

4. Menu pricing

Type of Fixed Cost	Charges (£)
[INSERT TYPE OF SERVICE TO BE PROVIDED]	[INSERT FIGURE (EXPRESSED AS UNIT COST OR HOURLY RATE) TO BE CHARGED TO COUNCIL FOR THAT SERVICE]
[INSERT TYPE OF SERVICE OR GOODS TO BE PROVIDED]	[INSERT FIGURE (EXPRESSED AS UNIT COST OR HOURLY RATE) TO BE

	CHARGED TO COUNCIL FOR THAT SERVICE]
[INSERT TYPE OF SERVICE OR GOODS TO BE PROVIDED]	[INSERT FIGURE (EXPRESSED AS UNIT COST OR HOURLY RATE) TO BE CHARGED TO COUNCIL FOR THAT SERVICE]
[INSERT TYPE OF SERVICE OR GOODS TO BE PROVIDED]	[INSERT FIGURE (EXPRESSED AS UNIT COST OR HOURLY RATE) TO BE CHARGED TO COUNCIL FOR THAT SERVICE]

5. Payment Plan

In accordance with the written terms of the Specification

Schedule 5 Contract management

1. Authorised representatives

1.1 The Council's initial Authorised Representative: Elaine Smith Assistant Parking Manager/ Contract Manager

1.2 The Service Provider's initial Authorised Representative: [INSERT DETAILS]

2. Meetings

2.1 Type – via TEAMS or face to face

2.2 Quorum Council Parking Manager, contract manager, operational representative and PCN Notice processing representative

2.3 Frequency: Initially 3 months monthly then at least quarterly for remainder of Term

2.4 Agenda: To include Service Provider's update, Council's update, KPI performance review, reporting data analysis of use trends and resilience of service, customer satisfaction, media matters and any current new initiatives or ongoing projects

3. Reports

3.1 Type in Excel or other agreed format to be provided monthly

3.2 Contents see section 12 of the Specification as a minimum

3.3 Frequency monthly

3.4 Circulation list Parking Manager, Contract Manager, Operational and PCN Notice Processing representative

Schedule 6 Council's Premises and Assets

[DETAILS OF COUNCIL PREMISES AND ANY APPLICABLE LEASES OR LICENCES TO BE INSERTED ANY COUNCIL ASSETS]

Schedule 7 Data processing: As set out in the attached Schedule A and Appendix to Schedule A to include:

1. Processing by the Supplier

1.1 Scope

1.2 Nature

1.3 Purpose of processing

1.4 Duration of processing

2. Types of Personal Data

3. Categories of Data Subject