

**DATED**

-----

**SERVICE LEVEL AGREEMENT**

between

**COUNCIL**

and

**SERVICE PROVIDER**

## CONTENTS

---

### CLAUSE

1.	Interpretation .....	1
2.	Service provision .....	2
3.	Service Provider's and Council's obligations .....	3
4.	Charges and payment .....	3
5.	Service review and governance .....	4
6.	Confidentiality .....	4
7.	Limitation of liability .....	4
8.	Term and termination .....	5
9.	Force majeure .....	6
10.	Waiver .....	6
11.	Severance .....	6
12.	Entire agreement.....	7
13.	Assignment.....	7
14.	No partnership or agency.....	7
15.	Third-party rights .....	7
16.	Notices.....	7
17.	Anti-bribery .....	8
18.	Governing law and jurisdiction .....	8

### SCHEDULE

SCHEDULE 1	FEES .....	10
1.	Fees .....	10
SCHEDULE 2	SERVICE SPECIFICATION .....	11
SCHEDULE 3	COUNCIL'S OBLIGATIONS .....	12

**THIS AGREEMENT** is dated

## **PARTIES**

- (1) Royston Town Council of Town Hall, Melbourn Street, Royston. Herts SG8 7DA  
(**Council**)
- (2) North Hertfordshire District Council of Civic Offices Gernon Road Letchworth  
Garden City Hertfordshire SG6 3JF (**Service Provider**).

## **BACKGROUND**

- (A) The Service Provider will provide the Services.
- (B) The Council wishes the Service Provider to provide the Services for a period of 5 years.
- (C) The Service Provider has agreed to provide, and the Council has agreed to take and pay for, the Services, subject to the terms and conditions of this agreement.
- (D) The Fees payable by the Council to the Service Provider, together with the retention of all monies collected from parking enforcement, will cover the Service Provider's operational and management costs of providing the Services and taking necessary car parking enforcement action.

## **AGREED TERMS**

### **1. INTERPRETATION**

- 1.1 The definitions and rules of interpretation in this clause apply in this agreement.

**Commencement Date:** 1<sup>st</sup> August 2013.

**Business Day:** any day which is not a Saturday, Sunday or public holiday in the UK.

**Confidential Information:** information that is proprietary or confidential and which is either labelled as such or else which should reasonably be considered as confidential because of its nature and the manner of its disclosure.

**Effective Date:** the date of this agreement.

**Fees:** the fees payable to the Service Provider, as described in Schedule 1.

**Initial Term:** means the period from the Commencement Date until 31<sup>st</sup> July 2018.

**Lease:** means the lease between NPK Holdings and the Council dated (**insert date**)

**NPK Holdings:** means NPK Holdings Ltd co registration no. 00001346 or any successor by acquisition, amalgamation or otherwise.

**Pay and Display Car Parking Machines:** pay and display car parking machines to be installed at the Angel Pavement and Market Place car parks where the Royston market takes place.

**Service Specification:** means the specification as described in Schedule 2.

**Services:** the services to be provided in accordance with the Service Specification and this Agreement.

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 A person includes a corporate or unincorporated body (whether or not having separate legal personality)
- 1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Words in the singular shall include the plural and vice versa.
- 1.6 A reference to one gender shall include a reference to the other genders.
- 1.7 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension or re-enactment, and includes any subordinate legislation for the time being in force made under it.
- 1.8 A reference to **writing** or **written** includes faxes but not e-mail.
- 1.9 References to clauses and schedules are to the clauses and schedules of this agreement. References to paragraphs are to paragraphs of the relevant schedule.
- 1.10 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality)

## **2. SERVICE PROVISION**

- 2.1 **Subject to the Council complying with its obligations as set out in Schedule 3**, the Service Provider will provide the Services in accordance with the Service Specification as from the Commencement Date until expiry or termination of this agreement for any reason.
- 2.2 The Service Provider is entitled to engage any existing or new contractor in order to undertake and discharge its obligations under this agreement PROVIDED in the event that any such contractor is so engaged, the Service Provider shall have no liability of

any kind (save as provided by law) for any non performance of the Services. In such circumstances the Service Provider will use its reasonable endeavours to remedy non performance under the terms of the contract with the contractor.

2.3 The Council undertakes to perform its obligations set out in Schedule 3

### **3. SERVICE PROVIDER'S AND COUNCIL'S OBLIGATIONS**

3.1 The Service Provider warrants that the Services will be performed with all reasonable skill and care and that it will be provided substantially in accordance with the Service Specification.

3.2 The warranty in clause 3.1 shall not apply to the extent of any non-conformance which is caused by any action, omission or breach of this agreement by the Council.

3.3 This agreement shall not prevent the Service Provider from entering into similar agreements with third parties, or from independently developing, using, selling or licensing services which are similar to those provided under this Agreement.

3.4 The Council shall comply with the Equality Act 2010 and all other equalities legislation that may apply by virtue of the Council's engagement with any person pursuant to this agreement.

3.5 The Council shall assist the Service Provider at its own cost with any requests the Service Provider may receive under the Freedom of Information Act 2000 or the Environmental Information Regulation 2004 in connection with the Services.

### **4. CHARGES AND PAYMENT**

4.1 The Council shall pay the Fees set out in Schedule 1 when invoiced by the Service Provider.

4.2 The Service Provider shall invoice the Council for the Fees as set out in Schedule 1.

4.3 In the event that this agreement is terminated in accordance with clause 8, or otherwise, the Service Provider shall refund to the Council any overpayment of Fees in respect of any period after the date of termination.

4.4 Payment for sums due under any invoice shall be made within 14 days of the date the invoice is sent.

**5. SERVICE REVIEW AND GOVERNANCE**

5.1 If the Service Provider demands, the Council and the Service Provider shall have meetings to monitor and review the performance of this agreement and to discuss matters generally. These meetings shall be minuted by the Service Provider and copies of those minutes shall be circulated to, and approved by, both parties.

**6. CONFIDENTIALITY**

6.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this agreement. A party's Confidential Information shall include information that:

- (a) is or becomes publicly known other than through any act or omission of the receiving party;
- (b) was in the other party's lawful possession before the disclosure;
- (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure;
- (d) is independently developed by the receiving party, which independent development can be shown by written evidence; or
- (e) is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.

6.2 Each party shall keep the other's Confidential Information secure and hold it in confidence and, unless required by law, shall not make the other's Confidential Information available to any third party or use the other's Confidential Information for any purpose other than the implementation of this agreement.

6.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this agreement.

6.4 This clause 6 shall survive termination of this agreement, however arising.

**7. LIMITATION OF LIABILITY**

7.1 Subject to clause 2.2 this clause 7 sets out the entire financial liability of the Service Provider (including any liability for the acts or omissions of its employees) to the Council in respect of:

- (a) any breach of this agreement; and
- (b) any representation, statement or tortious act or omission (including negligence) arising under or in connection with this agreement.

- 7.2 Except as expressly and specifically provided in this agreement:
- (a) The Service Provider shall have no liability for any damage caused by Errors or omissions in any information, instructions or scripts provided to the Service Provider by the Council in connection with the Services, or any actions taken by the Service Provider at the Council's direction; and
  - (b) all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this agreement.
- 7.3 Nothing in this agreement excludes or limits the liability of the Service Provider for:
- (a) death or personal injury caused by the Service Provider's negligence;
  - (b) fraud or fraudulent misrepresentation; or
  - (c) any other liability which cannot lawfully be excluded or limited.
- 7.4 Subject to clause 7.3 and clause;
- the Service Provider shall not be liable for any loss of profits, loss of business, depletion of goodwill or similar losses, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising.

## **8. TERM AND TERMINATION**

- 8.1 This agreement shall commence on the Commencement Date and shall continue, unless otherwise terminated as provided in this clause 8, until expiry of the Initial Term. Thereafter this agreement shall automatically renew, until either party terminates by 3 months notice in writing to the other or the Lease has terminated. The parties may vary or extend this agreement in writing.
- 8.2 Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate this agreement without liability to the other if:
- (a) the other party commits a material breach of any of the terms of this agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach;
  - (b) an order is made or a resolution is passed for the winding up of the other party, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order in relation to the other party;
  - (c) the other party makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way, or becomes bankrupt;
  - (d) the Service Provider is no longer able to undertake the Service due to change in the regulation regarding the Service Provider's ability to continue this agreement;

- (e) the other party takes or suffers any similar or analogous action in any jurisdiction in consequence of debt.
- (f) The Lease is terminated.

8.3 On termination of this agreement for any reason:

- (a) the Service Provider shall immediately cease provision of the Services;
- (b) each party shall return and make no further use of any equipment, property, materials and other items (and all copies of them) belonging to the other party; and
- (c) the accrued rights of the parties as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination, shall not be affected or prejudiced.

**9. FORCE MAJEURE**

The Service Provider shall have no liability to the Council under this agreement if it, or its contractor, is prevented from, or delayed in, performing its obligations under this agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of the Service Provider or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of Service Providers or subService Providers, provided that the Council is notified of such an event and its expected duration.

**10. WAIVER**

10.1 A waiver of any right under this agreement is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and to the circumstances for which it is given.

10.2 Unless specifically provided otherwise, rights arising under this agreement are cumulative and do not exclude rights provided by law.

**11. SEVERANCE**

11.1 If any provision (or part of a provision) of this agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.



- 11.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

**12. ENTIRE AGREEMENT**

- 12.1 This agreement, and any documents referred to in it, constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover.

- 12.2 Each of the parties acknowledges and agrees that in entering into this agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this agreement or not) relating to the subject matter of this agreement, other than as expressly set out in this agreement.

**13. ASSIGNMENT**

- 13.1 The Council may not at any time assign, transfer, charge, subcontract or deal in any other manner, with all or any of its rights or obligations under this agreement without the consent of the Service Provider.

**14. NO PARTNERSHIP OR AGENCY**

Nothing in this agreement is intended to, or shall, operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of, or otherwise to bind, the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

**15. THIRD-PARTY RIGHTS**

This agreement is made for the benefit of the parties to it and (where applicable) their successors and permitted assigns, and is not intended to benefit or be enforceable by anyone else.

**16. NOTICES**

- 16.1 Any notice required to be given under this agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in this agreement, or such other address as may have been notified by that party for such purposes, or sent by fax to the other party's fax number as set out in this agreement.

16.2 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9am on the first Business Day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by fax shall be deemed to have been received at the time of transmission (as shown by the timed printout obtained by the sender).

## 17. ANTI-BRIBERY

17.1 The Council shall:

- (a) comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (**Relevant Requirements**);
- (b) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
- (c) have and shall maintain in place throughout the term of this agreement its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements and clause 17.1(b), and will enforce them where appropriate;
- (d) promptly report to the Service Provider any request or demand for any undue financial or other advantage of any kind received by the Council in connection with the performance of this agreement;
- (e) immediately notify the Service Provider if a foreign public official becomes an officer or employee of the Council or acquires a direct or indirect interest in the Council, and the Council warrants that it has no foreign public officials as officers, employees or direct or indirect owners at the date of this agreement;

17.2 Breach of this clause 17 shall be deemed a material breach under clause 8.3 (a)

17.3 For the purpose of this clause 17, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively.

## 18. GOVERNING LAW AND JURISDICTION

18.1 This agreement and any disputes or claims arising out of or in connection with its subject matter are governed by and construed in accordance with the law of England.

18.2 The parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement.

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

## **Schedule 1 Fees**

### **1. FEES**

- 1.1 All fees for collection of monies from Pay and Display car parking machines.
- 1.2 All fees for the replacement, repair and maintenance of Pay and Display car parking machines unless such fees are covered and payable under any agreement the Council has with a third party contractor. This does not prejudice the Council's ability to make savings on such contract.

## **Schedule 2 Service Specification**

The Service Provider shall:

1. Provide Pay and Display Car Parking Machines and parking covers.
2. Undertake standard maintenance of the Pay and Display Car Parking Machines
3. In its absolute discretion, undertake enforcement of the Pay and Display Car Parking machines and retain all monies collected from any such enforcement action.
4. Collect all monies from the Pay and Display Car Parking Machines on behalf of the Council and will hand over such monies as soon as practicable.
5. Retain full control over all administration, requirements, duties and obligations and enforcement in connection with Traffic Regulation Orders.
6. Retain full control over the setting and administration of car parking charges, fee and penalties.

### **Schedule 3 Council's Obligations**

The Council shall:

1. Pay all Fees to the Service Provider without delay.
2. Where applicable, comply with the Service Provider's parking policies including parking charges.
3. Pay all rent, costs, expenses, fees and charges under the Lease and to observe and perform all covenants, terms and conditions under the Lease.
4. Maintain and clean Royston Market to the satisfaction of the Service Provider. At a minimum the area must be sufficiently maintained and cleaned to enable the Service Provider to undertake any necessary enforcement action. For example enforcement action may be necessary for lines and signs.
5. Not to obstruct performance of the Service Provider's administration, requirements, duties and obligations and enforcement in connection with Traffic Regulation Orders.
6. Ensure that any subsequent lease, following termination of the Lease, to continue to run Royston Market runs concurrently with the Initial Term or any extension of this Agreement.
7. Comply with the Service Provider's reasonable instructions from time to time.

Signed by  
for and on behalf of the Service  
Provider .....

Signed by  
for and on behalf of Council

.....