

# Brighton & Hove City Council

DATED the 3<sup>rd</sup> day of January 20<sup>20</sup> 2019

## AGREEMENT FOR OFF STREET CAR PARKING ENFORCEMENT ON HOUSING LAND

BETWEEN

BRIGHTON & HOVE CITY COUNCIL

-and-

ONE PARKING SOLUTION LTD



THIS CONTRACT is made and entered into this the 3<sup>rd</sup> day of January 2019

**BETWEEN**

- (1) **BRIGHTON & HOVE CITY COUNCIL** of King's House, Grand Avenue, Hove BN3 2LS (hereinafter called "the Council"); and
- (2) **ONE PARKING SOLUTION LTD** (Company No: 05992210) whose registered office address is at 95 Arundel Road, Worthing, West Sussex, BN13 3EU (hereinafter called "the Company")

**IT IS AGREED** as follows :-

1. The Contract Period is a period of four (4) years from 1 July 2019 to 30 June 2023 plus any extension period that will be up to a maximum of one (1) year.
2. During the Contract Period the Specification and all of the terms of the Contract shall apply.
3. If the Company shall have offered or given or agreed to give any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of this contract or any other contract with the Council or for showing or forbearing to show favour or disfavour to any person in relation to this contract or any other contract with the Council or if the like acts shall have been done by any person employed by him or acting on his behalf (whether with or without the knowledge of the Company) or if in relation to any contract with the Council the Company or any person employed by him or acting on his behalf shall have committed any offence under the Bribery Act 2010, the Prevention of Corruption Acts 1889 to 1916 or shall have given any fee or reward the receipt of which is an offence under sub-sections (2) and (3) of section 117 of the Local Government Act, 1972, then and in any such cases the Council shall be entitled to cancel this contract and to recover from the Company the amount of any loss resulting from such cancellation

**EXECUTED as a DEED**  
**by affixing the COMMON SEAL of**

**BRIGHTON & HOVE CITY COUNCIL**  
in the presence of:

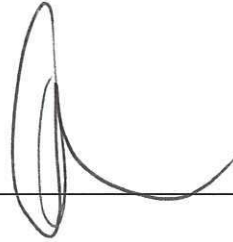
Authorised Signatory: A Newland



**EXECUTED as a DEED by  
ONE PARKING SOLUTION LTD**  
acting by and under the signature of:

Name: VAL CARON  
Director

Signature: \_\_\_\_\_

A handwritten signature in black ink, consisting of a large, stylized 'V' followed by a cursive 'C' and 'A'.

Name: Gavin Price  
Director

Signature: \_\_\_\_\_

A handwritten signature in black ink, featuring a stylized 'G' and 'P'.

# Terms & Conditions

## 1. INTERPRETATION

1.1. In this Agreement unless the context otherwise requires, the following words and expressions shall have the following meanings:-

**Areas** means the areas of private land to be controlled, which is owned by the Council as set out in Appendix A

**Authorised Officer(s)** the person(s) named as such in the Schedule or such replacement as is advised from time to time by the Council

**Charges** means all or any of the charges mentioned in this Agreement. All charges are exclusive of VAT unless otherwise stated

**Code** means the Code of Practice for the clamping and removal of vehicles on private land and in private car parks accessible to the public, issued by the British Parking Association ('BPA').

**Commencement Date** 1 December 2019

**Commercially Sensitive Information** means information that constitutes a trade secret which is genuinely confidential and which may be exempted from disclosure under the *Freedom of Information Act 2000*

**Confidential Information** means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to the business, affairs, properties, assets, trading practices, Services, developments, trade secrets, Intellectual Property Rights, know-how, personnel, customers and suppliers of either Party, all personal data and sensitive personal data within the meaning of the *Data Protection Act 2018* and the Commercially Sensitive Information;

**Costs and Losses** all costs, losses, charges, damages expenses, claims, demands, liabilities, actions and proceedings (including the costs and expenses of such proceedings and the



staff costs expended in requiring the discharge of an indemnity or the payment of damages) whatsoever and whether sustained directly or indirectly from the relevant act or omission.

**Council Data**

means:

a) the data, case management information, text, drawings, diagrams, documents, records, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media and which are:

- i) supplied or communicated to the Contractor by or on behalf of the Council or a customer/user of the Services;
  - ii) inputted into the Council IT systems or the Contractor's IT system by the Council or the Council's representatives; or
  - iii) which the Contractor is required to access, generate process, store or transmit pursuant to the Contract, whether on the Council IT systems or the Contractor's IT system; and/or
- b) any Personal Data for which the Council is Data Controller.

**Data Controller**

has the same meaning as is set out in the Data Protection Legislation.

**Data Processor**

has the same meaning as is set out in the Data Protection Legislation.

**Data Protection Impact Assessment**

means an assessment carried out pursuant to Article 35 of the General Data Protection Regulation.

**Data Protection Legislation**

means the Privacy and Electronic Communications (EC Directive) Regulations 2003, the Regulation of Investigatory Powers Act 2000, the Investigatory Powers Act 2016, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000, the Data Protection Act 2018 and the General Data Protection Regulation, together with any Law implemented in connection with or replacement of such Law, including guidance, codes of practice and other publications issued by the Supervisory

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|  | Authority;   |
| <b>Data Security Breach</b>                  | means any breach of security or confidentiality leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data;  |
| <b>Data Subject</b>                          | has the same meaning as is set out in the Data Protection Legislation;   |
| <b>Environmental Information Regulations</b> | means the <i>Environmental Information Regulations 2004</i> ;  |
| <b>Establishments</b>                        | any Council owned or controller establishments set out in Appendix A   |
| <b>FOIA</b>                                  | means the <i>Freedom of Information Act 2000</i> and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation  |
| <b>General Data Protection Regulation</b>    | means General Data Protection Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data  |
| <b>Good Industry Practice</b>                | the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced Company or Supplier of the Services seeking in good faith to comply with its contractual obligations, complying with all applicable laws and engaged in the same type of undertaking and under the same or similar circumstances and conditions. The Company will also have regard to the BPA's Code of Practice in supplying the Services and also |
| <b>Information</b>                           | has the meaning given under section 84 of the <i>Freedom of Information Act 2000</i> ;   |
| <b>Intellectual Property</b>                 | all current and future legal and/or equitable interests in trade marks, service marks, utility marks, trade or business names  |

copyrights, database rights, patents, design rights, semiconductor topography rights, unauthorised extraction and/or re-utilisation rights, inventions, confidential information, know-how or other intellectual property rights (and in each case other similar rights or obligations and whether registered, registrable or not in any country (including but not limited to the United Kingdom)) and applications for any of the foregoing

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|----------------------|--|
| <b>Notice</b>        | notice complying with the terms of Clause 7                            |
| <b>PCN</b>           | means Parking Charge Notice  |
| <b>Personal Data</b> | has the same meaning as set out in the Data Protection Legislation.    |
| <b>Process</b>       | has the same meaning as is set out in the Data Protection Legislation. |
| <b>Services</b>      | Means the services set out in the Specification                        |
| <b>Specification</b> | The Specification as set out in Schedule 1                             |
| <b>Term</b>          | From the Commencement Date to 30 June 2019.                            |

- 1.2. Words denoting an obligation on a party to do any act matter or thing include an obligation to procure that it be done and words placing a party under a restriction include an obligation not to cause permit or allow infringement of the restriction.
- 1.3. Unless the context otherwise requires reference to any recital condition, sub-condition, schedule paragraph or annexure it is a reference to a recital condition, sub-condition, schedule paragraph or annexure of or to this Contract.
- 1.4. Any reference to any Contract, document or other instrument includes a reference to that contract, document or instrument as amended, supplemented, novated or assigned.
- 1.5. Any references to any statute or statutory provisions (including any subordinate legislation) shall include references to any statute or statutory provision which amends, extends, consolidates or replaces the same or which has been extended, consolidated or replaced by the same (whether in either case before on or after the date of this Contract), and shall include any orders, regulations, codes of practice, instruments, plans, permissions, directions or other subordinate legislation for the time being made issued or given thereunder or deriving validity therefrom.
- 1.6. Any definition in this Contract shall apply also to all verbal forms of the defined term.



- 1.7. Where a document is incorporated into the contract whether by reference, annexure or otherwise the provisions of this Contract and the Schedules contained within this document shall take precedence over such document in the event of conflict.
- 1.8. As between this Contract and the Schedules this Contract shall take precedence.

## **2. SCOPE**

- 2.1. The Company shall operate the Services to control unauthorised parking or illegal parking in the Areas stated in this Agreement and defined for each of the Council's directorates in Appendix A.
- 2.2. The Council has agreed to give the Company rights to control unauthorised parking or illegal parking in the Areas stated in this Contract subject to the terms and conditions hereinafter appearing.
- 2.3. The operation of the concession is to be at no cost to the Council and the Company is required to finance the services from the income derived from the issue of PCNs.
- 2.4. The Company is a member of the BPA and operates within the terms and conditions of the Code (amended 1 January 2002).
- 2.5. The Company, in accordance with the Code, the Private Security Industry Act 2001 and any other applicable laws, and the developing policies and regulations of the Security Industries Authority ('SIA'), employs trained officers to carry out the enforcement service.
- 2.6. The Company shall provide copies of its Health & Safety Policy, Equal Opportunities Policy, Lone Working Procedure and Insurances prior to commencement of the Service and upon execution of the Contract they shall be deemed part of the same.
- 2.7. Failure to visit the Areas prior to signing this Contract will not be deemed a suitable reason for any omissions, errors or any additions in cost.
- 2.8. If by agreement of either the Company or the Council any part of this Contract should be adjudged to be unenforceable or void, that part shall be treated as if it had not been included in this Contract and the remainder of this Contract shall remain unaffected.
- 2.9. The headings in this Contract are for reference only and shall not be deemed to be any indication of the meaning of the clause to which they relate.

## **3. Liability and Indemnity**

- 3.1. The Company shall be liable for and shall indemnify the Council, its officers, servants, employees and agents against all and any liability, loss, claim, damages or proceedings whatsoever arising under any statute or at common law in respect of:
  - 3.1.1. any damage to or destruction of property, real or personal, including any infringement of third party patents, copyrights and registered designs, consequential loss; and
  - 3.1.2. any injury, illness or disease to persons, fatal or otherwise arising out of or in the course of or in connection with or in consequence of the

provision of the Services or the use by the Company or its employees of the Council's premises and equipment. Except, insofar as and to the extent that such liability, loss, claim or damages shall be due to any act or neglect of the Council or of any person for whom the Council is responsible.

- 3.2. The Council shall not in any event be liable to the Company for any indirect or consequential loss whatsoever and howsoever caused.
- 3.3. The Company shall indemnify and shall keep indemnified the Council against all actions, claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect of any breach by the Company of the Conditions of this Contract.
- 3.4. The Company shall forthwith notify the Council of any accident, which occurs on the Council's premises involving and/or witnessed by any of the Company's employees, agents and any sub-contractors's, during the operation of the Contract.

#### **4. Insurances**

- 4.1. The Company shall maintain the following insurances throughout the duration of the Contract:
- 4.2. Public Liability insurance in a sum not less than £10,000,000.00 (ten million pounds) in respect of any one act or occurrence or series of occurrences arising from one cause; and
- 4.3. Employer's Liability Insurance to comply with statutory requirements with a minimum limit of £10,000,000.00 (ten million pounds).
- 4.4. The Company shall, prior to the commencement of the Services and thereafter on the renewal date of each individual policy of insurance or on any change in the cover provided by such insurances, as and when such occurs, and at such other times as the Council may reasonably require:

- 4.4.1. Supply confirmation from the Company's that the insurance obtained is fully compliant with the obligations of this Agreement and is effective.

- 4.4.2. Supply copies of all relevant cover notes and premium receipts to the Council.

- 4.5. Nothing in this clause shall be construed as placing any liability on the Council in consequence of the Company or its sub-contractors placing or failing to place insurance in accordance with this Contract.
- 4.6. The insurance and its limits referred to above shall not limit or be construed as limiting the Company's liability to the Council or any third party nor the indemnity given by the Company elsewhere in this Contract.

#### **5. TERMINATION OF CONTRACT**

- 5.1. If the Company is found to have –
  - 5.1.1. fixed or adjusted the amount of his tender by or in accordance with any Contract or arrangement with any other person; or



- 5.1.2. communicated to any person other than the Council the amount or approximate amount of his proposed tender for this Contract except where such disclosure is made in confidence in order to obtain quotations necessary for the preparation of the Tender for insurance or a contract guarantee bond; or
- 5.1.3. entered into any agreement or arrangement with any other person that he should refrain from tendering or as to the amount of any tender to be submitted; or
- 5.1.4. in relation to this Contract or any other with the Council committed or attempted to commit any offence under or any act of bribery or corruption (and in particular those set out in the Prevention of Corruption Acts 1889 to 1916) or the Bribery Act 2010 or if any employee director or agent of the Company has done any of the foregoing (whether or not with the knowledge of the Company)

the Council shall (without prejudice to any criminal liability which such conduct by a Company may attract) be entitled to terminate the Contract and to recover from the Company the amount of any loss resulting from such termination.

5.2. If the Company:

- 5.2.1. fails to comply with any of the provisions of this Contract and (in the case of a failure capable of being remedied) does not rectify such non-compliance within fourteen working days of written notice of it from the other party;
- 5.2.2. becomes bankrupt, or makes a composition or arrangement with his creditors or has a proposal in respect of his company for the voluntary arrangements for a composition of debts, or scheme or arrangement approved in accordance with the Insolvency Act 1986;
- 5.2.3. has an application made under the Insolvency Act 1986 in respect of his company to the Court for the appointment of an administrative receiver;
- 5.2.4. has a winding-up order made, or (except for the purposes of amalgamation or reconstruction) a resolution for voluntary winding-up passed;
- 5.2.5. has a provisional liquidator, receiver, or manager of his business or undertaking duly appointed;
- 5.2.6. has an administrative receiver, as defined in the Insolvency Act 1986, appointed;
- 5.2.7. has possession taken, by or on behalf of the holders of any debentures secured by a floating charge, of any property comprised in, or subject to, the floating charge;
- 5.2.8. is in circumstances which entitle the Court or a creditor to appoint, or have appointed, a receiver, a manager, or administrative receiver, or which entitle the Court to make a winding-up order;

- 5.2.9. has abandoned the Contract; or
- 5.2.10. without reasonable explanation has failed to provide the Services or has suspended the supply and/or provision of the same after in either case receiving from the Authorised Officer notice to proceed

then in any such circumstances the Council may, without prejudice to any accrued rights or remedies under the Contract, terminate the Company's engagement under the Contract by notice having immediate effect.

- 5.3. If the Company's engagement is terminated as provided in Condition 5.2 then the Council shall:

- 5.3.1. cease to be under any obligation to make further payment until the costs, loss and/or damage resulting from or arising out of the termination of the Company's engagement shall have been calculated and provided such calculation shows a sum or sums due to the Company;
- 5.3.2. be entitled to repossess any of its materials, clothing, equipment, vehicles or other goods made available to the Company and to exercise a lien over any of the materials, clothing, equipment, vehicles or other goods belonging to the Company for any sum due hereunder or otherwise from the Company to the Council;
- 5.3.3. be entitled to employ and pay other persons to provide and complete supply and/or provision of the Services or any part thereof and to use all such Company's materials, clothing, equipment, vehicles or other goods for the purposes thereof;
- 5.3.4. be entitled to deduct from any sum or sums which would but for Condition 5.3.1 have been due from the Council to the Company under this Contract or any other contract, or be entitled to recover the same from the Company as a debt, any costs, loss and/or damage resulting from or arising out of the termination of the Company's engagement.
- 5.3.5. when the total costs, loss and/or damage resulting from or arising out of the termination of the Company's engagement has been calculated and deducted so far as practicable from any sum or sums which would but for Condition 5.3.1 have been due to the Company, any balance shown as due to the Council shall be recoverable as a debt, or, if there is no balance shown as due to the Council, the Council shall pay to the Company any balance of the said sum or sums.
- 5.3.6. If the Council shall dispose of or close all or a substantial number of the Establishments, the Council may, at its sole discretion, terminate the Company's engagement by not less than six months notice and repossess its materials, clothing, equipment, vehicles or other goods made available to the Company. If the Company's engagement is terminated under this Condition 5.4, neither the Council nor the Company shall have claims against the other in respect of any loss or damage resulting from or arising out of the termination of the Company's engagement. The Company shall be entitled to receive any sum or sums due in respect of any Services performed up to the time of termination of the Company's engagement.



- 5.3.7. The Company may, but not unreasonably or vexatiously, terminate this agreement by giving three months notice to the Council if the Council persistently fails to make any due payment in accordance with the Contract, or if the Council or any person for which the Council is responsible persistently interferes with or obstructs the supply and/or provision of the Services, provided such action has been previously recorded and submitted to the Council in writing.

## **6. POST TERMINATION**

- 6.1. Termination of the engagement of the Company hereunder shall be without prejudice to any other rights or remedies then accrued or accruing to any party whether directly or pursuant to any guarantee, indemnity or bond.
- 6.2. Except for any obligation fully performed at the date of termination of the contract, each of the contracts, covenants, obligations, warranties, indemnities and undertakings contained in the contract shall continue in full force and effect notwithstanding termination.

## **7. NOTICES**

- 7.1. Any notice to be served upon the Council under this Contract shall be valid and effective if it is sent by Recorded Delivery post or delivered by hand to the named office or principal place of business, or is delivered by hand to the Authorised Officer.
- 7.2. Any notice to be served upon the Company under this Contract shall be valid and effective if it is sent by Recorded Delivery post or delivered by hand to the Registered Office, principal place of business, or is delivered by hand to a Director or other appropriate member of the Company's staff.
- 7.3. The parties undertake to give notice to the other of any change of address or other contact arrangements at the earliest opportunity.

## **8. ENFORCEMENT**

- 8.1. All rights and remedies granted to either of the parties shall be cumulative and concurrent and may be exercised successively in respect of any given default.
- 8.2. No exercise by either of the parties of any right or remedy hereunder shall restrict or prejudice the exercise of any other right or remedy hereby granted or otherwise available to it or prejudice any rights or obligations of either party then accrued or accruing.
- 8.3. Neither party is required to exercise any right or remedy hereunder as a condition precedent to the exercise of any other right or remedy.
- 8.4. Failure by either party at any time or for any period of time to enforce any one or more of the provisions of the contract or to require performance by the other of any of the provisions of the contract or any delay or accommodation in time for performance shall not be construed as a permanent waiver or revision of any such provision or creating an estoppel in regard thereto and shall not affect the validity of the contract or any guarantee or bond related thereto or any part thereof or the right of either party to enforce any provision in accordance with its terms and no waiver of any default in the performance of any of the provisions of the contract shall operate or be construed as a waiver of any other or further default or defaults whether of a

like or different nature thereof or the right of the Council to enforce any provision in accordance with its terms.

## **9. FORBEARANCE / WAIVER**

- 9.1. No forbearance, indulgence or relaxation on the part of the Council under this Contract shall in any way affect, restrict or diminish its respective rights and powers under the Contract or operate as, or be deemed, a waiver of any breach of contract.

## **10. AGENCY**

- 10.1. The Company is not and shall in no circumstances hold itself out as being the servant or agent of the Council for any purpose other than those expressly conferred by this Contract.
- 10.2. The Company is not and shall in no circumstances hold itself out as being authorised to enter into any contract on behalf of the Council or in any other way to bind the Council to the performance, variation, release or discharge of any obligation, other than as may be expressly provided for in the Specification.
- 10.3. The Company's staff nor any other person used by the Company in connection with the Services are not and shall not hold themselves out as being, nor shall they be held out by the Company as being, servants or agents of the Council for any purposes other than those expressly conferred by this Agreement.

## **11. OBSERVANCE OF STATUTORY REQUIREMENTS**

- 11.1. The Company shall comply with all relevant legal provisions, whether in the form of Orders, Regulations, Statutes, Statutory Instruments, Codes of Practice, Bylaws, Directives or the like, to be observed and performed in connection with the Services to be provided under this Contract.

## **12. ADVERTISING**

- 12.1. No static advertisement nor any materials, equipment or consumables carrying advertisement of any description will be allowed in or to be fixed on the Area without the prior written consent of the Council, which shall not be unreasonably withheld. Any advertisement, which is placed on the Council's premises without consent, shall be promptly removed.
- 12.2. Signage, notice, materials, equipment and vehicles carrying the logo and contact details of the Company are permissible in the Areas by the Council while this Contract is in effect. the Council reserve the right to remove these items following termination of this Contract as set out in Clause 5.

## **13. GRATUITIES**

- 13.1. The Company shall not, whether itself or by any agent of the Company engaged in the provision of the Service, solicit or accept any gratuity, tip or any other form of money taking or reward, collection or charge for any part of the Service other than those charges properly approved by the Council in accordance with the provisions of this Contract.



## 14. ENVIRONMENT

- 14.1. The Company shall ensure that in its performance of the Service it employs working methods, equipment, materials and consumables, which minimise environmental damage. In particular, the Company shall ensure that it complies with the environmental obligations laid down in the Councils Environment Strategy so far as applicable to the Services that it and its staff are familiar with the Councils Environment Strategy.

## 15. CONFIDENTIALITY

### 15.1. Each Party:-

15.1.1. shall treat all Confidential Information belonging to the other Party as confidential and safeguard it accordingly; and

15.1.2. shall not disclose any Confidential Information belonging to the other Party to any other person without the prior written consent of the other Party, except to such persons and to such extent as may be necessary for the performance of the Contract or except where disclosure is otherwise expressly permitted by the provisions of this Contract.

### 15.2. The Company shall take all necessary precautions to ensure that all Confidential Information obtained from the Council under or in connection with the Contract:-

15.2.1. is given only to such of its employees and professional advisors or consultants engaged to advise it in connection with the Contract as is strictly necessary for the performance of the Contract and only to the extent necessary for the performance of the Contract;

15.2.2. is treated as confidential and not disclosed (without prior approval) or used by any employees or such professional advisors or consultants otherwise than for the purposes of the Contract.

15.3. Where it is considered necessary in the opinion of the Council, the Company shall ensure that the Company's employees, agents, professional advisors or sub-contractors are aware of the Company's Confidentiality obligations under this Contract. The Company will ensure that any sub-contract entered into that is necessary for carrying out its functions under the contract have a similar confidentiality clause that in no way denigrates the liabilities, obligations of the Company or sub-contractors or the true intention of this Condition.

15.4. The Company shall not use any Confidential Information it receives from the Council other than for the purposes of the Contract.

15.5. The provisions of Clauses 15.1 to 15.4 shall not apply to any Confidential Information received by one party from the other:-

15.5.1. which is or becomes public knowledge (otherwise than by breach of this Clause);

15.5.2. which was in the possession of the receiving party, without restriction as to its disclosure, before receiving it from the disclosing party;

- 15.5.3. which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
  - 15.5.4. is independently developed without access to the Confidential Information; or
  - 15.5.5. which must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to Clause 16 (Freedom of Information).
- 15.6. Nothing in this Clause shall prevent the Council from disclosing any Confidential Information for the purpose of:-
- 15.6.1. the examination and certification of the Council's accounts; or
  - 15.6.2. any examination pursuant to Section 6 of the Audit Commission Act 1998 of the economy, efficiency and effectiveness with which the Council has used its resources; or
  - 15.6.3. Disclosing any Confidential Information obtained from the Company to any person engaged in providing any services to the Council for any purpose relating to or ancillary to the Contract provided that in disclosing information under this sub-paragraph the Council discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.
- 15.7. Nothing in this Condition shall prevent either party from using any techniques, ideas or know-how gained during the performance of the Contract in the course of its normal business, to the extent that this does not result in a disclosure of Confidential Information or an infringement of Intellectual Property Rights.
- 15.8. In the event that the Company fails to comply with this Clause, the Council reserves the right to terminate the Contract by notice in writing with immediate effect.

## **16. FREEDOM OF INFORMATION**

- 16.1. The Company acknowledges that the Council is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and co-operate with the Council (at the Company's expense) to enable the Council to comply with these Information disclosure requirements.
- 16.2. The Company shall and shall procure that its sub-contractors shall:
- 16.2.1. transfer the Request for Information to the Council as soon as practicable after receipt and in any event within two working days of receiving a Request for Information.
  - 16.2.2. provide the Council with a copy of all Information in its possession or power in the form that the Council requires within five working days (or other such period as the Council may specify) of the Council's requesting that Information; and



- 16.2.3. provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA (or regulation 5 of the Environmental Information Regulations).
- 16.3. The Council shall be responsible for determining at its absolute discretion whether the Commercially Sensitive Information and/or any other Information:
  - 16.3.1. is exempt from disclosure in accordance with the FOIA or the Environmental Information Regulations.
  - 16.3.2. is to be disclosed in response to a Request for Information, and in no event shall the Company respond directly to a Request for Information unless expressly authorised to do so by the Council.
- 16.4. The Company acknowledges that the Council may, acting in accordance with the Secretary of State's Code of Practice on the Discharge of Functions of Public Authorities under Part 1 of the FOIA, be obliged under the FOIA or the Environmental Information Regulations to disclose Information:-
  - 16.4.1. without consulting with the Company, or
  - 16.4.2. following consultation with the Company and having taken its views into account.
- 16.5. The Company shall ensure that all information produced in the course of the Contract or relating to the Contract is retained for disclosure and shall permit the Council to inspect such records as requested from time to time.
- 16.6. The Company acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and that the Council may nevertheless be obliged to disclose Confidential Information in accordance with Clause 16.4.

## **17. DATA PROTECTION**

- 17.1. In relation to all Personal Data the Company shall at all times comply with their obligations under the Data Protection Legislation which arise in connection with the performance of the Contract.
- 17.2. The Company shall be liable for and shall indemnify (and keep indemnified) the Council against each and every action, proceeding, liability, cost, claim, loss, expense (including legal fees) incurred by the Council which arise from the Council's breach of its obligations under the Data Protection Legislation, including without limitation those arising out of any third party demand, claim or action, or any breach of contract, negligence, fraud, wilful misconduct, breach of statutory duty or non-compliance with any part of the Data Protection Legislation by the Council and/or its Representatives. The parties agree that, where these contract particulars dis-apply clause 18 (Data Processor Obligations), the Company shall enter into a separate data sharing agreement with the Council, on terms stipulated by the Council.
- 17.3. The provisions of this clause 17 shall apply during the continuance of the Contract and indefinitely after its expiry or termination.

## 18. DATA PROCESSOR OBLIGATIONS

18.1. With respect to the parties' rights and obligations under the Contract, to the extent that the Contractor in delivering the Services to the Council acts as a Data Processor for the Council as Data Controller the following provisions of this clause 18 shall apply. A description of the Personal Data processed by the Contractor and the processing activities undertaken by the Contractor is set out in Schedule 2 (Data Processing Activities).

18.2. In respect of Personal Data, the Contractor shall and shall procure that its Representatives shall:

- 18.2.1. solely process the Personal Data for the purposes of fulfilling its obligations under the Contract and in compliance with the Council's written instructions;
- 18.2.2. notify the Council immediately if any instructions of the Council relating to the processing of Personal Data are unlawful;
- 18.2.3. not transfer to or access any Personal Data from a country outside of the United Kingdom without the Council's prior written consent;
- 18.2.4. comply with the Council's instructions in relation to transfers of Personal Data to a country outside of the United Kingdom unless the Contractor is required pursuant to applicable Laws to transfer Personal Data outside the United Kingdom, in which case the Contractor shall inform the Council in writing of the relevant legal requirement before any such transfer occurs unless the relevant Law prohibits such notification on important grounds of public interest;
- 18.2.5. ensure the reliability of any Staff who have access to the Personal Data and ensure that all such Staff are subject to legally binding obligations of confidentiality in relation to the Personal Data;
- 18.2.6. ensure that none of the Contractor's Staff publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Council;
- 18.2.7. not engage any sub-contractor to carry out any processing of Personal Data without the prior written consent of the Council provided that notwithstanding any such consent the Contractor shall remain liable for compliance with all the requirements of the Contract including in relation to the processing of Personal Data;
- 18.2.8. ensure that obligations equivalent to the obligations set out in this clause 18 are included in all contracts between the Contractor and permitted sub-contractors who will be processing Personal Data and who have been approved;
- 18.2.9. take appropriate technical and organisational measures against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data taking into account the harm that might result from such unauthorised or unlawful



processing, loss, destruction or damage and the nature of the Personal Data to be protected including without limitation, all such measures that may be required to ensure compliance with the Data Protection Legislation;

- 18.2.10. upon request provide a written description of the technical and organisational measures employed by the Contractor pursuant to clause (within the timescales required by the Council) and if the Council does not consider that such measures are adequate to enable compliance with the Data Protection Legislation, implement such additional measures as may be specified by the Council (acting reasonably) to ensure compliance;
- 18.2.11. taking into account the nature of the data processing activities undertaken by the Contractor, provide, at no cost to the Council, all possible assistance and co-operation (including without limitation putting in place appropriate technical and organisational measures) to enable the Council to fulfil its obligations to respond to requests from individuals exercising their rights under the Data Protection Legislation, including (without limitation):
  - 18.2.11.1. notifying the Council within two (2) Working Days, of receiving any request from a Data Subject exercising their rights under the Data Protection Legislation;
  - 18.2.11.2. complying with the Council's instructions in relation to complying with the Data Subject's rights under the Data Protection Legislation, which may include (without limitation) providing notices to Data Subjects in a format specified by the Council, rectifying inaccurate Personal Data, ceasing or restricting processing of Personal Data, providing access to Personal Data, permanently deleting or securely destroying Personal Data and providing copies of Personal Data in a format specified by the Council;
- 18.2.12. maintain a record of the Contractor's processing activities in accordance with the requirements of the Data Protection Legislation;
- 18.2.13. assist the Council, at no cost to the Council, in ensuring compliance with the obligations set out in Articles 32 to 36 (inclusive) of the General Data Protection Regulation (or any equivalent legislation in the UK or any subsequent legislation) taking into account the nature of the data processing undertaken by the Contractor and the information available to the Contractor, including (without limitation):
  - 18.2.13.1. providing information and assistance upon request to enable the Council to notify Data Security Breaches to the Supervisory Authority and/or to affected individuals and/or to any other regulators to whom the Council is required to notify any Data Security Breaches; and
  - 18.2.13.2. providing input into and carrying out Data Protection Impact Assessments in relation to the Contractor's data processing activities;
- 18.2.14. ensure that it has in place appropriate technical and organisational measures to ensure that processing of Personal Data carried out by the Contractor in connection with the Contract meets the requirements of the Data Protection Legislation and ensures protection of the rights of individuals under the Data Protection Legislation;

- 18.2.15. notify the Council immediately and in any event within twenty four (24) hours in writing if:
- 18.2.15.1. the Contractor or any sub-contractor engaged by or on behalf of the Contractor suffers a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data; or
  - 18.2.15.2. the Contractor or any sub-contractor engaged by or on behalf of the Contractor receives any Data Security Breach notification, complaint, notice or communication which relates directly or indirectly to the processing of the Personal Data or to either party's compliance with the Data Protection Legislation, and in each case the Contractor shall provide full co-operation, information and assistance to the Council in relation to any such Data Security Breach, complaint, notice or communication at no cost to the Council;
- 18.3. upon termination of the Contract, at the discretion of and at no cost to the Council, delete securely or return all Personal Data to the Council and delete all existing copies of the Personal Data unless and to the extent that the Contractor is required to retain copies of the Personal Data in accordance with applicable Laws in which case the Contractor shall notify the Council in writing of the applicable Laws which require the Personal Data to be retained. In the event the Personal Data is deleted or destroyed by the Contractor, the Contractor shall provide the Council with a certificate of destruction evidencing that the Personal Data has been destroyed or deleted.
- 18.4. make available to the Council at no cost to the Council all information necessary to demonstrate compliance with the obligations set out in this clause 18 and, upon request, allow the Council, the Supervisory Authority and its Representatives access to the Contractor's Premises, records and Personnel for the purposes of assessing the Contractor's compliance with its obligations under this clause 18; and
- 18.5. indemnify the Council from and against all costs, expenses (including legal and other professional fees and expenses), losses, damages and other liabilities or whatever nature (whether contractual, tortious or otherwise) suffered or incurred by the Council and arising out of or in connection with any breach by the Contractor or any sub-contractors of this clause 22, including (for the avoidance of doubt) any fines imposed by the Supervisory Authority on the Council in relation to a Data Security Breach, where such breach is caused wholly or in part by the Contractor.
- 18.6. The provisions of this clause 18 shall apply during the continuance of the Contract and indefinitely after its expiry or termination.

## **19. EQUALITIES**

- 19.1. The Company shall not treat one group of people less favourably than others because of their colour, race, nationality or ethnic origin sex or sexual orientation, marital status, religion or belief or disability and otherwise as provided in the future by law in relation to decisions to recruit, train or promote employees or everyday dealings or provision of the Services to all sections of the community and shall comply with all relevant statutes and statutory instruments.
- 19.2. In performing the service the Company shall not discriminate against any service user on the grounds of race, colour, ethnic and national origins, sex, disability,



in particular shall not unlawfully discriminate against any person within the meaning of the Sex Discrimination Act 1975, the Disability Discrimination Act 1995, the Race Relations Act 1976, as amended by the Race Relations (Amendment) Act 2000, the Employment Equality (Sexual Orientation) Regulations 2003, the Employment Equality (Religion or Belief) Regulations 2003, the Gender Recognition Act 2004, the Employment Equality (Sex Discrimination) Regulations 2005, the Employment Equality (Age) Regulations 2006 and any other similar legislation as and when it becomes effective.

- 19.3. In the event of any finding of such unlawful discrimination being made against the Company in the last three years by any Court or Employment Tribunal, or of an adverse finding in any formal investigation by any relevant statutory body over the same period, the Company shall take appropriate steps to prevent repetition of the unlawful discrimination.
- 19.4. The Company shall, on request, provide the Council with details of any steps taken under Clause 19.2 above.
- 19.5. The Company shall set out its policy on matters referred to above:
  - 19.5.1. in instructions to those concerned with recruitment, training promotion and everyday dealings;
  - 19.5.2. in documents available to employees, recognised trade unions or other representative groups of employees;
  - 19.5.3. in recruitment advertisements or other literature; and
  - 19.5.4. in the provision of the Services.
- 19.6. The Company shall, on request, provide the Council with examples of the instructions and other documents, recruitment advertisements or other literature.
- 19.7. The Company shall observe as far as possible all relevant Codes of Practice statutory or otherwise in relation to its employees and the provision of the Services including under the Race Relations (Amendment) Act 2000.
- 19.8. The Company shall provide such information as the Council may reasonably request for the purpose of assessing the Company's compliance with Conditions 18.1 and 18.6 so far as relevant.
- 19.9. When required by the Authorised Officer, the Company shall co-operate with the Council's initiatives aimed at improving the provision of the Services to different groups.

## **20. HEALTH AND SAFETY**

- 20.1. The Company shall at all times comply with the requirements of the Health & Safety at Work Act 1974, The Management of Health & Safety at Work Regulations 1992, The IEE Regulations (16<sup>th</sup> Edition BS 7671) 1992 and any other legal provisions or amendments to the above pertaining to the Health & Safety of its own staff, the Council's employees and others who may be affected by its performance of the Services.

- 20.2. The Company shall provide its statement of Health & Safety Policy and its Lone Working Policy to the Council and upon execution of the Agreement they shall be deemed to be part of the same.
- 20.3. The Company shall ensure that its safety policy is kept up to date and has been drawn to the attention of all its employees and that all members of management and those working in a supervisory capacity have a detailed knowledge of this policy and that they will observe the policy and require the Company's staff to comply fully with its provisions.
- 20.4. The Company must whenever appropriate comply with the Council's Health & Safety and supplementary policies and codes of practice as the Council may adopt from time to time.
- 20.5. Smoking is not permitted by any employee of the Company or agent thereof while undertaking duties in the provision of the Service while in the Areas.
- 20.6. The Company has agreed to apply for CHAS accreditation as a condition of this Contract. The Company will seek such accreditation and do all things necessary to achieve such accreditation within a reasonable time of the commencement of this Contract. The Company agrees to provide the Council with information regarding its accreditation promptly and in full whenever such information is requested. Failure on the part of the Company to comply with this clause may result in the Contract being terminated forthwith.

## **21. THIRD PARTY RIGHTS**

- 21.1. The parties do not intent any part of this Contract to be enforceable by a third party and for the avoidance of doubt the provision of the Contracts (Rights of Third Parties) Act 1999 are hereby expressly excluded.

## **22. ASSIGNMENT AND SUB CONTRACTING**

- 22.1. The Council shall be entitled to assign the benefit of this Contracts or any part of it to any other body. The Council shall give reasonable notice of its intentions in this regard to the Company unless the assignment takes effect by operation of law.
- 22.2. Notwithstanding any such sub contracting the Company at all times retains the obligation to provide the Service in accordance with this Contract.

## **23. DISPUTES, ESCALATION AND RESOLUTION**

- 23.1. The parties shall attempt to resolve all disputes under this contract and shall use all reasonable endeavours to prepare within one month of the Commencement Date appropriate internal escalation procedures for disputes.
- 23.2. In the event that a dispute remains unresolved despite good faith efforts of the parties, the dispute will be referred to the Centre for Dispute Resolution ("CEDR"), 100, Fetter Lane, London EC4A 1DP to appoint a neutral advisor. The neutral advisor will have experience with and knowledge of the Services.
- 23.3. All negotiations connected with the dispute shall be conducted in confidence and without prejudice to the rights of the parties in any future proceedings.



- 23.4. If the parties accept the neutral adviser's recommendations or otherwise reach agreement on the resolution of the dispute, such agreement shall be set out in writing and, once it is signed by their duly authorised representatives, shall be binding on the parties. Such agreement shall be implemented in full within fourteen days of signature failing which it shall be rendered null and void (and may not be referred to in any subsequent legal proceedings) unless legal proceedings have been initiated to enforce it by either party within a further fourteen days.
- 23.5. Either party, before or during any dispute resolution proceedings, may apply to a court having jurisdiction for a temporary restraining order or preliminary injunction where such relief is necessary to protect its interests pending completion of the dispute resolution proceedings. The dispute resolution procedure will not be required for actions for recovery of specific property, for collection of uncontested amounts or for breach of confidentiality or enforcement of intellectual property rights and the parties may bring such actions in any relevant court.
- 23.6. If the parties fail to reach agreement in the structured negotiations within sixty days of the neutral adviser being appointed then any dispute or difference between them may be referred to the courts unless the parties agree to refer the matter to arbitration before an arbitrator whose method of appointment is agreed between them.
- 23.7. Before starting legal proceedings, the aggrieved party will give the other party written notice describing the claim and amount as to which it intends action and the prior effort it has made under this Clause 23 to resolve the dispute.

## **24. ASSISTANCE IN LEGAL AND OTHER PROCEEDINGS**

- 24.1. If requested to do so by the Council the Company shall co-operate fully (including but not limited to the provision of documentation and statements from staff) in the connection with any legal proceedings, arbitration procedure as set out in Clause 23, Ombudsman Enquiries by the Local Government Ombudsman Service, inquiry, tribunal or court proceedings in which the Council may become involved, or any relevant disciplinary hearing internal to the Council, arising out of or in connection with the provision of the Service or the Company's presence on the Council premises and the Company shall give evidence in such inquiries, arbitration, proceedings and hearings.
- 24.2. Where the Company or any of its staff become aware of any incident, maladministration, accident, criminal offence or other matter which may give rise to a Ombudsman Enquiry, claim or legal proceedings in respect of the provision or failure to provide the Service, it shall notify the Council immediately by telephone and in writing (e-mail and facsimile message are acceptable forms of communication). Such notification shall include for all relevant information to enable the matter to be fully investigated.
- 24.3. Such information provided or assistance in whatever form shall be at no cost to the Council.
- 24.4. The Company shall fully co-operate with and provide assistance and relevant information to the Council and the Ombudsman in enquiries or investigations carried out by or on behalf of the Ombudsman in matters of alleged maladministration or injustice or any other matter arising in connection with or touching upon the provision of Service under this Contract.

- 24.5. If, as a result of an enquiry or investigation, the Ombudsman makes a finding against the Council of maladministration or injustice or other finding and if that finding is found to be attributable wholly or in part to the actions or omissions of the Company or any of its staff, the Council shall be entitled to recover from the Company such proportion of the award made to the complainant and related costs as are attributable to those actions or omissions of the Company or its staff.
- 24.6. In the event of a dispute as to the proportion of the award and costs payable by the Council and the Company then both parties shall be entitled to refer the matter to an independent arbitrator in accordance with Clause 23 of this Contract whose decision shall be final.
- 24.7. Any liability that the Council incurs as a result of failure by the Company shall be recoverable from the Company.

## **25. VARIATION OF AGREEMENT**

- 25.1. Notwithstanding any other of these Conditions but subject to the Condition next following, no deletion from, addition to, or variation of the Conditions shall be valid or have any effect unless agreed in writing and signed by the parties.

## **26. VARIATION OF SERVICES**

- 26.1. The Authorised Officer shall be entitled to issue to the Company from time to time instructions by a minimum of one month's notice requiring the Company to do all or any of the following:
- 26.1.1. to omit or to cease to provide any part of the Services whether permanently or for such period or periods as the Authorised Officer may determine;
  - 26.1.2. to provide such Services additional as the Authorised Officer may reasonably require, provided that such additional Services shall be the same as or similar to the then existing Services;
  - 26.1.3. to provide the Services or any part thereof in such manner as the Authorised Officer may reasonably require;
  - 26.1.4. to permanently vary the Services to be provided at the Establishments; and/or
  - 26.1.5. to continue to provide the Services or any part thereof under the terms and conditions of the contract for such period or periods beyond the Term as the Authorised Officer may from time to time require provided that the Term plus such extensions shall together not exceed the maximum contract period permitted under the tendering legislation then applicable to the Council.

## **27. ENTIRE AGREEMENT**

- 27.1. This Contract sets forth the entire agreement between the parties with respect to the subject matter covered by it and supersedes and replaces all prior communications, representations, warranties, stipulations, undertakings and agreements whether oral or written between the parties.



**28. LAW**

- 28.1. The Contract shall be governed by and construed in accordance with English law and be subject to exclusive jurisdiction of English Courts.

Contract No:0752

**DATED**

**2019**

**BRIGHTON & HOVE CITY COUNCIL**

and

**ONE PARKING SOLUTION LTD**

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**C O N T R A C T**

**relating to:**  
**OFF STREET PARKING ENFORCEMENT**

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Legal Services  
Room G101  
Hove Town Hall  
Norton Road

HOVE BN3 3BQ  
Ref: WMS/EC712.305