

This Contract is made on [date]

between:

(1) XXXXXXXXXXXXXXX

whose registered number is XXXXXXXXXX and whose registered office is at
XXXXXXXXXXXXXXXXXXXX (the "Client")

and

(2) XXXXXXXXXXXXXXX

whose registered number is XXXXXXXXXX and whose registered office is at
XXXXXXXXXXXXXXXXXXXX (the "Service Provider")

The contract sets out the terms under which the Service Provider will provide the services to the Client. Terms and service requirements included in the original Invitation to Tender, the specification and tender received from the Service Provider are deemed to be part of this contract and, for the avoidance of doubt, this documentation is included in the appendices of the contract.

CONTENTS (to be completed

in final draft)

1st Draft

1. DEFINITIONS

Term	Definition
ANPR	Automatic Number Plate Recognition
AO	Authorised Officer. The representative of the client responsible for the management and performance of the operation and the Service Provider. The AO is responsible to the AOS board for the service delivery and financial performance of the contract
AOS	Approved Operator Scheme
ATA	Accredited Trade Association
Authorised Services	Adjudications, appeals and other quasi-judicial acts by appropriately qualified staff or contractors, as set out in the Service Specification Schedule
BPA	British Parking Association
Certificate of Confidentiality, Non-A collusion and Non-Canvassing	certificate to be signed by the Service Provider and returned with the Tender
Client	The BPA (depending on decisions on governance)
Commencement Date	The date the Contract will start
Contract	This contract including all appendices and schedules
Contract Period	The period from the Commencement Date of the Contract to [specify a date of expiry] or such earlier date of termination of the agreement in accordance with the Law or the provisions of the Contract.
COP	Code/s of Practice

Client
CPE
Default

The organisation awarding the tender, in this case,
and for the time being the British Parking Association

Civil Parking Enforcement

"Default" means any breach of the obligations of the relevant Party (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the relevant Party or the Staff in connection with or in relation to the subject-matter of the Contract and in respect of which such Party is liable to the other.

Driver and Vehicle Licensing Agency

DVLA

EQUIPMENT

The Service Provider's equipment, plant, materials and such other items supplied and used by the Service Provider in the performance of its obligations under the Contract.

Form of tender

The form to be completed by the Service Provider and returned with the tender.

FOIA

"FOIA" means the Freedom of Information Act 2000 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 or relevant government department in relation to such legislation.

IAS

Independent Appeals Service

ITT

The Invitation to Tender

KPIs

Key Performance indicators

Premises

The location where the Services are to be supplied, as set out in the Service Specification Schedule

Tender

All the documents submitted by the Service Provider in response to this invitation to Tender.

Service Provider

The organisation awarded the contract to provide the Services

Services The service deliverables to be provided by the Service Provider as set out in the Service Specification Schedule, including the quality and performance standards

SLA Service Level Agreement

TMA Traffic Management Act 2004 and its associated guidance's.

2. THE SCOPE

1 The services will be provided by the Service Provider as defined in the Service Specification Schedule as adjusted from time to time with the written agreement of the parties.

2 INTELLECTUAL PROPERTY RIGHTS

3.1 The intellectual property rights on any material produced by the Service Provider relating to the service during the course of the contract or its implementation period shall vest in the Client unless otherwise agreed in writing.

1 No materials relating to the service will be used, reproduced or distributed during the implementation period, the course of the contract or for six years after the end of the contract without the written permission of the Client.

2 CONTINUITY OF SERVICE AT CONTRACT END

4.1 At the end of the Contract Period, in the event that the contractual obligations to provide the Services passes to a successor contractor, the Service Provider shall cooperate with a successor contractor a view to ensuring that the operation of the Services shall continue with a minimum of disruption. Such co-operation shall include using its reasonable endeavours to facilitate the transfer to the successor contractor of any staff employed to provide the Services, whether or not TUPE applies.

4.2 In the event that TUPE does not apply, and staff that had been employed in providing services do not transfer to the successor contract and as a consequence become redundant, the Service Provider shall indemnify the Client against any claims by the redundant staff under their employment contracts.

4.3 The Service Provider shall ensure that either within two weeks of the Client giving notice to terminate the contract or in the twelve months prior to the contract the Service Provider shall provide in writing to the Client all information in relation to staff engaged in providing the Services. This shall include, but the list is not necessarily exhaustive:

(i) a comprehensive list of all persons employed by the Service Provider in order to provide the service

(ii) a list of all sub-contractors, agency workers, and all other independent contractors employed by the Service Provider to provide the service

(iii) the total gross payroll and other costs including invoice costs for independent staff

(iv) all terms and conditions relating to all persons employed by the Service Provider in order to provide the service

4.4 Within the same periods specified in 4.3 above and in relation to full time and all over designations of staff the Service Provider shall not;

(i) change any terms and conditions of any person employed to provide the service

(ii) materially change the job descriptions or numbers of people employed to provide the service

In the specified period changes may be made with the advance written consent of the Client. Designations of staff includes sub-contractors, agency and all other types of independent staff.

5. ENVIRONMENTAL MANAGEMENT

1 The Service Provider will have in place and adhere to an appropriate environmental management policy. This policy will be available for review by the Client on request

2 **WARRANTIES AND REPRESENTATIONS**

6.1 All parties to this contract, warrant and represent that they have full capacity and, prior to the beginning of the implementation period, have taken all steps and obtained all approvals to lawfully enter into and perform their obligations under this contract.

6.2 The Service Provider warrants and represents that:

(i) it has not committed any act of Fraud or other Prohibited Act by entering into this contract.

(ii) it has satisfied itself as the type and extent of the risks it assumes under this contract.

(iii) it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Contract;

(iv) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Service Provider or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Service Provider's assets or revenue;

1 To the degree permitted by law and unless expressly stated in this contract, all warranties, terms and conditions, whether express or implied by statute, common law or otherwise are excluded.

2 **LIABILITY AND INDEMNITY**

7.1 Neither Party excludes or limits liability to the other Party for:

- (a) death or personal injury caused by its negligence; or
- (b) Fraud; or
- (c) fraudulent misrepresentation.

7.2 Throughout the period of the contract the Client is indemnified by the Service Provider against all actions, proceedings, costs, claims, demands, liabilities, losses and expenses arising out of or in connection with this contract unless the same is caused by or arises from the negligence, breach of this Contract or any other contract, breach of statutory duty, breach of Legislation or other wrongful act or omission of the Client, its agents, sub-contractors or servants.

7.3 The aggregate liability of either party for damages, payments of compensation or by way of indemnity or of any nature whatsoever arising under or in relation to this contract or the services (including as a result of negligence):

(ii) all breaches of this contract which results in direct loss of or damage to any kind of property, be limited to one million pounds (£1,000,000)

(iii) all other liability for all breaches or non-performance of this contract whether in contract, tort or otherwise shall be limited to the total annual payments for the service to the Service Provider in the financial year in which the breach occurs or the total annual payments for the service to the Service Provider in the previous financial year, if greater.

7.4 In no circumstances shall either party be liable to the other for loss of profits, business revenue or goodwill.

1 In the event of any claim the Service Provider shall keep the Client fully informed as soon as a claim is received and throughout the course of the claim. The Service Provider will consult with the Client about the conduct of any claim and shall conduct the claim with due regard to the interests of the Client.

2 **INSURANCE**

8.1 The Service Provider shall take out and maintain the following insurance policies:
(i) employers liability insurance of not less than five million pounds (£5,000,000) in respect of any one claim or series of claims arising out of one incident

(ii) public liability insurance to provide an indemnity of not less than five million pounds (£5,000,000) in respect of any one claim or series of claims arising out of one incident

(iii) professional indemnity insurance to provide an indemnity of not less than five million pounds (£5,000,000) in respect of any one claim or series of claims arising out of one incident

(iv) any other insurance that may be required by law

8.2 The Client may require the Service Provider to name the Client as co-insured (other than employer liability and professional indemnity insurance) with any other Party maintaining the insurance and any other matter that the Client considers reasonable in the circumstances.

8.3 The Service Provider shall provide to the Client evidence and copies of all insurance policies required under this clause as requested during the procurement and implementation period and, following this, at each renewal date. If the insurance should lapse for any reason or there should be any material change in the insurance the Service Provider will inform the Client immediately and will be responsible for any costs or claims arising from the lapse.

1 In the event of any claim the Service Provider shall keep the Client fully informed as soon as a claim is received and throughout the course of the claim. The Service Provider will consult with the Client about the conduct of any claim and shall conduct the claim with due regard to the interests of the Client.

2 DISPUTE RESOLUTION PROCEDURE

9.1 All disputes and differences arising out of or in connection with this contract (whether such disputes are in contract, tort or arise out of or under any rule of the common law or equity or under any statute) shall be resolved according to the terms and conditions of this procedure.

9.2 The Parties shall each use reasonable endeavours to resolve a dispute by means of prompt, bona fide discussion between the Client and the Service Provider.

9.3 In the event that a Dispute is not resolved within seven (7) Calendar Days of it having been referred in writing to a review meeting, then either Party may refer it in writing to the Client's AO and the Contract Manager from the Service Provider for resolution.

The two representatives will meet for discussion within seven (7) Calendar Days of receiving the written notice or such longer period as the Parties may agree.

9.4 Following this meeting either Party may propose to the other Party that mediation be entered into with the assistance of an independent and accredited Expert agreed between the parties or appointed by the Chartered Institute of Arbitrators.

9.5 Within fourteen (14) Calendar Days of the appointment of an Expert, the Parties shall meet with the Expert in order to agree in good faith a programme for the exchange of information and the structure to be adopted for the mediation process.

9.6 If the Parties accept the recommendations of the Expert or otherwise reach agreement on the resolution of the Dispute, such agreement shall be put into writing and, once signed by the appointed representative of both parties shall be binding for both Parties.

9.7 All negotiations and meetings connected with the dispute shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.

9.8 No reference of any Dispute to an Expert or an Adjudicator shall relieve either Party from any liability for the due and punctual performance of its obligations under this Contract.

9.9 Notwithstanding clause 9.8, either Party shall have the right to seek appropriate injunctive relief against the other in an appropriate court having jurisdiction in England and Wales and, provided such court is satisfied that the proceedings have not been brought frivolously or vexatiously, all aspects of the Dispute shall be dealt with by such court and not under this contract.

10. DEFAULT AND TERMINATION

10.1 The Client may terminate this Contract on written notice to the Service Provider if:

(i) a court makes an order that the Service Provider be wound up or a resolution for a voluntary winding-up of the Service Provider is passed

(ii) any receiver or manager in respect of the Service Provider is appointed or possession is taken by or on behalf of any creditor, of all or a material part of any property of the Service Provider

(iii) the Service Provider enters into any voluntary arrangement for a composition of debts or a scheme of arrangement is approved under the Insolvency Act 2000, the Companies Act 1985 or the Enterprise Act 2002

(iv) an administration order is made in respect of the Service Provider

(v) a breach by the Service Provider of its obligation to take out and maintain the required insurances under this contract

(vi) the Service Provider commits any Prohibited Act that is not capable of remedy; or

(vii) the Service Provider commits a breach of the health and safety requirements under this contract.

10.2 The Client may terminate the Contract by written notice to the Service Provider with immediate effect if the Service Provider commits a Default and if:

(a) the Service Provider has not remedied the Default to the satisfaction of the Client within 25 Working Days, or such other period as may be specified by the Client, after issue of a written notice specifying the Default and requesting it to be remedied; or

(b) the Default is not, in the opinion of the Client, capable of remedy; or

(c) the Default is a material breach of the Contract.

10.3 The Service Provider may terminate this Contract on written notice if the Client has instructed the Service Provider to temporarily stop provision of the Services or any substantial aspect of the Services and has not instructed the Service Provider to recommence full provision of the Services for a period of ninety (90) Calendar Days from receipt of the instruction.

11. CONSEQUENCES OF EXPIRY OR TERMINATION

11.1 The Service Provider and the Client shall each carry out their respective responsibilities in accordance with this Contract until expiry or termination of the contract.

11.2 The Service Provider shall use its best endeavours to give assistance to the Client to effect an orderly continuation of the Services after termination or expiry of this contract in any manner that the Client may reasonably request and require.

11.3 The reasonable costs of any assistance provided by the Service Provider under this clause shall be borne by the Client.

11.4 The expiry or termination of this contract shall not prejudice or affect any claim, right, action or remedy that shall have accrued or shall accrue to either Party.

12. FORCE MAJEURE EVENTS OUTSIDE THE PARTY'S CONTROL

12.1 If an event occurs outside the control of either party, and which is not attributable to any act or failure to take preventative action by that Party, including fire; flood; violent storm; pestilence; explosion; malicious damage; armed conflict; acts of terrorism; nuclear, biological or chemical warfare; or any other disaster, natural or man-made, but excluding any industrial action occurring within the Service Provider's or any subcontractor's organisation or the failure by any sub-contractor to perform its obligations under any sub-contract, and which materially affects the performance of this contract such an event shall be treated as Force Majeure. In the event of Force Majeure the affected Party shall notify the other Party as soon as practicable, giving details of the event and include evidence of its impact on the services and any action proposed as a result of the event.

12.2 As soon as practicable after notification, the Parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the event and facilitate the continued provision of the service and this contract.

12.3 If no such terms are agreed on or before the date falling sixty (60) calendar days after the date of the start of the event and the event is continuing or its consequence

remains such that the affected Party is unable to comply fully with its obligations under this contract then, either Party may terminate this contract by giving thirty (30) calendar days written notice to the other Party.

12.4 The affected Party shall notify the other Party as soon as practicable after the event ceases or no longer causes the affected Party to be unable to comply with its obligations under this contract. Following such notification this contract shall continue to be performed on the terms existing immediately prior to the occurrence of the event.

12.5 Neither Party shall be entitled to bring a claim for a breach of obligations under this Contract by the other Party, or incur any liability to the other Party for any losses or damages incurred by that other Party to the extent that Force Majeure occurs and the Party is prevented from carrying out obligations by Force Majeure.

13. HEALTH AND SAFETY

13.1 The Service Provider shall comply with and shall procure that all staff, agents and sub-contractors engaged in the provision of the Services comply with the requirements of the Health and Safety at Work Etc. Act 1974, and any other acts, regulations and approved codes of practice relating to the health and safety of staff and others who may be affected by the work activities of the Service Provider.

13.2 The Service Provider shall provide to the Client any information relating to their compliance with Health and Safety requirements that the Client may reasonably request at any time from the Commencement Date.

13.3 The Client shall be permitted reasonable access to any site where the Service Provider is undertaking any services under this Contract for the purpose of carrying out an inspection of health, safety and welfare standards.

13.4 The Service Provider shall provide to the Client within seven (7) Calendar Days of receipt full copies of any communication received from a statutory body concerning the health, safety, welfare, environmental or fire safety standards of the services.

14. DISCRIMINATION, EQUAL OPPORTUNITIES AND HUMAN RIGHTS

14.1 In the performance of the services and in its dealings with service users, Client employees and members of the general public, the Service Provider shall comply and shall ensure that its employees, agents and sub-contractors comply with:

(i) the Human Rights Act 1998 as if the Service Provider were a public body as defined in the Human Rights Act 1998;

(ii) all legislation, official guidance and codes of practice relating to equal opportunities, including but without limitation relating to disability discrimination, sex discrimination and race relations.

14.2 The Service Provider shall inform the Client as soon as the Service Provider becomes aware of any legal proceedings or complaint brought or likely to be brought against the Service Provider under the legislation set out in this clause.

14.3 The Service Provider shall provide such information as the Client may reasonably request for the purpose of assessing the compliance with this clause.

15. DATA PROTECTION

15.1 The Service Provider shall comply with its obligations under the Data Protection Act 1998 (the "1998 Act") and the Computer Misuse Act 1990 insofar as performance of this Contract gives rise to obligations under those Acts.

15.2 Notwithstanding the general obligation in the clause 15.1, where personal data is being processed (as defined by the 1998 Act) for the Client (as defined by the 1998 Act) the Service Provider shall ensure that it has in place appropriate technical and organisational measure to ensure the security of the personal data (and to guard against unauthorised or unlawful processing of the personal data and against accidental loss or destruction of, or damage to, the personal data including that obtained during the operation of Closed Circuit Television), as required under the Seventh Data Protection Principle in Schedule 1 to the 1998 Act:

(i) provide the Client with information which it may reasonably require to satisfy itself that the Service Provider is complying with its obligations under the 1998 Act;

(ii) promptly notify the Client of any breach of the security measures required to be put in place

(iii) ensure that it does nothing knowingly or negligently which places the Client in breach of their obligations under the 1998 Act.

16. CONFIDENTIALITY

16.1 Subject to Clause 16.2 the Parties shall keep confidential all matters relating to this Contract and shall use all reasonable endeavours to prevent their employees and agents from making any disclosure to any person of any matter relating to this Contract.

16.2 Clause 16.1 shall not apply to:

(i) any information which the disclosing Party can demonstrate is already generally available and in the public domain otherwise than as a result of a breach of this clause

(ii) any disclosure which is required by any law (including any order of a court of competent jurisdiction) or the rules of any stock exchange or governmental or regulatory authority having the force of law

(iii) any disclosure of information which is already lawfully in the possession of the receiving Party, prior to its disclosure by the disclosing Party

(iv) any disclosure by the Client of information relating to the provision of the Services and such other information as may be reasonably required for the purpose of conducting a due diligence exercise to any proposed replacement service provider, should the Client decide to re-tender this Contract

(v) any disclosure of information by the Client to any other department, office or agency of the government

(vi) any disclosure for the purpose of:

(a) the examination and certification of accounts certified in writing by the Client

(b) any examination under the Audit Commission Act 1998 of the economy, efficiency and effectiveness with which the Client has used its resources

16.3 Where disclosure is permitted under Clause 16.2 the disclosing Party shall ensure that the recipient of the information shall be subject to the same obligation of confidentiality as that contained in this contract.

16.4 Neither Party shall make use of this contract or any information issued or provided by or on behalf of the other party in connection with this contract otherwise than for the purpose of performing its obligations under this contract, except with the written consent of the other Party.

16A. FREEDOM OF INFORMATION

16A.1 The Service Provider acknowledges that under current legislation the Client is not subject to the requirements of the FOIA or the Environmental Information Regulations.

16A.2 In the event that during the term of the contract the Client becomes subject to the requirements of FOIA or the Environmental Information Regulations the Service Provider shall assist and cooperate with the Client to enable the Client to comply with its Information disclosure obligations.

16A.3 In the event that the Client becomes subject to the FOIA or the Environmental Information Regulations during the term of the contract, the parties will seek to agree a Variation of the Contract including a change to the Contract Price, to take account of any additional obligations that would then fall on the Service Provider.

16A.4 The Service Provider acknowledges that under current legislation it is subject to the requirements of the FOIA or the Environmental Information Regulations. The Service Provider shall indemnify the Client against any claims, proceedings, costs, expenses and any other liability that may arise as a result of the Service Provider meeting or failing to meet its obligations under the FOIA or the Environmental Information Regulations in the performance of the Contract.

17. ASSIGNMENT AND SUB-CONTRACTING

17.1 The Service Provider shall not without the prior written consent of the Client, assign all or any benefit, right or interest under this contract or sub-contract any of the services.

17.2 Where the Client has consented to the placing of sub-contracts, copies of each sub-contract shall, at the request of the Client, be sent by the Service Provider to the Client as soon as reasonably practicable.

17.3 Notwithstanding any sub-contracting permitted under this contract, the Service Provider shall remain responsible for the acts and omissions of its sub-contractors as though they were its own.

17.4 For the avoidance of doubt, the appointment of individual adjudicators or assessors to carry out the Services shall be permitted under this contract no matter whether their status is as employees or independent contractors.

17.5 The Client shall be entitled to:

(i) assign, novate or otherwise dispose of its rights and obligations under this Contract either in whole or part.

(ii) transfer, assign or novate its rights and obligations where required by law and only to a body assuming the whole or part of the business.

18. ENTIRE AGREEMENT

18.1 Both Parties acknowledge that this contract sets forth the entire agreement between them with respect to provision of the services and supersedes and replaces all prior communications, drafts, representations, warranties, stipulations, undertakings and agreements of whatsoever nature, whether oral or written, between the Parties.

19. NO PARTNERSHIP OR AGENCY

19.1 Nothing in this Contract shall be construed as a legal partnership (within the meaning of the Partnership Act 1890) or as a contract of employment between the Client and the Service Provider.

19.2 The Service Provider shall not be, and shall not be deemed to be, an agent of the Client and the Service Provider shall not hold itself out as having authority or power to bind the Client in any way.

20. NO WAIVER

20.1 Failure by either Party at any time or for any period to enforce any one or more of the provisions of this contract or to require performance by the other Party of any of the provisions of this contract shall not:

- (i) constitute or be construed as a waiver of any such provision or of the right at any time subsequently to enforce all terms and conditions of this Contract; nor
- (ii) affect the validity of the contract or any part thereof or the right of the Parties to enforce any provision in accordance with its terms.

20.2 No waiver of any of the provisions of this contract shall be effective unless it is expressed to be a waiver in writing.

21. SEVERANCE

21.1 Each provision of this contract is severable and distinct from the others and the Parties intend that every such provision shall be and remain valid and enforceable to the fullest extent permitted by law.

21.2 If any provision of this Contract is or at any time becomes to any extent invalid, illegal or unenforceable under any enactment or rule of law, it shall to that extent be deemed not to form part of the contract (except to the extent in the case of that provision) and all other provisions of this contract shall continue in full force and effect and their validity, legality and enforceability shall not be thereby affected or impaired, provided that the operation of this contract would not negate the commercial intent and purpose of the Parties under this contract.

21.3 If any provision of this Contract is illegal or unenforceable as a result of any time period being stated to endure for a period in excess of that permitted by a regulatory authority, that provision shall take effect within a time period that is acceptable to the

relevant regulatory authorities subject to it not negating the commercial intent of the Parties under this Contract.

22. NOTICES

22.1 Any notice required by this contract to be given by either Party to the other shall be in writing and shall be served personally, by fax or by email or by sending the same by registered post or recorded delivery to the registered address of the party or such address, fax number or email address as notified to each other. (In the case of fax or email, such communications must be confirmed by letter).

22.2 Provided the relevant communication is not returned as undelivered, any notice served personally will be deemed to have been served on the day of delivery, any notice sent by post will be deemed to have been served forty eight (48) hours after it was posted and any notice sent by fax or email will be deemed to have been served four (4) hours after it was despatched, or earlier where the other Party acknowledges receipt.

23. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

23.1 The Parties agree that this Contract shall not be enforceable by any third party pursuant to the Contracts (Rights of Third Parties) Act 1999 and any rights contained therein are excluded.

24. LAW AND JURISDICTION

1. This Contract shall be governed by the laws of England and Wales and the exclusive jurisdiction of the courts of England and Wales.

2. CHANGE MANAGEMENT AND CONTRACT VARIATION

25.1 Subject to the provisions of this clause 25, the Client may request any reasonable variation to the Specification. Such a change is hereinafter called a "Variation".

25.2 The Client may request a Variation by notifying the Service Provider in writing of the "Variation" and giving the Service Provider sufficient information to assess the extent of the Variation and consider whether any change to the Contract Price is required in order to implement the Variation. The Client shall specify a time limit within which the Service Provider shall respond to the request for a Variation. Such time limits shall be reasonable having regard to the nature of the Variation. If the Service Provider accepts the Variation it shall confirm the same in writing.

25.3 In the event that the Service Provider is unable to accept the Variation to the Specification or where the Parties are unable to agree a change to the Contract Price, the Client may;

(a) allow the Service Provider to fulfil its obligations under the Contract without the variation to the Specification;

(b) terminate the Contract with immediate effect, except where the Service Provider has already delivered all or part of the Services or where the Service Provider can show evidence of substantial work being carried out to fulfil the requirements of the Specification; and in such case the Parties shall attempt to agree upon a resolution to the matter. Where a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution procedure detailed at Clause 9.

25.4 Where the Parties agree a change to the Contract Price as a result of a Variation to the Specification, the revised Contract Price shall take effect from the date when the Variation to the Specification comes into force and continue until the Contract terminates.

26. PREMISES

- 26.1 The Service Provider shall provide the premises at which it will supply the Services during the Contract Period. The location of the premises will be specified in the Service Specification Schedule.
- 26.2 The Client may inspect and examine the manner in which the Service Provider supplies the Services at the Premises during normal business hours on reasonable notice.
- 26.3 The Service Provider will maintain the Premises in a secure, clean, tidy and safe condition throughout the Contract Period.
- 26.4 The location of the Premises where the Services are to be supplied may be changed by the written agreement of the Parties.

27. EQUIPMENT AND MATERIAL

27.1 The Service Provider shall provide all the Equipment necessary for the supply of the Services.

27.2 All Equipment brought onto the Premises shall be at the Service Provider's own risk and the Client shall have no liability for any loss of or damage to any Equipment unless the Service Provider is able to demonstrate that such loss or damage was caused or contributed to by the Client's Default. The Service Provider shall provide for the haulage or carriage thereof to the Premises and the removal of Equipment when no longer required at its sole cost. Unless otherwise agreed, Equipment brought onto the Premises will remain the property of the Service Provider.

27.3 The Service Provider shall maintain all items of Equipment within the Premises in a safe, serviceable and clean condition.

28. TUPE [to be considered]

29. CONTRACT MANAGEMENT AND REPORTING

29.1 The Service Provider shall appoint a Contract manager as the main point of contact between the Service Provider's organisation and the Client.

29.2 The Client will appoint an Authorised Officer (AO) to act as the main point of contact between the Client's organisation and the Service Provider.

29.3 The Service Provider shall upon receipt of reasonable notice and during normal office hours attend all meetings arranged by the Client for the discussion of matters connected with the performance of the Services.

29.2 Without prejudice to any other requirement in this Contract, the Service Provider shall provide such reports on the performance of the Services as the Client's AO may reasonably require. These reports shall include those reports specified in the Specification.

29.5 The Service Provider will create and maintain throughout the Contract term a Contract Manual (which may be in an electronic format) which sets out the methodology by which the Service Provider will fulfil its obligations under the contract and records the current status of performance. The Contract Manual will include, inter alia,

29.5.1 A record of the organisation structure, names, qualifications, roles and responsibilities of the Service Provider's team who will contribute from time to time in the delivery of the Services

29.5.2 A schedule of the major milestones in the implementation and performance of the contract deliverables

29.5.3 An assessment of the risks and issues which in the opinion of the Service Provider may negatively impact the performance of the Contract, along with the steps agreed to be taken by the parties to identify, assess and manage those risks and issues.

29.5.4 A quality management strategy which sets out the service performance targets and measures, if any, agreed between the parties and the status of the achievement of such targets and measures.

29.5.5 A Record of planned and past review meetings between the parties for the purpose of managing the contract, including agendas and past minutes

29.5.6 An updated copy of the contract documentation, reflecting any variations to the contract agreed from time to time by the parties.

29.5.7 A description of the payment processes agreed between the parties, including how payment can be sought by the Service Provider, authorisations required, and any agreed mechanism for deductions or service credits where performance is below the contracted level.

29.5.8 A record of payments that have been made and of any payments that are currently outstanding.

29.5.9 A record of the results of any audit that has been carried out by the Client of the Service Provider's performance.

29.5.10 A record of the governance structure of the Contract, showing inter alia, the decision making and escalation processes agreed between the parties, and the delegated responsibilities if any of the Service Provider in performing the services.

30. AUDIT

30.1 The Service Provider shall keep and maintain until 6 years after the end of the Contract Period, or as long a period as may be agreed between the Parties, full and accurate records of the Contract including the Services supplied under it, all expenditure reimbursed by the Client, and all payments made by the Client. The Service Provider shall on request afford the Client or the Client's representatives such access to those records as may be requested by the Client in connection with the Contract.

31. COMPLAINT PROCEDURE

31.1 Where a complaint is received about the standard of Services or about the manner in which any Services have been supplied or work has been performed or about the materials or procedures used or about any other matter connected with the performance of the Service Provider's obligations under the Contract, then the Client shall notify the Service Provider, and where considered appropriate by the Client, investigate the complaint. The Client may, in its sole discretion, uphold the complaint and take further action in accordance with clause 10 (Default and Termination) of the Contract.

33. QUALITY MANAGEMENT

33.1 The parties will develop and agree performance indicators and targets against which the quality of service provided by the Service Provider will be measured. These indicators and targets are described herein as the Contract Standard and will be recorded in the Contract Manual.

33.2 If performance indicators and targets are not agreed between the parties in relation to any particular service, or to any services provided by the Service Provider, then the Contract Standard shall be the standards of a professional provider of the Services.

33.3 It shall be the duty of the Service Provider to provide the Services to the Contract Standard which in all respects shall be to the satisfaction of the Client's AO.

33.4 The Service Provider shall institute and maintain a properly documented system of quality control which is to the satisfaction of the AO to ensure that the Contract Standard is met.

33.5 If in the opinion of the AO the Contract Standard has not been met by the Service Provider in respect of any of the services in the previous month, the Client may issue a Performance Notice setting out the nature of the Client's dissatisfaction with the provision of services and proposing a rebate of the Contract Price commensurate with the underperformance specified in the Performance Notice.

33.6 If the Service Provider disputes any matters specified in the Performance Notice and/or the proposed rebate, the Service Provider may raise its objection with the Client, in line with the escalation procedure.

33.7 If the parties are unable to agree a resolution of the matters objected to by the Service Provider within 21 days the matter shall be referred to the Dispute Resolution procedure specified in Clause 9.

34. PREVENTION OF CORRUPTION

34.1 The Service Provider shall not offer or give, or agree to give, to the Client or any person employed by or on behalf of the Client any gift or consideration of any kind as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Contract or any other contract with the Client, or for showing or refraining from showing favour or disfavour to any person in relation to the Contract or any such contract.

34.2 The Service Provider warrants that it has not paid commission or agreed to pay commission to the Client or any person employed by or on behalf of the Client in connection with the Contract.

34.3 If the Service Provider, its Staff or anyone acting on the Service Provider's behalf, engages in conduct prohibited by clauses 34.1 or 34.2, the Client may:

(a) terminate the Contract and recover from the Service Provider the amount of any loss suffered by the Client resulting from the termination, including the cost reasonably incurred by the Client of making other arrangements for the supply of the Services and any additional expenditure incurred by the Client throughout the remainder of the Contract Period; or

(b) recover in full from the Service Provider any other loss sustained by the Client in consequence of any breach of those clauses.

35 PREVENTION OF FRAUD

35.1 The Service Provider shall take all reasonable steps, in accordance with Good Industry Practice, to prevent Fraud by Staff and the Service Provider (including its shareholders, members, directors) in connection with the receipt of monies from the Client.

35.2 The Service Provider shall notify the Client immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.

35.3 If the Service Provider or its Staff commits Fraud in relation to this or any other contract the Client may:

(a) terminate the Contract and recover from the Service Provider the amount of any loss suffered by the Client resulting from the termination, including the cost reasonably incurred by the Client of making other arrangements for the supply of the Services and any additional expenditure incurred by the Client throughout the remainder of the Contract Period; or

(b) recover in full from the Service Provider any other loss sustained by the Client in consequence of any breach of this clause.

SERVICE SPECIFICATION SCHEDULE

[insert description of the Services to be supplied including, where appropriate, the Key Personnel, the Premises and the Quality Standards]

The Service Provider will

1. Provide a quality Independent Appeals Service (IAS) to support appeals following the issue of parking tickets in relation to parking on private land.
2. Ensure the IAS systems and processes are accessible, timely and cost-effective enabling the IAS to register, process and deliver a response to appeals for appellants and parking operators.
3. Act fairly between the appellants and the operators and will carry out the adjudication by reference to the BPA's code of practice, relevant laws including contract and consumer protection legislation and will judge the evidence before making a final decision on the appeal.
4. Ensure that all users of the IAS are treated equally and fairly, regardless of ethnic origin, gender, marital status, sexual orientation, political affiliation, religion, age or disability.
5. Provide all parties using the IAS with independent, impartial and well-considered decisions based on clear findings of fact and proper application of law.
6. Communicate the independence of the IAS to all stakeholders including appellants, operators, the DVLA and other Government departments and agencies, including through the use of branding on an IAS-specific website and IAS documentation, and adopting a corporate style which is distinct from other services which the Service Provider may offer.
7. Provide and manage a technical infrastructure which allows appeals to be made on-line via a web-based portal.
8. Provide for appeals to be made by post.
9. Support the IAS with a call centre with a non-geographical 0845 number so that calls are charged at local rate regardless of where in England and Wales the caller is ringing from. The call centre will operate Monday to Friday, 9am to 5pm. Whilst primarily business will be conducted in English, provision will be made to allow Welsh speakers to communicate by phone. Provision will be made to assist deaf or hard-of-hearing users in the use of the call centre.

Comment [SRC1]: Change to 'Act fairly between the appellants and the operators and will carry out the adjudication by judging the evidence against relevant laws including but not restricted to contract and consumer protection legislation. It is understood that the adjudicator may make reference to the BPA Code of practice in his deliberations and conclusions.'

10. Create efficient, effective and user-friendly processes which assist the appellant and respondent in accessing and using the IAS service
11. Measure how well the delivered service matches customers' expectations through monitoring performance against agreed service levels and outcomes.
12. Ensure that the quality of the electronic service it provides via a specific IAS website is maintained using established and robust business continuity plans.
13. Maintain the quality of the responsiveness of the management of the appeals process on a basis and timescales specified by the IAS Code of Practice using agreed key performance indicators such as:
 - . Average number of days taken to decide on-line cases
 - . Average number of days taken to decide postal cases
 - . average number of days taken to first consider cases
 - . average number of days taken to close cases
 - . number of complaints about the service (excluding complaints about judicial style decisions)
14. Apply the processes and standards to maintain the quality of the financial, cash and billing management for the IAS service.
15. Ensure that adjudicators and assessors have appropriate knowledge, skills and integrity to make those appropriate decisions in the course of carrying out their duties for the IAS.
16. Implement and maintain a programme of on-going staff development and training to ensure consistency in the quality of decisions and compliance with legislative change,
17. Implement a quality assurance process of random sampling of one in five appeal decisions to ensure quality in the decision making process.
18. Have a "trial period" before the implementation date in order to test out the practical application of the IAS on actual examples
19. Implement the Service in line with a plan agreed with the Client.
20. Provide a user manual for IAS staff which includes sample appeals case studies and decisions.
21. Monitor the performance of back-office staff against agreed service levels and key performance indicators.

22. Design the back office systems to have built in capacity and capability to increase and decrease as the number of appeals fluctuates.

23. Provide monthly written reports on the quality of the service delivered against agreed service levels and key performance indicators.

24. Hold monthly review meetings

25. Continuously review and seek to improve the quality of service provided using quality practices in:

- . Understanding and improving of operational processes
- . Identifying problems quickly and systematically
- . Establishing valid and reliable service performance measures
- . Measuring customer satisfaction and other performance outcomes
- .

26. Consider how the service could be improved through the use of new technology and other methods.

Premises: the Services will be delivered from the Service Provider's premises at Angel Square, London.

Staff: Include an Organisation chart for the Service showing functions.

Comment [SRC2]: £129,000

Comment [SRC3]: The service provider will invoice the client for the costs of the appeals heard on a monthly basis.

Comment [SRC4]: Might not include this section but included now for transparency

PRICING SCHEDULE

[insert pricing provisions as appropriate]

- 1 Set-up: the Client will pay all initial capital costs of establishing the costs of establishing the IAS, which shall not exceed £ XXX.
- 2 Running costs: The Client will pay a fixed monthly sum of £YYY plus a unit charge of £ZZZ for each appeal that is processed by the IAS.
- 3 The Service Provider will operate an 'Open Book' arrangement to validate the costs incurred in setting up and operating the service.
- 4 The Service Provider understands that the Client will recover the costs of running the Service by a mixture of a fixed annual fee and a per-appeal cost which may at the Client's discretion vary.

1st Draft

IN WITNESS whereof the Parties have executed this contract as a deed and delivered it on the date first written.

Signed as a deed by

acting by Director

Director/Secretary

The common seal of

was affixed by Order
Authorised Signatory

OR

Signed as a deed by on behalf of

..... Authorised

Signatory Authorised Signatory

Date



Appendix 3 –London Council's Response





**RESPONSE TO THE PROJECT BRIEF
FOR THE PROVISION OF AN
INDEPENDENT APPEALS SERVICE FOR
PARKING ON UNREGULATED PRIVATE
LAND IN ENGLAND AND WALES**

Submitted by London Councils

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British Parking Association
Stuart House
41-43 Perrymount Road
Haywards Heath
West Sussex
RH16 3BN

Contact: Stephen Benton
Direct line: 020 734 9937
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Email: stephen.benton@londoncouncils.gov.uk

Our
reference:
Your
reference:
Date: 03 April 2012

Dear Sir/Madam

**Provision of An Independent Appeals Service For Parking On Private Land In
England And Wales**

Thank you for inviting London Councils to respond to the Project Brief for the provision of this proposed appeals service.

Please find attached our response and see below our suggestions for taking forward this project:

- a joint BPA/London Councils team is set up to take forward the project jointly rather than a client/contractor relationship
- a 'costs plus' contract with an open book approach and joint approval of expenditure in advance.
- the contracts must be with the BPA and they will need to provide funding in advance.
- BPA must be responsible for collecting payments from AOS members
- London Councils will consider making officer time available from existing staff to set up the project without up-front funding on the understanding that this expense is fully reimbursed once the service is running.
- the proposed structure is indicative as it will need to be flexible to change over time as knowledge and experience of the IAS increases and volumes of appeals are known
- proposed name POPLA (Parking on Private Land Appeals)

We look forward to meeting with you to discuss our approach to the range of issues which need to be considered.

Yours sincerely



Stephen Benton
Programme Director Transport and Mobility

Implementation

London Councils will operate and administer the Service from our existing offices at Angel Square, London with back-office support services provided through a combination of in-house and sub-contracts through our current contractors.

Annex A: Implementation plan (See attached Annex)

Resource requirements:

Recruitment of Staff: The Adjudicator and Assessors plus Senior Tribunal Assistant and Tribunal Assistants (All costs pre-go live and recruitment, training, salaries and on-costs will need to be met)

Desk tops

Website

Stationary

Support documentation

Training requirements

The initial set up investment will need to be identified and paid up-front payment as part of the proposed 'costs plus' contract with an open book approach and joint approval of expenditure up front.

The main tasks in setting up the Service are:

- recruitment, induction and training of adjudicators, assessors and administrative staff;
- developing the IT system to meet the requirements of the Specification including on-line appeals;
- setting up both front and back-office processes to meet the requirements of the Specification including developing forms and templates;
- development of the website and other communications tools;

Main risks:

- Difficulty in predicting the volumes of appeals in terms of size or by timing may lead to major fluctuations and increased costs
- Impact on volumes of appeals in terms of size or by timing from difficulty in parking companies who are not members of Accredited Trade Association (ATA) accessing information from DVLA about vehicle keeper
- Uncertainty caused by the lack of a defined structure and governance model for the IAS and lack of clarity on the new body
- AOS members unwilling to pay the necessary costs to operate an independent appeals service
- Contracting with BPA ' a private company'

Input from third parties:

Back-office support services provided through our current contractors

BPA to set up new structures and governance model for the IAS and IAS Board

Provision of professional services

Our approach and procedures to delivering the professional IAS service are described below. The key elements in making our service consistent, fair and robust are a standard approach to documentation and clear communication; a bespoke documented process for dealing with appeals and the decision making; on-going training of the adjudicators/assessors and peer review; auditing of the decisions made; clear guidance for appellants.

Decisions on appeals would be made by independent people from a legal background. The judicial approach would be led by an Adjudicator. This would be an existing adjudicator, whose appointment as a parking adjudicator has been approved by the Lord Chancellor and who has knowledge of parking adjudication arrangements, principles and procedures. While the Adjudicator would have an oversight of all decisions and would be directly responsible for making key decisions, the majority of judicial decisions would be made by assessors. Assessors would not have the same legal standing as adjudicators and could be legal executives or senior, post graduate law students. This level of competence recognises both the level of legal decision making needed and the fact that any decisions made are not binding.

The corps of assessors would be primarily a panel of part time members whose hours could be adjusted to suit the workload. We would expect to have, probably 2 full time senior assessors to act as team leaders and who would be available to ensure consistency in decision making and to respond to immediate queries as well as providing a base-load capacity for appeals.

We would suggest that the appeal procedure itself be kept straight forward and as easy for the Operators and appellants to use and understand as possible. The appeal will be received, either electronically or via the post, and entered into our Case Management System. It would then be scheduled for consideration on a specific date, both parties are given the opportunity to file additional evidence and a decision issued would be issued on, or as near as possible to, that date.

An overview of the appeals process can be seen in Annex C: "Professional Service Flow Diagram."

In order to ensure that the appeals process runs smoothly, there are a number of

things that need to be in place before an appeal even reaches the IAS:

1. Only disputes against a Notice that cannot be resolved between the Operator and Keeper should be considered by the IAS, so it should be a requirement that the Keeper makes representations to the Operator before having the right to appeal to the IAS. This would need to be made clear to the Operator in advance (preferably in the Code of Conduct) and would need to be made clear in the information sent to the Keeper with their Notice. Only if these representations are rejected would an appeal to the IAS be possible.
2. So that the system utilised by the IAS is able to cope with appeals in relation to all 140 different Operators, and so that it is immediately evident which Operator has issued a Notice, we would have to insist that a standard number format would be adopted by all of the Operators for its ticket references. Each Operator would be issued with a 2 or 3 digit alphanumeric code that identifies the individual Operator. The operator would then allocate a unique number to identify the individual ticket.
3. A standard form on which to appeal to the IAS would be distributed to each Operator. The form would either be sent to the Keeper when their challenge is rejected or would form part of the notice of rejection itself, and any Keeper that opts to appeal would be encouraged to use the form to ensure that their appeal was dealt with by the IAS as swiftly as possible. Each Operator would either be required to include details of the contravention on the form before sending it out, identifying the essential ticket details (e.g. penalty number, date that the challenge was rejected etc) OR a method of generating a unique reference number will be provided. The form would clearly show that the keeper had already been through the Operators complaints procedure, and would also provide the details that allow the IAS to identify the ticket being challenged.

If all of the required details are present, when the appeal is received by the IAS our case management system would allocate a case reference number and schedule a date for consideration of the case. The case management system would also inform the Operator and the appellant of that date. The Operator would also be sent a copy of the appellant's appeal and supporting evidence for consideration.

The consideration date would be 35 days after the date it was accepted for

scheduling to allow for a number of things to take place before the case is considered:

1. The Operator will need to consider the appeal and file with the IAS any evidence that they wish to file in response. The Operator would also be required to send a copy of their evidence to the appellant for consideration.
2. The appellant will also be able to file further evidence in response to the Operators evidence. A copy of this evidence would be sent by the IAS to the Operator for consideration.
3. The Operator may choose not to contest the appeal and notify the IAS accordingly. This would allow the case to be administratively allowed rather than go before an Assessor/Adjudicator.
4. The appellant may choose to withdraw their appeal. Again, this would allow the case to be closed administratively rather than go before an Assessor/Adjudicator.

Once the date for consideration arrives, the case will be passed to an Assessor. Where possible, the Assessor will consider the case on the date that the case becomes available for consideration, and a decision will be issued on the same day.

At times when there are a lot of cases pending, it may be that cases are not heard on the date they are scheduled, but will fall into a queue to be heard as soon as possible after the scheduled date.

In cases where the issue in question is more complicated, the decision could actually be delayed for further evidence to be obtained from either party. Alternatively, the drafting of the decision may take more time than available and could be made on a subsequent day.

Any appeal submitted in Welsh would be considered by a Welsh Assessor and the response also made in Welsh.

Although we would not intend to offer personal or telephone hearings as standard, they would be available in special circumstances, we would envisage that there would not be personal or telephone appeals unless the Adjudicator decides that the case turns on such matters of such significant principle as to require consideration of oral arguments but this could be added to our services at a later date.

Although the decision would be binding on the Operators, we would still expect correspondence post-decision from both the appellant and the Operator querying or challenging the decision. As there would still be a right to challenge the decision in the County Court, we would not intend entering into correspondence post-decision. However, we do recognise that it would not be in the interests of either the BPA or the IAS to disregard any correspondence that may identify an administrative error in the decision or a blatant error in applying the law.

As such, any correspondence post-decision would be considered by the administrative staff and any obvious administrative errors would be corrected.

See Annex B: Professional Service Flow Diagram

The Project Brief asks for an explanation of how the IAS will deal with malicious complaints i.e. vexatious, frivolous or unreasonable complaints from either party.

In the case of vexatious keepers we could get to the point where we refuse to deal with that keeper.

In the case of Operators who were vexatious or acted wholly unreasonably we could refer the Operator back to the BPA for consideration against the Code of Conduct.

Operational & infrastructure issues

London Councils will operate and administer the IAS from our existing offices at Angel Square in London. For Business Continuity purposes in the event of an emergency at Angel Square we have our main site in the London borough of Southwark to where staff can relocate. Induction and training for the IAS staff will take place at Angel Square.

The IAS back-office support services will be provided partly in-house and with call taking by a sub-contractor under a schedule to our existing contract. Subject to costs we also have the option to sub-contract services for developing and maintaining the IT systems; dealing with all in-coming and out-going post including scanning of all documents.

The work will be structured in such a way that in addition to the PATAS site at Angel Square the adjudicators and assessors will be able to work remotely to complete the appeals using a secure log-on ID to access the electronic version of the appeal. The call centre staff could also be given access to the database.

a). Financial model – In view of the high levels of uncertainty about the service, both in terms of its nature and volumes, we do not think it is helpful to offer a detailed financial model at this stage. Instead we propose that the project is managed by a joint BPA/PATAS team who would take decisions on the nature of the service as experience is developed. We would propose a 'costs plus' contract combined with open book accounts to enable the BPA to be confident about any costs before decisions are taken. Initial investment costs will need to be paid by the BPA in advance. In operational mode we would expect the BPA to pay a fixed monthly sum to cover all fixed and unavoidable costs and a unit charge per appeal to cover variable/avoidable costs.

b). Procedures for invoicing and cash collection – London Councils has stated that it is neither desirable nor practical for it to collect money from AOS members. It is undesirable in that this will undermine the independence of the appeals service by making a very clear link between the operators paying and the provision of the service and assessors/adjudicator. In practical terms, London Councils would not be in any position to address any challenges in principle about apportionment of costs between adjudicators nor to verify any information about their respective sizes or

levels of activity. There would, therefore, be a very high likelihood that there would be delays in payment and disputes. London Councils could only respond to these by refusing to register appeals related to these operators and this approach could easily lead the IAS into disrepute. London Councils believes that the only realistic option is for the BPA to collect the necessary revenue from AOS members on whatever basis it believes to be appropriate. London Councils will provide BPA with sufficient information about numbers of appeals to inform this process.

c). We would expect to work against KPIs related to

- average number of days taken to first consider cases
- average number of days taken to close cases
- number of complaints about the service (excluding complaints about judicial style decisions)

d). Resourcing the service – see Annex C Structure Chart. Our indicative costs for staff salaries and on-costs (national insurance and pension) based on the lowest point on the London Councils grading structure and 2012/13 budget figures are:

The Adjudicator – Grade E £57,272 full time equivalent(fte) per annum

Senior Assessor – Grade C £39,566 fte per annum

Assessors – Grade B £31,370 fte per annum

Senior Tribunal Assistant – Grade C £39,566 fte per annum

Tribunal Assistants - Grade A £24,998 fte per annum

e). Volume levels and unexpected issues

In order to deliver an efficient and cost effective IAS and to cope with fluctuations in volume levels we suggest having a staff group working a flexible range of full and part time hours. This will enable us to take advantage of the existing knowledge and expertise within London Councils, PATAS and Road User Charging; manage the peaks and troughs in service volume levels and avoid the overhead costs of recruiting additional staff at busy times and when the volume levels are uncertain in the longer term.

As far as decision makers are concerned we would expect to have one full time adjudicator and, initially, one full time assessor. There would also be a panel of part time assessors which would allow for cover for holidays and sickness as well as being able to address peaks and troughs of demand. The high-lighted text in structure chart indicates which roles are full or part-time.

The type of service we currently provide at PATAS whilst very similar to the IAS has

the addition of being a personal hearing centre therefore both London Councils and We have contingency plans to cope with fluctuating volume levels and unexpected issues at PATAS. We will work with the Client to develop bespoke contingency plans based on our current PATAS business continuity plans to deal with unexpected issues at the IAS. As stated above, we both have multi-sites and contingency plans for business continuity in the event of unexpected issues that render a site unavailable.

The Communication Systems will be the PATAS/London Councils systems with call taking provided by a sub-contractor through an existing contract.

IT hardware will be provided through London Councils.

An important question is the degree of automation. We would suggest that in the short term we implement an essentially manual system based on an in-house access database. This would minimise both the degree of investment needed and the time taken to establish a service.

In the longer term, in the light of experience of volumes, we could consider alternative approaches. These might include:

- a). continuing a postal appeals service using an in-house Access database
- b). a bespoke IT system using an application such as Share Point with the advantage of being more robust to deal with higher volumes of appeals but higher development costs.

We would expect to see a 'bow wave' of appeals once the service is first established as keepers look to test the system and before decisions work through into established operator practice. It will be important not to over specify the service simply based on this 'bow-wave' effect.

Service structure & processes

London Councils has experience in setting up governance structures for example for the PATAS and Road User Charging judicial appeals processes as well as wider governance processes within local government, however our suggested governance structure for IAS reflects the fact that it is for administrative appeals rather than a judicial appeals processes.

Our suggested IAS governance structure is as follows:

London Councils, as an established local government entity would take responsibility for the administration of the IAS under the following structure:

Corporate Director Services (supported by The Adjudicator, Head of Appeals Administration and Chief Contracts Officer).

The Adjudicator – (supported by a deputy/team leaders and 5 assessors) overseeing adjudication and assessment service delivery and management of assessors.

Head of Appeals Administration - (supported by the Project Manager and 3 staff)

Chief Contracts Officer – (supported by the Contracts Officer) overseeing contract delivery and management including sub-contractor contract management.

In order to deliver an efficient and cost effective IAS and to cope with fluctuations in demand we suggest having a staff group working a flexible range of full and part time hours. This will enable us to take advantage of the existing knowledge and expertise within London Councils, PATAS and Road User Charging; manage the peaks and troughs in demand for the service and avoid the overhead costs of taking on more staff at busy times. For example, assessors will be recruited specifically for the IAS, in addition at times of increased demand of appeals or to cover for peaks in sickness and at main holiday times PATAS and Road User Charging adjudicators will be trained to carryout IAS appeals to provide cover. The structure chart indicates which roles are full or part-time.

The judicial team will be independent and report to London Councils purely for disciplinary, pay and conditions purposes. London Councils will appoint these and this will provide both independence from the operators and a link to the established strengths of the tribunals administered by PATAS.

London Councils will operate under a contract to the BPA. If, in due course, the BPA establishes the IAS as an independent charity the question as to whether the contract should novate to the IAS will depend on the financial structures established. London Councils will not be prepared to undertake a contract without some assurance of continued payments.

Initiatives to encourage a positive public perception of the IAS

Demonstrating and reassuring the public that the IAS is genuinely independent of the Client and operators, fair and transparent are very important factors in encouraging a positive public perception of the IAS. The marketing of the IAS is fundamental to demonstrate reassurance. London Councils already has experience of operating independent, fair and transparent tribunals for parking appeals and Road User Charging. The Parking and Traffic Appeals Service administers the independent tribunals established to hear appeals against Penalty Charge Notices issued by the London Local Authorities and Transport for London. We will use our knowledge and experience of marketing these two existing tribunals to work with the Client on marketing the IAS.

We suggest on-going initiatives to communicate and market the service to the public through website links and in hard copy by the BPA, parking operators, consumer groups, CAB, local authorities, Trading Standards, DVLA, DfT, MoJ and other organisations to be agreed with the client (BPA). We also suggest marketing of the service using on-line video case studies and developing a parking appeals app. Another initiative to demonstrate transparency will be to enable the appellant to track the progress of their appeal on line. We will also develop a user guide, a quarterly newsletter and publish up-to-date statistics on our website for the numbers of appeals processed.

Quality

London Councils through its Transport and Environment Committee, TEC, provides a range of high quality operational services such as parking and traffic appeals, the London night-time and weekend lorry ban, the Freedom Pass and Taxicard schemes. TEC aims to ensure that London boroughs' concerns and best practice are taken fully into account in the development and implementation of the whole range of transport and environment policies generated by Government departments, the European Union, and the Mayor of London. The committee deals with a wide array of issues, including congestion charging, CCTV camera traffic enforcement, waste, air quality, and public protection.

Quality is embedded within London Councils through our Organisational Performance Development strategy, Service Level Agreements and contracts. The quality of our in-house and outsourced service provision and contracts with third party suppliers are measured at multiple levels and stages within our organisation. Our employees performance is monitored and managed using a personal development framework (developed to Investors in People standards) and operational service delivery is reported and monitored monthly against service levels and key performance indicators. We report on both our internal performance and that of our third party contractors. The service levels and key performance indicators for our third party contractors are established within the terms of the contract. We provide both written and verbal reports monthly to our management boards and the London boroughs on both our internal and third party contractor performance.

We will define a quality IAS service as one which provides accessible, timely and cost-effective systems and processes to register, process and deliver a response to appeals for the appellant and parking operators. We will measure how well a delivered service matches the customers' expectations through monitoring performance against agreed service levels and outcomes. We will continuously review the outcomes and improve the service using quality practices in:

- Understanding and improving of operational processes
- Identifying problems quickly and systematically
- Establishing valid and reliable service performance measures
- Measuring customer satisfaction and other performance outcomes

We will ensure that the quality of the electronic service we provided via the specific IAS website service provision was maintained using our established and robust business continuity plans which are already in place for PATAS.

We will ensure that the quality in terms of continuity of services of the postal appeals service was maintained using our established and robust business continuity plans which are already in place for PATAS including diverting the PO Box address to an alternative site if necessary.

We will maintain the quality of the responsiveness of the management of the appeals process on a basis and timescales specified by the IAS Code of Practice using key performance indicators with our adjudicators/assessors such as:

- Average number of days taken to decide on-line cases
- Average number of days taken to decide postal cases

We will apply the processes and standards in the London Councils Financial regulations to maintain the quality of the financial, cash and billing management for the IAS service.

We will ensure the quality of a suitably trained and consistent team of staff by appointing legally trained adjudicators and assessors and implementing a programme of on-going staff development. We will use the existing London Councils recruitment and retention policies and personal development framework for assessors, adjudication and admin staff employed by London Councils to work in the IAS. The standards we apply include regular team meetings, peer review and one to one meetings with the line manager. We will have a "trial period" before the implementation date in order to test out the practical application of the IAS on actual examples. This period will also be used for peer review and staff training purposes during which levels of consistency in the quality of appeals decisions will be measured and any inconsistencies addressed. This will be followed by on-going training for IAS staff to ensure consistency in the quality of decisions and compliance with legislative change. We will also implement a quality assurance process of random sampling by the Head Adjudicator of one in five appeal decisions to ensure quality in the decision making process. A similar process is used in assessing quality in the independent Road User

Charging appeals service.

The quality of the back-office staff if provided by a sub-contractor will be monitored against the service levels and key performance indicators in the sub-contract agreement with London Councils. There will also be a user manual for IAS staff which includes sample appeals case studies and decisions.

To ensure the quality and efficiency of the IAS during potential future volume shifts in the appeals received a flexible appeals process will be adopted based on London Councils first-hand knowledge and experience of running PATAS. In terms of on-line and postal appeals the back office systems will have built in capacity and capability to increase and decrease as the number of appeals fluctuates. London Councils will recruit a team of assessors on a variety of contracted hours in order to provide a flexible work force. Adjudication and admin staff employed in PATAS will also be trained on IAS work to provide additional capacity.

Our proposals for working in partnership with the client to provide a quality and continuously improving service are as follows:

A joint BPA/PATAS management team to implement and monitor operations both during implementation and subsequently.

'Open book' arrangements to allow the BPA to have complete assurance about costs incurred.

Liaising with the Client throughout the course of the contract including providing monthly written reports on the quality of the service delivered against agreed service levels and key performance indicators.

Holding regular meetings, we suggest that for the first twelve months (following contract award) these will be monthly then become quarterly.

Working together to develop the service as follows:

During the life of the contract we will investigate using new technology such as voice recognition software, for example Dragon Dictate. A number of PATAS Adjudicators use it in their other work and at least one is currently using it, in its cut down format, for parking appeals. We will undertake a cost benefit analysis of the cost of purchase and implementation versus time saved.

Independence

London Councils already has experience of operating independent, fair and transparent tribunals for parking appeals and Road User Charging. The Parking and Traffic Appeals Service administers the independent tribunals established to hear appeals against Penalty Charge Notices issued by the London Local Authorities and Transport for London. The Road User Charging Adjudicators Tribunal is independent from Transport for London and decides appeals against Congestion Charging penalties and Low Emission Zone penalties in London.

Cases are decided by an independent adjudicator, each of whom is qualified either as a barrister or a solicitor and is directly appointed by the Lord Chancellor. They decide each case impartially, applying the law to the facts of the case.

In the case of the IAS the assessor/adjudicator will act fairly between the Operator and the vehicle keeper and will carry out the adjudication by reference to the ATA code of practice, relevant contract and consumer protection legislation and will judge the evidence before making a final decision on the appeal.

We will maintain the independence, fairness and transparency of the IAS in the service provision and ensure that this and the appeals procedure is clearly communicated to the customer by explaining that:

Their appeal will be decided by a trained, professional, independent parking and traffic assessor/adjudicator.

The adjudicator is independent of the Operators and all of the enforcement authorities.

The hearing is kept as informal as possible.

The Adjudicator will reference to the ATA code of practice, relevant contract and consumer protection legislation and will judge the evidence before making a final decision on the appeal

The handling of complaints will be set in the context of the need to protect independence. For example, Parking and Traffic Adjudicators are not accountable to London Councils Transport and Environment Committee (TEC), the Lord Chancellor or the Chief Adjudicator for the decisions they take. The interests of justice require that, in their work, Parking and Traffic Adjudicators are independent of the views of the Local Authorities and London Councils TEC and are not subject to their control.

Their decisions, including procedural decisions about the handling of cases can only be challenged through the legal process.

Under the terms of the 1991 Road Traffic Act, the Parking Adjudicators are required to produce an annual report for the Committee on the discharge of their functions. In turn, the Committee is required to produce a report for the Secretary of State on the performance by the Adjudicators of their functions. We would produce an annual report on the work of the IAS.

There will be segregation of duties between the adjudicators/assessors and London Councils administration staff. The latter will aim to provide a fast, efficient and quality service, offering case management support to the panel of independent IAS adjudicators and assessors.

To ensure the independence is clear to the customer we will brand the IAS separately to our other services and it will be accessible through its own website. The branding will be made clear to customers when using the IAS website and call centre; completing the appeal documentation and receiving correspondence from the IAS. We propose to name it POPLA (Parking on Private Land Appeals) and produce a Customer Charter and Mission Statement. For example,

- To provide all parties to Parking on Private Land Appeals with independent, impartial and well-considered decisions based on clear findings of fact and proper application of law.
- To have appropriate knowledge, skills and integrity to make those decisions
- To ensure that all parties to Parking on Private Land Appeals are treated equally and fairly, regardless of ethnic origin, gender, marital status, sexual orientation, political affiliation, religion, age or disability.
- To enhance the quality and integrity of the Parking on Private Land Appeals process

The website and IAS on-line appeals facility will both be bespoke systems designed, developed and branded specifically for the IAS. The documentation will also be branded for the IAS and the call centre will have its own unique number which will be answered by call takers who will reply in the brand name of the IAS.

It may be appropriate to involve a consumer action group through the AOS to monitor the operation of the IAS for independence, fairness and transparency. Although the IAS itself is not subject to the Freedom of Information Act (FOIA), London Councils is and we are experienced in dealing with and responding appropriately to the types of enquiries which are received in relation to the work of an independent tribunal which is not subject to the FOIA.

Service accessibility

The service will be accessible to the public as both a web-based portal and a postal service with documents available in large print and Braille. There will also be a call centre with a non-geographical 0845 number so that calls are charged at local rate regardless of where in England and Wales the caller is ringing from. The call centre will operate Monday to Friday, 9am to 5pm. Whilst primarily business will be conducted in English, provision will be made to allow Welsh speakers to communicate by phone. Similarly we plan to cater for people who are deaf or hard of hearing by offering a minicom service or equivalent.

On receipt, documents received by post will be scanned and made visible to the adjudicators and assessors. The appellant and parking operator will be able to track the progress of the appeal on-line for all appeals including postal appeals once they have been scanned onto the system.

The key elements in making our service accessible are clear documentation and communications; a bespoke user friendly documented process and user guide for dealing with appeals and the decision making which will be available on-line and in hard copy on request from the call centre, BPA and parking operators. A set of frequently asked questions and answers on the IAS will be available. The on-going training of the IAS staff will include equalities and accessibility awareness. Appellants will be invited to give feedback on the IAS including accessibility; the clarity of the application guidance documentation and appeals process. The IAS website, hard copy guidance and call centre will provide clear information and instructions for the public on how to appeal and what evidence they need. For example:

What evidence do I need?

Evidence can include written documents such as a receipt for the sale of a vehicle, witness statements or written evidence.

Evidence which might be relevant to your case will depend upon the facts but may include:

- Photographs
- Letter from DVLA regarding ownership
- Bank/credit card statement as evidence that a charge was paid to the operator
- Telephone statement as evidence that you contacted the operators call centre

- Receipt as evidence that you purchased a parking Ticket for the correct date and the correct vehicle

Evidence might also include a signed and dated written statement from someone who was a witness.

You should send your evidence to the adjudicator and keep copies of any evidence you send.

If you wish to submit in evidence photographs in electronic format or moving images, please do so on CD, DVD or videotape (not Super VHS). Please note that we will retain it as we require a complete record of the evidence.

In view of the significant security issues associated with their use, we cannot accept evidence on a USB flash drive.

Please also note that, if you present evidence that we cannot retain the adjudicator may need to adjourn the decision for you to provide the evidence in a suitable form.

If you are intending to fax photographs or images to the tribunal the quality on receipt is likely to be poor. Please send clear copies to us by email or post.

Please remember that neither the adjudicator nor their staff can contact witness or gather evidence on behalf of any party.

If the appellant has requested a postal decisions, the procedure is as follows:

a letter will be sent to the appellant which explains the date after which the appeal will be decided, and a date by which time they should submit any further evidence;

The adjudicator will consider all the documentary evidence produced by both parties (the appellant and the parking operator, the respondent) and will then make a decision based on the evidence before them;

If, when considering the evidence, the adjudicator needs either party to provide further details before making a decision, they can adjourn the appeal to a later date;

The adjudicator will then post the decision to the appellant.

London Councils provides information on our website in a format which is designed to

be accessible to all, regardless of ability or disability. We recognise that there are many different ways people access information on the web and we try to allow for the many personal preferences which provide maximum ease of use for individual visitors to the site.

Our websites are all thoroughly and regularly tested for accessibility and achieve Web Content Accessibility Guidelines (WCAG) AA standard. They contains guidance on the following to help with specific requirements and preferences:

- Adjusting the text size
- Magnifying the whole screen
- Using a screen reader
- If you would like to listen to the site
- Using access keys to jump to pages
- Other useful keyboard shortcuts
- Using the tab key to jump to links
- Alternative descriptive image text
- If you find images distracting or are connecting at a very slow speed
- Adjusting colour schemes and fonts

The service will communicate and inter relate with the public using email, the website, postal services and the call centre as described above for the appeals service. An IAS user guide containing clear guidance on how to access and use the service will be developed and available on-line and in hard copy from the call centre (see below for other suggested outlets for the hard copy information to be available).

Our view on different methods of access are:

- we can offer personal hearings by telephone and potentially face to face over the internet e.g. using Skype
- we anticipate that postal appeals will account for a substantial number of the appeals where the applicant does not have internet access
- electronic access will include the ability to download the appeals forms for completion and submission as postal appeals in addition to completion and submission of on-line appeals
- access by people with disabilities will be enabled by the availability of large print and Braille versions of the appeals forms which can be submitted by post; telephonic and electronic modes of personal hearings will be available to

people unable to submit postal appeals.

We note that the Client would expect to work closely with the Service Provider on marketing and publicity and that the Client is not seeking for them to include in their tender any costs for marketing. However we suggest on-going communications and marketing of the service to the public by promoting the service through website links and in hard copy to the BPA, parking operators, consumer groups, CAB, local authorities, Trading Standards, DVLA, DfT, MoJ and other organisations to be agreed with the client (BPA). We also suggest marketing of the service using on-line video case studies and developing a parking appeals app.

Pre-requisite for service

We suggest adopting a similar provisions to the Parking legislation as described below:

Under the current Parking legislation, the discount rules are different depending on whether a ticket is placed on the vehicle or not. These 2 situations are also defined in the Protection of Freedom's Bill.

1. If a ticket is placed on the vehicle, the Driver of the vehicle has 14 days to pay the discount or 28 days to pay the full amount. After the 28 days, a Notice is sent to the Registered Keeper informing them of the ticket. There is no discount given to the keeper.

2.

(a) If a ticket is issued on the basis of CCTV evidence and served only by post, directly to the registered keeper, then the registered keeper is able to take advantage of the discounted rate. The discount is payable within 21 days of the date of service.

(b) If a ticket was to be issued at the scene but for some reason could not be, the PCN may be served by post (as above) but the discounted amount has to be paid within 14 days. The 2 circumstances specified by the current legislation for this are where:

- (i) the ticket issuer was prevented by someone from serving it at the scene; or
- (ii) the ticket issuer had begun to prepare a PCN but the vehicle was driven away before it was finished and issued.

It is suggested the discount should be 50 % as it is with parking.

On the question of standardised forms this is covered in our response under Section (ii) Provision of Professional Services, as is the requirement for a standard numbering format to be adopted by each of the Operators for its ticket references. Each Operator would be issued with a 2 or 3 digit alphanumeric code that identifies the individual Operator. A unique number would then be added to identify the individual ticket.

ANNEX A Implementation Plan



Access A
Implementation Plan

ANNEX B Professional Service Flow Diagram



Annex B Professional
Service Flow Diagram

ANNEX C POPLA Structure Chart



