

Dated

2005

**READING BOROUGH COUNCIL
[THE PARTNER]**

**AGREEMENT
relating to the provision of works
and services to car parking
facilities within the
Borough of Reading**

ADDLESHAW GODDARD

Contents

Clause	Page
1	Definitions, Interpretation and Construction.....1
2	Execution and delivery of documents1
3	Commencement and Expiry.....1
4	The Operations1
5	The Works.....3
6	The Services6
7	The Guaranteed Minimum Payment, the Revenue Share and other payments.....8
8	Additional Income.....10
9	Handback10
10	Compensation Events, Relief Events and Force Majeure10
11	Representatives10
12	Licence to occupy the Sites for the purposes of the Operations10
13	The Sites11
14	Consents and Planning Approval.....12
15	Prohibited Act.....12
16	Indemnity.....12
17	Insurance14
18	Reinstatement and Change of Requirement after Insured Event.....17
19	Employees20
20	Pensions25
21	The Council's right to Step-in30
22	Intellectual Property32
23	Data Protection33
24	Dispute Resolution35
25	Termination35
26	Termination by the Council35
27	Termination by the Partner38
28	Termination for Corrupt Gifts and Fraud.....38
29	Termination following a Force Majeure Event39
30	Financial consequences of termination.....40
31	Other Consequences of termination or expiry40
32	Guarantees/Surety42
33	Assignment and Sub-contracting.....42
34	Confidentiality.....43
35	Race Relations Act 1976.....45
36	Miscellaneous46

Schedule

1	Definitions and Interpretation50
	Part 1 - Definition50
	Part 2 - Interpretation60
2	Relief Events and Compensation Events.....61
3	The Works.....65
	Part 1 - Works Requirements.....65
	Part 2 - Works Method Statements.....71
	Part 3 - The Partner's Programme of Works.....72
4	Services Requirements.....73
	Part 1 - Performance Standards73

	Part 2 - Performance Monitoring System.....	77
	Part 3 - Services Method Statements	83
5	Changes.....	84
6	Handback Provisions	88
7	Dispute Resolution Procedure	91
8	Compensation on Termination.....	93
9	Insurance Requirements.....	96
	Part 1 - Works Period.....	96
	Part 2 - Services Period	100
	Part 3 - Special endorsements.....	103
10	Completion Documents.....	107
	Part 1 - Documents to be delivered by the Partner.....	107
	Part 2 - Documents to be delivered by the Council	108

Appendix

1	Plan of Broad Street Mall
2	Plan of Queen's Road
3	Plan of Kings Meadow
4	Plan of Hills Meadow
5	Plan of Cattle Market
6	Plan of Civic 'B' Car Park
7	Plan of Chester Street
8	Plan of Recreation Road
9	Plan of Dunstall Close

Between

- (1) **Reading Borough Council** of Civic Offices, Civic Centre, Reading, RG1 7TD (**Council**); and
- (2) **[The Partner]** [of ♦] [(No. ♦) whose registered office is at ♦] (**Partner**).

Whereas

- (A) The Council wishes to improve the capacity, accessibility, quality and efficiency of its car parking facilities.
- (B) To achieve the aims referred to at Recital (A), it appears to the Council to be expedient to enter into this Agreement.

It is agreed

1 Definitions, Interpretation and Construction

This Agreement shall be interpreted according to the provisions of schedule 1 (Definitions and Interpretation).

2 Execution and delivery of documents

On or prior to execution of this Agreement:

- (a) the Partner shall deliver to the Council one full set of the documents referred to in part 1 of schedule 10 (Completion Documents) unless the requirement to deliver any such document is waived by the Council by written notice to the Partner; and
- (b) the Council shall deliver to the Partner one full set of the documents referred to in part 2 of schedule 10 (Completion Documents) unless the requirement to deliver any such document is waived by the Partner by written notice to the Council.

3 Commencement and Expiry

Term

- 3.1 This Agreement shall commence on the date of execution of this Agreement and shall terminate automatically on the Expiry Date unless it is previously terminated in accordance with clause 25 (Termination).

Service Commencement

- 3.2 The Partner's obligations to provide the Works and Services shall commence on the Service Commencement Date.

4 The Operations

Scope

- 4.1 The Partner shall carry out and perform the Operations at its own cost and risk without recourse to the Council, except to the extent expressly provided otherwise in this Agreement.

General standards

- 4.2 The Partner shall, at its own cost, be solely responsible for procuring that the Operations are at all times performed:
- (a) in accordance with Good Industry Practice;
 - (b) in a manner consistent with the Quality Plans;
 - (c) in a manner that will not:
 - (i) be injurious to health;
 - (ii) cause damage to property;
 - (iii) be harmful to the Council's reputation;
 - (iv) cause a nuisance to any person; or
 - (v) constitute a breach by the Council of any Relevant Property Document;
 - (d) in a manner consistent with the Council discharging its statutory duties and other functions undertaken by it as the same may be notified to the Partner from time to time;
 - (e) in compliance with all Law and Consents (including without limitation the giving of notices and the obtaining of any such Consents) and so as not to prejudice the renewal of any such Consents; and
 - (f) with all due skill, care and due diligence and in compliance with all applicable Council Requirements.

Safety

- 4.3 The Partner shall, throughout the conduct of the Operations, have full regard for the safety of all persons on the Sites (whether lawfully or not) and shall keep the Sites in an orderly state, appropriate in accordance with Good Industry Practice, to avoid danger to such persons.

The Partner Parties

- 4.4 Subject to the provisions of schedule 2 (Relief Events and Compensation Events), the Partner shall not be relieved or excused of any responsibility, liability or obligation relating to the Operations under this Agreement by the appointment of any Partner Party. The Partner shall, as between itself and the Council, be responsible for the selection, pricing, performance, acts, defaults, omissions, breaches and negligence of all Partner Parties. All references in this Agreement to any act, default, omission, breach or negligence of the Partner shall be construed accordingly to include any such act, default, omission, breach or negligence of a Partner Party.

Co-operation

- 4.5 Each Party agrees to co-operate in good faith, at its own expense, with the other Party in the fulfilment of the purposes and intent of this Agreement.

The Car Park Working Group

- 4.6 The Car Park Working Group shall meet at least monthly, or less often if the Council and the Partner agree.
- 4.7 At meetings of the Car Park Working Group all aspects of the performance of the Partner of its obligations in this Agreement shall be reviewed and discussed. Meetings of the Car Park Working Group shall operate as the main forum for liaison between the Council and the Partner in connection with the Car Parks.
- 4.8 The Council and the Partner will adopt the reasonable recommendations of the Car Park Working Group.

Annual report to the Council and annual meeting

- 4.9 The Partner shall:
- (a) on one occasion in each rolling period of twelve (12) months when requested to do so by the Council with at least one (1) month's notice, submit a written report to the Council which shall summarise in reasonable detail operating and financial performance since the commencement of this Agreement or (where a report pursuant to this clause has previously been submitted) the end of the relevant period covered by a previous report submitted pursuant to this clause 4.9; and
 - (b) procure that its chief operating officer (or other senior person or persons approved in advance by the Council) meets with the Council on one occasion in each rolling period of twelve (12) months when requested to do so by the Council with at least one (1) month's notice, in order to present to the Council on the content of the annual report. The Council may bring to the meeting such persons as it sees fit (including without limitation any number of members). After any such presentation, the Partner shall procure that the person(s) attending on its behalf is available to respond to questions which any persons attending who represent the Council may wish to raise.

Liaison with the Police

- 4.10 The Partner shall liaise in good faith with the Reading Town Centre Police Inspector as part of an Information Exchange Initiative. Such liaison shall include attending meetings on an approximately quarterly frequency with a view to assisting in the reduction of town centre and automotive crime. The Partner shall also participate as reasonably required by the Council in national initiatives to reduce automotive crime as advised by the Police from time to time. The Partner shall procure that the Partner's local Contract Manager, his Deputy or someone more senior shall attend such meetings.

5 The Works

Works Requirements

- 5.1 Without prejudice to clause 4.2, the Partner shall carry out and perform the Works in accordance with the provisions of part 1 of schedule 3 (Works Requirements) and part 2 of schedule 3 (Works Method Statements).

The Council Representative's role in relation to monitoring the carrying out of the Works

- 5.2 The Partner shall procure that:

- (a) the Council Representative receives not less than five Business Days' written notice of project meetings in connection with the carrying out of the Works;
- (b) is permitted to attend;
- (c) is supplied with any minutes thereof that may be prepared; and
- (d) is supplied with such further information or evidence as the Council Representative shall reasonably require that the decisions taken at such meetings have been or are being effectively implemented.

5.3 The Partner shall procure that the Council Representative and/or any Council personnel reasonably authorised by him in writing for the purpose of inspecting the Works shall have the right at all reasonable times during the progress of the Works:

- (a) to enter upon the Sites to view the state and progress of the Works and the materials used and intended for use thereon; and
- (b) to ascertain whether or not the Partner's obligations in this Agreement have been and are being duly observed and performed,

provided always that the Council Representative and/or other persons authorised by him shall upon arrival at a Site report their presence to the Partner and comply with any reasonable directions made by the Partner and shall not in any circumstances give instructions to any person or company involved in carrying out the Works.

5.4 The Council Representative and all other persons exercising rights of inspection under clause 5.3 shall use all reasonable endeavours not to hinder or delay the Works.

5.5 The Partner acknowledges that the Council Representative shall have purely a monitoring role on behalf of the Council and the approval or non-disapproval or any inspection or non-inspection of the design or execution of the Works or any part thereof at any stage shall not imply any responsibility on the Council nor prevent the Council from objecting to the standard of the Works as to design, quantity or quality or in any other way at any later date.

5.6 Without prejudice to the monitoring role of the Council Representative, the Council shall have power (but without any obligation being imposed upon it) during the progress of the Works to require by written notice whether served by the Council or the Council Representative on the Partner the removal of any work executed or materials not in accordance with the Council's Works Requirements or otherwise not in accordance with the Partner's obligations under this Agreement, and the Partner shall procure all necessary reinstatement works.

Determining the Completion of an Element of the Works

5.7 The following provisions shall apply in relation to the certification by the Partner that an Element of the Works is Complete:

Notification

- (a) The Partner shall give the Council and the Council Representative not less than 5 Business Days notice of the date, time and location upon which the Partner proposes to inspect the Element for the purposes of determining whether such Element is Complete and for the purposes of carrying out any commissioning tests required for Completion.

Procedure for the Council attending the Partner's inspection

- (b) The Council may attend the Partner's inspection referred to at clause 5.7(a). If the Council wishes to attend the Partner's inspection referred to at clause 5.7(a), the Council may direct that the Council Representative or such other representative, sub-contractor or agent who has the relevant technical expertise shall attend the Partner's inspection and commissioning tests and carry out such assessments or inspections to satisfy himself or themselves that the Partner has carried out the Element in accordance with this Agreement (including, without limitation the provisions of schedule 3 (The Works)) and that such Element is Complete. The Council shall use all its reasonable endeavours to procure that the person(s) attending carry out such assessment or inspection so as not to delay the Partner's Programme(s) or adversely affect the Partner's ability to perform its obligations under this Agreement.
- (c) Subject to clause 5.7(d), within 2 Business Days following the date of completion of the relevant inspection, the Partner shall confirm to the Council in writing whether or not it believes the Element is Complete.
- (d) If the Council, having (if relevant) consulted with the person(s) attending the inspection and commissioning tests pursuant to this clause 5.7, considers that the Element does not comply with the requirements of this Agreement (including without limitation the provisions of schedule 3 (The Works) and/or that the Element is not Complete, the Council shall within 10 Business Days of the relevant inspection notify the Partner accordingly giving details of the relevant grounds of non-compliance. Following any such notification, the Partner shall as soon as possible consider the contents and confirm whether or not it agrees with the Council's notification.
- (e) Where the Partner agrees with the Council's notification, the Partner shall take such steps as it considers necessary to ensure that the Element is Complete as soon as possible. When the Partner believes that it has completed the relevant steps, the Partner shall notify the Council accordingly and the provisions of this clause 5.7 shall apply in relation to the Council's right to reassess or reinspect until such time as either the Council does not issue a notice under and in accordance with clause 5.7(d) in relation to such Element or until it is agreed or determined pursuant to schedule 7 (Dispute Resolution) that the Element is Complete.
- (f) Where the Council has served notice pursuant to clause 5.7(d) but the Partner does not agree with the Council's notification, the Parties shall use their reasonable endeavours in good faith to reach agreement by discussion, but if no agreement has been reached within 20 Business Days, schedule 7 (Dispute Resolution) shall apply.
- (g) Where the Council has served notice pursuant to clause 5.7(d) and either the Partner agrees with the Council's notification or a dispute is in progress, the Element shall not be treated as being Complete for the purposes of this Agreement until such date that it is agreed or determined pursuant to schedule 7 (Dispute Resolution) that the Element is Complete.

- 5.8 A failure to ensure that Works are Complete may, for the avoidance of doubt, lead to the accrual of Service Credits payable to the Council pursuant to schedule 4 (Services Requirements) and/or termination pursuant to clause 26 (Termination by the Council).

6 The Services

General obligations

- 6.1 Without prejudice to clause 4.2, the Partner shall provide the Services and the Services Method Statements in accordance with the provisions of schedule 4 (Services Requirements).
- 6.2 Subject to clauses 6.3 to 6.5, the Partner may increase or decrease Car Park Charges in such manner as it sees fit.
- 6.3 Before implementing any change to the Car Park Charges, the Partner shall ensure that at least three (3) months notice is given to Car Park users by the display of accessible notices within reasonable proximity to the entrance of the relevant Car Park(s).
- 6.4 The Partner shall not:
- (a) increase Car Park Charges more than once in a twelve month period;
 - (b) *[insert agreed restrictions on Discounted Tickets, Season Tickets and Contract Parking]*

[Note: RBC wishes to ensure that any agreed restrictions encourage short-term parking and discourage long-term parking, especially by commuters and will require some level of control to ensure this. RBC also recognises that the imposition of any BAFO response price controls will be a sensitive area for bidders. As part of their BAFO response bidders are required to propose what such controls they would consider acceptable, in addition to clearly indicating the pricing strategy embodied by their BAFO response including the percentage/number of season/contract tickets anticipated and any discounts that would apply. Where any such controls have an impact on the Guaranteed Minimum Payment, or other financial impact, such impact must be clearly stated as part of the BAFO Response.]

- 6.5 Nothing in clauses 6.1 to 6.4 shall affect the obligations of the Partner to make payments to the Council pursuant to clause 7.

Obligation to prepare and submit schedules of Programmed Maintenance

- 6.6 No later than the date of this Agreement, the Partner shall submit to the Council Representative a schedule of Programmed Maintenance for the period from the date of this Agreement to the expiry of the first Contract Year.
- 6.7 Not later than three months prior to the commencement of each subsequent anniversary of the date of this Agreement the Partner shall submit to the Council Representative a schedule of Programmed Maintenance for the next succeeding Contract Year.

6.8 Each schedule of Programmed Maintenance shall contain the following information (**Programmed Maintenance Information**):

- (a) details of the proposed start and end dates for each period of Programmed Maintenance, the works or services to be carried out and the proposed hours of work; and
- (b) details of any effect of the Programmed Maintenance on the delivery of any of the Works and/or Services and/or the activities of the Council.

The Council Representative may raise comments on a schedule of Programmed Maintenance only on the grounds referred to at clause 6.11. If the Council Representative does not raise comments on any such schedule in accordance with clause 6.11 within 20 Business Days of receipt, he shall be deemed to have no comments. The Partner shall in good faith review any comments made and shall, if the comments are correct, amend the schedule of Programmed Maintenance to fully reflect the same. Any dispute shall be dealt with pursuant to schedule 7 (Dispute Resolution Procedure).

6.9 Not later than 30 Business Days prior to the commencement of any quarter (being a three month period commencing on 1 April, 1 July, 1 October or 1 January), the Partner may submit to the Council Representative for approval a revision to the schedule of Programmed Maintenance for the Contract Year in which the relevant quarter falls showing the effect of any proposed changes to the Programmed Maintenance Information. The Council Representative may only comment on such schedule on the grounds referred to at clause 6.11. If the Council Representative does not raise comments in accordance with clause 6.11 on such proposed revision within 20 Business Days of receipt, the schedule of Programmed Maintenance as revised shall become the schedule of Programmed Maintenance in respect of that quarter. The Partner shall in good faith review any comments made and shall, if the comments are correct, amend the schedule of Programmed Maintenance to fully reflect the same. Any dispute shall be dealt with pursuant to schedule 7(Dispute Resolution Procedure).

6.10 Where the Partner amends a schedule of Programmed Maintenance upon which the Council has commented, the Partner shall resubmit the amended schedule to the Council as soon as may be practicable and the foregoing provisions of clause 6.8 and 6.9 shall apply (as applicable) in relation to the Council's right to comment on the amended schedule.

6.11 The Council may only raise comments on a schedule of Programmed Maintenance or a revision to the same on grounds that:

- (a) the schedule (or a revision to the same) is not sufficient to ensure compliance with the Council's Service Requirements or the Handback Requirements; or
- (b) the safety of users of the car parks would be adversely affected.

Programmed and Un-programmed Maintenance

6.12 The Partner shall not carry out any Programmed Maintenance or Un-programmed Maintenance Works save:

- (a) in accordance with:
 - (i) a schedule of Programmed Maintenance (whether being an original schedule submitted to the Council pursuant to clause 6.8 and 6.9 or an amended

version submitted to the Council pursuant to clause 6.10) to which no objection has been made on the grounds specified at clause 6.11;

- (ii) a schedule of Programmed Maintenance to which the Council has objected but in respect of which it has subsequently been agreed or determined pursuant to schedule 7 (Dispute Resolution Procedure) that the Council's comments were incorrect or not made in accordance with clause 6.11;
 - (b) in circumstances other than an emergency, in accordance with the procedures set out in clause 6.13; or
 - (c) in an emergency, in accordance with clause 6.14.
- 6.13 If, in circumstances other than an emergency, the need arises for Maintenance Works (excluding any works of a *de minimis* nature in respect of which the parties have agreed this clause shall not apply, which are not scheduled to be carried out as part of the Programmed Maintenance (**Un-programmed Maintenance Work**)), the Partner shall not carry out any Un-programmed Maintenance Work unless and until the Council Representative has approved the same (including without limitation the proposed commencement date, the proposed hours of work and estimated duration of the requisite Un-programmed Maintenance Works).
- 6.14 If, as a result of an emergency, the need arises for Un-programmed Maintenance Works, the Partner may carry out such Un-programmed Maintenance Works provided that the Partner shall notify the Council Representative as soon as possible (and in any event within 1 Business Day of the occurrence of the emergency) of the extent of the necessary Un-programmed Maintenance Works and the reasons for them. The Partner shall take all reasonable steps to minimise the duration of such Un-programmed Maintenance Works.

Council inspection and survey

- 6.15 The Council may (without restriction) inspect the Car Parks to ensure that the Car Parks are being maintained in accordance with the Council's Service Requirements and that the Car Parks comply with the Council's Construction Requirements throughout the Operating Period. The Council may appoint an independent third Party for the purposes of carrying out any such inspection and shall make known the findings to the Partner. The Partner shall use its reasonable endeavours to facilitate any such inspection. Following any such inspection, relevant representatives of the Parties shall then meet as soon as reasonably practicable thereafter to discuss any implications of such findings and any steps that are necessary to remedy any failure to comply with such obligations. The Partner shall take into account such discussions in the next schedule of Programmed Maintenance so that any failure to comply with such obligations shall be remedied. Either party may raise any such findings of their implications at a meeting of the Car Park Working Group.

7 The Guaranteed Minimum Payment, the Revenue Share and other payments

The Guaranteed Minimum Payment

- 7.1 Subject to clause 7.3, the Partner shall during each calendar year falling within the Operating Period, pay to the Council the annual sum of £♦ **[Bidders to insert]** [plus VAT] (Indexed) (**Guaranteed Minimum Payment**) in recognition of the Council granting to the Partner (subject to the Revenue Share and any other payments payable to the Council pursuant to this Agreement) the exclusive right to take all receipts from Car Parking Paying Acts.

- 7.2 The Guaranteed Minimum Payment shall be paid by the Partner to the Council by twelve equal monthly payments in arrears within 5 Business Days following the end of each calendar month falling within the Operating Period, the first such payment to be made on **[insert date]**.

The Revenue Share

- 7.3 The Partner shall pay to the Council, in respect of each calendar year falling within the Operating Period, an amount equal to the Revenue Share (if any). Such payment to be made in arrears within 20 Business Days of each calendar year.

Other Payments

- 7.4 ***[Bidders to clearly set out any other payments to the Council which can be offered]***
[(Relevant Payments)]

General Provisions relating to payments

- 7.5 All payments to the Council under this Agreement shall be made in pounds sterling by electronic transfer of funds for value on the day in question into Account Number: ***[Insert Account details]***, quoting the invoice number against which payment is made.
- 7.6 The Council shall be entitled, without prejudice to any other right or remedy, to receive interest on any payment not made on the due date pursuant to this Agreement calculated from day to day at a rate per annum equal to the Default Interest Rate from the day after the date on which payment was due up to and including the date of payment.
- 7.7 If any payment to be made pursuant to clause 7.1 to 7.6 relates to a period being less than the period stated by reason of the commencement or termination of this Agreement, the payment due shall be reduced pro-rata to reflect such shorter period.
- 7.8 The Guaranteed Minimum Payment, the Council's Revenue Share and payments pursuant to clause 7.4 (Other Payments) shall only be capable of being decreased:
- (a) where the parties have agreed to implement a change pursuant to Schedule 5 (Changes) and the parties have agreed that the implementation of such Change requires a reduction in the Relevant Payment;
 - (b) or pursuant to Schedule 2 following the occurrence of a Compensation Event.
- 7.9 For the avoidance of doubt, no Relevant Payment shall be amended to reflect:
- (i) any change in demand for Car Parking Paying Acts or other change in market conditions (howsoever caused); or
 - (ii) any other matter affecting the conduct of any of the Operations following the date of this Agreement.
- 7.10 All sums to be paid or other consideration to be given (including the carrying out by the Partner of the Works) by either Party (Paying Party) to the other Party under this Agreement are exclusive of VAT which if properly charged shall be paid at the same time as and in addition to such sums and consideration at the applicable rate, whereafter the other Party shall issue a VAT invoice to the Paying Party in respect of the relevant supply.

8 Additional Income

No Additional Income may be generated by the Partner unless such generation has been agreed in advance in writing by the Council (such agreement not to be unreasonably withheld or delayed). *[Bidders should note that the Council is prepared to consider lists of permitted activities prior to completion dependent upon the bidders' specific requirements. Each Bidder's bid should, if any permitted activity matters are required, provide a proposed list of activities which it believes should be permitted for this purpose.]*

9 Handback

The provisions of schedule 6 (Handback provisions) shall apply in relation to the condition which the Car Parks must be handed back upon the expiry of this Agreement.

10 Compensation Events, Relief Events and Force Majeure

The provisions of schedule 2 (Relief Events and Compensation Events) shall apply.

11 Representatives

Council Representative

- 11.1 The Council Representative shall be *[insert name]* or such other person appointed pursuant to this clause. The Council Representative shall have full authority to exercise the obligations and/or rights of the Council in relation to the Operations which are identified in this Agreement as obligations and/or rights to be carried out by the Council Representative. The Council may by notice to the Partner change the Council Representative. Where the Council wishes to do so, it shall by written notice to the Partner propose a substitute for approval, taking account of the need for liaison and continuity in respect of the Project. Such appointment shall be subject to the approval of the Partner (not to be unreasonably withheld or delayed).

The Partner Representative

- 11.2 The Partner Representative shall be *[insert name]* or such other person appointed pursuant to this clause. The Partner Representative shall have full authority to exercise the obligations and/or rights of the Partner in relation to the Operations which are identified in this Agreement as obligations and/or rights to be carried out by the Partner Representative. The Partner may by notice to the Council change the Partner Representative. Where the Partner wishes to do so it shall by written notice to the Council propose a substitute for approval, taking account of the need for liaison and continuity in respect of the Project. Such appointment shall be subject to the approval of the Council (not to be unreasonably withheld or delayed).

12 Licence to occupy the Sites for the purposes of the Operations

- 12.1 The Council hereby grants a licence to the Partner and the Partner Parties during the Operating Period to enter upon the Sites solely for the purposes of carrying out the Operations, such licence to terminate on the Expiry Date or the date of earlier termination of this Agreement (**Licence**).
- 12.2 The Licence shall not operate or be deemed to operate as a demise of the Sites or any part of the Sites, and the Partner shall not have or be entitled to exclusive possession or any estate right title or interest in the Sites but shall occupy the Sites as a licensee only.

12.3 The Licences are personal to the Partner and the Partner Parties and are granted only in so far as such rights are capable of being granted by the Council whether as a result of any restriction in any Relevant Property Document or otherwise.

12.4 The Partner shall procure that:

- (a) all the Operations carried out at the Sites by or on behalf of the Partner shall be carried out in a manner which does not breach any provisions of any Relevant Property Document; and
- (b) there shall be no action, or omission to act, which shall give rise to a right for any person to obtain title to the Sites or any part of it.

13 The Sites

13.1 Subject to clause 13.3, the condition of the Sites shall be the sole responsibility of the Partner. Accordingly, without prejudice to any other obligation of the Partner under this Agreement, the Partner shall be deemed to have:

- (a) inspected and examined the Sites and their surroundings and (where applicable) any existing structures or works on, over or under the Sites;
- (b) satisfied itself as to the nature of the Site Conditions, the ground and the subsoil, the form and nature of the Sites, the load-bearing and other relevant properties of the Sites, the buildings located at the Sites, the risk of injury or damage to property affecting the Sites, (where relevant) the nature of the materials (whether natural or otherwise) to be excavated and the nature of the design, work and materials necessary for the execution of the Works and the Services;
- (c) satisfied itself as to the adequacy of the rights of access to and through the Sites and any accommodation it may require for the purposes of fulfilling its obligations under this Agreement;
- (d) satisfied itself as to the possibility of interference by persons of any description whatsoever, with access to or use of, or rights in respect of, the Sites, with particular regard to the owners of any land adjacent to the Sites; and
- (e) satisfied itself as to the precautions, times and methods of working necessary to prevent any nuisance or interference, whether public or private, being caused to any third parties.

13.2 The Partner accepts full responsibility for all matters referred to in clause 13.1 and the Partner shall not, subject to clause 13.3, be entitled to make any claim against the Council of any nature whatsoever on any grounds that incorrect or insufficient information on any matter relating to the Sites was given to it by any person (whether or not a Council Party). The Partner shall, subject to clause 13.3, bear all risk in relation to the matters referred to at clause 13.1 and shall not be entitled to receive any compensation of any nature whatsoever if the condition of the Sites leads to any loss of income (whether from Car Park Paying Acts or otherwise).

13.3 If:

- (a) any defect, which could not have been reasonably identified by the Partner prior to the date of this Agreement, in the condition of the Car Parks at Broad Street Mall or Civic B becomes patent following the date of this Agreement; and

- (b) the Partner believes that such defect has resulted in a material reduction in income generated by the Partner in respect of this Agreement (including, without limitation, income from Car Park Paying Acts),

the Partner shall be entitled to claim compensation in respect of such loss of income pursuant to and in accordance with the provisions of paragraph 3 of schedule 2 (Compensation Events). For the avoidance of doubt, the Partner shall not pursuant to this Agreement be entitled to claim any compensation in respect of the cost of rectifying the defect and the Council shall not, subject to the provisions of this clause 13.3, be obliged to the Partner to rectify any such defect.

14 Consents and Planning Approval

The Partner shall be responsible for:

- (a) obtaining all Consents which may be required for the performance of the Operations; and
- (b) implementing each Consent within the period of its validity in accordance with its terms.

15 Prohibited Act

The Partner warrants that in entering into this Agreement it has not committed any Prohibited Act and undertakes that neither it nor any Partner Party shall commit any Prohibited Act during the Operating Period.

16 Indemnity

16.1 The Partner shall indemnify and keep the Council indemnified at all times from and against all Losses sustained by the Council in consequence of:

- (a) any claim for, or in respect of, the death and/or personal injury of any employee of, or person engaged by, the Partner or any Partner Party arising out of, or in the course of, the Operations;
- (b) any claim for, or in respect of, the death and/or personal injury of any third Party arising out of, or in the course of, the Operations;
- (c) any physical loss of or damage to Council Assets arising by reason of any act or omission of the Partner or any Partner Party;
- (d) any loss of or damage to property or assets of any third party arising by reason of any act or omission of the Partner or any Partner Party; and
- (e) any breach of statutory duty arising by reason of any act or omission of the Partner or any Partner Party,

provided that the Partner shall not be liable for any matter to the extent it was caused by the breach by the Council of its obligations in this Agreement.

Conduct of claims

- 16.2 This clause shall apply to the conduct by the Partner in respect of claims made by a third person against the Council. Accordingly:
- (a) if the Council receives any notice, demand, letter or other document concerning any claim for which it appears that the Council is, or may become entitled to indemnification under this Agreement, the Council shall give notice in writing to the Partner as soon as reasonably practicable and in any event within twenty (20) Business Days of receipt of the same;
 - (b) subject to clauses 16.2(c), 16.2(d) and 16.2(e) below, on the giving of a notice by the Council pursuant to clause 16.2(a) above, where it appears that the Council is or may be entitled to indemnification from the Partner in respect of all (but not part only) of the liability arising out of the claim, the Partner shall (subject to providing the Council with a secured indemnity to its reasonable satisfaction against all costs and expenses that it may incur by reason of such action) be entitled to dispute the claim in the name of the Council at the Partner's own expense and take conduct of any defence, dispute, compromise, or appeal of the claim and of any incidental negotiations. The Council shall give the Partner all reasonable co operation, access and assistance for the purposes of considering and resisting such claim;
 - (c) with respect to any claim conducted by the Partner pursuant to clause 16.2(b) above:
 - (i) the Partner shall keep the Council fully informed and consult with it about material elements of the conduct of the claim;
 - (ii) the Partner shall not bring the name of the Council into disrepute; and
 - (iii) the Partner shall not pay or settle such claims without the prior consent of the Council, such consent not to be unreasonably withheld or delayed;
 - (d) the Council shall be free to pay or settle any claim on such terms as it thinks fit and without prejudice to its rights and remedies under this Agreement if:
 - (i) the Partner is not entitled to take conduct of the claim in accordance with clause 16.2(b) above; or
 - (ii) the Partner fails to notify the Council of its intention to take conduct of the relevant claim within twenty (20) Business Days of the notice from the Council under clause 16.2(a) above or notifies the Council that it does not intend to take conduct of the claim; or
 - (iii) the Partner fails to comply in any material respect with the provisions of clause 16.2(c) above;
 - (e) the Council shall be free at any time to give notice to the Partner that it is retaining or taking over (as the case may be) the conduct of any defence, dispute, compromise or appeal of any claim (or of any incidental negotiations) to which clause 16.2(b) above applies. On receipt of such notice the Partner shall promptly take all steps necessary to transfer the conduct of such claim to the Council, and shall provide to the Council all reasonable co operation, access and assistance for the purposes of considering and resisting such claim. If the Council gives any notice pursuant to this clause 16.2(e), then the Partner shall be released from any liability under its

indemnity under clause 16.1 and, without prejudice to any accrued liabilities, any liability under its indemnity given pursuant to clause 16.2(b) in respect of such claim;

(f) if the Partner pays to the Council an amount in respect of an indemnity and the Council subsequently recovers (whether by payment, discount, credit, saving, relief or other benefit or otherwise) a sum which is directly referable to the fact, matter, event or circumstances giving rise to the claim under the indemnity, the Council shall forthwith repay to the Partner whichever is the lesser of:

(i) an amount equal to the sum recovered (or the value of the saving or benefit obtained) less any out of pocket costs and expenses properly incurred by the Council in recovering the same; and

(ii) the amount paid to the Council by the Partner in respect of the claim under the relevant indemnity,

provided that there shall be no obligation on the Council to pursue such recovery and that the Partner is repaid only to the extent that the amount of such recovery aggregated with any sum recovered from the Partner exceeds any loss sustained by the Council (including for this purpose indirect or consequential losses or claims for loss of profits which are excluded by this Agreement from being recovered from the Partner); and

(g) any person taking any of the steps contemplated by clauses 16.2(a) to 16.2(e) shall comply with the requirements of any insurer who may have an obligation to provide an indemnity in respect of any liability arising under this Agreement.

Taxation

16.3 If any payment by the Partner under an indemnity in this Agreement is subject to income tax or corporation tax (or any tax replacing them) in the hands of the Council, the Council may demand in writing to the Party making the payment that the payment shall be increased by such amount as would ensure that, after taking into account any such tax payable in respect of such additional amount, the Council receives and retains a net sum equal to the amount it would have otherwise received had the payment not been subject to such tax. The Party making the payment shall pay such additional amount within ten (10) Business Days of receipt of such demand.

17 Insurance

17.1 Requirement to Maintain

The Partner shall:

(a) with effect from the date of this Agreement or as otherwise required by Parts 1, 2 and 3 of schedule 8 (Insurances) take out and maintain in force or procure the taking out and maintenance of the Insurances together with the benefits of the endorsements specified in Parts 1, 2 and 3 of schedule 9 (Insurance Requirements) and any other insurances as may be required by Law in relation to the Car Parks and the maintenance and operation of the Car Parks (including without limitation required insurance in respect of the statutory inspection of lifts, lifting apparatus and boilers); and

- (b) procure that any broker of the Partner from time to time charged with the responsibility of placing or maintaining the Required Insurances provides a broker letter of undertaking substantially in the form set out in Part 4 of schedule 9 (Insurance Requirements).

17.2 Obligation on Parties

No party to this Agreement shall (and the Partner will use reasonable endeavours to procure that none of its Sub-Contractors of any tier shall) take any action or fail to take any reasonable action, or (insofar as it is reasonably within its power) permit anything to occur in relation to it, which would entitle any insurer to refuse to pay any claim under any insurance policy in which that party is an insured, a co-insured or additional insured person.

17.3 Nature of the Insurances

The Required Insurances shall:

- (a) wherever possible, name the Council as co-insured for its separate interest with any other party maintaining the insurance;
- (b) provide for non-vitiation protection in respect of any claim made by the Council as co-insured;
- (c) contain a clause waiving the insurers' subrogation rights against the Council and its employees and agents, acting properly in the course of such employment or agency;
- (d) provide for twenty (20) Working Days' prior written notice of their cancellation, non-renewal or amendment to be given to the Council;
- (e) provide for payment of any proceeds to be made by insurers in accordance with clause 18 (Reinstatement and Change of Requirement after Insured Event);
- (f) insofar as they relate to damage to assets cover the same for the full reinstatement value;
- (g) contain a clause whereby the insurance shall apply to each of the insured as if a separate policy had been issued to each of them, other than in the event of exhaustion of the sum insured; and
- (h) contain a provision that notice of a claim given by any insured party shall be accepted by the receiving party as valid notification of a claim in respect of the interest of all insured parties.

17.4 Evidence of Policies

The Partner shall provide, on request, to the Council:

- (a) copies of all insurance policies relating to the above (including all documents evidencing any amendments, extensions or variations to all such policies) and the Council shall be entitled to inspect them during ordinary business hours; and
- (b) evidence that the premiums payable under the Required Insurances have been paid and that the insurances are in full force and effect.

17.5 Renewal Certificates

Renewal certificates, or such other written evidence of renewal which is satisfactory to the Council, in relation to any of the insurances required by clause 17.1 (Requirement to Maintain) shall be obtained as and when necessary and copies (certified in a manner acceptable to the Council) shall be forwarded to the Council as soon as possible but in any event no more than ten (10) Working Days after the renewal date.

17.6 Breach

If the Partner is in breach of clause 17.1 (Requirement to Maintain), the Council may pay any premiums required to keep such insurance in force or itself procure such insurance and may, in either case, recover such amounts from the Partner on written demand, together with all expenses incurred in procuring such insurance.

17.7 Notification of Claims

The Partner shall:

- (a) give the Council notification within twenty (20) Working Days after any claim in excess of £10,000 Indexed on any of the Required Insurances or which, but for the application of the applicable policy excess, would be made on any of the Required Insurances and (if required by the Council) give full details of the incident giving rise to the claim;
- (b) promptly and diligently deal with all claims received relating to the Required Insurances and in accordance with insurers' requirements; and
- (c) in relation to all claims relating to the Required Insurances, give the Council details of the value and nature of all such claims as may from time to time be required by the Council provided always that such information shall be supplied by the Partner no less frequently than once every three (3) months.

17.8 Limit of Liability

Neither failure to comply nor full compliance with the insurance provisions of this Agreement shall limit or relieve the Partner of its liabilities and obligations under this Agreement.

17.9 Premiums

The insurance premiums for the Required Insurances and the amount of any loss that would otherwise be recoverable under any of the Required Insurances but for the applicable uninsured deductible and limit of indemnity in respect of such insurance shall at all times be the responsibility of the Partner.

17.10 Council Approval

The Required Insurances shall be effected with insurers approved by the Council, such approval not to be unreasonably withheld or delayed.

17.11 Professional Indemnity Insurance

Except for clauses 17.1 (Requirement to Maintain), 17.2 (Obligation on Parties), 17.4 (Evidence of Policies), and 17.5 (Renewal Certificates) the provisions of this clause 17

(Insurance) shall not apply to professional indemnity insurance (**PI Insurance**) and in respect of PI Insurance the Partner undertakes to:

- (a) provide evidence satisfactory to the Council (as and when reasonably required by the Council) of the PI Insurance being in full force and effect by [the Building Contractor] from the date of this Agreement (such evidence to include details of the cover) including confirmation of vicarious liability and retro cover, territorial limits, indemnity limit (which shall be a minimum of ten million pounds (£10,000,000) for any occurrence or series of occurrences arising out of each and every event and in the aggregate in any one year of insurance with a minimum of one automatic reinstatement of the aggregate indemnity limit in any one (1) year of insurance), levels of excess, insurers and policy number) and to maintain such insurance in run off form for a maximum of seven (7) years following the expiry of this Agreement;
- (b) provide the Council with copies of all notices under the PI Insurance relative to the Project;
- (c) provide such information to the Council as the Council may reasonably require in relation to any claim or circumstance notified to it under the PI Insurance in respect of the Project and any potential breach of the aggregate limit of the policy;
- (d) disclose to the relevant insurers:
 - (i) any matters which could reasonably be expected to be material in the context of the Project; and
 - (ii) any of the other insurances required to be maintained under this clause 17 (Insurance); and
- (e) indemnify the Council in respect of any subrogation claim by the insurers brought in connection with any claim made under the PI Insurance.

18 Reinstatement and Change of Requirement after Insured Event

18.1 Joint Account

- (a) All insurance proceeds received under any of the Required Insurances set out at paragraph 1 of parts 1 and 2 of schedule 9 (Insurance Requirements) (**Physical Damage Policies**) shall be applied to repair, reinstate and replace each part or parts of the Car Parks and/or assets in respect of which the proceeds were received.
- (b) The Partner shall set up and at all times maintain an account in the joint names of the Council and the Partner (**Joint Insurance Account**) into which it shall pay all insurance proceeds received from insurers in respect of the Physical Damage Policies in respect of a single event (or a series of related events) (**Relevant Incident**) in an amount in excess of £100,000 (Indexed) during the Works Period and £30,000 (Indexed) during the Services Period, such proceeds at all times to be used so as to ensure the performance by the Partner of its obligations under this Agreement, including, where necessary, the reinstatement, restoration, or replacement of the Car Parks and/or assets in respect of which such proceeds were received.

18.2 Obligations

Where a claim is made or proceeds of insurance are received or are receivable under any Physical Damage Policy in respect of a Relevant Incident in an amount in excess of £100,000 (Indexed) during the Works Period and £30,000 (Indexed) during the Services Period:

- (a) The Partner shall deliver as soon as practicable and in any event within twenty (20) Working Days after the making of the claim a plan prepared by the Partner for the carrying out of the works (**Reinstatement Works**) necessary to repair, reinstate or replace the Car Park and/or assets (**Reinstatement Outline**) in accordance with this clause 18.2 (Obligations). The Reinstatement Outline shall set out:
 - (i) the identity of the person proposed to effect the Reinstatement Works, which shall be subject to the prior written approval of the Council (not to be unreasonably withheld or delayed); and
 - (ii) the proposed terms and timetable upon which the Reinstatement Works are to be effected (including the date that the Project will become fully operational), the final terms of which shall be subject to the prior written approval of the Council (not to be unreasonably withheld or delayed).
- (b) The Council shall within ten (10) Working Days of receipt of the Reinstatement Outline notify the Partner in writing that:
 - (i) it is satisfied that the Reinstatement Outline will enable the Partner to comply with its obligations to carry out the Reinstatement Works within a reasonable timetable, and that the identity of any person (set out in the Reinstatement Outline) that may be appointed to effect the Reinstatement Works is approved;
 - (ii) the identity of any person (set out in the Reinstatement Outline) that may be appointed to effect the Reinstatement Works is not approved together with its reasons for such non-approval in sufficient detail so as to enable the Partner to understand the nature and extent of such non-approval and to assess whether the Council's approval under clause 18.2(a)(ii) (Obligations) has been unreasonably withheld;
 - (iii) the Council does not approve the Reinstatement Outline together with its reasons for such non-approval, in sufficient details so as to enable the Partner to understand the nature and extent of such non-approval and to assess whether the Council's approval under clause 18.2(a)(ii) (Obligations) has been unreasonably withheld; or
 - (iv) if the Council does not make one of the said responses within the period specified in clause 18.2(b) (Obligations) it shall be deemed to have approved the Reinstatement Outline, save where the Council has reasonably requested any further information from the Partner, in which case the time limit outlined in clause 18.2(b) (Obligations) will be deemed to commence upon receipt of such further information by the Council.
- (c) If the Council gives notice of non-approval in accordance with clauses 18.2(b)(i) (Obligations) or 18.2(b)(ii) (Obligations), the Partner may amend and re-submit the Reinstatement Outline (**Amended Reinstatement Outline**) to the Council for its reconsideration and the Council shall give its approval or non approval within five (5)

Working Days of the submission of the Amended Reinstatement Outline to the Council. If the Council does not approve the Amended Reinstatement Outline, it shall provide reasons for such non-approval in sufficient detail so as to enable the Partner to understand the nature and extent of such non-approval and to assess whether the Council's approval has been unreasonably withheld.

- (d) In the event that the Amended Reinstatement Outline or a person proposed to carry out the Reinstatement Works is not approved by the Council in accordance with clauses 18.2(b) (Obligations) or 18.2(c) (Obligations), the Partner may submit the Amended Reinstatement Outline to the Dispute Resolution Procedure in order for it to be determined whether the Council's approval under clause 18.2(c) (Obligations) was unreasonably withheld.
- (e) The Reinstatement Outline as approved by the Council pursuant to this clause 18 (Reinstatement and Change of Requirement after Insured Event) or as determined pursuant to the Dispute Resolution Procedure shall become the reinstatement plan (**Reinstatement Plan**).
- (f) The Partner shall effect the Reinstatement Works in accordance with the Reinstatement Plan, and:
 - (i) shall enter into contractual arrangements to effect the Reinstatement Works with the person(s) identified in the approved Reinstatement Plan;
 - (ii) prior to the earlier to occur of the Termination Date or the Expiry Date, any amounts standing to the credit of the Joint Insurance Account (**Relevant Proceeds**) (together with any interest accrued) may be withdrawn by the Partner from the Joint Insurance Account as required to enable it to make payments in accordance with the terms of the contractual arrangements entered into to effect the Reinstatement Works and to meet any other reasonable costs and expenses of the Partner for the sole purposes of financing the Reinstatement Works. Following the earlier to occur of the Termination Date and the Expiry Date the Council may withdraw amounts standing to the credit of the Joint Insurance Account for the purposes of funding any Reinstatement Works;
 - (iii) the Council agrees and undertakes that, subject to compliance by the Partner with its obligations under this clause 18 (Reinstatement and Change of Requirement after Insured Event), and provided that the Partner procures that the Reinstatement Works are carried out and completed in accordance with this clause 18.2 (Obligations), it shall not exercise any right which it might otherwise have to terminate this Agreement by virtue of the event which gave rise to the claim for the Relevant Proceeds;
 - (iv) the Council undertakes to use all reasonable endeavours to assist the Partner in the carrying out of the Reinstatement Plan but will incur cost in doing so only having first obtained the prior approval of the Partner to do so and on the basis that such reasonable costs are recoverable from the Partner;
 - (v) after the Reinstatement Works have been implemented to the reasonable satisfaction of the Council and in accordance with clause 18.2 (Obligations) the Council shall consent to the payment to the Partner of any Relevant

Proceeds then held within the Joint Insurance Account in respect of the Relevant Incident, together with any interest accrued; and

- (vi) the Partner shall be solely responsible for the payment of any deficiency.

18.3 Works Carried Out

Where insurance proceeds are to be used in accordance with this agreement to repair, reinstate or replace any part of the Car Parks and/or assets, the Partner shall carry out the work in accordance with the Council's Requirements so that on completion of the work the Car Park and/or assets meet the provisions of this Agreement.

19 Employees

Transfer Regulations (TUPE)

- 19.1 It is acknowledged by the Partner and the Council that TUPE applies to this Agreement, and accordingly the contracts of employment of the Transferring Employees shall have effect on the Service Transfer Date (subject to Regulation 5(4A) of TUPE) and thereafter as if originally made between each such Transferring Employee and the Partner or relevant Sub-Contractor in accordance with and subject to TUPE.
- 19.2 The Council shall comply with its obligations under TUPE in respect of the Relevant Transfer pursuant to this Agreement and the Partner shall comply and shall procure that each Sub-Contractor shall comply with its obligations (including without limitation the obligation under Regulation 10(3) of TUPE) in respect of the Relevant Transfer pursuant to this Agreement and each of the Council and the Partner shall indemnify the other against any Direct Losses sustained as a result of any breach of this clause 19 by the party in default.

Employee Information

- 19.3 The Council will, prior to the Service Transfer Date, disclose to the Partner all information in relation to the terms and conditions of employment of the Transferring Employees including the Trade Unions Facilities Agreement, National Agreements and Local Agreements. The Council warrants that as at the date it is provided all such information is true, accurate and contains no material omissions. The Council shall indemnify the Partner against any reasonable costs, losses and damages arising out of any breach of the warranty contained in this clause 19.3.

Details of Measures

- 19.4 The Partner shall as soon as reasonably practicable following a written request by the Council, but in any event no later than twenty (20) Business Days following such a request, provide to the Council details of any measures which the Partner or any Sub-Contractor envisages it or they will take in relation to any Transferring Employees, and if there are no measures, confirmation of that fact, and, for the avoidance of doubt, shall indemnify the Council against all Direct Losses resulting from any failure by the Partner to comply with this obligation.

Trade Unions

- 19.5 The Partner shall, and shall procure that each and every relevant Sub-Contractor shall, in accordance with and to the extent required by TUPE, recognise the trade unions representing the Transferring Employees from the Service Transfer Date and thereafter to the same extent as they were recognised by the Council immediately prior to the Service Transfer Date.

- 19.6 The Partner shall procure that, on each occasion on which the identity of a Sub-Contractor changes pursuant to this Agreement (**New Sub-Contractor**), in the event that there is a Relevant Transfer, the new Sub-Contractor shall in accordance with TUPE recognise the trade unions representing the employees whose contracts of employment transfer to the new Sub-Contractor to the same extent as they were recognised before the change of identity of the Sub-Contractor in respect of the provision of the Services at the Council's premises.

Emoluments and Outgoings

- 19.7 The Council shall be responsible for all remuneration, benefits, entitlements and outgoings in respect of the Transferring Employees, including without limitation all wages, holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions, pension contributions and otherwise, up to the Service Transfer Date.
- 19.8 The Partner shall be responsible or shall procure that any relevant Sub-Contractor is responsible for all remuneration, benefits, entitlements and outgoings in respect of the Relevant Employees and any other person who is or will be employed or engaged by the Partner or any Sub-Contractor in connection with the provision of any of the Services, including without limitation all wages, holiday pay, bonuses, commission, payment of PAYE, national insurance contributions, pension contributions and otherwise, for the period between the Service Transfer Date and the Contract Expiry Date.

Recruitment and Training and Code Obligations

- 19.9 The Partner shall be responsible for the recruitment and provision of suitable Personnel as may be necessary for the provision of the Services and all Personnel shall receive proper training in their functions and duties.
- 19.10 The Partner shall provide to the Council, details of the workforce which the Partner proposes to establish to provide the Services (**Proposed Workforce**) classified by reference to grade, job description, hours worked, shift patterns, pay scales, rates of pay, terms and conditions and pension arrangements.
- 19.11 The Council and the Partner shall have regard to the Code in interpreting and applying the Code Obligations. The following shall apply:
- (a) Subject to clause 19.11(b), the Partner shall procure that any New Employees shall be employed on terms and conditions of employment which are, overall fair and reasonable and no less favourable than those of the Transferring Employees engaged in the provision of the Services who are working alongside and holding the same or a similar position to that of the New Employees.
 - (b) The Partner shall procure that any relevant Sub-Contractor shall consult with the recognised trade unions and where there is no recognised trade union any other employee representative body on the terms to be offered to the New Employees pursuant to clause 19.11(a).
 - (c) In addition to its obligations under clause 19.11(a) above, the Partner shall procure that the New Employees are offered either:
 - (i) membership of the Local Government Pension Scheme (**LGPS**) where the employer has admitted body status within the scheme and makes the requisite contribution; or

- (ii) membership of a good quality employer pension scheme, being a contracted-out final salary based defined benefit scheme, or a defined contribution scheme under which the employer must match employee contributions up to six percent (6%); or
 - (iii) a stakeholder pension scheme, under which the employer matches employee contributions up to 6 per cent (6%).
- (d) During the term of this Agreement, the Partner shall on request by the Council provide or procure that the Council is provided with such accurate and complete information as soon as reasonably practicable, including the terms and conditions of employment of the Transferring Employees and the New Employees, where this is required to monitor the Partner's compliance with its Code Obligations.
- (e) The Partner shall and shall procure that any relevant Sub-Contractor shall support any central Government sponsored review and monitoring programme on the impact of the Code and on request by the Council provide the Council with such accurate and complete information as soon as reasonably practicable in order to assist the Council in doing this.
- (f) The Council and the Partner shall in the first instance seek to resolve by discussions between them any complaints from any employee or any recognised trade union in relation to compliance by the Partner and any Sub-Contractor of its Code Obligations.
- (g) Where it appears to the Council or the Partner that it is not possible to resolve the matter by continuing discussions between them pursuant to clause 19.11(f) or where an employee of the Partner or any recognised trade union writes to the Council to confirm that it has been unable to resolve its complaint directly with the Partner or any Sub-Contractor in relation to the Partner's Code Obligations:
 - (i) the Council shall first write to the Partner to seek an explanation for the alleged failure by the Partner to comply with its Code Obligations. The Partner shall or shall procure that the relevant Sub-Contractor provides such an explanation in writing within five (5) Business Days of receipt of the request from the Council;
 - (ii) if the response provided by the Partner or any Sub-Contractor satisfies the Council that the Code Obligations have been met, then the Council will inform the complainant of this and the matter will be deemed to have been concluded;
 - (iii) in the event that the Council is not satisfied with the response provided by the Partner or any Sub-Contractor the Council shall write to the Partner within five (5) Business Days to require the Partner to take immediate action to resolve this dispute; and
 - (iv) if, following such a request by the Council the Partner still appears to the Council not to be complying with its Code Obligations, the matter shall be dealt with in accordance with the Code Dispute Resolution in Schedule 20.

Indemnities

- 19.12 The Council shall indemnify the Partner and keep the Partner fully indemnified from and against all and any Direct Losses which relate to any claim which is or may be brought by any

Transferring Employee arising from any act, omission, breach, default, obligation or liability of the Council prior to the Service Transfer Date, including as a result of a failure on the part of the Council to comply with its obligations under Regulation 10 of TUPE.

- 19.13 The Partner shall (for itself and any relevant Sub-Contractor) indemnify the Council against any Direct Losses the Council may incur as a result of any failure to comply with its (or those of any relevant Sub-Contractor) obligations under regulation 10 of TUPE to the extent that any such Direct Losses are attributable to any failure or delay on the part of the Partner or relevant Sub-Contractor in providing the Council with information (whether before or after the date hereof) pursuant to regulation 10(3) of TUPE.
- 19.14 Indemnify and keep indemnified in full the Council, against all Direct Losses incurred by the Council in connection with or as a result of:
- (a) any claim by any Transferring Employee that the identity of the Partner or the relevant Sub-Contractor is to that Transferring Employee's detriment or that any proposed or actual substantial change by the Partner or any Sub-Contractor to the Transferring Employees' working conditions or any proposed measures of the Partner or the relevant Sub-Contractor are to that employee's detriment whether such claim arises before or after the Service Transfer Date; and
 - (b) any claim arising out of any misrepresentation or mis-statement whether negligent or otherwise made by the Partner or Sub-Contractor to the Transferring Employees or their representatives whether before on or after the Service Transfer Date and whether liability for any such claim arises before on or after the Service Transfer Date.
- 19.15 The Council will co-operate fully with the Partner's reasonable requests prior to the Service Transfer Date to procure the smooth transfer of the Transferring Employees.

Council Rights

- 19.16 The Council may if it has reasonable grounds for believing that any person employed or engaged or to be employed or engaged by the Partner or any relevant Sub-contractor in or in connection with the provision of the Services is or would be an Unsuitable Person, if so employed or engaged in or in connection with the provision of a Service, by notice in writing from the Council to the Partner require the Partner to procure that such Unsuitable Person is not engaged or employed directly or indirectly in or in connection with the provision of the Services or any part of the Services. The Partner shall not be obliged to dismiss or procure the dismissal of any Unsuitable Person in respect of whom a notice has been issued pursuant to this clause 19.16, but shall immediately transfer or procure the immediate transfer of any such Unsuitable Person to the performance of duties other than the Services, at the Partner's expense.

Expiry and Termination

- 19.17 The Partner shall (and shall procure that any Sub-Contractor shall) within the period of twelve (12) months immediately preceding the expiry of this Agreement or following the service of a notice of Termination in accordance with this Agreement, or at any other time as reasonably requested by the Council:
- (a) deliver to the Council in respect of any person wholly or mainly engaged or employed by the Partner or any Sub-Contractor in the provision of the Services (**Assigned Employees**) such full and accurate and up to date information as the Council

reasonably requests (including but not limited to, information relating to terms and conditions of employment, job title, age, length of service and benefits) and other information required or expected by Law affecting each of those Assigned Employees who it is expected, if they remain in the employment of the Partner or of any Sub-Contractor until immediately before the End Date, would be End Employees **(Retendering Information)**;

- (b) provide the Retendering Information promptly and in any event no later than twenty (20) Business Days of a request and at no cost to the Council;
- (c) notify the Council in writing of any material changes to the Retendering Information promptly as and when such changes arise;
- (d) indemnify and keep indemnified in full the Council, and at the Council's request each and every service provider who shall provide any service equivalent to any of the Services after expiry or earlier termination of this Agreement **(Future Service Provider)** against all Direct Losses arising from any claim by any party as a result of:
 - (i) the Partner or relevant Sub-Contractor failing to provide or promptly to provide the Council with full and accurate Retendering Information or as a result of any material inaccuracy in or omission from the Retendering Information.
 - (ii) any claim or demand against the Council or any Future Service Provider by any person who is or has been employed or engaged by the Partner or any Sub-Contractor in connection with the provision of any of the Services where such claim arises as a result of any act, fault or omission of the Partner and/or any Sub-Contractor after the Service Transfer Date;
 - (iii) a breach by the Partner of its obligations under clause 19.8 above; and
 - (iv) any claim by any trade union or staff association or employee representative (whether or not recognised by the Partner and/or the relevant Sub-Contractor in respect of all or any of the Assigned Employees) arising from or connected with any failure by the Partner and/or any Sub-Contractor to comply with any legal obligation to such trade union, staff associated or other employee representative whether under Regulation 10 of TUPE, under the ARD or otherwise and, whether any such claim arises or has its origin before or after the date of the Service Transfer Date.

19.18 Following the service of a notice of termination the Partner shall not, without the prior written consent of the Council, carry out an Unauthorised Act, which for the purposes of this clause 19.18 are:

- (a) the termination of the employment of any Assigned Employee except in circumstances involving acts of gross misconduct and where termination is carried out pursuant to the Partner's disciplinary procedures or as required by Law;
- (b) the alteration or change in any way of any terms and conditions of employment of any Assigned Employee (whether with or without consent of the relevant Assigned Employee) other than in order to give effect to wage or salary awards which are in line with those offered generally for similar status individuals within the relevant employer's workforce or as required by Law;

- (c) the recruitment (except as a replacement for any Assigned Employee whose employment is terminated and where the replacement is being recruited on terms which are not materially better than the terms of the employee being replaced) of any employees to perform any of the Services; and
- (d) the re-assignment of any Assigned Employee to or from duties connected with any of the Services.

19.19 Upon expiry or termination of this Agreement or of any Services or material part thereof for whatever reason (**End Date**) the following provisions shall have effect in respect of the relevant End Employees, regardless of whether Law shall determine there is a Relevant Transfer, the Partner shall or shall procure that the relevant Sub-Contractors shall:

- (a) ensure that all wages, salaries and other benefits of the relevant End Employees and other employees or former employees of the Partner or the Sub-Contractors (who had been engaged in the provision of the Services) and all PAYE tax deductions and national insurance contributions relating thereto in respect of the employment of the relevant End Employees and such other employees or former employees of the Partner or Sub-Contractors up to the relevant End Date are satisfied;
- (b) remain responsible for all the Partner's or Sub-Contractor's employees (other than the End Employees) on or after the time of expiry or termination of this Agreement and shall indemnify the Council and any Future Service Provider against all Direct Losses incurred by the Council or any Future Service Provider resulting from any claim whatsoever whether arising before on or after the relevant End Date by or on behalf of any of the Partner's or Sub-Contractor's employees who do not constitute the relevant End Employees;
- (c) in respect of the relevant End Employees
 - (i) indemnify the Council and any Future Service Provider against all Direct Losses incurred by the Council or any Future Service Provider resulting from any claim whatsoever by or on behalf of any relevant End Employees in respect of the period from the Service Transfer Date up to the Contract Expiry Date (whether any such claim, attributable to the period up to and on the Contract Expiry Date, arises before, on or after Contract Expiry Date) including but not limited to any failure by the Partner or any Sub-Contractor to comply with its or their obligations under Regulation 10 of TUPE and/or the ARD as if such legislation applied, even if it does not in fact apply save to the extent that any such failure to comply arises as a result of an act or omission of the Council or any Future Service Provider.
 - (ii) The Council shall be entitled to assign the benefit of this indemnity to any Future Service Provider.

20 Pensions

20.1 Partner to Become an Admitted Body

Where the Partner employs any Eligible Employees from a Relevant Transfer Date it shall procure that it shall become an Admitted Body. The Partner shall before the Relevant Transfer Date execute an Admission Agreement which will have effect from and including the Relevant Transfer Date.

20.2 Admission Agreement

The Council shall before the Relevant Transfer Date execute each of the Admission Agreements referred to in clause 20.1 (Partner to Become an Admitted Body) [and shall use reasonable endeavours to ensure that the Administering Council executes each such Admission Agreement before the Relevant Transfer Date].

20.3 Indemnity for a Breach of the Partner Admission Agreement

Without prejudice to the generality of this clause 20, the Partner hereby indemnifies the Council against all Direct Losses suffered or incurred by it or them which arise from any breach by the Partner of the terms of the Admission Agreement to the extent that such liability arises before or as a result of the termination or expiry of this Agreement (howsoever caused).

20.4 Indemnity or Bond

Without prejudice to the generality of the requirements of this clause 20 the Partner shall as soon as reasonably practicable obtain any indemnity or bond required in accordance with the Admission Agreement.

20.5 Right of Set Off

The Council shall have a right to set off against any payments due to the Partner under this Agreement an amount equal to any overdue employer and employee contributions and other payments (and interest payable under the Regulations) due from the Partner under the Admission Agreement.

20.6 Partner Ceases to be an Admitted Body

If the Partner employs any Eligible Employees from a Relevant Transfer Date and:

- (a) the Partner is unable to offer those Eligible Employees membership of the LGPS; or
- (b) the Council and the Partner are of the opinion that it is not possible to operate the provisions of clauses 20.1 (Partner to Become an Admitted Body) to 20.5 (Right of Set Off) inclusive; or
- (c) if for any reason after the Relevant Transfer Date the Partner ceases to be an Admitted Body other than on the date of termination or expiry of this Agreement or because it ceases to employ any Eligible Employees,

then the provisions of clauses 20.1 (Partner to Become an Admitted Body) to 20.5 (Right of Set Off) inclusive shall not apply (without prejudice to any rights of the Council under those clauses) and the provisions of clause 20.7 ((Partner Scheme)) shall apply.

20.7 Partner Scheme

- (a) If at any time clause 20.1 does not apply or at any time before the Cessation Date clauses 20.1 to 20.5 do not apply, the Partner shall not later than 3 months before ceasing to be an Admitted Body nominate to the Council in writing the occupational pension scheme which it proposes shall be "the Partner Scheme" for the purposes of this clause 20.7. Such pension scheme must be:

- (i) established within three (3) months of the Relevant Transfer Date or Cessation Date (as the case may be) and maintained until the termination or expiry of this agreement;
 - (ii) reasonably acceptable to the Council (such acceptance not to be unreasonably withheld or delayed);
 - (iii) approved by the Board of Inland Revenue as an exempt approved scheme under Chapter I of Part XIV of the Income and Corporation Taxes Act 1988 (or capable of such approval provided that the payment to be made to the Partner Scheme pursuant to clause 20.7(b)(vi) has been specifically approved by the Board of Inland Revenue); and
 - (iv) certified by [the Government Actuary's Department] [an actuary nominated by the Council in accordance with relevant guidance produced by the Government Actuary's Department] as providing benefits which are broadly comparable to those provided by the LGPS;
- (b) The Partner undertakes to the Council (for the benefit of the Council itself and for the Council as agent and trustee for the benefit of the Eligible Employees) that it shall procure that:
- (i) the Eligible Employees shall by three (3) months before the Relevant Transfer Date or the Cessation Date (as the case may be) be offered membership of the Partner Scheme with effect from and including the Relevant Transfer Date or Cessation Date (as the case may be);
 - (ii) the Partner Scheme shall provide benefits in respect of the Eligible Employees' periods of service on and after the Relevant Transfer Date or Cessation Date (as the case may be) which [the Government Actuary's Department] [an actuary nominated by the Council in accordance with relevant guidance produced by the Government Actuary's Department] shall certify to be broadly comparable to the benefits which the Eligible Employees would have been entitled to under the LGPS had they continued in membership of the LGPS;
 - (iii) if the Partner Scheme is terminated, a replacement pension scheme shall be provided with immediate effect for those Eligible Employees who are still employed by the Partner. The replacement scheme must comply with this clause 20.7 (Partner Scheme) as if it were the Partner Scheme;
 - (iv) before the Relevant Transfer Date or Cessation Date (as the case may be) the trustees of the Partner Scheme shall undertake by deed to the Council and to the Administering Council that they shall comply with the provisions of this clause 20.7 (Partner Scheme) and clauses 20.8(a), 20.8(c) and 20.8(d) (Undertaking from the Partner);
 - (v) that there is offered to each eligible employee who agrees to become a member of the Partner Scheme the opportunity to transfer the benefits he had accrued under the LGPS into the Partner Scheme; and
 - (vi) for each employee who accepts such an offer in writing within 2 months of the receipt of the offer the Partner will procure (subject to the receipt of the transfer in accordance with clause 20.7(c) below that the Partner will provide

benefits which in the opinion of the actuary nominated by the Council in respect of past service are overall equal in value and no less favourable than the benefits to which the Eligible Employee was entitled under the LGPS immediately before the Relevant Transfer Date or Cessation date (as the case may be) on the assumption that he remained in membership during the period of the agreement and any subsequent bulk transfers on termination or expiry of this Agreement;

- (c) The transfer value under clause 20.7(b)(vi) above will subject only to Inland Revenue limitations be wholly applied under the Partner Scheme in the provision of benefits for and in respect of the eligible employees in respect of whom that transfer was made in respect of service before the Relevant Transfer Date or Cessation Date (as the case may be);
- (d) Before the Relevant Transfer Date or Cessation Date (as the case may be) the trustees of the Partner Scheme undertake to the Council and to the Administering Council by deed that they shall procure compliance with the provisions of clauses 20.7 (Partner Scheme) and 20.8 (Undertaking from the Partner).

20.8 Undertaking from the Partner

The Partner undertakes to the Council (for the benefit of the Council itself and for the Council as agent and trustee for the benefit of the Eligible Employees) that:

- (a) all information which the Council or the Administering Council or their respective professional advisers may reasonably request from the Partner for the administration of the LGPS or concerning any other matters raised in clause 20.7 (Partner Scheme), 20.8 (Undertaking from the Partner) shall be supplied to them as expeditiously as possible;
- (b) it shall not without the consent in writing of the Council (which shall only be given subject to the payment by the Partner of such reasonable costs as the Council or the Administering Council may require) consent to instigate, encourage or assist any event which could impose on the LGPS or on the Council a cost in respect of any Eligible Employee greater than the cost which would have been payable in respect of that Eligible Employee had that consent, instigation, encouragement or assistance not been given;
- (c) until the Relevant Transfer Date, it shall not issue any announcements (whether in writing or not) to the Eligible Employees concerning the matters stated in clauses 20.1 (partner to Become an Admitted Body) to 20.6 (Partner Ceases to be an Admitted Body) inclusive without the consent in writing of the Council and the Administering Council (not to be unreasonably withheld or delayed);
- (d) it shall not take or omit to take any action which would materially affect the benefits under the LGPS or under the Partner Scheme of any Eligible Employees who are or will be employed wholly or partially in connection with the Services without the prior written agreement of the Council (not to be unreasonably withheld or delayed) provided that the Partner will be so entitled without the requirement of consent to give effect to any pre-existing contractual obligations to any Eligible Employees; and
- (e) it shall offer any of its Eligible Employees ceasing to be engaged in the provision of the Services and thereby ceasing to be eligible for membership of the LGPS

membership of the Partner Scheme as soon as reasonably practicable after ceasing to be so engaged.

20.9 Discretionary Benefits

- (a) Where the Partner is an Admitted Body, the Partner shall award benefits (where permitted) to the Eligible Employees under the Compensation Regulations and/or the LGPS in circumstances where the Eligible Employees would have received such benefits had they still been employed by the Council;
- (b) Where the award of benefits in clause 20.9(a) is not permitted under the Compensation Regulations and/or the LGPS or the Partner is not an Admitted Body, the Partner shall and/or shall award benefits to the Eligible Employees which are identical to the benefits the Eligible Employees would have received under the Compensation Regulations and/or the LGPS in circumstances where the Eligible Employees would have received such benefits had they still been employed by the Council; and
- (c) Under clause 20.9(a) and 20.9(b), where such benefits are of a discretionary nature, they shall be awarded on the basis of the Council's written policy in relation to such benefits at the time of the Relevant Transfer Date (which the Council shall provide upon request). Where the payment of such benefits is not, for whatever reason, possible, the Partner shall compensate the Eligible Employees in a manner which is broadly comparable or equivalent in cash terms.

20.10 Claims from Eligible Employees or Trade Unions

The Partner hereby indemnifies the Council and/or any future service provider from and against all Direct Losses suffered or incurred by it or them which arise from claims by Eligible Employees of the Partner or by any trade unions, elected employee representatives or staff associations in respect of all or any such Eligible Employees which losses:

- (a) relate to pension rights in respect of periods of employment on and after the Relevant Transfer Date until the date of termination or expiry of this Agreement; or
- (b) arise out of the failure of the Partner to comply with the provisions of this clause 20 before the date of termination or expiry of this Agreement.

20.11 Liability for Costs

The costs of the Council necessarily and reasonably incurred in connection with the Partner Admission Agreement and/or of obtaining the necessary certification of comparability in accordance with clause 20.7(a)(iv) (Partner Scheme) shall be borne by the Partner.

20.12 Transfer to another Employer

Save on expiry or termination of this Agreement, if the employment of any Eligible Employee transfers to another employer (by way of a transfer under TUPE) the Partner shall:

- (a) consult with and inform those Eligible Employees of the pension provisions relating to that transfer; and
- (b) procure that the employer to which the Eligible Employees are transferred (the "New Employer") complies with the provisions of this clause 20 provided that references to the "Sub-Partner" will become references to the New Employer, references to

“Relevant Transfer Date” will become references to the date of the transfer to the New Employer and references to “Eligible Employees” will become references to the Eligible Employees so transferred to the New Employer.

20.13 Pension Issues on Expiry or Termination

The Partner shall:

- (a) maintain such documents and information as will be reasonably required to manage the pension aspects of any onward transfer of any person engaged or employed by the Partner in the provision of the Services on the expiry or termination of this Agreement (including without limitation identification of the Eligible Employees);
- (b) promptly provide to the Council such documents and information mentioned in clause 20.13(a) which the Council may reasonably request in advance of the expiry or termination of this Agreement; and
- (c) fully co-operate (and procure that the trustees of the Partner's Scheme shall fully co-operate) with the reasonable requests of the Council relating to any administrative tasks necessary to deal with the pension aspects of any onward transfer of any person engaged or employed by the Partner in the provision of the Services on the expiry or termination of this Agreement.

21 The Council's right to Step-in

21.1 The provisions of clauses 21.2 to 21.7 (inclusive) shall apply if:

- (a) the Council, acting reasonably, considers that a breach by the Partner of any obligation under this Agreement:
 - (i) may create an immediate and serious threat to the health or safety of any person; or
 - (ii) may result in a material interruption in the provision of the Works or the Services; or
- (b) the Partner has, in relation to any Service, accrued more than 8 Service Credits in any period of 3 months pursuant to part 2 of schedule 4; or
- (c) the Partner is not in breach of its obligations as described in clause 21.1(a) and 21.1(b), but the Council considers the circumstances constitute an emergency.

21.2 In any of the circumstances set out in clause 21.1, the Council, acting reasonably, may (without prejudice to its rights under clause 24 (Termination) or any other express rights under this Agreement) either:

- (a) if it considers that there is sufficient time and that it is likely that the Partner will be willing and able to provide assistance, require the Partner by written notice to take such steps as the Council considers necessary or expedient to mitigate or rectify such state of affairs and the Partner shall use its best endeavours to comply with the Council's requirements as soon as reasonably practicable; or
- (b) if it considers there is not sufficient time, or that the Partner is not likely to be willing and able to take the necessary steps, take such steps as it considers to be appropriate (either itself or by engaging others to take any such steps) to ensure

performance of the relevant Services to the standards required by this Agreement (or as close as possible to those standards as the circumstances permit and, in any event, in accordance with Good Industry Practice).

21.3 If:

- (a) the Partner does not confirm, within ten (10) Business Days of a notice served pursuant to clause 21.2(a) (or such shorter period as is appropriate in the case of an emergency), that it is willing to take such steps as are referred to in clause 21.2(a); or
- (b) the Partner fails to take the steps notified to it by the Council pursuant to clause 21.2(a) within such time as the Council, acting reasonably, shall think fit,

then (without prejudice to clause 21.2(b)) the Council, acting reasonably, may itself take or engage others to take such steps as it considers appropriate.

21.4 Where the Council considers it to be necessary or expedient to do so, the steps which the Council may take pursuant to this clause shall include the partial or total suspension of the right and obligation of the Partner to provide the relevant Services to the Council but only for so long as the circumstances referred to in clause 21.1 subsist or, in the circumstances set out in clause 21.1(b), until such time as the Partner shall have demonstrated to the reasonable satisfaction of the Council that it will perform (and is capable of performing) its obligations in respect of the relevant Services to the required standard.

21.5 If the Council either takes steps itself or requires the Partner to take steps in accordance with this clause as a result of the circumstance referred to in clause 21.1(c):

- (a) the Council shall indemnify and keep indemnified the Partner at all times from and against all additional direct reasonable costs, losses, expenses or damages suffered or incurred in relation to undertaking such steps over and above those that would otherwise have been incurred in the proper performance of the Partner's obligations under this Agreement; and
- (b) any costs incurred by the Council in taking such steps or requiring the Partner to take such steps shall be borne by the Council.

21.6 To the extent that the Parties shall agree, or it shall be determined in accordance with schedule 7 (Dispute Resolution Procedure), that the Council was not reasonable in requiring the Partner to take such steps (or in taking such steps itself) as are referred to in this clause 21, then the Council shall indemnify and keep indemnified the Partner at all times from and against any costs, losses, expenses or damages (over and above those that would otherwise have been incurred by the Partner in the proper performance of its obligations under this Agreement) that are directly and reasonably incurred by the Partner in complying with those requirements of the Council as are agreed or determined not to be reasonable. To avoid doubt, it is acknowledged that the Partner has no right to require determination before taking any such action that the Council may specify; only subsequently may it refer any dispute for resolution to determine if the Council was reasonable in requiring the Partner to take such steps.

21.7 Subject to clauses 21.5 and 21.6:

- (a) any costs or expenses incurred by the Partner in taking such steps as are required by the Council pursuant to clause 21.2(a) shall be borne by the Partner;

- (b) The Partner shall reimburse the Council for all reasonable costs, losses, expenses or damages incurred by it in relation to taking the steps, or engaging others to take the steps, referred to in clauses 21.2 and 21.3.

22 Intellectual Property

Data

22.1 The Partner shall make available to the Council free of charge (and hereby irrevocably licences the Council to use) all Data that might reasonably be required by the Council and the Partner shall ensure that it obtains all necessary licences, permissions and consents to ensure that it can make the Data available to the Council on these terms, for the purposes of:

- (a) the Council carrying out its duties under this Agreement and/or any statutory duties which the Council may have; and
- (b) following termination of this Agreement, the design or construction of the Car Parks, the operation, maintenance or improvement of the Car Parks and/or the carrying out of operations the same as, or similar to, the Operations,

(together, the **Approved Purposes**), and in this clause "use" shall include the acts of copying, modifying, adapting and translating the material in question and/or incorporating them with other materials and the term "the right to use" shall be construed accordingly.

22.2 The Partner:

- (a) hereby grants to the Council, free of charge, an irrevocable, non exclusive and transferable (but only to any assignee or transferee of any rights or benefits under this Agreement or upon or at any time following termination of this Agreement) licence (carrying the right to grant sub licences) to use the Intellectual Property Rights which are or become vested in the Partner; and
- (b) shall, where any Intellectual Property Rights are or become vested in a third Party, use all reasonable endeavours to procure the grant of a like licence to that referred to in clause 22.2(a) above to the Council,

in both cases, solely for the Approved Purposes.

22.3 The Partner shall use all reasonable endeavours to ensure that any Intellectual Property Rights created, brought into existence or acquired during the term of this Agreement vest, and remain vested throughout the term of this Agreement, in the Partner and the Partner shall enter into appropriate agreements with any Partner Party (or other third parties) that may create or bring into existence, or from which it may acquire, any Intellectual Property Rights.

Maintenance of data

22.4 To the extent that any of the data, materials and documents referred to in this clause are generated by or maintained on a computer or similar system, the Partner shall use all reasonable endeavours to procure for the benefit of the Council, at no charge or at the lowest reasonable fee, the grant of a licence or sub licence for any relevant software to enable the Council or its nominee to access and otherwise use (subject to the payment by the Council of the relevant fee, if any) such data for the Approved Purposes. As an alternative, the Partner may provide such data, materials or documents in a format which may be read by software generally available in the market at the relevant time or in hard copy format.

- 22.5 The Partner shall ensure the back up and storage in safe custody of the data, materials and documents referred to in clause 22.4 in accordance with Good Industry Practice. Without prejudice to this obligation, the Partner shall submit to the Council for approval its proposals for the back up and storage in safe custody of such data, materials and documents and the Council shall be entitled to object if the same is not in accordance with Good Industry Practice. The Partner shall comply, and shall cause all the Partner Parties to comply, with all procedures to which the Council has given its approval. The Partner may vary its procedures for such back-up and storage subject to submitting its proposals for change to the Council, who shall be entitled to object on the basis set out above.

Claims

- 22.6 Where a claim or proceeding is made or brought against the Council which arises out of the infringement of any rights in or to any Intellectual Property or because the use of any materials, plant, machinery or equipment in connection with the Operations infringes any rights in or to any Intellectual Property of a third Party then, unless such infringement has arisen out of the use of any Intellectual Property by or on behalf of the Council otherwise than in accordance with the terms of this Agreement, the Partner shall indemnify the Council at all times from and against all such claims and proceedings and the provisions of clause 16.2 (Conduct of Claims) shall apply.

23 Data Protection

- 23.1 In this clause 23, the terms **Personal Data**, **Data Subject**, **Data Controller**, **Data Processor** and **Sensitive Personal Data** have the meanings given in the Data Protection Law and **Processing**, **Process** and **Processed** shall be construed accordingly.

Obligations of the Partner and the Council

- 23.2 Each of the Partner and the Council shall:
- (a) identify to each other an individual within each of their respective organisations authorised to respond to enquiries regarding any Personal Data. Each of the Partner and the Council (as appropriate) shall deal with such enquiries promptly, including those from the other and/or the Information Commissioner in relation to any Personal Data;
 - (b) deal with any Data Subject request in relation to that Data Subject's Personal Data in accordance with all relevant Data Protection Legislation;
 - (c) promptly provide to each other all information in its possession concerning any unauthorised or accidental disclosure or access made by an employee, director, agent, sub-contractor or any other identified or unidentified third Party; and
 - (d) comply with any relevant changes in the Data Protection Law in respect of the Personal Data.

Data Controller/Data Processor

- 23.3 The Partner and the Council acknowledge that the Council is a Data Controller and that the Partner is a Data Processor in respect of any Personal Data processed under this Agreement. The Parties also recognise and agree that the Partner may, as provided in this Agreement, act as a Data Controller in respect of certain elements of the Personal Data. The Partner warrants to the Council that it has:

- (a) put in place appropriate technical and organisational measures against Processing of Personal Data against unauthorised, accidental or unlawful access to the Personal Data (having regard to the state of technological development and the costs of implementing any such measures) as well as reasonable security programmes and procedures for the purpose of ensuring that only authorised personnel have access to the Personal Data processing equipment to be used to process the Personal Data, and that any persons whom it authorises to have access to the Personal Data shall respect and maintain all due confidentiality;
- (b) a level of security programmes and procedures which reflect:
 - (i) the level of damage that might be suffered by a Data Subject to whom the Personal Data relates as a result of unauthorised or unlawful possession of the Personal Data or the loss or destruction of or damage to the Personal Data; and
 - (ii) the state of technological development and the costs of implementing such programmes and procedures; and
- (c) as required by Data Protection Law, such security programmes and procedures which specifically address the nature of any Sensitive Personal Data.

Obligations of the Partner

23.4 The Partner agrees:

- (a) that it will only Process Personal Data as is necessary to perform its obligations under this Agreement and (without prejudice to clause 23.2 (Obligations of the Partner and the Council)) that such data will be held and Processed only in accordance with the Data Protection Law;
- (b) to take all such actions as are necessary to ensure that it has fulfilled and will continue to fulfil and observe the warranties and obligations in clause 23.3 above in respect of the Personal Data as if it were a Data Controller;
- (c) to process the Personal Data only for such purposes as are instructed by the Council or in accordance with the laws of any relevant regulatory body;
- (d) subject to clause 23.3, to promptly comply with any change of instructions from the Council relating to:
 - (i) the Personal Data; and
 - (ii) the Partner's role as a Data Processor
- (e) as issued in accordance with this Agreement and/or as otherwise required by changes or amendments to applicable Laws; and

that it will not, without the Council Representative's written consent, do or omit to do anything which would cause any Personal Data to be transferred outside the European Economic Area or to a country which was not at the time of transfer one recognised by the European Commission as providing an adequate level of protection of Personal Data.

24 Dispute Resolution

Except where expressly provided otherwise in this Agreement, any dispute arising out of or in connection with this Agreement shall be resolved in accordance with the procedure set out in schedule 7 (Dispute Resolution Procedure).

25 Termination

Termination of this Agreement on the Expiry Date unless earlier termination

25.1 This Agreement will terminate on the earlier of:

- (a) the Expiry Date;
- (b) the date of termination by the Council pursuant to clauses 26 (Termination by the Council);
- (c) the date of termination by the Service Provider pursuant to clause 27 (Termination by the Service Provider);
- (d) the date of termination following a Prohibited Act pursuant to clause 28; and
- (e) the date of termination following an Event of Force Majeure pursuant to clause 29.

Antecedent Breaches and Exclusive Right to Terminate

25.2 This clause 25 and clauses 26 and 27 (inclusive) are without prejudice to either Party's accrued rights in respect of any breach of this Agreement.

26 Termination by the Council

Partner Default

26.1 Each of the following events shall for the purposes of this Agreement constitute a Partner Default:

- (a) a material breach by the Partner of any of its obligations under this Agreement;
- (b) a court makes an order that the Partner be wound up or a resolution for a voluntary winding-up of the Partner is passed;
- (c) any receiver or manager in respect of the Partner is appointed or possession is taken by or on behalf of any creditor of any property that is the subject of a charge;
- (d) any voluntary arrangement is made for a composition of debts or a scheme of arrangement is approved under the Insolvency Act 1986 or the Companies Act 1985;
- (e) an administration order is made;
- (f) a breach by the Partner of its obligations in clause 31 (Assignment by the Service Provider) occurs;
- (g) the abandonment of the Agreement by the Service Provider;
- (h) a failure to complete the Works required at a Car Park pursuant to this Agreement by the Long Stop Date applicable to such Car Park;

- (i) the Partner accruing more than 12 Service Credits in any period of 3 calendar months pursuant to part 2 of schedule 4 (Performance Monitoring System);
- (j) a breach by the Service Provider of its obligation to take out and maintain required insurances set out in schedule 9 (*Insurance Requirements*); or
- (k) at any time after the Service Commencement Date, the Partner or a Partner Party commits a breach of its obligations under this Agreement (other than as a consequence of a breach by the Council of its obligations under this Agreement) which results in the criminal investigation, prosecution and conviction of the Partner or any Partner Party under the Health and Safety Regime (an "**H&S Conviction**") provided that an H&S Conviction of a Partner Party shall not constitute a Partner Default Event if, within ninety (90) Business Days from the date of the H&S Conviction (whether or not the H&S Conviction is subject to an appeal or any further judicial process), the involvement in the Project of each relevant Partner Party (which in the case of an individual director, officer or employee shall be deemed to include the Partner Party of which that person is a director, officer or employee) is terminated and a replacement is appointed by the Partner in accordance with clause 33 (Assignment and Sub-contracting). In determining whether to exercise any right of termination pursuant to this clause 26.1(k), the Council shall:
 - (i) act in a reasonable and proportionate manner having regard to such matters as the gravity of any offence and the identity of the person committing it; and
 - (ii) give all due consideration, where appropriate, to action other than termination of this Agreement;
- (l) a Persistent Breach occurs.

Termination following a Partner Default Event and Partner's opportunity to rectify

- 26.2 If a Partner Default Event has occurred and the Council wishes to terminate this Agreement, it must serve a termination notice on the Partner.
- 26.3 The termination notice must specify:
- (a) the type and nature of the Partner Default Event that has occurred giving reasonable details; and
 - (b) that this Agreement will terminate on the day falling sixty (60) days after the date the Partner receives the termination notice, unless the Partner puts forward an acceptable rectification programme within thirty (30) days (and implements such programme in accordance with its terms and rectifies the Partner Default in accordance with the Works Programme) or rectifies the Partner Default within sixty (60) days or the provisions of the Direct Agreement apply to prevent termination.
- 26.4 If the Partner either:
- (a) rectifies the Partner Default within the time period specified in the termination notice; or
 - (b) implements the rectification programme, if applicable, in accordance with its terms,
- the termination notice will be deemed to be revoked and this Agreement will continue.

26.5

- (a) If the Partner fails to rectify the Partner Default within the time period specified in the Council termination notice (or in accordance with any accepted rectification programme) this Agreement will terminate on the date falling sixty (60) days after the date of receipt of the termination notice.
- (b) If the Partner fails to implement any rectification programme in accordance with its terms, this Agreement will terminate on the date falling sixty (60) days after the date of notification to the Partner.

Notification of actual or potential Partner Default Event

26.6 Where either Party believes that a Partner Default Event has occurred or a breach which, if not remedied, might constitute a Partner Default Event or an event or circumstance has occurred which would, with the giving of notice, lapse of time, determination of materiality or satisfaction of any other condition, constitute or give rise to a Partner Default Event, in either case:

- (a) without prejudice to clause 26.6(b), that Party shall as soon as is reasonably practicable after it has knowledge of the same notify the other Party of the same and the Parties shall promptly discuss the matter at managerial level; and
- (b) the Partner shall be required to notify the Council promptly of the same.

Voluntary Termination by the Council

26.7

- (a) The Council may terminate the Agreement at any time on or before its Expiry Date by complying with its obligations under clause 26.7(b) to 26.7(c).
- (b) If the Council wishes to terminate the Agreement under this clause, it must give notice to the Partner stating:
 - (i) that the Council is terminating the Agreement under this clause 26.7;
 - (ii) that the Agreement will terminate on the date falling thirty (30) days after the date of receipt of the notice referred to in clause 26.7(b) above.
- (c) The Agreement will terminate on the date falling thirty (30) days after the date of receipt of the notice referred to in clause 26.7(b).

Persistent Breach

26.8

- (a) If a breach has occurred more than two (2) times in any three (3) month period then the Council may serve a notice on the Partner:
 - (i) specifying that it is a formal warning Notice;
 - (ii) giving reasonable details of the breach; and

- (iii) stating that such breach is a breach which, if it recurs frequently or continues, may result in a termination of this Agreement.
- (b) If, following service of such a warning notice the breach specified has continued beyond thirty (30) days or recurred one or more times within the six (6) month period after the date of service, then the Council may serve another notice on the Partner:
 - (i) specifying it is a final warning notice;
 - (ii) stating that the breach specified has been the subject of a warning notice served within the twelve month period prior to the date of service of the final warning notice; and
 - (iii) stating that if such failure continues or recurs one or more times within the six months after the date of service of the final warning notice the Agreement may be terminated on account of a Persistent Breach occurring.
- (c) A warning notice may not be served in respect of any breach in respect of which a separate warning notice has already been served until a period of twelve (12) months has elapsed since the date of service of the previous warning notice or final warning notice.

27 Termination by the Partner

Council Default

27.1 "**Council Default**" means one of the following events:

- (a) an expropriation, sequestration or requisition of a material part of the assets and/or shares of the Partner by the Council;
- (b) a breach by the Council of its obligations under this Agreement which substantially frustrates or renders it impossible for the Partner to perform its obligations under this Agreement for a continuous period of two (2) months.

27.2 Termination on Council Default

- (a) If a Council Default has occurred and the Partner wishes to terminate the Agreement, it must serve a termination notice on the Council within forty-five (45) days of becoming aware of the Council Default.
- (b) The termination notice must specify the type of Council Default which has occurred entitling the Partner to terminate.
- (c) The Agreement will terminate on the day falling forty-five (45) days after the date the Council receives the termination notice, unless the Council rectifies the Council Default within thirty (30) days of receipt of the termination notice.

28 Termination for Corrupt Gifts and Fraud

28.1 If the Partner, or any Sub-contractor (or anyone employed by or acting on behalf of any of them) or any of its or their agents or shareholders commits any Prohibited Act, then the Council shall be entitled to act in accordance with this clause 28.2 to 28.7.

- 28.2 If a Prohibited Act is committed by the Partner or by an employee not acting independently of the Partner, then the Council may terminate this Agreement by giving notice to the Partner.
- 28.3 If the Prohibited Act is committed by an employee of the Partner acting independently of the Partner, then the Council may give notice to the Partner of termination and this Agreement will terminate, unless within thirty (30) days of receipt of such notice the Partner terminates the employee's employment and (if necessary) procures the performance of such part of the Service by another person.
- 28.4 If the Prohibited Act is committed by a Sub-contractor or by an employee of that Sub-contractor not acting independently of that Sub-contractor, then the Council may give notice to the Partner of termination and this Agreement will terminate unless, within thirty (30) days of receipt of such notice, the Partner terminates the relevant Project Document and procures the performance of such part of the Service by another person.
- 28.5 If the Prohibited Act is committed by an employee of a Sub-contractor acting independently of that Sub-contractor then the Council may give notice to the Partner of termination of this Agreement and this Agreement will terminate unless within thirty (30) days of receipt of such notice, the Sub-contractor terminates the employee's employment and (if necessary) procures the performances of such part of the Service by another person.
- 28.6 If the Prohibited Act is committed by any other person not specified in clauses 28.2 to 28.5, then the Council may give notice to the Partner of termination and the Agreement will terminate unless within thirty (30) days of receipt of such notice, the Partner procures the termination of such person's employment and of the appointment of their employer (where not employed by the Partner or the Sub-contractors) and (if necessary) procures the performance of such part of the Service by another person.
- 28.7 Any notice of termination under this clause 28 shall specify:
- (a) the nature of the Prohibited Act;
 - (b) the identify of the Party whom the Council believes has committed the Prohibited Act; and
 - (c) the date on which this Agreement will terminate, in accordance with the applicable provision of this clause 28.

29 Termination following a Force Majeure Event

Force Majeure

- 29.1 No Party shall be entitled to bring a claim for a breach of obligations under the Agreement by the other Party or incur any liability to the other Party for any losses or damages incurred by that other Party to the extent that a Force Majeure Event occurs and it is prevented from carrying out obligations by that Force Majeure Event.
- 29.2 Nothing in clause 29.1 shall affect any accrual of Service Credits in the period during which the Force Majeure Event is subsisting.
- 29.3 On the occurrence of a Force Majeure Event, the affected Party shall notify the other Party as soon as practicable. The notification shall include details of the Force Majeure Event, including evidence of its effect on the obligations of the Affected Party and any action proposed to mitigate its effect.

- 29.4 As soon as practicable following such notification, the parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and facilitate the continued performance of the Agreement.
- 29.5 If no such terms are agreed on or before the date falling one hundred and twenty (120) days after the date of the commencement of the Force Majeure Event and such Force Majeure Event is continuing or its consequence remains such that the affected Party is unable to comply with its obligations under this Agreement for a period of more than one hundred and eighty (180) days, then, either Party may terminate the Agreement by giving thirty (30) days' written notice to the other Party.
- 29.6 The parties shall at all times following the occurrence of a Force Majeure Event use all reasonable endeavours to prevent and mitigate the effects of any delay and the Partner shall at all times during which a Force Majeure Event is subsisting take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.
- 29.7 The affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the affected Party to be unable to comply with its obligations under this Agreement. Following such notification the Agreement shall continue to be performed on the terms existing immediately prior to the occurrence of the Force Majeure Event.

30 Financial consequences of termination

Schedule 8 shall apply in relation to the financial consequences of termination pursuant to clauses 25 to 29.

31 Other Consequences of termination or expiry

31.1 Treatment of Assets

If termination of this Agreement occurs for any reason (including without limitation expiry) then the Council may require the Partner to transfer its rights, title and interest in and to the Assets to the Council or as directed by the Council at no cost to the Council.

31.2

- (a) On or before a date falling no later than 12 months prior to the Expiry Date, the Council shall notify the Partner in writing whether it wishes:
- (i) to retender the provision of the Operations or any part of them; or
 - (ii) the Partner to transfer all of its rights, title and interest in and to the Assets to the Council or as directed by the Council.
- (b) If the Council wishes to retender the provision of the Operations or any part of them then:
- (i) the retendering shall be carried out on the basis that the Council will contract with a successor partner to provide the new service on and from the Expiry Date; and

- (ii) the Partner shall do all necessary acts (including entering into any contracts) to ensure that the successor partner obtains all of its rights, title and interest in and to the Assets with effect on and from the Expiry Date; and
- (iii) the Council will bear all costs of any retendering of this Agreement on expiry.

Transfer of documents etc to the Council following termination

- 31.3 The Partner shall within twenty (20) Business Days of the Expiry Date (or the date of any earlier termination) hand over to the Council all documents (or complete and accurate copies thereof), records, books, data and/or information in the possession, custody or power of the Partner relating to and/or touching upon the Operations other than any of such documents, records, books, data and/or information of a financial nature which will not be relevant to the provision of services equivalent to the Operations after the date of termination of this Agreement. Documents, records, books, data and/or information kept or stored on computer will be surrendered, released and/or handed-over to the Council by whatever means and in whatever format the Council may reasonably require.

Assignment of Rights, etc.

- 31.4 On the Expiry Date (or on the date of any earlier termination of this Agreement) if so required by the Council the Partner shall assign to the Council:
- (a) the benefit of all and any contracts or arrangements it may have with any third parties and shall, if for any reason it cannot assign the same, declare a trust of all its beneficial interest in the same for the benefit of the Council; and
 - (b) take such action in relation to Intellectual Property as is referred to in clause 22 (Intellectual Property),

and the Partner hereby irrevocably and unconditionally appoints the Council as the Partner's lawful attorney for the duration of the Agreement Term (and to the complete exclusion of any rights that the Partner may have in such regard) for the purpose of generally executing or approving such deeds or documents and doing any such acts or things necessary to give effect to the provisions of this clause 31.4 as the attorney may think fit.

Vacation of Council's Facilities, etc.

- 31.5 On the Expiry Date (or on the date of any earlier termination of this Agreement), the Partner shall vacate any of the Council's facilities or premises where any of the Service were or are being carried out and shall procure that all Partner Parties to the Project Documents and its Sub-contractors and Sub-subcontractors shall also vacate the same and in so vacating the Partner shall procure that any damage to any relevant property (and any inconvenience to the Council and any other Council Party caused thereby) is minimised and any damage that is caused by the Partner and/or such parties is made good as soon as practicable.

Co-operation by the Partner

- 31.6 Without prejudice to schedule 6, on and after the date of termination of this Agreement the Partner shall continue to act in good faith and shall co-operate with the Council to ensure the smooth hand-over of the Car Parks.

32 Guarantees/Surety

[Appropriate provisions to be inserted in respect of parent company guarantees as required by the Council. Bidders should propose as part of the BAFO response what is being offered in this respect.]

33 Assignment and Sub-contracting

Assignment

- 33.1 This Agreement is binding on, and shall ensure to the benefit of, the Partner and the Council and their respective successors and permitted transferees and assigns.
- 33.2 The Partner shall not, without the prior written consent of the Council, assign, transfer, sub-contract or otherwise dispose of any interest in this Agreement or any other contract entered into by the Partner for the purposes of performing its obligations under this Agreement.
- 33.3 The provisions of clause 33.2 do not apply to the grant of any security, in a form approved by the Council prior to its grant (such approval not to be unreasonably withheld or delayed), for any loan made to the Partner under the [Initial Funding Agreements] ***[To be considered further at Preferred Bidder Stage depending upon the Preferred Bidder's Funding Structure]***.
- 33.4 The Council shall not be restricted in assigning or otherwise disposing of the benefit of the whole or part of this Agreement.

Sub-contractors

- 33.5 The Partner shall:
- (a) not terminate or agree to the termination of the engagement and/or employment of (or the replacement of) the Partner under the Ancillary Documents; and
 - (b) without prejudice to clause 33.1 (Assignment), procure that none of the persons listed below shall sub-contract all (or substantially all) of their obligations under or in this Agreement set out next to its name:

Person

Contract

[To be considered further at Preferred Bidder Stage depending upon the Preferred Bidder's contractual structure. Bidder to amend as appropriate – but key subcontractors (if any) to be named here]

without, in each case, the prior written consent of the Council (such consent not to be unreasonably withheld or delayed).

- 33.6 If the contract set out next to the name of any person referred to in clause 33.5 shall at any time lapse, terminate or otherwise cease to be in full force and effect (whether by reason of expiry or otherwise), with the effect that such person shall cease to act in relation to this Agreement, the Partner shall forthwith appoint a replacement (subject to compliance with clause 33.5 (Sub-contractors)).
- 33.7 The Partner shall procure that any replacement for any person referred to in clause 33.5 shall enter into a contract upon the same or substantially similar terms as the person so replaced

and shall also enter into a collateral agreement on the same or substantially the same terms as the Collateral Agreement entered into by the person so replaced.

34 Confidentiality

Confidential Information

- 34.1 In this Agreement, **Confidential Information** means all information relating to any Party which is supplied by or on behalf of another Party (whether before or after the date of this Agreement), either in writing, orally or in any other form, directly or indirectly from or pursuant to discussions with such other Party or which is obtained through observations made by the receiving Party. **Confidential Information** also includes all analyses, compilations, studies and other documents whether prepared by or on behalf of a Party which contain or otherwise reflect or are derived from such information.

Use and Disclosure of Confidential Information

- 34.2 Each Party shall hold in confidence any Confidential Information, provided that the provisions of this clause 34 shall not restrict a Party from passing such information to its professional advisers, to the extent necessary to enable it to perform (or to cause to be performed) or to enforce its rights or obligations under this Agreement, and provided further that the Partner may, subject to obtaining appropriate confidentiality restrictions[:

- (a) pass to the [Funders] such documents and other information as are reasonably required by the [Funders] in connection with the raising of finance for the Operations or which the Partner is obliged to supply by the terms of the Funding Agreements; and] *[To be considered further depending upon the Preferred Bidder's Funding Structure]*
- (b)]pass to Partner Parties such documents and other information which are necessary for the Partner's performance of the Operations but only to the extent they are so necessary.

Exceptions

- 34.3 The obligation to maintain the confidentiality of the Confidential Information does not apply to Confidential Information:
- (a) which is or comes into the public domain otherwise than through any disclosure prohibited by this Agreement;
 - (b) to the extent that any person is required to disclose such Confidential Information by Law or any regulatory or government authority (but only to that extent);
 - (c) which is reasonably necessary for the purpose of providing services which are successor to the Services or for the operation, maintenance or improvement of the Facilities in the event of, or following, termination of this Agreement (provided always that the Council may not disclose any confidential information in relation to the Partner's corporate, funding or pricing structure (including any breakdown of Unit Prices) which would give a competitor of the Partner a commercial advantage over the Partner and thereby prejudice the business of the Partner except with the Partner's prior written consent);
 - (d) which the Council Representative may reasonably consider appropriate (having due regard to the nature of the information to be disclosed and the nature of the Party to

whom the disclosure is to be made) to disclose to the public or other third parties for the purposes of public accountability for the manner in which the Council provide services and also the way in which public money is used under this Agreement provided that the Council Representative shall use reasonable endeavours to work with the Partner to minimise the level, type and amount of Confidential Information to be disclosed; and

- (e) in the form of any public announcement, press release or press interview made by the Council in connection with the award and/or execution of this Agreement provided that the Council shall limit the information disclosed to the key terms of this Agreement (provided always that the Council may not disclose any confidential information in relation to the Partner's corporate, funding or pricing structure (including any breakdown of Unit Prices) which would give a competitor of the Partner a commercial advantage over the Partner and thereby prejudice the business of the Partner for the purposes of any such public announcement, press release or press interview except with the Partner's prior written consent).

Information and Audit Commission Access

- 34.4 The Partner shall provide all reasonable assistance and co-operation to any auditors appointed by the Audit Commission in the carrying out by the latter of statutory functions in relation to the Council.

Comptroller and Auditor General

- 34.5 For the purpose of any 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, the Comptroller and Auditor General may examine such documents as they may reasonable require which are owned, held or otherwise within the control of the Partner (and the Partner shall procure that any person acting on its behalf (including but not limited to any Partner Party) who has such documents and/or other information shall also provide access) and may require the Partner to produce such oral or written explanations as they consider necessary. To avoid doubt, it is hereby declared that the carrying out of an examination under Section 6(3)(d) of the National Audit Act 1983 in relation to the Partner is not a function exercisable under this clause 34.

Provision of Information

- 34.6 The Partner shall provide such information as the Council may reasonably require from time to time to enable it to meet its obligations to provide reports and returns pursuant to regulations, directions or guidance applicable to local authorities or as required by external agencies.

Publishing by National Audit Office

- 34.7 The Parties acknowledge and agree that the National Audit Office has the right to publish details of this Agreement (including commercially sensitive information) in its relevant reports to Parliament.

Freedom of Information

- 34.8

- (a) The Partner shall note the Code of Practice on Access to Government Information 1997, and the Freedom of Information Act 2000 (the 2000 Act) and notify the Council Representative promptly if it becomes aware of any person exercising any rights or making a complaint under the Code or the 2000 Act in relation to the Council.
- (b) The Partner shall use all reasonable endeavours to assist the Council in complying with such obligations as may be imposed upon them by the 2000 Act including:
 - (i) providing reasonable assistance in complying with any Request For Information (as defined in the 2000 Act) served on the Council under the 2000 Act;
 - (ii) processing information provided by the Council in accordance with a record management system which complies with the Lord Chancellor's records management recommendations and code of conduct under section 46 of the 2000 Act.

Announcements

- 34.9 Unless otherwise required by any Law or any regulatory or governmental authority (but only to that extent), the Partner shall not make or permit or procure to be made any public announcement or disclosure (whether for publication in the press, the radio, television screen or any other medium) of any Confidential Information or of its (or any Partner Party's) interest in the Project or, in any such case, any matters relating thereto, without the prior written consent of the Council Representative (which shall not be unreasonably withheld or delayed).

35 Race Relations Act 1976

- 35.1 The Partner shall comply with section 71(1) Race Relations Act 1976 (as amended by the Race Relations (Amendment) Act 2000) (Race Relations Act) as if it were a body within the meaning of schedule 1A of the Race Relations Act (or any European equivalent which shall be deemed to include without limitation an obligation to have due regard to the need to eliminate unlawful racial discrimination and to promote equality of opportunity and good relations between persons of different racial groups). Notwithstanding the foregoing, the Partner shall not be required to comply with specific duties imposed on public authorities by virtue of an Order under s71(2) of the Race Relations Act.

Partner's Obligations on Race Relations

- 35.2 The Partner shall:
- (a) comply with the provisions of Parts II, III and IV of the Race Relations Act, where appropriate;
 - (b) comply with the provisions of Section 7 of the Race Relations Act in all dealings with the Council and the Contractor, and any other Party to whom this Agreement or any Ancillary Document relates;
 - (c) not discriminate directly or indirectly against any person because of their colour, race, nationality or ethnic or national origin in decisions to recruit, train, promote, discipline or dismiss employees; and
 - (d) for purposes of ensuring compliance with this clause 35, observe as far as possible the provisions of the Commission for Racial Equality's Code of Practice in Employment.

Notification of Proceedings and Indemnity

35.3 The Partner shall notify the Council Representative forthwith in writing as soon as it becomes aware of any investigation of or proceedings brought against the Partner under the Race Relations Act. Where any investigation is undertaken by a person or body empowered to conduct such investigation and/or proceedings are instituted in connection with matters referred to in this Agreement being in contravention of the Race Relations Act, the Partner shall free of charge:

- (a) provide any information requested in the timescale allotted;
- (b) attend any meetings as required and permit Partner staff (or any of them) to attend;
- (c) promptly allow access to and investigation of any documents or data deemed to be relevant;
- (d) allow itself and any Partner staff to appear as witness in any ensuing proceedings; and
- (e) co-operate fully and promptly in every way required by the person or body conducting such investigation during the course of that investigation,

and where any investigation is conducted or proceedings are brought which arise directly or indirectly out of any act or omission of the Partner, its agents or sub-contractors, or the Partner Staff, and where there is a finding against the Partner in such investigation or proceedings, the Partner shall indemnify the Council with respect to all Losses arising out of or in connection with such investigation or proceedings.

Monitoring of Ethnic Groups

35.4 The Partner shall monitor the representation among the Staff of persons of different racial groups (which shall mean groups of persons classified as ethnic groups in the most recent official census by the Office of National Statistics or successor body).

36 Miscellaneous

Entire Agreement

36.1 Except where expressly provided otherwise in this Agreement, this Agreement constitutes the entire agreement between the Parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings concerning the subject matter of this Agreement.

36.2 Each of the Parties acknowledges that:

- (a) it does not enter into this Agreement on the basis of and does not rely, and has not relied, upon any statement or representation (whether negligent or innocent) or warranty or other provision (in any case whether oral, written, express or implied) made or agreed to by any person (whether a Party to this Agreement or not) except those expressly repeated or referred to in this Agreement and the only remedy or remedies available in respect of any misrepresentation or untrue statement made to it shall be any remedy available under this Agreement; and
- (b) this clause shall not apply to any statement, representation or warranty made fraudulently, or to any provision of this Agreement which was induced by fraud, for

which the remedies available shall be all those available under the law governing this Agreement.

Severability

- 36.3 If any provision of this Agreement shall be declared invalid, unenforceable or illegal by the courts of any jurisdiction to which it is subject, such provision may be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Agreement.

No Privity

- 36.4 It is agreed for the purposes of the Contracts (Rights of Third Parties) Act 1999 that this Agreement is not intended to, and does not, give to any person who is not a Party to this Agreement any rights to enforce any provisions contained in this Agreement except for any person to whom the benefit of this Agreement is assigned or transferred in accordance with clause 33 (Assignment and Sub-contracting).

Mitigation

- 36.5 Each of the Council and the Partner shall at all times take all reasonable steps to minimise and mitigate any loss for which the relevant Party is entitled to bring a claim against another Party pursuant to this Agreement.

Governing Law and Jurisdiction

- 36.6 This Agreement shall be considered as a contract made in England and shall be subject to the laws of England.

Counterparts

- 36.7 This Agreement may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all the parties shall constitute a full original of this Agreement for all purposes.

Costs and Expenses

- 36.8 Each Party shall be responsible for paying its own costs and expenses incurred in connection with the negotiation, preparation and execution of this Agreement.

Unlawful Discrimination

- 36.9 The Partner shall not, and shall procure that all Partner Parties shall not unlawfully discriminate on the grounds of colour, sex, religion, political opinion, nationality, sexual orientation, age, race or ethnic origins and without limitation to the foregoing, comply with all relevant obligations under the Disability Discrimination Act 1995.

Address for Notices

- 36.10 All notices under this Agreement shall be in writing and all certificates, notices or written instructions to be given under the terms of this Agreement shall be served by sending the same by first class post, facsimile or by hand, leaving the same at:

If to the Council

[Address]

Fax No: [♦]

For the attention of: [♦]

If to the Partner

[Address]

Fax No: [♦]

For the attention of: [♦]

If to the Council Representative

[Address]

Fax No: [♦]

For the attention of: [♦]

Time of Service of Notice

36.11 Notices:

- (a) given by post shall be effective upon the earlier of (i) actual receipt, and (ii) five (5) Business Days after mailing;
- (b) delivered by hand shall be effective upon delivery;
- (c) given by facsimile shall be deemed to have been received where there is confirmation of uninterrupted transmission by a transmission report and where there has been no telephonic communication by the recipient to the senders (to be confirmed in writing) that the facsimile has not been received in legible form:
 - (i) within two (2) hours after sending, if sent on a Business Day between the hours of 9am and 4pm; or
 - (ii) by 11am on the next following Business Day, if sent after 4pm, on a Business Day but before 9am on that next following Business Day.

Amendments to the Agreement

- 36.12 This Agreement may not be varied except by an agreement in writing executed as a deed by duly authorised representatives of the Parties.

Waiver

- 36.13 Any relaxation, forbearance, indulgence or delay (together indulgence) of any Party in exercising any right under this Agreement shall not be construed as a waiver of the right and shall not affect the ability of that Party subsequently to exercise that right or to pursue any remedy, nor shall any indulgence constitute a waiver of any other right (whether against that Party or any other person).

No Agency

36.14 Nothing in this Agreement shall be construed as creating a partnership or a contract of employment between the parties, and save as expressly provided otherwise in this Agreement, the Provider shall not:

- (a) be, or be deemed to be, an agent of the Council; or
- (b) hold itself out as having authority or power to bind the Council in any way.

Human Rights

36.15 In the course of performing this Agreement all Parties shall give all due regard to the provisions of the Human Rights Act 1998 and the Provider shall comply with the provisions of such Act as if it were a public health authority (as such term is defined within the Human Rights Act 1998).

Schedule 1

Definitions and Interpretation

Part 1 - Definition

Administering Council means The Royal Borough of Windsor and Maidenhead acting in its capacity as the administering Council of the Royal Berkshire Pension Fund for the purposes of the LGPS Regulations

Admission Agreement means an agreement for the purposes of Regulation 5A of the LGPS Regulations

Admitted Body means a transferee Admitted Body for the purposes of regulation 5A of the LGPS Regulations

Ancillary Documents means [*to be considered further depending upon the Preferred Bidder's contractual structure*], all as the same may be amended or replaced from time to time

ARD means Directive No.77/187/EEC (known as the **Acquired Rights Directive**)

Assets means all assets and rights to enable the Council or a successor partner to own, operate and maintain the Project in accordance with this Agreement, including:

- (a) any land or buildings;
- (b) any equipment;
- (c) any books and records (including operating and maintenance manuals, health and safety manuals and other know-how);
- (d) any spare parts, tools and other assets (together with any warranties in respect of assets being transferred);
- (e) any revenues and any other contractual rights; and
- (f) any intellectual property rights

but excluding any assets and rights in respect of which the Council is full legal and beneficial owner

BROMAT Crimes means the following crimes: breaking into vehicles, robbery from the Partner, offences against a customer, miscellaneous offences, assaults on staff and theft of a motor vehicle

Business Day means a day other than a Saturday, Sunday or a Bank Holiday on which the banks are open for business in the City of Reading

Capital Expenditure means any expenditure which falls to be treated as capital expenditure in accordance with generally accepted accounting principles in the United Kingdom from time to time

Car Park Charges means such fees as are set by the Partner for each Car Parking Paying Act

Car Park Charges Discounts means any discounts or reductions offered by the Partner to any person in relation to a single Car Parking Paying Act or series thereof

Car Parking Paying Act means each separate episode of a vehicle entering any of the Car Parks for the purpose of parking in a Paying Space in such Car Parks

Car Park Spaces means the total number of spaces for parking vehicles at all of the Car Parks, being as at the date of this Agreement ♦ spaces

Car Park Working Group means a committee consisting of three representatives of the Council (being ♦, ♦ and ♦) and three representatives of the Partner (being ♦, ♦ and ♦) or such other representatives as the Partners and the Council may nominate

Car Parks means the car parks outlined in red on the plans contained at annexes 1 to 9 of this Agreement, being the car parks known as

- (a) Broad Street Mall
- (b) Queen's Road
- (c) King's Meadow
- (d) Hills Meadow
- (e) Cattle Market
- (f) Civic 'B' Car Park
- (g) Chester Street
- (h) Recreation Road and
- (i) Dunstall Close

Cessation Date means any date on which the Partner ceases to be an Admitted Body as defined in clause 20.1 (Partner to Become an Admitted Body) other than as a result of the termination of this Agreement or because it ceases to employ any Eligible Employees

Code means the Code of Practice on Workforce Matters in Local Authority Service Contracts as currently contained in ODPM Circular 3/03 Annex D

Code Obligations means the express obligations of the Partner in clause 19.11 (other than that in clause 19.11(a)) which derive from the Code

Complete means a state in which the Works within an Element:

- (a) are complete in all respects and free from apparent defects;
- (b) satisfy the requirements of this Agreement (including without limitation the provisions of schedule 3 (Works Requirements); and
- (c) have been carried out in such a manner to ensure that the Site is left in a clean and tidy condition,

provided that an Element shall not be considered to be Complete until all commissioning and commissioning tests properly required to be carried out and satisfactorily completed in accordance with Good Industry Practice, any applicable Law or any relevant British Standards or Codes of Practice (or any European Union equivalent) have been satisfactorily carried out and completed

Confidential Information has the meaning given to it in clause 34.1

Consents means all permissions, consents, approvals, certificates, permits, licences, statutory agreements and authorisations required by Law, and all necessary consents and agreements from any third parties (including, without limitation, any Planning Permission), needed to carry out the Operations in accordance with this Agreement

Construction Requirements means the requirements of the Council set out or identified in Part 1 of schedule 3 (Works Specification) as amended from time to time in accordance with the terms of this Agreement

Contract Year means the period of twelve (12) calendar months commencing on and including the date of this Agreement and each subsequent period of twelve (12) calendar months commencing on each anniversary of the date of this Agreement, provided that the final Contract Year shall be such period as commences on and includes the anniversary of the date of this Agreement that falls in the year in which this Agreement expires or is terminated (for whatever reason) and ends on and includes the date of expiry or earlier termination of this Agreement (as the case may be)

Council Assets means any assets owned by the Council

Council Party means any employee, officer, contractor or agent of the Council

Council Representative means the person appointed as such by the Council pursuant to clause 11

Council Requirements means the Council's requirements in respect of the Works and the Services as contained in this Agreement (including without limitation the requirements set out at schedule 3 (Works Requirements) and schedule 4 (Services Requirements))

Data means:

- (a) all design data
- (b) all drawings, reports, documents, plans, software, formulae, calculations and other data relating to the provision of the Services and
- (c) any other materials, documents and or data acquired, brought into existence or used in relation to the Operations or this Agreement

Data Protection Law means the Data Protection Act 1998 together with all applicable regulations, directives, orders, codes of practice, guidance notes, instructions and formal written advice issued by or on behalf of the Information Commissioner from time to time

Default Interest Rate means 2% over LIBOR

Direct Losses means all damage, losses, liabilities, claims, actions, costs, expenses (including the cost of legal or professional services, legal costs being on an agent/client, client paying basis), proceedings, demands and charges whether arising under statute, contract or at common law but, to avoid doubt, excluding Indirect Losses

Dispute shall bear the meaning ascribed thereto in clause 24 (Dispute Resolution)

Dispute Resolution Procedure means the procedure set out in schedule 7 (Dispute Resolution Procedure)

Element means a part of the Works as set out in an individual numbered sub-paragraph within paragraphs 2.1 to 3 of part 1 of schedule 3 (Works Requirements)

Eligible Employees means:

- (a) the Transferring Employees who are active members of (or eligible to join) the LGPS on a Relevant Transfer Date and
- (b) any other individuals nominated by the Partner (as appropriate)

for so long as they are employed in connection with the provision of the Services or part of such Services

End Employees means those employees that are wholly or substantially engaged in the provision of Services immediately before expiry or termination of this Agreement

Estimated Change in Project Costs means in relation to schedule 2 (Relief Events and Compensation Events) and schedule 5 (Changes) the aggregate of any estimated increased construction costs, operating costs and financing costs less the aggregate of any reduced construction costs, operating costs and financing costs

Equipment means all equipment, technology and apparatus in place located at the Car Parks

Expiry Date means the date being 15 (fifteen) years following the date of the Service Commencement Date

Force Majeure Event means the occurrence after the date of the Agreement of:

- (a) war, civil war, armed conflict or terrorism; or
- (b) nuclear chemical or biological contamination unless the source or the cause of the contamination is the result of actions of the contractor; or
- (c) pressure waves caused by devices travelling at supersonic speeds,

which directly causes either party, (**Affected Party**) to be unable to comply with all or a material part of its obligations under the Agreement

[Funders means all or any persons who provide financing or funding to the Partner [and/or the Developer] in respect of the Operations under the Funding Agreement including, where the context so permits, prospective financiers or funders]

Future Services Provider means any replacement service provider engaged by the Council to perform any of the Services or any service equivalent to any of the Services from the Contract Expiry Date or earlier Termination Date, as referred to in the provisions of clauses 19.17 and 19.19

Good Industry Practice means using standards, practices, methods and procedures conforming to the Law and exercising that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person engaged in a similar type of undertaking under the same or similar circumstances

Gross Revenue means the aggregate of all revenue (exclusive of VAT but, for the avoidance of doubt, before the deduction of any costs) generated in respect of the Car Parks, including without limitation revenue attributable to the Car Parking Paying Acts and the matters referred to in clause 8 (Additional Income)

Guaranteed Minimum Payment has the meaning given to it in clause 7.1

[**Guarantor** means [♦]]

Handback means the return of the Facilities by the Partner to the Council on the Expiry Date or Termination Date (whichever is the of earlier)

Handback Amount has the meaning given in schedule 6 (Handback Provisions)

Handback Bond has the meaning given in schedule 6 (Handback Provisions)

Handback Certificate means the certificate of confirmation that the Transferable Facilities comply with the Handback Requirements to be issued by the Council in accordance with schedule 6 (Handback Provisions)

Handback Procedure means the procedure for Handback described in schedule 6 (Handback Provisions)

Handback Programme has the meaning given in schedule 6 (Handback Provisions)

Handback Requirements has the meaning given in schedule 6 (Handback Provisions)

Handback Works has the meaning given in schedule 6 (Handback Provisions)

Indirect Losses means loss of profits, loss of use, loss of production, loss of business, loss of business opportunity, or any claim for consequential loss or for indirect loss of any nature

Intellectual Property means all registered or unregistered trade marks, service marks, patents, registered designs, utility models, applications for any of the foregoing, copyrights, unregistered designs, the sui generis rights of extraction relating to databases, trade secrets and other confidential information or know-how

Intellectual Property Rights means the Intellectual Property which (or the subject matter of which) is created, brought into existence, acquired, used or intended to be used by the Partner, any Partner Party or by other third parties (for the use by or on behalf of or for the benefit of the Partner) for the purposes of the Works and/or the Services or the conduct of any other Operation or otherwise for the purposes of this Agreement

Joint Insurance Account has the meaning given to it at clause 18.1(b)

Law means:

- (a) any applicable statute or proclamation or any delegated or subordinate Law
- (b) any enforceable community right within the meaning of section 2(1) European Communities Act 1972
- (c) any applicable guidance, direction or determination with which the Partner is bound to comply to the extent that the same are published and publicly available or the existence or contents of them have been notified to the Partner by the Council and/or the Council Representative and
- (d) any applicable judgement of a relevant court of law which is a binding precedent in England and Wales

in each case in force in England and Wales

LGPS means the Local Government Pension Scheme established pursuant to regulations made by the Secretary of State in exercise of powers under sections 7 and 12 of the Superannuation Act 1972 as amended from time to time

LGPS Regulations means The Local Government Pension Scheme Regulations 1997 (SI 1997/1612) (as amended from time to time)

LIBOR means the rate per annum determined by [♦] Bank plc to be the offered rate for six month sterling deposits in the London interbank market which appears on Telerate Page 3750 (or such other page as may replace that page on the Dow Jones Telerate service)

Licences means the licences granted by the Council pursuant to clause 12

Local Agreements means all relevant local agreements between the Council and the relevant trade unions as the Contract Award Date

Local Government Pension Scheme means the Local Government Pension Scheme established pursuant to regulations made by the Secretary of State in exercise of powers under sections 7 and 12 Superannuation Act 1972 as amended from time to time

Long Stop Date means, in respect of each Car Park the date which is six (6) months following targeted date for completion of all Works at such Car Park as set out at part 3 of schedule 3 (Programme of Works) and, accordingly each Car Park's Long Stop Date may be different and will depend upon the Contractor's Programme of Works at such Car Park

Losses means all damage, losses, liabilities, claims, actions, costs, expenses (including the cost of legal or professional services, legal costs being on an agent/client, client paying basis), proceedings, demands and charges whether arising under statute, contract or at common law

Maintenance Works means any works for maintenance or repair of the Facilities that are necessary to ensure that the Facilities are maintained in accordance with Service Level Specifications and that the Facilities comply with the Council's Construction Requirements and the Partner's Proposals (including, without limitation, the renewal or replacement of any Equipment) throughout the Operating Period

Monitoring Officer means Head of Planning and Transport or such other person appointed by the Council

Multi-Storey Car Parks means the Broad Street and Queens Road Car Park Parks

National Agreement means [relevant national agreements as at the Contract Award Date]

New Employees means those new employees employed by the Partner, Subcontractor or Sub-Subcontractor as the case may be to provide the Services

No Default Interest Rate means LIBOR

Operating Period means the period commencing on the date of this Agreement and expiring on the date being the earlier of:

- (a) the Expiry Date and
- (b) any earlier date this Agreement terminates pursuant to its terms

Operations means the carrying out of the Works and the Services and the performance of all other obligations of the Partner pursuant to this Agreement from time to time

Party means the Council and the Partner, and **Parties** shall be construed accordingly

Partner Party means the Partner's agents and contractors and its or their sub-contractors of any tier and its or their directors, officers, employees and workmen in relation to the Project, and "**Partner Parties**" shall be construed accordingly

Partner Representative means the person appointed as such by the Partner pursuant to clause 11

Partner's Scheme means the occupational pension scheme(s) established or to be established under clause 20.7 of this Agreement

Paying Space means those spaces designated as car parking spaces in any of the Car Parks

Penalty Charges means charges enforced by the Partner on any person occupying a Paying Space without adhering to the codes of practice of the Car Parks and/or the Partner including, but not limited to, failure to pay the appropriate Car Park Charges

Persistent Breach means a breach which has occurred one or more times within six (6) months after the date on which a final warning notice referred to at clause 26.8(b) (Persistent Breach) is served on the Contractor

Personnel means the employees, servants, agents, contractors, sub-contractors or other representatives, of the Partner, or of any Sub-contractor involved directly or indirectly in the provision of the Services at any time

Planning Permission means any planning permission, approval of reserved matters, listed building consent, conservation areas consent and/or other consent or approval reasonably required from time to time for construction and/or operation of the Facilities (including without limitation for any Council Additional Works Item or Works Changes and the Planning Approval)

Programmed Maintenance means the maintenance work which the Partner is to carry out in accordance with a schedule of Programmed Maintenance (as referred to at clause 6 (The Services))

Programmed Maintenance Information has the meaning given to it in clause 6 (The Services)

Prohibited Act means:

- (a) offering, giving or agreeing to give to the Council or any other public body or to any person employed by or on behalf of the Council or any other public body any gift or consideration of any kind as an inducement or reward:
 - (i) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Agreement or any other agreement with the Council or any other public body or
 - (ii) for showing or not showing favour or disfavour to any person in relation to this Agreement or any other agreement with the Council or any other public body
- (b) entering into this Agreement or any other agreement with the Council or any other public body in connection with which commission has been paid or has been agreed to be paid by the Partner or on its behalf, or to its knowledge, unless before the relevant agreement is entered

into particulars of any such commission and of the terms and conditions of any such agreement for the payment of such commission have been disclosed in writing to the Council

- (c) committing any offence:
 - (i) under the Prevention of Corruption Acts 1889-1916
 - (ii) under any Law creating offences in respect of fraudulent acts or
 - (iii) at common law, in respect of fraudulent acts in relation to this Agreement or any other agreement with the Council or any other public body or
- (d) defrauding or attempting to defraud or conspiring to defraud the Council or any other public body.

but to avoid doubt does not mean any payment for service or bonuses or payments in lieu of notice or holidays

Project means the refurbishment and management of the Car Parks pursuant to this Agreement

Quality Plans means the Design Quality Plan and Construction Quality Plan, prepared in accordance with Part 3 of schedule 3(The Works), and the Services Quality Plan, prepared in accordance with [♦] of schedule 4 (Service Requirements)

Relevant Employees means the employees who are the subject of a Relevant Transfer

Relevant Incident has the meaning given to it at clause 18.1(b)

Relevant Proceeds means any amounts standing to the credit of the Joint Insurance Account

Relevant Property Document means *[all documents contained in the Data Bundle and possibly other documents]*

Relevant Transfer Date means the date on which an Eligible Employee transfers to the Partner whether by virtue of any Relevant Transfers or deemed Relevant Transfers or otherwise

Relief Event has the meaning given to it in clause 10 (Compensation Events, Relief Events and Force Majeure) and in schedule 2

Revenue Share means 50% of the Gross Revenue received by the Partner in respect of Car Parking Paying Acts in excess of £♦ per annum ***[Note: Bidders may propose different thresholds for different years of the Operating Period if so desired]***

Schedule of Programmed Maintenance means the programme referred to in clause 6 (The Services) to be submitted to the Council Representative by the Partner

[Season Tickets means pre-paid tickets permitting use (conditions of use specified in schedule 4 (Services Requirements)) of the Car Parks (or any one of the named Car Parks) for a specified period of time]

Service Commencement Date means the day following the date of this Agreement ***[If Bidders require a period longer than this for mobilisation purposes their Bids should clearly state what period is required, and the reasons why such period is required]***

Service Period means the period commencing on the Service Commencement Date and expiring on the Expiry Date or the date of any earlier termination of this Agreement in accordance with its terms

Service Requirement means the requirements of the Council in respect of the Services set out at schedule 4 (Services Requirements)

Services means the services relating to the maintenance, management and operation of the Car Parks to be provided, managed and/or procured by the Partner for the Council in accordance with this Agreement (including without limitation the provisions of schedule 4 (Services Requirements) as subsequently amended in accordance with this Agreement but excluding, for the avoidance of doubt, the Works)

Services Method Statement means the method statements relating to the Services set out at part 3 of schedule 34

Service Transfer Date means the date from which the Partner takes over the provision of the Service Requirement

Site Conditions means the condition of the Site including (but not limited to) climatic, hydrological, hydrogeological, ecological, environmental, geotechnical and archaeological conditions

Sites means the areas of land outlined in red on the plans attached to this Agreement as appendix 1 to appendix 9, being the areas upon which the Car Parks are located

Staff means each person employed, assigned or engaged by the Partner or any Sub-contractor in providing the Services on or after the Transfer Date

Sub-Contractor means a person to whom the Partner sub-contracts any of its obligations under this Agreement

Surface Car Parks means all the Car Parks apart from the Multi-Storey Car Parks

Termination Date means the date on which termination of this Agreement takes effect in accordance with its terms

Trade Unions means the Transport and General Workers Union

Trade Unions Facilities Agreement means the agreement between the Council and the Trade Union [*details to be inserted*]

Transfer Date means the date on which the contracts of employment of each of the Transferring Employees transfers from the Council or Outgoing Contractor to the Partner pursuant to TUPE

Transferring Employees means those employees of the Council who immediately before the Service Commencement Date are engaged in services substantially similar to the Services and whose names are listed in [♦] (Transferring Employees)

TUPE means the Transfer of Undertakings (Protection of Employment) Regulations 1981 (as amended) and **Transfer Regulations** shall be construed accordingly

Unauthorised Act shall bear the meaning ascribed thereto in clause 19.18

Un-Programmed Maintenance Work has the meaning given to it at clause 6.13

Unsuitable Person means any person who:

- (a) in the reasonable opinion of the Council:
- (i) is or is likely to cause damage to the reputation of the Council; or
 - (ii) persistently fails or would fail to comply with the health and safety or other material obligations of the Partner under this Agreement; or
 - (iii) is not a fit and proper person to be engaged, or employed in or in connection with the provisions or performance of any of the Services ; or
 - (iv) may present an actual or potential risk to the health, safety or welfare of any Council Party or member of the public

Works means the design, construction, testing, commissioning and completion of the works specified in part 1 of schedule 3 (Works Requirements) and otherwise to be performed by the Partner in accordance with this Agreement) (excluding, for the avoidance of doubt, the Services)

Works Method Statement means the method statements relating to the works set out at part 2 of schedule 3

Works Period means in respect of each Car Park, the period from the date of this Agreement to the date of Completion of the Works at a Car Park

Part 2 - Interpretation

1.1 In this Agreement, except where the context otherwise requires:

- (a) the masculine includes the feminine and vice-versa;
- (b) the singular includes the plural and vice-versa;
- (c) a reference in this Agreement to any clause, sub-clause, paragraph, schedule or annex is, except where it is expressly stated to the contrary, a reference to such clause, sub-clause, paragraph, schedule or annex of this Agreement;
- (d) any reference to this Agreement or to any other document shall include any permitted variation, amendment, or supplement to such document;
- (e) any reference to any enactment, order, regulation or other similar instrument shall be construed as a reference to the enactment, order, regulation or instrument (including any EU instrument) as amended, replaced, consolidated or re-enacted;
- (f) a reference to a person includes firms, partnerships and corporations and their successors and permitted assignees or transferees; and
- (g) headings are for convenience of reference only.

1.2 References to amounts expressed to be "Indexed" are references to such amounts multiplied by

$\text{Index}_1 / \text{Index}_2$

where Index_1 is the value of RPIX most recently published prior to the relevant calculation date and Index_2 is the value of RPIX on the Base Date.

Schedule 2

Relief Events and Compensation Events

1 Definitions, Interpretation and Construction

- 1.1 In each part of this schedule 2 the following expressions (in addition to those specified in schedule 1 (Definitions, Interpretations and Construction)) shall save where the context or the express provisions of this Agreement otherwise requires or admits, have the following meanings:

Compensation Event means:

- (a) any breach by the Council of any of its obligations under this Agreement; or
- (b) a material reduction in income generated by the Partner pursuant to this Agreement caused by a defect in the condition of the Sites of the type described at clause 13.3;

Relief Event means:

- (a) fire, explosion, lightning, storm, tempest, flood, bursting or overflow of water tanks, apparatus or pipes, ionising radiation (to the extent it does not constitute a Force Majeure Event), earthquakes, riot and civil commotion;
- (b) any accidental loss or damage of the Car Parks or roads servicing the Car Parks;
- (c) any blockade or embargo which does not constitute a Force Majeure Event;
- (d) any:
 - (i) official or unofficial strike;
 - (ii) lock out;
 - (iii) go-slow; or
 - (iv) other dispute,generally affecting the car parking industry or a significant sector of it;
- (e) the discovery of fossils, antiquities or unexploded ordnance about or on the Sites,

provided in each case that such event does not arise (directly or indirectly) as a result of any wilful act, default or omission of the Partner or any of its sub-contractors.

2 Relief Events

- 2.1 If and to the extent that a Relief Event:

- (a) is the direct cause of a delay in the achievement of a Long Stop Date; and/or
- (b) adversely affects the ability of the Partner to perform any of its obligations under this Agreement,

then the Partner is entitled to apply for relief from any rights of the Council to terminate this Agreement.

2.2 To obtain relief, the Partner must:

- (a) as soon as practicable, and in any event within fourteen (14) days after it became aware that the Relief Event has caused or is likely to cause delay and/or adversely affect the ability of the Partner to perform its other obligations give to the Council a notice of its claim for relief from its obligations under this Agreement, including full details of the nature of the Relief Event, the date of occurrence and its likely duration; and
- (b) within seven (7) days of receipt by the Council of the notice referred to in paragraph 2.2(a) above, give full details of the relief claimed; and
- (c) demonstrate to the reasonable satisfaction of the Council that:
 - (i) the Partner and its Sub-contractors could not have avoided such occurrence or consequences by steps which they might reasonably be expected to have taken, without incurring material expenditure;
 - (ii) the Relief Event directly caused the delay to the achievement of the relevant Long Stop Date or the need for a relief from the Council's rights to terminate this Agreement;
 - (iii) the time lost and/or relief from the obligations under this Agreement claimed could not reasonably be expected to be mitigated or recovered by the Partner acting in accordance with Good Industry Practice, without incurring material expenditure; and
 - (iv) the Partner is using reasonable endeavours to perform its obligations under this Agreement.

2.3 In the event that the Partner has complied with its obligations under paragraph 2.2 above, then:

- (a) the relevant Long Stop Date shall be postponed by such time as shall be reasonable for such a Relief Event, taking into account the likely effect of delay; and/or
- (b) the Council shall not be entitled to exercise its rights to terminate this Agreement.

2.4 Nothing in paragraph 2.3 above shall affect the accrual of Service Credits made pursuant to Part 2 of Schedule 4 (Service Requirements) during the period in which the Relief Event is subsisting.

2.5 In the event that information required by paragraph 2.2 above is provided after the dates referred to in that paragraph, then the Partner shall not be entitled to any relief in respect of the period for which the information is delayed.

2.6 The Partner shall notify the Council if at any time it receives or becomes aware of any further information relating to the Relief Event, giving details of that information to the extent that such information is new or renders information previously submitted inaccurate or misleading.

2.7 If the Parties cannot agree the extent of the relief required, or the Council disagrees that a Relief Event has occurred or that the Partner is entitled to any extension of the relevant Long Stop Date, the parties shall resolve the matter in accordance with clause 24 (Dispute Resolution).

3 Compensation Events

3.1 If, and to the extent that the occurrence of a Compensation Event means:

- (a) the Partner is unable to complete the Works on or before the Long Stop Date; and/or;
- (b) the Partner is unable to comply with its obligations under this Agreement ; and/or
- (c) the Partner incurs costs or loses revenue,

then the Partner is entitled to apply for relief from its obligations and/or claim compensation under this Agreement.

3.2 To obtain relief and/or claim compensation the Partner must:

- (a) as soon as practicable, and in any event within twenty-one (21) days after it became aware that the Compensation Event has caused or is likely to cause delay, breach of an obligation under this Agreement and/or the Partner to incur costs or lose revenue, give to the Council a notice of its claim for an extension of time to the relevant Long Stop Date, payment of compensation and/or relief from its obligations under the Agreement;
- (b) within fourteen (14) days of receipt by the Council of the notice referred to in paragraph 3.2(a) above, give full details of the Compensation Event and the extension of time and/or any estimated change in project costs and/or any estimated loss of revenue claimed; and
- (c) demonstrate to the reasonable satisfaction of the Council that:
 - (i) the Compensation Event was the direct cause of the estimated change in project costs and/or any estimated loss of revenue and/or any delay in the achievement of the relevant Long Stop Date; and
 - (ii) the estimated change in project costs, loss of revenue, time lost, and/or relief from the obligations under the Agreement claimed, could not reasonably be expected to be mitigated or recovered by the Partner acting in accordance with Good Industry Practice.

3.3 In the event that the Partner has complied with its obligations under paragraph 3.2, then:

- (a) the relevant Long Stop Date shall be postponed by such time as is reasonable for such a Compensation Event, taking into account the likely effect of delay;
- (b) in the case of an additional cost being incurred or loss of revenue suffered by the Partner the Council shall compensate the Partner for the actual cost reasonably incurred by the Partner by agreeing to a reduction in the Guaranteed Minimum Payment;
- (c) the Council shall give the Partner such relief from its obligations under the Agreement, as is reasonable for such a Compensation Event.

3.4 In the event that information is provided after the dates referred to in clause 3.2, then the Partner shall not be entitled to any extension of time, compensation, or relief from its obligations under the Agreement in respect of the period for which the information is delayed.

- 3.5 If the parties cannot agree the extent of any compensation, delay incurred, relief from the Partner's obligations under the Agreement , or the Council disagrees that a Compensation Event has occurred (or as to its consequences), or that the Partner is entitled to any relief under this clause, the parties shall resolve the matter in accordance with clause 24 (Dispute Resolution).
- 3.6 Any payment of compensation referred to in paragraph 3.3 shall be payable at the Council 's option, either by way of a lump sum or by an adjustment to the Guaranteed Minimum Payment.

Schedule 3

The Works

Part 1 - Works Requirements

1 Introduction

- 1.1 This schedule sets out a description of the Council's minimum requirements in respect of works which the Provider must provide pursuant to this Agreement. Pursuant to this Agreement, the Bidder shall in addition be obliged to carry out other works which are documented in the Works Method Statements. All completed works pursuant to this Agreement shall be fit for purpose and shall conform to all relevant requirements of suppliers and manufacturers in order to achieve guaranteed or optimal performance of:
- (a) the relevant product installed or used at part of the Works; and
 - (b) the structure of and utilisation of each individual car park.
- 1.2 Unless stated otherwise, all standards for goods, services and workmanship shall be British Standards or those alternative European Standards, up-dated from time to time.
- 1.3 Where, in relation to any aspect of the Works, there are no relevant British or European Standards, such work shall conform to Good Industry Practice and the Partner shall procure that the specification for such work shall be submitted to the Council for written approval prior to the Partner making any commencement on site. Approval shall not be withheld by the Council unreasonably.
- 1.4 The Partner shall procure that:
- (a) half of all the Car Parks shall gain the Park Mark Safer Parking Award (PMSPA) within the first Contract year; and
 - (b) all Car Parks shall gain PMSPA within the first three Contract years; and
 - (c) PMSPA or its successor scheme award shall be retained (following the same being obtained) throughout the Services Period.

2 General provisions

- 2.1 Unless the Council otherwise agrees in writing, all maintenance or refurbishment painting undertaken pursuant to this Agreement shall be undertaken using one base coat and 2 topcoats, which shall be gloss for all metalwork and matt on concrete surfaces (e.g. anti-carbonisation paint) and all such painting shall be to British Standard BS 6150, conforming with Tables 11-17 as appropriate, BS5493 for steelwork, and in colours to BS4800.
- 2.2 Reading is considered an E3 environmental Area of medium district brightness (e.g. urban location) as far as Lighting the open roof level of multi-storey car parks is concerned, and the minimum uniformity ratio is 0.2. The Partner shall procure that such minimum uniformity ratio is met at all times during the Service Period.
- 2.3 When completed, each Car Park shall comply with Law in all respects. ***[Note: A programme of making the car parks Disability Discrimination Act compliant has been commenced and the high priority works have been carried out. Some handrail modifications by extension and adjustment of door closers to give a closing force <20N have yet to be***

done but are considered of secondary priority. Improvement of surface finishes, wayfinding and signing has not been carried out because it is expected that the Partner will wish to invoke their own style in this respect.]

- 2.4 Equipment at each of the Car Parks shall be upgraded and replaced (as necessary) to accept notes, coins and credit cards in circulation from time to time as methods of payment.

2.5 Provisions relating to Broad Street Mall MSCP

The Partner shall (or procure that a Partner Party shall):

- (a) up-grade the existing ventilation system, include dilution ventilation and secondary power source to meet all applicable British Standards in first Contract Year;
- (b) replace barriers around the roof and drops to meet all applicable safety standards;
- (c) up-grade barriers to give minimum 1.1m above highest foothold and vertical gaps less than 100mm within first Contract Year. All barriers shall be hot-dip galvanised before erection and then coated with etch primer and 2 coats of gloss paint;
- (d) replace all existing electrical systems to give lighting levels as below, all to B.S.5489:Part 9, in first Contract Year:

Lighting Level:

Area	E(average)/ lux:	E(minimum)/ lux
Parking bays, access lanes	75	50
Ramps, corners, intersections	150	75
Entrance/exit zones (vehicular)	75 night/300 day	n/a
Pedestrian areas, stairs, lifts	100	50

E(average) is the maintained horizontal illuminance at floor level.

E(minimum) is the maintained minimum horizontal illuminance at floor level at any point within the calculation grid, which should be no more than 0.5m from the wall or perimeter of the area.

Uniformity, the ratio of E(min) to E(ave) shall be not less than 0.5;

- (e) repaint all walls, roofs, balustrade and stairwells in masonry paint in accordance with British Standard 6150 to give a reflection value of not less than 0.5 in the first Contract year;
- (f) install a new CCTV System compliant with the requirements of Law (including the Data Protection Act 1998) in first Contract Year achieving the following:
 - (i) sufficient numbers of high quality fixed or pan/tilt and zoom colour cameras to enable the security staff to remotely view all areas of parking;
 - (ii) all cameras to be linked to an appropriately equipped control/monitoring facility and to digitally record at no less than 12 frames per second;

- (iii) the monitoring facility to incorporate any additional facilities to enable staff to work in a safe and comfortable environment, including if necessary air conditioning;
 - (iv) linkage to Reading's main system at the Police Station to enable monitoring staff there to view and control cameras (secondary control); and
 - (v) the CCTV System and all ancillary equipment to be subject to a comprehensive maintenance contract including a satisfactory regime of periodical camera/dome cleaning.
- (g) replace all Pay-on-Foot machines with APT Skidata or similar within first Contract Year;
 - (h) renew surfacing as necessary to a standard which ensures that no pothole or similar surface deterioration occurs throughout the Services Period; and
 - (i) re-define pedestrian and vehicle routes in material to BS3262, or alternative as agreed, in first Contract Year.

2.6 Provisions relating to Queens Road MSCP

The Partner shall (or shall procure that a Partner Party shall):

- (a) break out delaminated areas of slab shown in Hill Cannon Structural Appraisal (Oct 2004) and repair with cementitious material to restore structural integrity and match existing colour in the first Contract Year;
- (b) re-screed slabs to prevent pounding on Levels 2B, 3B and 4B in first Contract Year in accordance with Good Industry Practice and so as to ensure that the colour of the replacement screed matches the existing screed;
- (c) repair the existing waterproofing membrane with compatible material to 3M Scotch-Clad deck Coating System TLU to stop further deterioration in First Contract Year and replace on all floors with elastomeric membrane, or similar appropriate waterproofing system as agreed with the Council in writing, within three (3) Contract years;
- (d) renew surfacing as necessary so that no pothole or similar surface deterioration occurs throughout the Services Period;
- (e) replace all Pay-and -Display machines with Slumberger Stelio or similar within first Contract Year;
- (f) redecorate and re-furbish all metalwork, handrails to stairwells, and toilets Barriers to be taken down hot-dip galvanised re-erected and then coated with etch primer and 2 coats of gloss paint;
- (g) repaint /redecorate all internal surfaces of parking areas, stairwells and toilets with 2 coats of masonry paint to British Standard having a reflectivity of not less than 0.5;
- (h) raise lighting quality to standards specified for Broad St Mall within 2 Contract Years;
- (i) re-sign to meet current Health and Safety standards;
- (j) improve Lift Controls in lifts and on landings to current British Standards;

- (k) define pedestrian routes in materials to BS3262, or as otherwise agreed in advance by the Council, in first Contract Year;
- (l) replace all fire doors with similar approved including surrounds and intumescent seals; and
- (m) refurbish all toilet facilities to a reasonable standard.

2.7 Provisions relating to Civic “B”

The Partner shall (or shall procure that a Partner Party shall):

- (a) up-grade barriers to 1.1m height above highest foothold and reduce gaps to less than 100mm all in accordance with latest standards in first Contract Year (all barriers to be hot-dip galvanised before erection and then coated with etch primer and 2 coats of gloss paint);
- (b) replace and increase number of emergency light units and ensure operation to current British Standards in first Contract Year;
- (c) raise lighting quality to standards specified for Broad St Mall within 2 Contract Years;
- (d) repair leaking construction joints until no further water penetration over a 5-year period and permanently repair potholes using cementitious materials to match existing in first Contract Year;
- (e) paint columns and soffits with British Standard anti-carbonisation paint as specified by manufacturer in first Contract Year;
- (f) repaint /redecorate all internal surfaces of parking areas and stairwells with 2 coats of masonry paint with reflectivity of not less than 0.5;
- (g) undertake such works as are necessary to ensure that an efficient ventilation system is provided and maintained in operation for the contract duration;
- (h) define pedestrian routes in materials to BS3262 in first Contract Year; and
- (i) install new CCTV System compliant with the requirements of Law (including the Data Protection Act 1998) within first three Contract Years.

3 Surface Car Parks

3.1 General

- (a) For lighting purposes surface car parks can be regarded either as surface car parks or the open roof level of multi-storey car parks. The minimum uniformity ratio, as specified in Broad Street Mall clauses for exterior car parks, is 0.2. The Partner shall procure that such minimum uniformity ratio is met at all times during the Service Period following the relevant Works having been undertaken;
- (b) Whilst the sites currently have operating Pay & Display machines installed, all shall be replaced with Slumberger Stelio or similar within the first Contract Year.

3.2 Dunstall Close Surface Car Park

The Partner shall (or shall procure that a Partner Party shall):

- (a) resurface with bituminous bound material to BS 4987 or BS592 and remark parking bays to BS3262 and BS3263 in first Contract year;
- (b) install new lighting scheme to BS5489 within first 2 Contract Years.

3.3 Recreation Road Surface Car Park

The Partner shall (or shall procure that a Partner Party shall):

- (a) install Ellis Trief or similar raised pre-cast concrete kerbing as agreed in advance by the Council to BS7263 and make good to discourage over-running by vehicles of the kerb and renew existing BS7263 drop-kerbing and make good surrounds within 2 Contract Years;
- (b) resurface with bituminous bound material in accordance with BS 4987, and remark parking bays and circulation arrows to BS3262 and BS3263 within 2 Contract Years;
- (c) install lighting scheme in accordance with BS5489 within 2 Contract Years.

3.4 Hills Meadow Surface Car Park

The Partner shall (or shall procure that a Partner Party shall):

- (a) resurface with bituminous bound material to BS4987 and remark parking bays together with circulation arrows all to BS 3262 and BS3263 within 2 Contract Years.

3.5 Kings Meadow Surface Car Park

The Partner shall (or shall procure that a Partner Party shall):

- (a) resurface with bituminous bound material to BS 4987 and remark parking bays within 2 Contract Years;
- (b) install lighting to BS 5489 standards within 2 Contract Years;
- (c) renew security fencing and gates to a reasonable standard which is sufficient to ensure that (with appropriate maintenance during the Service Period) the same are in a serviceable condition throughout the Contract duration.

3.6 Chester Street Surface Car Park

No immediate work is envisaged but shall be maintained in its current condition throughout the contract period.

3.7 Cattle Market temporary Surface Car Park

The Partner shall (or shall procure that a Partner Party shall):

- (a) improve surfacing using materials to BS4987 to provide 65 short term parking spaces with a life-expectancy of at least 5 years;

- (b) re-mark parking bays and circulation direction arrows with material to BS3262 and BS3263 within the first Contract Year; and
- (c) define pedestrian routes with materials to BS 3262 and BS3263 within the first Contract Year.

3.8 Chatham Street Temporary Surface Car Park

[Bidder should note that no works are currently envisaged to keep this Car Park operational. Bidder should assume this for the purpose of the IRAFO report. Consideration will be given by the Council in the future to installing pay-and display machines and any other proposals by the Partner to bring this car parking facility into regular use but it is unlikely to be approved for a period of longer than 6 months and may possibly be less.]

Part 2 - Works Method Statements

[As part of its Bid each Bidder should, for eventual insertion into this part of the Agreement, prepare a Works Method Statement describing in detail how the Works specified at Part 1 shall be carried out. The Works Method Statements should be submitted on a Car Park by Car Park basis and should be prepared in sufficient detail so as to enable the Council to establish exactly what type and method of Works have been priced for as part of the Bidder's BAFO response. The Council reserves the right to discuss or seek clarification or amendment to the Works Method Statements at any time prior to contract signature.]

Part 3 - The Partner's Programme of Works

[As part of the BAFO response each Bidder should specify its proposed programme of Works for eventual insertion into this part of the Agreement. The Programme should be prepared on the basis that all works specified in Part 1 of this Schedule have been completed within a period of 3 years commencing on the Service Commencement Date.]

Schedule 4

Services Requirements

Part 1 - Performance Standards

1 Operation of the Car Parks – General requirements

The Partner shall carry out all activities necessary to operate the Car Parks as car parks for use by members of the public efficiently and effectively and in accordance with clause 4.2, including (without limitation) the following activities:

- (a) staffing the Car Parks;
- (b) providing appropriate security; and
- (c) providing lighting to at least the level in place immediately before the Service Commencement Date or as required under Law.

2 Operational Management

2.1 The Partner shall (or shall procure that a Partner Party shall):

- (a) keep the Car Parks and the Equipment in good, safe, clean and tidy condition and good repair (including (without limitation) the structural slab and structural retaining walls, lifts, WCs, ramps, Equipment, fences and boundary walls of each Car Park) and shall carry out all necessary or desirable repairs, alterations, maintenance and replacements to the same (including, where relevant, to secure compliance with the repairing and maintenance covenants in any Relevant Property Document);
- (b) repair, maintain and renew when necessary the lighting, decoration, Car Park lining, Car Park surface ventilation equipment, signage and control equipment to maintain the standards required by this Agreement or as may be specified by the Council (acting reasonably);
- (c) keep the Car Parks clean and clear of litter, graffiti and unsightly or hazardous deposits of petrol or grease;
- (d) promptly remove all abandoned items in the Car Parks, including vehicles;
- (e) promptly remove all trespassers (provided that if, under Law, the Council must evict any trespasser, the Council shall do this as quickly as reasonably possible and the Partner shall provide necessary assistance to the Council and shall pay any internal or external costs incurred by the Council in progressing the eviction);
- (f) ensure that all doors located at the Car Parks are properly maintained so that all relevant surfaces are clean and sound, vision panels are clean and the doors are in operating condition; and
- (g) ensure that all Staff are clearly identifiable so that they can be easily addressed and identified by customer.

2.2 The Partner shall provide aid or assistance to customers of the Car Parks as required to maintain a high quality service which meets the requirements of clause 4.2. For customers who have problems with their vehicles, the Partner shall grant entry and exit free of charge to

a known recovery service vehicle for example, from the RAC or AA). All such assistance to customers shall be provided as soon as practically possible. ***[Bidder should note that such benchmark will be agreed during the BAFO stage and Bidders are required to propose proposals in this regard.]***

- 2.3 The Partner shall monitor queuing times and ensure that queuing is negligible except in exceptional circumstances. Where undue delay in exit and entry (except where a Car Park is full) has occurred, the circumstances shall be investigated by the Partner to determine what measures should be necessary to avoid recurrence. The Partner shall notify the Council of the result of its investigations as soon as reasonably practicable and in any event no later than in the next following Monthly Report and any measures implemented to avoid recurrence. The meaning of undue delay shall depend upon the circumstances but in any event any delay of more than 3 minutes shall always constitute undue delay for the purposes of this paragraph.

2.4

- (a) The Partner shall with effect from the date of this Agreement, carry out a minimum programme of inspection, testing and remedial works as follows:

ICE Structural Appraisal –	Every 7 years
Fixed wiring testing -	Every 5 years
Dry Riser -	Annually
Electrical Testing -	Annually
Portable Appliances -	Annually
Fire Extinguishing equipment & sprinklers -	Annually
Domestic Water -	Quarterly
Emergency Lighting -	Monthly
Fire Alarms -	Weekly
Carbon Monoxide -	Periodically

- (b) Any associated remedial works or services identified as necessary from the above surveys shall be carried out within 3 calendar months of the commencement date for the carrying out the respective survey.
- (c) Records of these above inspections shall be retained on a computer database system that can be accessed by RBC.
- (d) The Partner shall procure that all schedules of Programmed Maintenance comply with the requirements of this paragraph 2.

3 Alterations and restrictions

- 3.1 The Multi-Storey Car Parks shall be open to the public 24 hours a day, unless otherwise agreed with the Council.

- 3.2 The Surface Car Parks shall be open to the public 24 hours a day, unless otherwise agreed with the Council.

4 Staff

- 4.1 The Partner shall provide mobile patrols to ensure adequate security at night against inappropriate use to the extent that the Partner considers reasonably necessary. For the avoidance of doubt the Council shall have no obligation to provide such mobile patrols.
- 4.2 Staff shall patrol and monitor the Car Parks (in person or with the assistance of close circuit telephone equipment) with the aim of identifying when customers may require assistance. The Partner shall procure that all staff shall be trained in customer care and shall render assistance to customer enquiries as required. The Partner shall on request provide the Council with copies of the Partner's training manuals.
- 4.3 Incidents involving damage or theft or from customers' vehicles, reported to or identified by the Partner's Staff shall be dealt with in a sympathetic, helpful and supportive manner. Agreed incident reporting procedures shall be followed, and if appropriate, the Police shall be summoned. All incidents that the Partner is aware of shall be reported to the Police within 24 hours.

5 Enforcement of parking control

The Partner shall operate a system of excess charging and/or penalty arrangements for non-payment of charges by customers and shall exercise recovery as appropriate under civil law. Any income received under this paragraph shall be treated as Gross Revenue.

6 The Euro

- 6.1 For the purposes of paragraph 6.2, **Euro Ready** means the ability to:
- (a) perform all of its monetary functions in euros;
 - (b) correctly implement the conversion and rounding requirements required by law including the ability to handle the triangulation method of currency conversion;
 - (c) operate in both sterling and euros both during and after the transition period leading up to European Monetary Union;
 - (d) handle any legal, regulatory or market requirement for dual reporting in both sterling and euros; and
 - (e) handle any legal, regulatory or market practice changes which are identified in the lead up to, or after, the introduction of the euro.

- 6.2 The Partner shall ensure that the Services and any equipment used in the provision of the Services are Euro Ready.

7 Building surveying, health & safety and other consultants reports

- 7.1 The Partner shall as soon as practicable following any request from the Council provide to the Council copies of all reports and other information in relation to the running, repair, maintenance and the structure of the Car Parks, including health and safety risk assessments.

- 7.2 The Partner shall review health and safety risk assessments at least annually or as soon as possible following a substantial change to working practices.

8 Complaints

[As part of their BAFO response Bidders are required to supply their proposed customer complaints procedure so that an agreed version can be referred to in this Agreement]

- 8.1 The Partner shall put in place a customer service charter, as agreed with the Council.
- 8.2 The Partner shall deal with all complaints from customers in a courteous, understanding and prompt manner.
- 8.3 The parties shall agree a procedure for dealing with written complaints.
- 8.4 Under such procedure, if any person makes a written complaint concerning the Works or the Services to the Partner or to the Council, the Partner shall procure that:
- (a) an initial acknowledgement is sent to the complainant within 3 Business Days of receiving the complaint;
 - (b) the complaint is immediately investigated and an appropriate response sent to the complainant within 10 Business Days of receiving the complaint; and
 - (c) corrective action is taken.
- 8.5 Where the Partner's systems or procedures are found to be at fault or the level of customer service has been insufficient:
- (a) the complainant shall receive a full refund; and
 - (b) the Partner shall adjust its procedures or provide additional staff training, as appropriate.
- 8.6 The Partner shall keep a log of all complaints made about the Services, including the nature of the complaint, the name of the person making the complaint, the date and time when it was received, the action taken to remedy the complaint, the date and time when the remedy was completed and the names of the Partner's staff involved in the action complained of and its remedy. This information will be maintained in a Complaints Register which shall be available for inspection by the Council upon reasonable notice.
- 8.7 The Partner shall analyse the complaints received on a regular basis (to be agreed by the parties) and shall provide the Council with a copy of the analysis. Following each analysis, the Partner shall take whatever action is required to prevent repetitions of the same or similar complaints.

Part 2 - Performance Monitoring System

The Services shall be monitored on a self-monitoring basis by the Partner in accordance with the procedure set out in this part 2 of this schedule 4

- 1 .
- 2 Commencing with the Service Commencement Date, the Service Levels referred to in this schedule will each month be measured by the Partner. The outcome of each such measurement shall be reported to the Council in a written report to be submitted by the Partner not less than 7 days following the end of the relevant month (**Monthly Report**).
- 3 The Monthly Report shall:
 - (a) provide a summary of the Partner's performance for the previous month;
 - (b) list any penalty points outstanding from previous Accounting Periods;
 - (c) explain what action has been undertaken to discharge them;
 - (d) provide a calculation as to any new points accrued during the relevant Accounting Period, detailing whether or not Service Credits are due and payable to the Council, and if so, calculate the amounts owed.
- 4 The form of the Monthly Report and the monitoring methodologies to be used by the Partner will be agreed between the parties before the Service Commencement Date. The Partner shall not make any changes to the Monthly Reporting format or the monitoring arrangements without the prior approval of the Council.
- 5 If at any time either the Partner or the Council considers that the Monthly Report does not produce an accurate assessment of the Partner's performance, either Party shall be entitled to propose to the other changes to the Monthly Report (such approval not to be unreasonably withheld or delayed) and upon agreement or determination of the same the revised Monthly Report (to the extent amended) shall be applied in measuring performance in delivery of the Services.
- 6 Failure by the Partner to meet the required Service Level shall not be penalised either:
 - (a) during the first 3 calendar months from the Service Commencement Date; or
 - (b) to the extent that the failure is caused by a Force Majeure Event.
- 7 Service Credits shall be calculated and paid by the Partner to the Council as follows:

0-2 points within a single Accounting Period	No Service Credit
3-7 points within a single Accounting Period	£250 for each point above 3 (eg for 7 points, the Service Credit would be £1,000)
7+ points within a single Accounting Period	£1000 per point for the total number of points (eg for 12 points, the Service Credit would be £12,000 in substitution of any lower level of Service Credits otherwise payable had the number of points not exceeded 9 points)

Any points outstanding for a period of 30 days which are capable of being rectified, but which have not been rectified	£1000 per point for each 30 day period
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- 8 Any Service Credits shall be paid to the Council in full within a period of 10 Business Days of the Partner notifying the Council, by way of the Monthly Report, that the Service Credits are payable.
- 9 Points shall accrue as follows:

Areas of partnership being assessed	Service Level	Points
Financial Reporting		
Weekly sales data	Weekly sales data to be sent to the Council in electronic format weekly within 6 days of the end of the trading week	1 point for late delivery 1 point for incomplete information
Income from daily tickets	The Partner to report, in each Monthly Report, income from daily tickets on the basis of calendar months within 7 days of the end of the relevant calendar month	1 point for late delivery 1 point for incomplete information
Income from season tickets	The Partner to report, in each Monthly Report, income from season tickets on the basis of calendar months within 7 days of the end of the relevant calendar month	1 point for late delivery 1 point for incomplete information
Income from other sources (parking related)	The Partner to report, in each Monthly Report, income from other sources on the basis of calendar months within 7 days of the end of the relevant calendar month	1 point for late delivery 1 point for incomplete information
Income from other sources (non-parking related)	The Partner to report, in each Monthly Report, income from other sources on the basis of calendar months within 7 days of the end of the relevant calendar month	1 point for late delivery 1 point for incomplete information
Late payment of guaranteed sum	As specified by this Agreement	1.5 points for the first instance of late delivery, 3 points for the second instance of late delivery, 4.5 points for the third instance of late delivery, and so on

Areas of partnership being assessed	Service Level	Points
Internal processes		
Car Park opening hours	<p>All the Car Parks are to be open for 24 hours a day.</p> <p>An 'occurrence' means that the Car Park is closed for a period of more than 30 minutes at any time</p>	<p>1 point for a first occurrence during each 5 day period</p> <p>2 points for any further occurrence at the same Car Park within the same week</p>
Equipment breakdown (new equipment only)	<p>The Partner is to submit detailed reports of equipment performance on a quarterly basis within 10 Business Days of the end of the quarter. Reports to include nature of any faults, action taken and amount of downtime.</p> <p>No less than 90% of all faults to be rectified within 24 hours</p> <p>No less than 100% of all faults to be rectified within 72 hours</p>	<p>1 point for late delivery or incomplete information</p> <p>1 point for failure to meet the service standard</p> <p>1 point for failure to meet the service standard</p>
Lift Operation	<p>The Partner, in each Monthly Report to submit report on quarterly basis within 7 days of the end of the quarter of lift breakdown. Report to include length of time any lifts are out of operation, nature of fault and action taken to rectify.</p> <p>After refurbishment no Car Park is to be without at least one operational lift</p>	<p>1 point for late delivery/incomplete information</p> <p>2 points per occurrence</p>
Planned maintenance	<p>A planned maintenance programme shall be produced and agreed in accordance with this Agreement. Progress against the planned maintenance plan shall be reported on a quarterly basis within 14 days of the end of the quarter.</p> <p>The amount of planned maintenance undertaken and completed within the reporting period shall not be less than 90% of the plan.</p>	<p>1 point for late delivery or incomplete information</p> <p>1 point for failure to meet the agreed programme</p>

Areas of partnership being assessed	Service Level	Points
Reactive maintenance	<p>All reactive maintenance items are to be reported to the Helpdesk. A report of reactive maintenance items logged together with time taken to attend to logged items shall be produced on basis of Accounting Periods within 8 Business Days of Accounting Period end</p> <p>No less than 90% of reactive maintenance items will be completed within 15 Business Days</p>	<p>1 point for late delivery or failure to provide complete information</p> <p>1 point for failure to meet agreed programme</p>
Delivery of capital investment plan	<p>Progress being less than 90% of the capital plan for the relevant reporting period</p> <p>Progress being less than 75% of the capital plan for the relevant reporting period</p> <p>Progress being less than 50% of the capital plan for the relevant reporting period</p> <p>Failure to complete 90% of all snagging items within 30 days of the Partners being notified</p>	<p>1.5 points</p> <p>3 points</p> <p>6 points</p> <p>1 point for missing the first 30 days period; 3 points for each successive 30 day period missed</p>
Cleanliness	The Car Parks are to be kept clean and litter free at all times in accordance with paragraph 2.1(a) and to a standard no less than Grade B in the Code of Practice on Litter and Refuse issued under Section 89 of the Environmental Act 1990. The Council, acting reasonably, shall notify the Partner if the Car Parks are not clean, and the Partner shall log the Council's complaint as a qualifying complaint.	1 point for more than 1 qualifying complaints within any period of three months, and multiples thereof which have not been rectified within 48 hours of notification
Removal of trespassers	The Partner will procure the removal of trespassers from the Car Park as soon as practicable and in any event in accordance with the strict timetable of the legal process	1 point per failure to meet the timescale

Areas of partnership being assessed	Service Level	Points
Removal of rubbish	The Partner will ensure the removal of rubbish, including fly tipping, from the Car Parks within 48 hours of the Partner becoming aware of it. Where this is not possible (eg with a major fly tipping incident) the Partner will procure its removal as soon as reasonably possible	1 point per failure to meet the timescale
Removal of abandoned vehicles	The Partner will order the removal of any abandoned vehicles brought to their attention as soon as practicable and in any event in accordance with the strict timetable of the legal process	1 point per failure to meet the timescale
Crime recording	<p>The Partner, in each Monthly Report, to report BROMAT Crimes within 7 days of the end of the relevant calendar month</p> <p>Upon becoming aware of any crimes, the Partner to report all details to the police within a period of 24 hours and to provide the relevant crime reference to the Council</p>	<p>1 point for late delivery or incomplete information</p> <p>1 points for late delivery or incomplete information</p>
Toilets at car parks	The toilets at car parks are to be kept clean	1 point for each verbal or written complaint exceeding one such complaint in any reporting period
Snagging list	TBC	TBC
Customers		
Customer complaints reporting	<p>No less than 95% of all customer complaints to be logged, recorded and acknowledged in writing within 3 Business Days</p> <p>No less than 95% of all customer complaints to be investigated, with a response from the Partner to the complaint within 10 Business Days</p>	<p>1 point for failure to meet the timescale</p> <p>1 point for failure to meet the timescale</p>
Staff		

Areas of partnership being assessed	Service Level	Points
Training plan	<p>Training to all staff is to be provided in accordance with the Partner's Training Plan to be agreed by the Council.</p> <p>Progress against the plan is to be reported to the Council on the basis of Accounting Periods within 8 Business Days of Accounting Period end</p>	<p>1 point for late delivery or incomplete information</p> <p>1 point for failure to deliver less than 95% of the agreed plan for the period</p>

Part 3 - Services Method Statements

[As part of its Bid each Bidder should, for eventual insertion into this part of the Agreement, prepare a Services Method Statement describing in detail how the Services specified at Part 1 shall be carried out. The Services Method Statements should be submitted on a Car Park by Car Park basis and should be prepared in sufficient detail so as to enable the Council to establish exactly what type and method of Services have been priced for as part of the Bidder's BAFO response. The Council reserves the right to discuss or seek clarification or amendment to the Services Method Statements at any time prior to contract signature.]

Schedule 5

Changes

1 Council Changes

1.1 Subject to paragraph 1.2 of this schedule 5, the Council may propose changes in the Operations by serving written notice on the Provider (an **Authority Change Notice**)

1.2 An Authority Change Notice may propose any change to the Operations required by the Council, including without limitation the removal or addition of car parks or car parking spaces to the scope of the Partner's obligations pursuant to this Agreement, provided that the Council shall not in an Authority Change Notice propose a change in Operations which:

- (a) requires the Operations to be performed in a way that infringes Law or is inconsistent with Good Industry Practice; or
- (b) requires the Partner to implement the change in Operations in an unreasonable period of time; or
- (c) unless the Partner agrees to such proposed change in advance:
 - (i) relates to the removal of the Car Parks at Broad Street Mall or Queen's Road from the Project; or
 - (ii) would have the effect that more than 50% of the Car Park Spaces falling within the scope of this Agreement as at the date it was entered into have been removed from the Project,

provided that the Partner shall not unreasonably withhold or delay the giving of any agreement for the purposes of this paragraph 1.2(c)

1.3 The Authority Change Notice shall:

- (a) set out the change in Operations required in sufficient detail to enable the Partner to calculate and provide the Estimate in accordance with paragraph 1.4;
- (b) in the event that the Change requires Capital Expenditure, state whether the Council intends to pay to the Partner the costs involved in implementing the change from its own resources without there being any impact on the Guaranteed Minimum Payment in respect of such Capital Expenditure or whether the Council requires the Partner to use its reasonable efforts to obtain funding in accordance with paragraph 1.10 below; and
- (c) require the Partner to provide the Council within fifteen (15) Business Days of receipt of the Authority Change Notice with the Estimate.

1.4 As soon as practicable and in any event within fifteen (15) Business Days after having received the Authority Change Notice, the Partner shall deliver to the Council the Estimate. The Estimate shall include the opinion of the Partner on:

- (a) whether relief from compliance with the Partner's obligations contained in this Agreement is required, including the obligations of the Partner to achieve the Long Stop Date;

- (b) any impact on the provision of the Operations;
- (c) any amendment required to this Agreement [and/or any Project Document] as a result of the change in Operations;
- (d) any Estimated Change in Costs that result from the change in Operations;
- (e) any impact on the Guaranteed Minimum Payment;
- (f) any loss of revenue that results from the change in Operations;
- (g) any Capital Expenditure that is required or no longer required as a result of the change in Operations; and
- (h) any regulatory approvals which are required.

1.5 As soon as practicable after the Council receives the Estimate, the Parties shall discuss and agree the issues set out in the Estimate, including:

- (a) providing evidence that the Partner has used reasonable endeavours (including (where practicable) the use of competitive quotes) to oblige its Sub-contractors to minimise any increase in costs and maximise any reduction in costs;
- (b) demonstrating how any Capital Expenditure to be incurred or avoided is being measured in a cost effective manner; and
- (c) demonstrating that any expenditure that has been avoided, which was anticipated to be incurred to replace or maintain assets that have been affected by the Authority Change Notice concerned, has been taken into account in the amount which in its opinion has resulted or is required under paragraph 1.4(d) and/or (e) and/or (f) and/or (g) above.

In such discussions the Council may modify the Authority Change Notice and (if the estimated increase in Capital Expenditure in respect of the change in Operations is expected to exceed one hundred thousand pounds (£100,000) (Indexed) and it is practicable for the Partner to do so), the Council may require the Partner to seek and evaluate competitive tenders for the relevant capital works. In each case the Partner shall, as soon as practicable, and in any event not more than ten (10) Business Days after receipt of such modification, notify the Council of any consequential changes to the Estimate.

1.6 If the Partner does not intend to use its own resources to implement any change in Operations it shall comply with Good Industry Practice with the objective of ensuring that it obtains best value for money (taking into account all relevant circumstances including, in particular, the requirement that the Partner should not be worse off as a result of the implementation of the change in Operations) when procuring any work, services, supplies, materials or equipment required in relation to the change in Operations.

1.7 If the parties cannot agree on the contents of the Estimate then the dispute will be determined in accordance with clause 24 (Dispute Resolution).

1.8 As soon as practicable after the contents of the Estimate have been agreed or otherwise determined pursuant to clause 24 (Dispute Resolution), the Council shall:

- (a) confirm in writing the Estimate (as modified); or

- (b) withdraw the Authority Change Notice.
- 1.9 If the Council does not confirm in writing the Estimate (as modified) within twenty (20) Business Days of the contents of the Estimate having been agreed in accordance with paragraph 1.4 above or determined pursuant to paragraph 1.5 above, then the Authority Change Notice shall be deemed to have been withdrawn.
- 1.10 In the event that the Estimate (as modified) involves estimated Capital Expenditure then (unless the Council has elected to fund such costs in accordance with paragraph 1.2(b)) the Partner shall use its reasonable endeavours to obtain funding for the whole of the estimated Capital Expenditure, on terms reasonably satisfactory to it [and the Senior Lenders].
- 1.11 If the Partner has used its reasonable endeavours to obtain funding for the whole of the estimated Capital Expenditure, but has been unable to do so within forty (40) Business Days of the date that the Council confirmed the Estimate, then the Partner shall have no obligation to carry out the change in Operations, unless the Council agrees within twenty (20) Business Days of the end of such period to pay the costs for which funding is not available on the basis provided in paragraph 1.14 below.
- 1.12 The Council may, at any time following the date on which the Estimate is confirmed, agree to meet all or, to the extent the Partner has obtained funding for part of the Capital Expenditure, the remaining part of the estimated Capital Expenditure.
- 1.13 In the event that the Estimate has been confirmed by the Council, then the Guaranteed Minimum Payment shall be adjusted accordingly.
- 1.14 Where the Council agrees to pay the costs for which funding is not available pursuant to paragraph 1.10 above, or where paragraph 1.2(b) of this schedule applies:
- (a) the Council and Partner shall agree:
- (i) a payment schedule in respect of the payment of the relevant sum reflecting the amount and timing of the costs to be incurred by Partner in carrying out the change in Operations to the extent borne by the Council; and
- (ii) where payment for part of the change in Operations reflects the carrying out of, or specific progress towards, an element within the change in Operations, an objective means of providing evidence confirming that the part of the change in Operations corresponding to each occasion when payment is due under the payment schedule appears to have been duly carried out,
- (such payment schedule and evidence to be determined in accordance with clause 38 (Dispute Resolution) in the event of the Council and Partner failing to agree as to its terms);
- (b) the Council shall make a payment to the Partner within fifteen (15) Business Days of receipt by the Council of invoices presented to the Council (in all material respects) in accordance with the agreed payment schedule (as the case may be, varied by agreement from time to time) accompanied by the relevant evidence (where applicable) that the relevant part of the change in Operations has been carried out; and

- (c) if payment is not made in accordance with sub-paragraph (b) above, the Council shall pay interest to the Partner on the amount unpaid from the date fifteen (15) Business Days after receipt of the relevant invoice until paid in accordance with clause [♦].

Schedule 6

Handback Provisions

1 Handback Requirements and inspection prior to the Expiry Date

- 1.1 On the Expiry Date, each element of the Car Parks shall be in a condition which is:
- (a) consistent with compliance by the Contractors with the Council's Service Requirements and other provisions of this Agreement relating to the maintenance and operation of the Car Parks; and
 - (b) consistent with the Works and each of the Elements of the Works having been carried out in accordance with schedule 3 (Works Requirements),
- together referred to as (the "**Handback Requirements**").
- 1.2 Not less than 12 months prior to the Expiry Date, the Partner and the Council Representative shall conduct a joint inspection of the Car Parks.
- 1.3 Within 20 Business Days after the completion of the inspection, if it is agreed or determined that any element of the Facilities is not in a condition consistent with the Handback Requirements, the Partner shall forthwith provide to the Council Representative:
- (a) the Partner's proposal as to the maintenance works (if any) (the "**Handback Works**") required to be carried out in respect of the Car Parks in order to procure that they will, on the Expiry Date, satisfy the Handback Requirements;
 - (b) the Partner's proposal as to the programme (the "**Handback Programme**") for the carrying out of the Handback Works over the remainder of the Operating Period, such programme shall describe the total works to be carried out and the method of carrying out such works during the overall period in which the Handback Works are to be executed; and
 - (c) the Partner's estimate of the cost of carrying out the Handback Works (the "**Handback Amount**").

2 Council's right to comment

The Council Representative may, within 20 Business Days after receipt of the details set out in paragraph 1.3 from the Partner, raise comments on the Partner's proposals and estimate referred to in paragraph 1 above.

3 Carrying out of the Handback Works

- 3.1 On agreement or determination in accordance with schedule 7 (Dispute Resolution Procedure), of the Handback Works, the Handback Programme and/or the Handback Amount (as the case may be), the Partner shall procure that the Handback Works are carried out in accordance with the Handback Programme. The Partner shall carry out the Handback Works at its own cost.
- 3.2 Unless the Council agrees otherwise in writing, the Partner shall within 20 Business Days of the agreement (or determination in accordance with schedule 7 (Dispute Resolution Procedure)) envisaged in paragraph 3.1, procure the provision of a bond (the "**Handback**

Bond") in favour of the Council for an amount equal to the Handback Amount from a bank or insurance company authorised to carry out business in the United Kingdom.

3.3 The Partner shall carry out the Handback Works to the satisfaction of the Council Representative in accordance with Good Industry Practice and in accordance with the Handback Programme so as to meet the Handback Requirements.

3.4 Notwithstanding:

- (a) the agreement of the Council Representative to any Handback Works, the Handback Programme or the Handback Amount;
- (b) the participation of the Council Representative in any inspection under this schedule; and/or
- (c) the complete or partial carrying out of the Handback Works,

the Partner shall not be relieved or absolved from any obligation to conduct any other inspection or to perform any other works in accordance with the Council's Requirements.

4 Inspection

4.1 Not later than 40 Business Days before the Expiry Date, the Partner and the Council Representative shall conduct a joint inspection of the Car Parks. Such inspection shall confirm whether or not the condition of the Car Parks is in accordance with paragraph 1.1 above.

4.2 Within (twenty) (20) Business Days after, the Expiry Date, the Council Representative shall either:

- (a) issue to the Partner a Handback Certificate and return the Handback Bond to the Partner; or
- (b) notify the Partner of its decision not to issue the Handback Certificate stating the reasons for such decision.

4.3 Any notice given by the Council Representative in accordance with paragraph 4.2(b) shall set out each respect in which the Handback Works have not been completed or the Facilities do not comply with the Handback Requirements and shall state the Council Representative's estimate of the cost of procuring that the Facilities comply in all respects with the Handback Requirements.

4.4 The Partner may, within 20 Business Days after receipt of the notice given in accordance with paragraph 4.2(b) by notice to the Council Representative, object to any matter set out in the Council Representative's notice. The notice from the Partner shall give details of the grounds of such objection and shall set out the Partner's proposals in respect of such matters.

4.5 If no agreement is reached between the Partner and the Council Representative as to any matter referred to in the Partner's notice given in accordance with paragraph 4.4 within 5 Business Days of receipt of that notice by the Council Representative, then either the Partner or the Council Representative may refer the matter for determination in accordance with schedule 7 (Dispute Resolution Procedure) as to:

- (a) whether the Facilities comply in all respects with the Handback Requirements; and

- (b) the estimated cost of procuring that the Facilities comply in all respects with the Handback Requirements, where the Facilities do not comply in all respects with the Handback Requirements.

5 Partner's obligation to pay if Handback Requirements are not satisfied

If it is agreed or determined in accordance with schedule 7 (Dispute Resolution Procedure) that the Car Parks did not, at the Expiry Date, comply in all respects with the Handback Requirements, the Partner shall pay to the Council an amount equal to the estimated cost of completing the relevant Handback Works or procuring that the Car Parks comply in all respects with the Handback Requirements. Such payment shall be made not later than 10 Business Days after the estimated cost has been agreed or determined and, upon such payment being received by the Council, the Council Representative shall issue the Handback Certificate and return the Handback Bond to the Partner.

Schedule 7

Dispute Resolution Procedure

- 1 The procedure set out in this schedule (Dispute Resolution Procedure) shall apply to any dispute, claim or difference arising out of or relating to this Agreement ("**Dispute**") except where it has been excluded from this procedure by an express term of this Agreement.
- 2 This Dispute Resolution Procedure shall not impose any pre-condition on any Party or otherwise prevent or delay any Party from commencing proceedings in any court of competent jurisdiction in relation to any Dispute in which that Party requires either:
 - (a) an order (whether interlocutory or final) restraining the other Party from doing any act or compelling the other Party to do any act; or
 - (b) a judgement for a liquidated sum to which there is no arguable defence.

Liaison Committee

- 3 Subject to paragraph 2 of this schedule, all Disputes shall first be referred to the Car Park Working Group for resolution. Any decision of the Car Park Working Group shall be final and binding unless the parties otherwise agree.

Mediation

- 4 If the parties have been unable to resolve the Dispute within 5 Business Days of referral to the Car Park Working Group, they may refer the Dispute to mediation on such conditions as may be agreed between the parties. Any mediation shall be completed within 30 Business Days of such referral and any decision arising therefrom shall be final and binding unless otherwise agreed by the parties.

Expert

- (a) Subject to paragraph 6, if the Dispute has not been resolved within 5 Business Days of it being referred to the Car Park Working Group, and they have chosen not to refer the Dispute to mediation, either Party may by notice to the other refer the Dispute to an expert named by the parties to act as Expert in resolution of the Dispute. If the parties fail to agree the appointment of the Expert within 5 Business Days of such notice, the Expert shall be appointed by the President of the Institute of Chartered Accountants.
- (b) The Expert shall act as an expert and not as an arbitrator and shall act fairly and impartially.
- (c) The decision of the Expert shall be final and binding on the parties unless overturned by arbitration proceedings.

Fast Track Dispute Resolution Procedure

- (a) Any dispute which relates to matters which are expressly stated in this Agreement to be subject to the Fast Track Dispute Resolution Procedure, may at any time be referred direct to an Expert without observing paragraphs 2, 3 and (where appropriate) 4.

- (b) Unless otherwise agreed between the parties the decision of the Expert in the Fast Track Dispute Resolution Procedure shall be final and binding.

Schedule 8

Compensation on Termination

1 Definitions

Without prejudice to schedule 1 (Definitions and Interpretation) for the purposes of this schedule 8 (Compensation on Termination) the following expression shall have the following meaning:

Compensation Amount means the amount stated in column 2 of the table below opposite the year in which the Termination Date occurs, as stated in column 1 of such table:

1	2
Contract Year in which the Termination Date occurs	Compensation Amount
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	

[Bidders should note that the figures in Column 2 are intended to represent capital costs incurred by the Preferred Bidder in carrying out the Works. The Council expects such figures to reduce year on year to reflect the period of time in which the contract

has been live (and therefore in which the Preferred Bidder has had opportunity to earn profits to offset the capital cost which was incurred "up front"). Bidders should "bid back" these figures and amend this schedule as they think appropriate to reflect the circumstances of their bid. Each Bid must contain a clear and transparent explanation and justification of the thinking adopted in this respect, to allow proper evaluation and (if necessary) negotiation in due course by the Council.]

2 Termination on the Expiry Date

Where this Agreement terminates by effluxion of time on the Expiry Date, no compensation shall be payable as a result of such termination.

3 Termination following a Partner Event of Default

If this Agreement is terminated by the Council following the occurrence of a Partner Event of Default then:

- (a) the Partner shall indemnify the Council against all Losses incurred or to be incurred by the Council as a consequence of such termination (including without limitation Losses relating to the costs of retendering the Project, any rectification costs and any additional costs incurred in respect of the provision of any of the Operations by a new Partner); and
- (b) one half of the Compensation Amount shall be paid to the Contractor by the Council either in a lump sum within thirty (30) Business Days following the Termination Date, or in six (6) equal bi-annual instalments payable in arrears on the last day of each six month period following the Termination Date, the first such payment to be made within ten (10) Business Days following the Termination Date.

4 Termination following a Council Event of Default or on Voluntary Termination

If this Agreement is voluntarily terminated by the Authority or terminated by the Partner following a Council Event of Default then the Council shall pay to the Partner a sum equal to:

- (a) [one years' loss of profit] ***[Bidders should, as part of their Bids, insert drafting which reflects the detail of how they believe such amount should be calculated by reference to the assumptions in their Bids and historic performance]***
- (b) if and to the extent that TUPE or its equivalent does not apply in respect of Staff at the point of Termination, any redundancy costs for Staff employed or engaged in the provision of the Operations; and
- (c) the Compensation Amount.

5 Termination following a Force Majeure Event

If this Agreement is terminated following the occurrence of a Force Majeure Event the Council shall pay to the Partner a sum equal to:

- (a) if and to the extent that TUPE or its equivalent does not apply in respect of Staff at the point of Termination, any redundancy costs for Staff employed or engaged in the provision of the Operations; and
- (b) the Compensation Amount.

6 Payment and Interest

- 6.1 Payment of the amounts due pursuant to the foregoing provisions of this schedule shall, subject to paragraph 9 and paragraph 3.1(b), be made by the payer to the payee as soon as practicable after, and in any event within twenty (20) Business Days of, the Termination Date.
- 6.2 Subject to paragraph 9 below, the payer shall, in addition to the amount referred to at paragraph 6.1, pay to the payee interest on the relevant termination sum (or any part of such sum that remains outstanding) from the Termination Date until the date of payment:
- (a) at the No Default Interest Rate for the period from (but excluding) the Termination Date to (and including) the date which is forty (40) Business Days after the Invoice Date; and
 - (b) thereafter, at the Default Interest Rate (provided that interest on any amount which the Council elects to pay by instalments pursuant to paragraph 3.1(b) shall accrue at the No Default Interest Rate unless any such payment is not made on the due date).

7 Full and final settlement

Any and all sums irrevocably paid under this schedule will be in full and final settlement of each party's rights and claims against the other for breaches and/or termination of this Agreement whether under contract, tort, restitution or otherwise but without prejudice to:

- (a) any antecedent liability of either party to the other that arose prior to the Termination Date (but not from the termination itself) to the extent such liability has not already been taken into account in determining or agreeing the relevant termination sum; and
- (b) any liabilities arising in respect of any breach by either party of their continuing obligations of this Agreement which arises or continues after the Termination Date.

8 Costs

- 8.1 The costs and/or expenses to be taken into account in the calculation of all termination sums due pursuant to this schedule shall only be such costs and/or expenses to the extent that they are reasonable and proper in quantum and shall have been or will be reasonably and properly incurred and shall only be counted once.
- 8.2 The Council and the Partner shall take all reasonable steps to minimise and mitigate any costs and/or expenses to be taken into account in the calculation of all termination sums due pursuant to this schedule.

9 Undisputed Amounts

If the calculation of any termination amount is disputed then any undisputed element of that amount shall be paid in accordance with this part of this schedule 8 (Compensation on Termination) and the disputed element shall be dealt with in accordance with schedule 7 (Dispute Resolution Procedure).

Schedule 9

Insurance Requirements

For the purposes of this schedule 9 (Insurance Requirements), the "**Insured Parties**" means:

- (c) the Partner;
- (d) the Council;
- (e) [the Building Contractor];
- (f) all other contractors and/or sub-contractors of any tier of the Building Contractor employed in connection with the Project;
- (g) [the Maintenance Contractor];
- (h) all other contractors and/or sub-contractors of any tier of the [Maintenance Contractor] employed in connection with the Project;
- (i) professional consultants and suppliers to the above for their site activities only in connection with the carrying out of the Project; and
- (j) [the Senior Lenders,]

for their respective rights and interests.

Part 1 - Works Period

1 Construction "All Risks"

Cover	"All Risks" of physical loss destruction or damage to the Property Insured from any cause not otherwise excluded.
Insured	The Insured Parties
Property Insured	All property and interests of every description used for or intended for incorporation within the Works and all facilities relating to design, supply, demolition, construction, erection, testing, setting to work, commissioning and defects maintenance in connection with the Project, including temporary works utilised to facilitate the carrying out of the Works
Insurance Period	[For the duration of the Works Period, plus the applicable defects liability period]
Territorial Limits	Anywhere in the United Kingdom in connection with the Project
Sum Insured	An amount representing the full reinstatement value of the Property Insured, plus an allowance sufficient to cater for the Principal Extensions as appropriate
Maximum	

Deductibles	£10,000 each and every loss but increasing to £150,000 each and every loss in respect of DE5 in respect of the defective part of the Works
Principal Extensions	<ul style="list-style-type: none"> Full value terrorism Professional fees - to scale Debris removal costs – limit £1,000,000 Escalator clause - +15% increase in Sum Insured Increased cost of constructing incomplete Works - limit £1,000,000, subject to 20% co-insurance Expediting expenses - limit £1,000,000 Plans and documents - limit £100,000 Full guarantee maintenance Automatic reinstatement of sums insured, subject to any additional premium not exceeding pro-rata Inland transits and incidental "off-site" storage European union authorities clause 72 hours clause Munitions of war Free issue materials Minimisation of loss - limit £250,000 Temporary repairs Additional Costs of working – limit £1,000,000, subject to 20% co-insurance
Principal Exclusions	<ul style="list-style-type: none"> War and civil war etc Nuclear events including radioactive contamination The cost of making good wear and tear etc but not resultant damage Unexplained shortages or disappearance at time of taking an inventory Sonic bangs Partners' plant, tools and equipment other than in respect of the party referred to at paragraph (a) of the definition of Insured Parties Liquidated and ascertained damages Consequential losses not otherwise insured Aircraft and marine craft (other than non-self propelled) DE5 design improvement Cyber risks

2 **Advance Loss of Revenue Insurance (Delay in Start-Up)**

Indemnity	In respect of loss of advance gross revenue and/or increased costs of working incurred as a result of a delay in a Planned Services Commencement Date arising from loss or damage to the Property Insured by a cause not otherwise excluded under the Construction "All Risks" insurance referred to in paragraph 1 of Part 1 of this schedule 9 (Insurance Requirements).
Insured	As in paragraphs (a) and (h) of the definition of Insured Parties
Sum Insured	An amount sufficient to cater for the Indemnity provisions during the Indemnity Period
Indemnity Period	twenty-four (24) months

Maximum Deductible	£10,000
Insurance Period	As under Construction "All Risks" Insurance referred to in paragraph 1 of Part 1 of this schedule 9 (Insurance Requirements), but excluding the applicable defects liability period.
Principal Extensions	Full value terrorism Additional increased costs of working - limit £500,000 Denial of access Utilities Specified suppliers premises – Fire, Lightning, Aircraft and Explosion perils Professional accountants Construction plant and equipment Automatic reinstatement of loss, subject to any additional premium not exceeding pro-rata
Principal Exclusions	Non-availability of funds

3 Public/Products Liability Insurance

Cover	Legal liability of the Insured to pay (including claimant's costs and expenses) as damages in respect of: <ul style="list-style-type: none"> (i) death or bodily injury, illness, death, disease contracted by any person (ii) loss of or damage to property (iii) interference to property or any easement quasi easement right of air, light, water or way or the enjoyment or use thereof by obstruction, stoppage of traffic, trespass, loss of amenities, nuisance or any like cause happening during the Insurance Period and arising out of or in connection with the Works.
Insured Parties	The Insured Parties other than as under paragraphs (d), (f) and (g) of the definition of Insured Parties.
Insurance Period	As under the Construction "All Risks" insurance referred to in paragraph 1 of Part 1 of this schedule 9 (Insurance Requirements)
Indemnity Limit	[£25,000,000] any one occurrence, unlimited in the aggregate during the Insurance Period, but in the aggregate during the Insurance Period in respect of pollution liability
Maximum Deductible	[£5,000] each and every occurrence but nil in respect of personal injury
Principal Extensions	Cross liabilities Costs and expenses in addition to indemnity limit

Contractual liability
Worldwide jurisdiction (excluding USA/Canada)
Health & Safety at Work defence costs
Munitions of war
Contingent motor
Vicarious liability for acts of sub-contractors
Indemnity to limb (a) of the definition of Council Related Parties
Parties excluding contractors

Principal Exclusions Penalties, fines, liquidated and ascertained damages
ABI Pollution exclusion
War and civil war etc
Nuclear events including radioactive contamination
Injury to Insured's own employees
Loss or damage to contractors plant/huts/equipment
Liability arising out of aircraft and marine craft
Design or advice given solely for a fee
Contract Works
Asbestos liability
Toxic mould
Liability arising out of the use of motor vehicles other than as a tool of trade

Part 2 - Services Period

1 Property "All Risks"

Cover	"All Risks" of physical loss or damage to Property Insured from a cause not otherwise excluded
Property Insured	All property used for or in connection with the Project (including but not limited to the structures of the Car Parks at Queens Road (IMC 'B' Car Kar and Barod Street Mall) [but excluding property which is owned by as the respectability of Broad Street Mall]
Insured Parties	As in paragraphs (a), (b), (e), (f) and (h) of the definition of Insured Parties
Sum Insured	An amount representing the full reinstatement value of the Property Insured, plus an allowance sufficient to cater for the Principal Exclusions as appropriate
Maximum Deductible	[£10,000] (Indexed) each and every loss
Insurance Period	twelve (12) months (or for any greater period) from the Service Commencement Date and renewable annually (or for any greater period) for the duration of the Services Period
Principal Extensions	Full value terrorism Day one reinstatement - +15% Mechanical and electrical breakdown Architects & surveyors fees Debris removal costs European union authorities clause Automatic reinstatement of sum insured, subject to any additional premium not exceeding pro-rata Waiver of subrogation rights against the Insured Parties as under paragraph (c) of the definition of Insured Parties 72 hour clause
Principal Exclusions	War and civil war etc Nuclear events including radioactive contamination The cost of making good wear and tear, etc but not excluding resultant damage Sonic bangs Consequential losses Unexplained shortages Fidelity losses Loss or damage to motor vehicles, aircraft or marine craft Inherent defects but not resulting damage not otherwise excluded Pollution but not ensuing losses not otherwise excluded Toxic mould Cyber risks

2 Business Interruption Insurance

Indemnity	In respect of loss of gross revenue and/or increased costs of working incurred as a result of interruption or interference in the provision of Services arising from loss or damage to the Property Insured, by a cause not otherwise excluded under Property "All Risks" Insurance referred to in paragraph 1 of Part 2 of this schedule 9 (Insurance Requirements).
Insured Parties	As in paragraphs (a) and (i) of the definition of Insured Parties
Sums Insured	An amount sufficient to cater for the Indemnity provisions during the Indemnity Period
Indemnity Period	twenty-four (24) months
Maximum Deductible	£10,000 (Indexed) each and every loss but in respect of mechanical and electrical breakdown the first 24 hours of any delay period.
Insurance Period	As under the Property "All Risks" Insurance referred to in paragraph 1 of Part 2 of this schedule 9 (Insurance Requirements).
Principal Extensions	Full value terrorism Additional increased costs of working - limit £500,000 Denial of access Utilities Specified suppliers premises – Fire, Lightning, Aircraft and Explosion perils Professional accountants Automatic reinstatement of loss, subject to any additional premium not exceeding pro-rata
Principal Exclusions	Non-availability of funds

3 Public/Products Liability Insurance

Cover	Legal liability of the Insured to pay (including claimant's costs and expenses) as damages in respect of: (a) death or bodily injury, illness, death, disease contracted by any person (b) loss of or damage to property (c) interference to property or any easement quasi easement right of air, light, water or way or the enjoyment or use thereof by obstruction, stoppage of traffic, trespass, loss of amenities, nuisance or any like cause happening during the Insurance Period and arising out of or in connection with the provision of Services in relation to the Project
Insured Parties	As under the Property "All Risks" Insurance referred to in paragraph 1 of Part 2 of this schedule 9 (Insurance Requirements) other than Insured Party (ff).

Indemnity Limit	[£25,000,000] (Indexed) any one occurrence, unlimited in the aggregate during the Insurance Period, but in the annual aggregate during the Insurance Period for products/pollution liability
Maximum Excess	[£5,000] (Indexed) each and every occurrence but nil in respect of personal injury
Insurance Period	As under Property "All Risks" insurance referred to in paragraph 1 of Part 2 of this schedule 9 (Insurances).
Principal Extensions	<ul style="list-style-type: none"> Cross liabilities Costs and expenses in addition to indemnity limit Contractual liability Worldwide jurisdiction (excluding USA/Canada) Health & Safety at Work defence costs Munitions of war Contingent motor Vicarious liability for acts of sub-contractors Parties excluding contractors
Principal Exclusions	<ul style="list-style-type: none"> Penalties, fines, liquidated and ascertained damages ABI Pollution exclusion War and civil war etc Nuclear events including radioactive contamination Injury to Insured's own employees Liability arising out of aircraft and marine craft Design or advice given solely for a fee Asbestos liability Toxic mould Liability arising out of the use of motor vehicles other than as a tool of trade

Part 3 - Special endorsements

1 Non vitiation

The Insurers undertake to each Insured that the policy shall not be invalidated as regards the rights and interests of such Insured and that the Insurers will not seek directly or indirectly to avoid any liability under this policy because of any act, neglect, error or omission made by any other Insured (whether occurring before or after the inception of the policy), including any failure by any other Insured to disclose any material fact, circumstance or occurrence, any misrepresentation by any other Insured or any breach or non-fulfilment by any other Insured of any condition, warranty or provision contained in the policy, whether or not any such act, neglect, error or omission could, if known at any time, have affected any decision of the Insurers to grant the policy, to agree to any particular term or terms of the policy (including this endorsement and the amount of any premium) or to act or refrain from acting in any way whatsoever in relation to this policy or to any liability which might arise hereunder.

2 Waiver of Subrogation

The Insurers agree to waive all rights of subrogation against the persons specified below in respect of injury, loss or damage caused by any of them arising out of the construction, ownership, operation or maintenance of the Assets or the provision of the Services:

- (a) any Insured;
- (b) the Council; and
- (c) the respective parents, affiliates, officers, directors, employees, sub-contractors, agents or representatives of any of the Insured or the Council.

3 Separate Policy

It is agreed that the inclusion of one or more Insured in this policy shall not affect the rights of any Insured in respect of any claim, demand, suit or judgment made or brought by or for any other Insured or by or for any employee of any Insured. This policy shall protect each Insured in the same manner as though a separate policy had been issued to each, but the inclusion herein of more than one Insured shall not serve to increase the limit of the Insurers' liability. The liability of the Insurers under this policy to any one Insured shall not be conditional upon the due observance and fulfilment by any other insured party of the terms and conditions of this policy or of any duties imposed upon that insured party relating thereto, and shall not be affected by any failure in such observance or fulfilment by any such other insured party.

4 Primary cover

The Insurers agree that this insurance shall be primary to and not excess to (except in respect of any layers of third party cover effected specifically for the Project) or contributing with any other insurance maintained by any Insured.

5 Loss Payee

Insurance other than legal liability insurance: Monies payable under insurances as detailed under paragraph 1 of Parts 1 and 2 of this schedule 9 (Insurance Requirements) shall be paid by the Insurers into an account in the joint names of the Council and the Partner at a bank to be nominated by the Council (and notified to the Insurers accordingly), such monies to be released against application by either party with such supporting information as the other party may reasonably require.

Legal Liability Insurances: Subject to the provisions of any applicable legislation and notwithstanding any assignments, all sums in respect of any claim hereunder by an Insured shall be paid directly to the person whose claim(s) constitutes the risk or liability insured against, provided that such person has executed a discharge of all claims made against the Insured in respect of the risk or liability in relation to which the claim was made, save in cases where (notwithstanding the policy terms to the contrary) Insurers accept liability to indemnify the Insured in respect of the claims or liabilities which the Insured has settled directly with the claim in which case payment under the policy of such sums shall be made in accordance with the instructions of the Council.

6 Cancellation

The Insurers shall advise the Council at least thirty (30) days (or such lesser period, if any, as may be specified from time to time by the Insurers in the case of war risks and kindred perils) before any cancellation or amendment is to take effect if the Insurers cancel or give notice of cancellation of the policy for any reason including non-payment of premium;

In respect of the insurances specified in Part 1 of this schedule 9 (Insurance Requirements), cover shall not be cancellable except in respect of non-payment of premium.

7 Changes to cover

No reduction in limits or coverage or increases in deductibles, exclusions or exceptions shall be made under the policy at the request of any Insured without the prior written consent of the Council.

8 Notices

Any notice of a claim given by any insured party shall be accepted by the receiving party as valid notification of a claim in respect of the interest of all insured parties and shall be given in accordance with clause 36.10 (Address for Notices).

Part 4 – Insurance Broker's Letter of Undertaking

To:

[Reading Borough Council

Address]

[] 2005

Dear Sirs,

RE: Car parking Outsourcing Project

We confirm that as far as we are aware those insurances (the "**Insurances**") on the terms specified in Parts 1 to 3 of schedule 8 (Insurances) (the "**Insurance Schedule**") of the agreement dated 2005 between Reading Borough Council (the "**Council**") and [] (the "**Partner**") (the "**Project Agreement**") are in effect as set out in the attached Cover Note dated [] and that all premiums due at the date thereof in respect of such Insurances have been paid in full.

Pursuant to instructions received from the Partner and in consideration of your approving our appointment or continuing appointment as brokers in connection with the Insurances covered by this letter, we hereby undertake in respect of the interests of the Partner and the Council in the Insurances during the term of our appointment:

- 1 to use reasonable endeavours on the relevant policies as and when the same is issued relevant endorsements substantially in the form set out in Part 3 of the Insurance Schedule;
- 2 to notify you:
 - (a) promptly on receipt of notice of any material changes notified to us which are proposed to be made in the terms of the Insurances and which, if effected, would in our reasonable opinion result in any material reduction in limits or coverage (including those resulting from extensions) or in any material increase in deductibles, exclusions or exceptions;
 - (b) at least thirty (30) days prior to the expiry of the Insurances if we have not received renewal instructions from the Partner and/or any jointly insured parties or the agents of any such party, and, in the event of our receiving instructions to renew, to advise you promptly of the details thereof;
 - (c) promptly on becoming aware:
 - (i) if any underwriter or insurer cancels or gives notice of cancellation or suspension of any of the Insurances;
 - (ii) of any material default beyond our normal terms of credit in the payment of the premium; and
 - (iii) of any act or omission or of any event of which we have knowledge which in our reasonable opinion might invalidate or render unenforceable, in whole or in part, any of the Insurances;
 - (d) promptly on our ceasing to act as insurance brokers to the Partner;
- 3 to pay without any set-off or deduction of any kind for whatever reason all proceeds from the Insurances received by us from the insurers into the accounts into which the Partner is

obliged to pay those proceeds under the terms of the Project Agreement [and/or the Direct Agreement] (except as might be otherwise permitted in the endorsements set out in Part 3 of the Insurance Schedule);

- 4 to disclose to the insurers any fact, change of circumstance or occurrence which in our reasonable opinion is material to the risks insured against under the insurances as soon as reasonably practical after we become aware of such fact, change of circumstance or occurrence;
- 5 to hold the insurance slips or contracts, the policies and any renewals thereof of any new or substitute policies (in each case, issued only with the Council's consent) to the extent they relate to any of the Insurances, where those documents would otherwise be held to the order of the Partner.

The above undertakings are given subject to our lien, if any, on the policies referred to above for premiums due under the Policies and subject to any insurer's right of cancellation (if any) following default in excess of thirty (30) days in payment of such premiums, but we undertake to advise you as soon as is reasonably practical if any such premiums are not paid to us by the due date and to use all reasonable endeavours to give you a reasonable opportunity of paying such amounts of such premiums outstanding before notification of cancellation on behalf of the insurers.

Our aggregate liability to you for any and all claims arising in connection with this letter and the contents hereof and any other claim howsoever arising, save where such liability arises from our wilful misconduct, shall be limited to one million pounds (£1,000,000). Nothing in this letter shall exclude or limit our liability for death or personal injury resulting from our negligence.

This letter shall be governed by and construed in accordance with the law of England and Wales and the English courts shall have exclusive jurisdiction in respect of any dispute as to the construction of this letter.

Yours faithfully

Schedule 10

Completion Documents

Part 1 - Documents to be delivered by the Partner

[To be finalised at Preferred Bidder Stage]

- 1 [any Consents]
- 2 [any relevant corporate or funding documentation]
- 3 [any relevant Subcontracts]
- 4 [Evidence of relevant insurances being taken out]
- 5 [Relevant Direct Agreements/collateral warranties]
- 6 The Independent Certifier Contract
- 7 Extracts from the minutes of the meeting of the board of directors (certified as true and accurate by the secretary of the relevant Company) of the Partner [and other relevant entities] at which resolutions were passed approving the execution, delivery and performance of each relevant document to which such person is expressed to be a Party and in each case authorising a named person or persons to execute and deliver each such document.

Part 2 - Documents to be delivered by the Council

[To be finalised at Preferred Bidder Stage]

- 1 [Any documents referred to at Part 1, which the Council will sign/execute]
- 2 [Council Resolutions/LGCA Certificate]

Appendix 1

Plan of Broad Street Mall

Appendix 2

Plan of Queen's Road

Appendix 3

Plan of Kings Meadow

Appendix 4

Plan of Hills Meadow

Appendix 5

Plan of Cattle Market

Appendix 6

Plan of Civic 'B' Car Park

Appendix 7

Plan of Chester Street

Appendix 8

Plan of Recreation Road

Appendix 9

Plan of Dunstall Close