

TERMS & CONDITIONS

1. INTERPRETATION

Definitions:

Accept and Acceptance: the acceptance of the Contract by the Client by way of pressing acceptance on the online account of the Client with the Supplier.

Authorised Persons: all persons authorised by the Client to use the Property from time to time without liability to pay the Parking Charge as notified by the Client to the Supplier on the on-line account of the Client from time to time during the Term.

Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Charges: the charges payable by the Client for the supply of the Services by the Supplier, as set out in the Contract Details and **Error! Reference source not found..**

Code of Practice: the current code of practice of the British Parking Association from time to time.

Compliance Requirements: all statutory requirements and regulations necessary for the carrying out of the Services on the Property by the Supplier including, without limitation, planning consent for the Use (with conditions attached which are acceptable to the Supplier) and the display of the Signage.

Conditions: these terms and conditions set out in clause 1 to clause 11 (inclusive).

Contract: the contract between the Client and the Supplier for the supply of the Services in accordance with the Contract Details, these Conditions and any Schedules.

Debt Recovery: the Parking Charge Payments which are not paid when due and fall within the debt recovery programme of the Supplier.

Delegate and Delegation: the delegation of Enforcement (comprising part of the Services) by the Supplier to the Client.

Deliverables: all documents, products and materials developed by the Supplier or its agents, subcontractors and personnel as part of or in relation to the Services in any form.

Driver: any driver parking any vehicle on the Property.

Enforcement: the administration and enforcement of the Parking Charge including the issuing of Parking Charge Notices in accordance with the Enforcement Procedure.

Enforcement Payment: the sum of £10.00 for each Parking Charge Payment received by the Supplier.

Enforcement Procedure: the procedure and process for Enforcement set out in Schedule 3.

Equipment: the equipment of the Supplier installed at the Property, including, without limitation, Mobile Phones and suitable fixtures and fittings necessary for the undertaking of the Services.

Intellectual Property Rights: all rights in confidential information (including know-how and trade secrets) passing off and any other intellectual property rights, whether registered or unregistered.

Management Report: a quarterly report compiled by the Supplier containing full details of the Parking Payments for the preceding 3 months.

Mobile Phone: a designated mobile phone, as advised by the Supplier for the Nominated Person or Nominated Persons to undertake the Enforcement.

Nominated Person: any employee or agent of the Client appointed to undertake the Enforcement.

Outgoings: rates, taxes and other impositions payable in respect of the Property and all costs in connection with all services and service media relating to the Property.

Parking Charge: the fee or charge arising from a Driver or Drivers being in breach or contravention of the Terms & Conditions.

Parking Charge Notice: the notice issued to a Driver or Drivers as a result of incurring a Parking Charge.

Parking Charge Payment: any payment made in full by a Driver in respect of each Parking Charge Notice issued.

Payment Date: every 3 months from the Term Commencement.

Parking Receipt: the ticket issued or the electronic receipt transmitted to a Driver or Drivers upon payment of appropriate consideration into the Equipment situated at the Property or paid electronically (as appropriate).

Property: the property specified in the Contract Details.

Service Media: all pipes, sewers, drains, mains, conduits, water courses, wires, cables, channels and all other conducting media plant and equipment.

Service Payments: payments due to the Supplier under this Contract in consideration of the provision of the Services equivalent to the Parking Charge Payments less the Enforcement Payments and together with other sums more fully described in Schedule 2.

Services: the services, including without limitation any Deliverables, to be provided by the Supplier pursuant to this Contract, as described in 0.

Services Start Date: the day on which the Supplier is to start provision of the Services, as set out in the Contract Details.

Signage: sufficient signs displayed or to be displayed at the Property, to be erected by the Client but subject to the minimum standards and information reasonably required by the Supplier including, without limitation the words "No Unauthorised Parking".

Terms and Conditions: the terms and conditions of use of the Property (including enforcement procedures) by Drivers as a car park during the term of this agreement as revised from time to time, and as notified to Drivers on the Parking Ticket (where applicable) and on the Signage.

Training: required training for undertaking the Enforcement under the Supplier's nominated back office system from time to time and in compliance with the BPA Code of Practice.

Use: the use of the Property as a car parking area, and/or as described on the Signage.

1.1 **Interpretation:**

- (a) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- (b) Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- (c) A reference to **writing** or **written** includes email.

2. **COMMENCEMENT AND TERM**

This Contract shall commence on the date when the Client has Accepted on-line and shall continue unless terminated earlier in accordance with the provisions of clause 8 of the Contract Details.

3. **SUPPLY OF SERVICES**

- 3.1 The Supplier shall supply the Services (other than Enforcement) to the Client from the Services Start Date in accordance with these Conditions.
- 3.2 The Supplier shall Delegate the Enforcement to the Client for the term of this Contract and use reasonable endeavours to provide all necessary equipment to the Client in order to Enforce.
- 3.3 The Supplier shall reimburse the Enforcement Payment to the Client upon payment in full of each Parking Charge by Drivers to the Supplier in the manner outlined in and at times stated in each Management Report .
- 3.4 The Supplier shall provide all necessary Signage at the Property within 10 working days from the Contract Commencement date and shall where necessary replace such Signage at the cost of the Supplier in the case of fair wear and tear only and as a result of legislative changes.

- 3.5 The Supplier shall provide remote Training as from the date of this Contract free of charge.
- 3.6 The Supplier shall provide the Client with a copy of the Management Report within 14 days of each quarterly period from the Term Commencement of this Contract.
- 3.7 In supplying the Services, the Supplier shall:
- (a) use reasonable endeavours to perform the Services in accordance with the service description set out in 0;
 - (b) perform the Services with reasonable care and skill;
 - (c) not cause any avoidable nuisance or annoyance in providing the Services to the Client or the owners or occupiers of adjoining or adjacent land;
 - (d) ensure that all goods, materials, standards and techniques used in providing the Services are of satisfactory quality and are fit for purpose;
 - (e) comply with:
 - (i) all applicable laws, statutes, regulations and codes from time to time in force; and
 - (ii) the Code of Practice,provided that the Supplier shall not be liable under this agreement if, as a result of such compliance, it is in breach of any of its obligations under this agreement;

4. CLIENT'S OBLIGATIONS

- 4.1 The Client shall in connection with Enforcement:
- (a) use all reasonable endeavours to perform the Enforcement in accordance with the Enforcement Procedure;
 - (b) notify in writing all enquiries from Drivers arising from Parking Charge Notices to the Supplier and direct all Drivers to the Supplier relating to Parking Charge Notices without entering into any dialogue or correspondence with Drivers in that regard;
 - (c) use all reasonable endeavours to prevent any damage to or removal of Signage or Equipment from the Property and to notify the Supplier of any such damage or removal and pay on demand by the Supplier for the reasonable costs of replacement Signage or Equipment;
 - (d) notify on the Client's on-line account details of all Authorised Persons from time to time and indemnify the Supplier against any loss incurred by reason of failing to notify such details;
 - (e) employ or engage sufficient (being a minimum of one) Nominated Person to undertake Enforcement at all times during the term of this Contract;
 - (f) supply a designated Mobile Phone for the purposes of Enforcement to be used by the Nominated Person(s);

- (g) erect the necessary Signage at the Property before the commencement of any Enforcement and, in any event, as speedily as possible following the Services Start Date.
- (h) comply with the Code of Practice.

4.2 The Client shall in connection with its other responsibilities:

- (a) generally co-operate with the Supplier in all matters relating to the Services;
- (b) give access at all times and for all purposes to the Property for the Supplier, its agents, subcontractors, consultants and employees for the purposes of carrying out the Services in accordance with the terms of this agreement;
- (c) not impede or obstruct the Supplier, its agents, subcontractors, consultants and employees in the provision of the Services in accordance with the terms of this agreement;
- (d) maintain the Property and, in particular but without limitation, the surface of the Property, to a good, safe and serviceable condition for the Use and to promptly repair and reinstate the Property to such condition whenever necessary;
- (e) take all reasonable steps to ensure that the Equipment and the Signage is secure and that the Signage is at all times observable to Drivers and is not permitted to become obscured by vegetation or any other impediment;
- (f) keep the Property clean, clear of any obstruction or object and free of detritus and rubbish at all times and take all reasonable steps for the prevention or eradication (as appropriate) of invasive plants or other noxious matters on the Property;
- (g) maintain suitable insurance cover against the Insured Risks in respect of the Property and in the event of damage or destruction apply all relevant insurance proceeds to the reinstatement of the Property to a good and serviceable condition;
- (h) ensure that all Compliance Requirements are obtained and continued or renewed for the purposes of the Use and the supply of the Services on the Property;

4.3 If the Supplier's performance of its obligations under this agreement is prevented or delayed by any act or omission of the Client, its agents, subcontractors, consultants or employees, the Supplier shall not be liable for any costs, charges or losses sustained or incurred by the Client that arise directly or indirectly from such prevention or delay.

4.4 The Client warrants and undertakes to the Supplier that:

- (a) the Client owns or has sufficient proprietary rights in the Property to enable it to enter into this Contract and to fully perform its obligations under this Contract;
- (b) the Property meets the Compliance Requirements;

- (c) the Property has all necessary accommodation and ancillary rights in order to enable it to be utilised for the Use without hindrance or permission from any third party; and
- (d) the Client shall indemnify the Supplier from any loss incurred by the Supplier arising from any breach of the warranties and undertakings contained in this clause 4.4.

5. INTELLECTUAL PROPERTY

- 5.1 The Supplier shall retain ownership of all Intellectual Property Rights of the Supplier.
- 5.2 The Supplier grants the Client a non-exclusive licence for the Intellectual Property Rights of the Supplier to be used for the purpose of delivery of the Services at the Property during the term of the Contract only.

6. CHARGES AND PAYMENT

In consideration for the provision of the Services, the Supplier will receive the Service Payments, in accordance with the provisions of this Contract.

7. LIMITATION OF LIABILITY

- 7.1 Nothing in this Contract shall limit or exclude the Supplier's liability for:
 - (a) death or personal injury caused by its negligence, or the negligence of its personnel, agents or subcontractors;
 - (b) fraud or fraudulent misrepresentation; and
 - (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 and any supplemental legislation (title and quiet possession) or any other liability which cannot be limited or excluded by applicable law.
- 7.2 Subject to clause 7.1, the Supplier shall not be liable to the Client, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this agreement for:
 - (a) loss of profits;
 - (b) loss of sales or business;
 - (c) loss of agreements or contracts;
 - (d) loss of anticipated savings;
 - (e) loss of use or corruption of software, data or information;
 - (f) loss of or damage to goodwill; and
 - (g) any indirect or consequential loss.

7.3 Subject to clause 7.1, the Supplier's total liability to the Client, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with this Contract shall be limited to a sum equivalent to 50% of the average annual Charges (calculated by reference to the Charges in successive 12 month periods from the Services Start Date) paid by the Client under this Contract.

7.4 The conditions implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 and any supplemental legislation are, to the fullest extent permitted by law, excluded from this agreement.

8. TERMINATION

8.1 Without affecting any other right or remedy available to it, either party to this Contract may terminate it with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of any term of this Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 20 Business Days after being notified in writing to do so;
- (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business;
- (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- (d) the Client is served with an enforcement notice in respect of the Use of the Property by the relevant local authority and there is less than two weeks left of the relevant notice period remaining; or
- (e) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under this Contract has been placed in jeopardy.

8.2 Without affecting any other right or remedy available to it, the Supplier may terminate the Contract with immediate effect by giving written notice to the Client if the Property ceases to be suitable or capable for the Use, for whatever reason or if ceases to conform to the Compliance Requirements.

8.3 Without affecting any other right or remedy available to it, either party may terminate the Contract in any event by giving not less than 3 months written notice to the other party.

8.4 On termination of this Contract for whatever reason:

- (a) the Client shall remove (and, if appropriate, make available for collection by the Supplier) the Signage from the Property using reasonable care and skill within a reasonable period of time;
- (b) termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract which existed at or before the date of termination; and
- (c) any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

8.5 Without affecting any other right or remedy available to the Supplier, on termination of this Contract by reason of any of the provisions of this clause 8, other than the culpability of the Supplier, at any time prior to the expiry of the Term, the Supplier shall not be entitled to account for nor to pay the Parking Receipts or any other sums due to the Client under this Contract for the period from the date of Termination to the next Payment Date or part thereof.

9. INDEMNITY

Each party shall keep the other party indemnified against all expenses, costs, claims, damage and loss arising from any breach of any provision of this Contract or any act or omission of that party or their respective agents, subcontractors, consultants and employees or any other person on the Property or involved in the Services with the actual or implied authority of either of them.

10. AGREEMENT

For the avoidance of doubt, the parties agree that during the term of this Contract, the Supplier shall have sole and exclusive rights to provide the Services at the Property without obstruction or hindrance from the Client, such provision to be undertaken in any manner thought fit by the Supplier so long as it accords with the terms of this Contract.

11. GENERAL

11.1 **Force majeure.** Neither party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.

11.2 **Assignment and other dealings.**

- (a) The Client shall not assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights and obligations under this Contract without the Supplier's prior written consent.

- (b) The Supplier may at any time assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights under this Contract.

11.3 Confidentiality.

- (a) Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, Clients, clients or suppliers of the other party, except as permitted by clause 11.3(b).
- (b) Each party may disclose the other party's confidential information:
 - (i) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under this Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 11.3; and
 - (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- (c) No party shall use any other party's confidential information for any purpose other than to perform its obligations under this Contract.

11.4 Entire agreement.

- (a) This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

- (b) Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Contract.
- 11.5 **Variation.** No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 11.6 **Waiver.** A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not:
 - (a) waive that or any other right or remedy; or
 - (b) prevent or restrict the further exercise of that or any other right or remedy.
- 11.7 **Severance.** If any provision or part-provision of this Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Contract.
- 11.8 **Notices.**
 - (a) Any notice or other communication given to a party under or in connection with this Contract shall be in writing, addressed to that party at its registered office or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first class post or other next working day delivery service, commercial courier or email.
 - (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause **Error! Reference source not found.**; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by email, one Business Day after transmission.
 - (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.
- 11.9 **Third party rights.** No one other than a party to this agreement shall have any right to enforce any of its terms.
- 11.10 **Governing law.** This Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or

formation, shall be governed by, and construed in accordance with the law of England and Wales.

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

Services

- To collect income generated by issuing of Parking Charge Notices.
- To administer the system dealing with recovery of all Parking Charges owing by Drivers.
- To account to the Client for all sums received in connection with the Parking Receipts and the Parking Charges in the form of a Quarterly Management report.
- To communicate queries from Drivers to the Client and generally to liaise with the Client for the better performance of the Services.