

Dated

6<sup>th</sup> November 2017

**MAYOR AND BURGESSES OF  
THE LONDON BOROUGH OF BARNET**

AND

**DriveNow UK LTD COMPANY**

---

**CONTRACT FOR THE PROVISION  
OF PARKING PERMITS  
FOR A FLOATING CAR SCHEME**

---

**HB Public Law**

working in collaboration with you

Harrow Council  
PO Box 2  
Civic Centre  
Station Road  
Harrow  
HA1 2UH

DX 30450 HARROW 3

**THIS AGREEMENT is dated**

**6<sup>th</sup> November 2017**

**PARTIES**

**(A) The Mayor and Burgesses of the London Borough of Barnet**, of North London Business Park, Oakleigh Road South, London N11 1NP (the “Council”)

**and**

**(B) DriveNow UK Ltd** incorporated and registered in England and Wales with company number 9265833 whose registered office is at United House, 39-41 North Road, London N7 9DP ( the “Company”).

**BACKGROUND**

- (1)** The Company operates a free-floating car sharing scheme (the Scheme) in which their vehicles are available for use in selected locations.
- (2)** The Company wishes to provide the Scheme in the London Borough of Barnet and in consideration of it complying with the provisions of this Agreement, the Council has agreed to issue the Company with electronic parking permits to authorise parking of those vehicles in selected locations in Barnet.
- (3)** The Company is a “floating car club operator” as defined by the London Borough of Barnet **Traffic Management Order 2017 No [TBC]** and also by the London Borough of Barnet **Traffic Management order 2017 No. [TBC]**(together “the Orders”).

## AGREED TERMS

### 1. INTERPRETATION

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

Term	Meaning
<b>“Additional Fee”</b>	means a fee payable quarterly in arrears by the Company to the Council if on any given day the number of Company Vehicles parked in Permitted Parking Locations exceeds the number of Pre-Paid Permitted Vehicles as further provided for and calculated in accordance with clause 4 of this Agreement.
<b>Additional Per Vehicle Fees</b>	A fee of £630.00 (six hundred and thirty pounds) per vehicle (exclusive of VAT) payable by the Company to the Council for each additional Permitted Vehicle allowed to park in Barnet in accordance with clause 3.7 of this Agreement and thereafter such fee as may be adjusted from time to time by the Council.
<b>“Annual Pre-Payment”</b>	means:  (a) in the first year of the Agreement the sum of £1,260.00 (one thousand two hundred and sixty pounds) per vehicle (exclusive of VAT) to be paid by the Company to the Council in accordance with clause 3.  (b) For each year of the Agreement thereafter a sum as stipulated by the Council.
<b>“Authorised Representative”</b>	the persons respectively designated as such by the Council and the Company, the first such persons being set out in Annex 5.
<b>“Barnet”</b>	means the London Borough of Barnet as shown on the plan annexed to this Agreement at Annex 1.

<b>Term</b>	<b>Meaning</b>
<b>“Civil Enforcement Officer”</b>	the Council officer or contractor who monitors vehicles parked in Barnet.
<b>“Company Vehicle”</b>	means a vehicle offered for hire to a Member by the Company under the Scheme.
<b>“Company White List”</b>	means a list of the Company Vehicles (by reference to VRN, make and model) that the Company has for hire to Members under the Scheme from time to time.
<b>“Commencement Date”</b>	means the date agreed by the parties in accordance with clause 2 of this Agreement.
<b>“Electric Vehicle”</b>	means a motor vehicle equipped with a powertrain containing at least one non-peripheral electric machine as energy converter with an electric rechargeable energy storage system, which can be recharged externally.
<b>“Employees”</b>	means all persons engaged by the Company in the provision of the Scheme from time to time including personnel, staff and employees of the Company and shall include the Company’s agents and authorised sub-contractors and “Employee” includes all those engaged as described herein by any such agent and sub-contractor.
<b>“Excess Vehicle Fee”</b>	means the sum of £ 200 (exclusive of VAT) payable by the Company for each day on which a daily total of the Company Vehicles parked in Permitted Parking Location exceeds the Maximum Daily Vehicle Total
<b>“Maximum Daily Vehicle Total”</b>	means the aggregate number of Permitted Vehicles that may be parked in the Permitted Parking Location on any one day.
<b>“Member”</b>	means any person who is a member of the Scheme.

<b>Term</b>	<b>Meaning</b>
<b>“Permit”</b>	means a permit issued by the Council entitling the vehicle to be parked in a floating car club Permitted Parking Location subject always to the provisions of the Orders.
<b>“Permitted Parking Locations”</b>	means the eligible parking zones where a Permitted Vehicle is allowed to park as further described in Annex 2 of this Agreement and as shown on the plan annexed to this Agreement at Annex 1 as may be varied by the Council from time to time.
<b>“Permitted Vehicle”</b>	means any Vehicle on the Company White List from time to time.
<b>“Pre-Paid Permitted Vehicles”</b>	means the number of Permitted Vehicles that are permitted to park in Barnet in accordance with this Agreement for which the Company pays the Annual Pre-Payment.
<b>“Prohibited Act”</b>	<p>means:</p> <p>(a) offering giving or agreeing to give to any servant of the Council any gift or consideration of any kind as an inducement or reward:</p> <p style="padding-left: 40px;">(i) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Agreement or any other contract with the Council; or</p> <p style="padding-left: 40px;">(ii) for showing or not showing favour or disfavour to any person in relation to this Agreement or any other contract with the Council;</p> <p>(b) entering into this Agreement or any other contract with the Council where a commission has been paid or has been agreed to be paid by the Company or on its behalf, or to its knowledge, unless before the relevant</p>

<b>Term</b>	<b>Meaning</b>
	<p>contract is entered into particulars of any such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to the Council;</p> <p>(c) committing any offence:</p> <p>(i) under the Bribery Act 2010;</p> <p>(ii) under legislation creating offences in respect of fraudulent acts, or</p> <p>(iii) at common law in respect of fraudulent acts in relation to this agreement or any other contract with the Council; or</p> <p>(d) defrauding or attempting to defraud or conspiring to defraud the Council.</p>
<b>“Quarter”</b>	<p>means that period of three months in each year of the term of this Agreement ending on:</p> <p>(a) 31<sup>st</sup> March;</p> <p>(b) 30<sup>th</sup> June;</p> <p>(c) 30<sup>th</sup> September; and</p> <p>(d) 31<sup>st</sup> December.</p>
<b>“Scheme”</b>	<p>means a free-floating car sharing scheme operated by the Company open to all the Members on the payment of a fee to book, hire and use of the Company Vehicles.</p>
<b>Termination Date</b>	<p>means the date falling on the anniversary of the Commencement Date.</p>
<b>“VRN”</b>	<p>means vehicle registration number.</p>

- 1.2. Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.3. Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.4. A reference to any party shall include that party's personal representatives, successors and permitted assigns.
- 1.5. Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.6. References to Conditions and Annexes are to the Conditions and Annexes of this Agreement and references to paragraphs are to paragraphs of the relevant Annex.
- 1.7. Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

## **2. COMMENCEMENT AND DURATION**

- 2.1. This Agreement shall take effect on the Commencement Date and shall continue until the Termination Date (Term), subject to earlier termination as provided for by this Agreement.
- 2.2. The Council in its absolute discretion may extend this Agreement beyond the Term by a further period or periods of up to 1 (one) year (Extension Period). If the Council wishes to extend this Agreement, it shall give the Company at least 3 (three) months' written notice of such intention before the expiry of the Term or Extension Period.
- 2.3. The Company shall serve not less than two months written notice on the Council setting out the date upon which it wishes the Term to commence; such date to be no later than **1<sup>st</sup> March 2018** and which must be accompanied by:
  - a. an application for all the vehicles on the Company White List to be designated as Permitted Vehicles by the Council which must include the following information:
    - (a) the Company White List for all relevant Company Vehicles;
    - (b) the VRN, car model and make of each Company Vehicle on the Company White List;
    - (c) proof of ownership of each Company Vehicle on the Company White List; and
    - (d) confirmation that each Company Vehicle is roadworthy, validly insured, has a valid MOT and the vehicle excise duty is up-to-date and is appropriately registered with the Driver and Vehicle licensing Agency (DVLA).
- 2.4. Provided that the Council is satisfied with the information that the Company has provided with its notice under clause 2.3 and subject to receipt of the

Annual Pre-Payment for the first year of the Term, the Agreement shall commence as agreed between the parties.

### **3. PAYMENT**

- 3.1. In consideration of the provision of the Permit by the Council to the Company, the Company shall pay the Annual Pre-Payment and all other monies payable under the terms of this Agreement during the Term.
- 3.2. The Annual Pre-Payment fee shall be made within 14 days of the Commencement Date of the Term or within 14 days of the Extension Period if the Agreement is extended. Unless expressly agreed to the contrary any other payment due under this Agreement shall be paid to the Council within 30 days of the Council issuing the Company with an invoice.
- 3.3. The number of Pre-Paid Permitted Vehicles in the first year of the Agreement shall be 20 which shall be reviewed by the Council on an annual basis and is subject to change as the Council in its discretion considers appropriate having given consideration to the monitoring data as described in clauses 4 and 5 of this Agreement. Thereafter no later than 28 days before each anniversary of the Commencement Date, the Company shall revise its Company White List as appropriate and shall apply to the Council for all vehicles on the revised Company White List to be Permitted Vehicles and furnish the revised list, together with the Annual Pre-Payment in respect of the Pre-Paid Permitted Vehicles for the Extension Period.
- 3.4. The application referred to in clause 3.3 above shall set out the same information required under clause 2.3.
- 3.5. No refund of the Annual Pre-Payment shall be made to the Company once the Company Vehicles on the Company White List have become Permitted Vehicle.
- 3.6. The Annual Pre-Payment fee for Electric Vehicles will have a fifty percent discount applied to any charges related to their use.
- 3.7. Where any party disputes any sums to be paid by it then a payment equal to the sum not in dispute shall be paid and the dispute as to the sum that remains unpaid shall be determined in accordance with clause 17. Provided that the sum has been disputed in good faith, interest due on any sums in dispute shall not accrue until the earlier of 14 days after resolution of the dispute between the parties.
- 3.8. Interest shall be payable on the late payment of any undisputed sum properly invoiced under this agreement in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.

### **4. MONITORING AND ADDITIONAL FEES**

- 4.1. If the average daily number of the Company Vehicles parking in Barnet is greater than the number of Pre-Paid Permitted Vehicles the Company shall be required to pay Additional Fees to the Council in respect thereof.



- 4.2. The number of the Company Vehicles parking shall be monitored using information provided by the Company and audited from time to time by the Council.
- 4.3. The Company shall provide the Council with the following information on a quarterly basis in arrears within 14 (fourteen) days of the last day of the preceding Quarter:
  - a. The number of the Company Vehicles parked in Barnet at noon (Figure A) and midnight (Figure B) on each day of that Quarter.
- 4.4. From this data the Council will determine the following:
  - a. The assumed total number of the Company Vehicles parked in Barnet on each day of that quarter. This number shall be determined by taking the greater of Figure A and Figure B and this is then Figure C
  - b. The average number of the Company Vehicles parked in Barnet per day during that Quarter which shall be calculated by adding together Figure C for each day in the Quarter and dividing this total by the number of days (V) in the Quarter which results in Figure D. Figure D shall be rounded up to the next highest whole number.
  - c. The Council shall use Figure D to determine whether the total number of Company vehicles parked in Barnet on any day during a Quarter exceeds either of the number of Pre-Paid Permitted Vehicles in the relevant period and the Maximum Daily Vehicle Total.
- 4.5. If the Council determines that Figure D exceeds the number of Pre-Paid Vehicles in the preceding Quarter, the Company shall pay the Council an Additional Fee for each additional Company Vehicle parked in Barnet in that Quarter, such fee to be a pro-rata sum of the Per Vehicle Fee to be paid quarterly in arrears. This fee shall be calculated as follows:

**Calculation of Additional Fee**

Where:

V is the number of days in the Quarter (the “Relevant Period”) which is being monitored

X is the total number of Pre-Paid Permitted Vehicles that applies in that year of the term of the Agreement

D is the average number of the Company Vehicles parked per day during the Relevant Period as defined in Clause 5.3.2 above.

Y is D minus X, or zero, whichever is the higher figure

Z is the cost per day for a the Company Vehicle calculated by dividing the Per Vehicle Fee by 365

**V x Y x Z = Additional Fee**

If the data provided by the Company shows that there are Electric Vehicles in this cohort, then a 50% discount will applied to the additional fee for all the Electric Vehicles.

**5. MAXIMUM DAILY VEHICLE TOTAL FEE**

5.1. Without prejudice to the Additional Fee payable in accordance with Clause 4 above, the Company shall also pay the Council the Excess Vehicle Fees as set out in this clause 5. This fee will come into effect in the event that the total number of vehicles in the borough has exceeded the number pre-paid vehicles to such an extent that it is now more than the “Maximum Daily Vehicle Total” permits. This is displayed in the table below:

<b>Category</b>	<b>Number of Vehicles</b>	<b>Additional Fee Applies</b>	<b>Maximum Fee Applies</b>
Pre-paid permit Vehicles	Less than and equal to 20	No	No
Addition Fee	More than 20, but less than 150	Yes	No
Maximum Daily Vehicle Total	More than or equal to 150	Yes	Yes

5.2. The Council shall determine (acting in its absolute discretion) from time to time the “Maximum Daily Vehicle Total”.

5.3. At the commencement of the Term of this Agreement, the Maximum Daily Vehicle Total shall be 150. This number may be varied by the Council acting in its absolute discretion at any time during the term of this Agreement save that at no time shall it be decreased to less than 60.

5.4. In the event that quarterly data set out in clause 4 of this Agreement shows that the daily total of the Company Vehicles exceeded the Maximum Daily Vehicle Total on any day during the relevant period then the Company shall pay the Council an Excess Vehicle Fee for each day in the Quarter on which such excess occurred. This payment is in addition to the Additional Fee.

5.5. The calculation of the Excess Vehicle Fees shall be made as follows.

**Calculation of Excess Vehicle Fees**

Where:

A is the number of the Company Vehicles parked in Barnet at noon on each day of the preceding Quarter.

B is the number of the Company Vehicles parked in Barnet at midnight on each day of the preceding Quarter.

C is the total number of the Company Vehicles parked in Barnet on each day of the preceding Quarter. This number shall be determined by taking the greater of A and B.

M is the Maximum Daily Vehicle Total (e.g. 200 at the commencement of the term of this Agreement)

F is the Excess Vehicle Fee (which is £200 per day)

N is the number of days in the relevant quarter on which C is greater than M

$F \times N =$  Excess Vehicle Fees for the relevant Quarter.

- 5.6. the Company shall pay the Excess Vehicle Fees to the Council quarterly in arrears at the same time as the Additional Fee.
- 5.7. The Excess Vehicle Fee will be reviewed annually by the Council in accordance with clause 9 of this Agreement.

## **6. MANAGEMENT INFORMATION**

- 6.1. During the term of this Agreement, the Company shall supply the Council with the following management information within 14 days following the end of each Quarter
- a. The number of the Company Members residing in Barnet at the start and end of each Quarter;
  - b. The number of active Members in Barnet each Quarter (i.e. those who have made at least one hire during the period);
  - c. The number of separate hires in each Quarter, broken down as: (i) hires commencing in Barnet and ending outside Barnet; (ii) hires commencing outside Barnet and ending in Barnet; and (iii) hires both commencing and ending inside Barnet;
  - d. The average duration (minutes) of each hire in the Quarter;
  - e. The average distance travelled per hire in the Quarter;
  - f. and any other information that the Council reasonably requests from time to time. The purpose of such data is to ascertain how the Company's services contribute to the Council's transport and other policy objectives.

## **7. VAT**

All sums payable by the Company are exclusive of any VAT that may be chargeable. If chargeable VAT will be invoiced to and paid additionally by the Company to the Council.

## **8. LIABILITY FOR ILLEGAL PARKING AND OTHER TRAFFIC OFFENCES**

- 8.1 The Company shall be responsible for paying and discharging all costs, charges, expenses, claims, demands, liabilities, losses, and damages that arise either indirectly or directly from illegal parking or moving traffic contraventions resulting in the issue of penalty charge notice related to the parking of the Company Vehicles in Barnet in breach of the terms of this Agreement.

- 8.2 The Company shall indemnify the Council against all costs, charges, expenses, claims, demands, liabilities, losses, damages, and expenses that arise either indirectly or directly due to illegal parking or other traffic related offences or issues. For the avoidance of doubt, this shall include penalty charge notices issued by the Council's Civil Enforcement Officers or other such officers or those acting on behalf of other parking authorities that operate in Barnet.
- 8.3 The Council shall record the VRNs of each Permitted Vehicle in a central database. This database may be used by the Council's contracted Civil Enforcement Officers or other nominated officers of the Council to check whether a vehicle parked in a Permitted Parking Location is a Permitted Vehicle

## **9 TERMINATION**

- 9.1 Without prejudice to any of its other rights and remedies, either party shall be entitled to terminate this Agreement at any time by giving not less than three months written notice to the other to that effect.
- 9.2 The Council may terminate this agreement in whole or part with immediate effect by the service of written notice on the Company in the following circumstances:
- 9.2.1 if the Company is in breach of any material obligation under this agreement provided that if the breach is capable of remedy, the Council may only terminate this agreement under this clause if the Company has failed to remedy such breach within 28 days of receipt of notice from the Council (a Remediation Notice) to do so;
- 9.2.2 the Company suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 OR (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 OR (being a partnership) has any partner to whom any of the foregoing apply;
- 9.2.3 the Company commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of the Company with one or more other companies or the solvent reconstruction of that other party;
- 9.2.4 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- 9.2.5 an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Company (being a company);

- 9.2.6 the holder of a qualifying floating charge over the assets of the Company (being a company) has become entitled to appoint or has appointed an administrative receiver; (i) a person becomes entitled to appoint a receiver over the assets of the Company or a receiver is appointed over the assets of the Company;
- 9.2.7 a creditor or encumbrancer of the Company attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within [14] days;
- 9.2.8 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in 9.2.2 to 9.2.9 (inclusive);
- 9.2.9 the Company suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.
- 9.3 Upon termination of this Agreement whether pursuant to this clause 9 or otherwise howsoever arising.
- 9.3.1 The Permit(s) shall immediately become null and void.
- 9.3.2 The Company shall be liable to compensate the Council for any loss or damage it has sustained caused by the Company (or may sustain in the future in consequence of any breach of this Agreement by the Company).
- 9.3.3 The Company shall indemnify the Council against all loss and damage suffered by the Council by reason of such termination.
- 9.4 It is hereby agreed that Clauses 4 (Monitoring and Additional Fee), 5 (Maximum Daily Vehicle Total and Quarterly Excess Vehicle Fee), 8 (Liability for Illegal Parking and Other Traffic Offences), 10 (Probity and Inducement), 9 (Termination), 12 (Liability of the Company), 13 (Insurance), 14 (Statutory Requirements) and 17 (Dispute Resolution) of this Agreement shall continue in full force and effect and be enforceable by the Council as will any other provision that by its nature or necessary implication is to survive termination.
- 9.5 Termination of this Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination.

## **10 PROBITY AND INDUCEMENTS**

- 10.1 The Company represents and warrants that neither it, nor to the best of its knowledge any of its Employees, have at any time prior to the Commencement Date:
- 10.1.1 committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
- 10.1.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.

- 10.2 The Company shall not during the term of this agreement:
- 10.2.1 commit a Prohibited Act; and/or
  - 10.2.2 do or suffer anything to be done which would cause the Council or any of the Council's employees, consultants, contractors, sub-contractors or agents to contravene any of the Bribery Act or otherwise incur any liability in relation to the Bribery Act.
- 10.3 The Company shall during the term of this agreement:
- 10.3.1 establish, maintain and enforce, and require that its sub-contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Bribery Act and prevent the occurrence of a Prohibited Act; and
  - 10.3.2 keep appropriate records of its compliance with its obligations under clause 10 and make such records available to the Council on request.
- 10.4 The Company shall immediately notify the Council in writing if it becomes aware of any breach of clause 10, or has reason to believe that it has or any of the Employees have:
- 10.4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
  - 10.4.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
  - 10.4.3 received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this agreement or otherwise suspects that any person or Party directly or indirectly connected with this agreement has committed or attempted to commit a Prohibited Act.
- 10.5 If the Company makes a notification to the Council pursuant to clause 10, the Company shall respond promptly to the Council's enquiries, co-operate with any investigation, and allow the Council to audit any books, records and/or any other relevant documentation.
- 10.6 If the Company is in Default under clause 10, the Council may by notice:
- 10.6.1 require the Company to remove from performance of this Agreement any Company's Employee whose acts or omissions have caused the default; or
  - 10.6.2 immediately terminate this agreement.
- 10.7 Any notice served by the Council under clause 10 shall specify the nature of the Prohibited Act, the identity of the Party who the Council believes has committed the Prohibited Act and the action that the Council has elected to take (including, where relevant, the date on which this agreement shall terminate).

## **11 THE COMPANY VEHICLES**

- 11.1 the Company warrants that each and every the Company Vehicle on the Company White List (which for the avoidance of doubt includes any revised the

Company White List) is and will remain throughout the Term of this Agreement and any Extension Period:

- 11.1.1 roadworthy;
  - 11.1.2 validly insured;
  - 11.1.3 hold a valid MOT;
  - 11.1.4 have had vehicle exercise duty paid where required;
  - 11.1.5 shall not use diesel fuel; and
  - 11.1.6 complies with any other statutory and legal requirements.
- 11.2 The Company shall fully and promptly indemnify the Council against all actions, claims, demands, proceedings, damages, costs and expenses whatsoever in respect of any breach by the Company of Clause 15.1 above.

## **12 LIABILITY OF THE COMPANY**

- 12.1 The Company shall fully and promptly indemnify the Council against all losses, costs expenses, liabilities and costs howsoever arising out of or connected with any breach by the Company of this Agreement or the operation of the Scheme and shall not do , nor omit to do anything that may result in the Council incurring any liability in relation to the Scheme or any other activity of the Company and shall similarly indemnify the Council.

## **13 INSURANCE**

- 13.1 the Company shall at all times maintain in force such policies of insurance with reputable insurers or underwriters as shall fully insure and indemnify the Company against liability:
- 13.1.1 to the Council and to any employee of the Council (Public Liability Insurance);
  - 13.1.2 to the Employees of the Company (Employers Liability Compulsory Insurance Act 1969); and
  - 13.1.3 to any other person (Public Liability Insurance).
- 13.2 In respect of Clauses 13.1.1 and 13.1.3 the insurance cover shall not be less than £10,000,000 ( ten million pounds) in respect of any one incident or such greater sum as the Council may from time to time reasonably specify or as may be required by law. In respect of Clause 13.1.2 the insurance cover shall not be less than £10,000,000 (ten million pounds) or such greater sum as may be required by law.
- 13.3 Such insurance shall have the interest of the Council endorsed (or an Indemnity to Principal clause) on the policy and the Company shall duly pay all premiums therefore and produce to the Council on request receipts therefore and shall not do or suffer or permit anything to be done which might prejudice the policy.
- 13.4 The Company shall upon request by the Council disclose to the Council all such policies of insurance, cover notes, premium receipts or other documents as

the Council may require from time to time and shall, if so requested furnish the Council with copies of any such documents.

13.5 The Council shall be entitled, ( but not obliged to and whether or not it does so, that shall not relieve the Company of any of its obligations under this clause 13, to notify the Company in writing that in the opinion of the Council any such policy of insurance does not effect sufficient cover to comply with the Conditions and to require the Company to effect such insurance as will so comply. Upon receipt of such notice, the Company shall forthwith procure and effect such insurance as the Council shall require and in default the Council may him/herself cause such insurance to be effected whereupon the Company shall pay to the Council such sum as the Council shall certify as being the cost to the Council of effecting such insurance.

13.6 The Company shall at the request of the Council (if it is reasonable to do so in the circumstances), in the places and in a form approved by the Council, arrange for notices/information to be permanently displayed giving details as to how insurance claims in respect thereof may be made.

## **14 STATUTORY REQUIREMENTS**

14.1 Without prejudice to any other provision of this Agreement, the Company shall comply with all statute, common law, statutory instruments, judicial decisions and European directives and other legal requirements relating to the subject matter of this Agreement, including (but not limited to):

14.1.1 Health and Safety at Work legislation (including all codes of practice and guidance);

14.1.2 the Data Protection Act 1998;

14.1.3 the Freedom of Information Act 2000; and

14.1.4 the employment of its Employees, agents, performers, servants, volunteers and any other persons authorised by it.

14.2 The Company shall adopt safe methods of work for all operations coming within the scope of the Agreement in order to protect the health and safety of other employees, volunteers, participants and all other persons and members of the public

14.3 Each Party shall ensure that it complies with the requirements of all legislation and regulatory requirements in force from time to time relating to the use of personal data (to the extent it is provided under this Agreement), including, without limitation, Data Protection Act 1998.

## **15 CONFIDENTIALITY**

15.1 Each party undertakes that it shall keep any information that is confidential in nature concerning the other party including, any details of its business, affairs, customers, clients, suppliers, plans or strategy (**Confidential Information**) confidential and that it shall not use or disclose the other party's Confidential Information to any person, except as permitted by this clause.

15.2 A party may:



- 15.2.1 disclose confidential information to any of its employees, officers, representatives or advisers (**Representatives**) who need to know the relevant Confidential Information for the purposes of the performance of any obligations under this Agreement, provided that such party must ensure that each of its Representative to whom Confidential Information is disclosed is aware of its confidential nature and agrees to comply with this clause as if it were a party;
- 15.2.2 disclose any Confidential Information as may be required by law, any court, any governmental, regulatory or supervisory authority (including any securities exchange) or any other authority of competent jurisdiction to be disclosed; and
- 15.2.3 use Confidential Information only to perform any obligations under this Agreement.
- 15.3 Each party recognises that any breach or threatened breach of this clause may cause irreparable harm for which damages may not be an adequate remedy. Accordingly, in addition to any other remedies and damages, the parties agree that the non-defaulting party may be entitled to the remedies of specific performance, injunction and other equitable relief without proof of special damages.
- 15.4 This clause 15 shall bind the parties during the Term and for 6 years thereafter.

## **16 NOTICE**

- 16.1 Any notice or other communication given to a party under or in connection with this Agreement shall be in writing marked for the attention of the party's Authorised Representative and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case).
- 16.2 Any notice or communication shall be deemed to have been received:
- 16.2.1 if delivered by hand, on signature of a delivery receipt;
- 16.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Working Day after posting.
- 16.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

## **17 DISPUTE RESOLUTION**

- 17.1 If a dispute arises out of or in connection with this Agreement or the performance, validity or enforceability of it (Dispute) then except as expressly provided in this agreement, the parties shall follow the procedure set out in this clause:
- 17.1.1.1 either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (Dispute Notice), together with relevant

supporting documents. On service of the Dispute Notice, the Authorised Representatives shall attempt in good faith to resolve the Dispute;

- 17.1.1.2 if the Authorised Representatives are for any reason unable to resolve the Dispute within [30] days of service of the Dispute Notice, the Dispute shall be referred to the **Council's Assistant Director of Transportation and Highways Commissioning** and the **Company's Managing Director** who shall attempt in good faith to resolve it; and
- 17.1.1.3 if the Council's Assistant Director of Transportation and Highways Commissioning and the Company's Managing Director are for any reason unable to resolve the Dispute within [30] days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR Solve. To initiate the mediation, a party must serve notice in writing (ADR notice) to the other party to the Dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR Solve. The mediation will start not later than [NUMBER] days after the date of the ADR notice.]

17.2 The commencement of mediation shall not prevent the parties commencing or continuing [court or arbitration] proceedings in relation to the Dispute under clause 24 which clause shall apply at all times.

## **18 NON-EXCLUSIVITY**

The rights granted to the Company are non-exclusive and the Council may issue Permits to other persons and organisations as it wishes.

## **19 WAIVER**

Failure by the Council at any time to enforce the provisions of this Agreement or to require performance by the Company of any of the provisions of this Agreement shall not be construed as a waiver of or as creating an estoppel in connection with any such provision and shall not affect the validity of this Agreement or any part thereof or the right of the Council to enforce any provision in accordance with its terms.

## **20 AGENCY**

- 20.1 Neither the Company nor its Employees shall in any circumstances hold itself or themselves out as being the servant or agent of the Council otherwise than in circumstances expressly permitted by this Agreement and without prejudice to the generality of the foregoing, the Company shall ensure that at all times it does not do, (or omit to do), anything that may result in the Council incurring any liability whatsoever in relation to the operation of the Scheme and shall indemnify the Council against any and all non-compliance with this provision.
- 20.2 Neither the Company nor its Employees shall in any circumstances hold itself or themselves out as being authorised to enter into any contract on behalf of the Council or any other way to bind the Council to the performance, variation, release or discharge of any obligation.

## **21 SEVERANCE**

If any provision of this Agreement shall become or shall be declared by any Court of competent jurisdiction to be invalid or unenforceable in any way such invalidity or unenforceability shall not in any way impair or affect any other provision all of which shall remain in full force and effect.

## **22 ASSIGNMENT**

The Company shall not assign sub-contract licence or otherwise dispose of any part of its rights and obligations unless agreement in writing has been given by the Council. Before considering whether to give such agreement the Council must satisfy itself that any such assignment sub-contract licence or disposal shall be in accordance with the Council's Standing Orders.

## **23 RIGHTS OF THIRD PARTIES**

The parties do not intend any provision of this Agreement to be enforceable by a third party by virtue of the provisions of the Contracts (Rights of Third Parties) Act 1999.

## **24 LAW**

This Agreement and any disputes or claims arising out of or in connection with its subject matter or formation (including non-contractual disputes or claims) are governed by and construed in accordance with English Law. The parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute, claim or matter that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

## **25. ENTIRE AGREEMENT**

- 25.1 This Agreement constitutes the entire agreement between them and supersedes all previous agreements, understandings and arrangements between them, whether in writing or oral in respect of its subject matter.
- 25.2 Each party acknowledges that it has not entered into this Agreement in reliance on, and shall have no remedies in respect of, any representation or warranty that is not expressly set out in this Agreement. No party shall have any claim for innocent or negligent misrepresentation on the basis of any statement in this Agreement.
- 25.3 Nothing in this Agreement purports to limit or exclude any liability for fraud or fraudulent misrepresentation.

## **26. HEADINGS**

Headings in this Agreement for ease of reference only and shall not affect the construction of this Agreement.

**IN WITNESS** whereof the parties have executed this Contract as a DEED the day and year first before written.

Executed as a deed by **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF BARNET** by affixing its Common Seal hereto in the presence of:

.....

**Authorised Signatory**

Executed as a deed by **DriveNow UK LTD** acting by either: two of its directors; a director and its company secretary or by a single director in the presence of a witness

.....  
Director Signature

Witness signature: .....

.....  
Director Name (BLOCK CAPITALS)

Witness name: .....

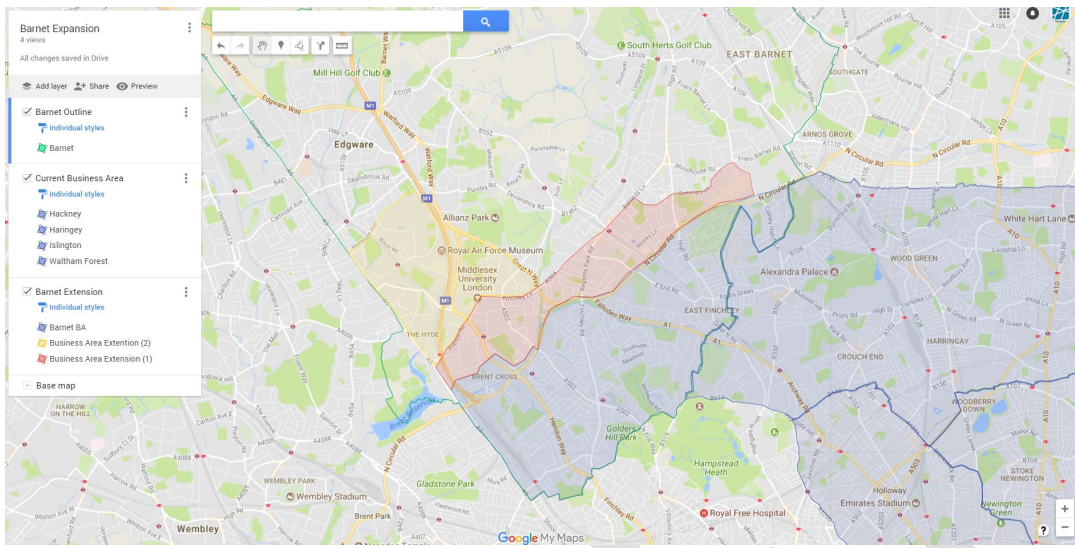
Address: .....

.....  
Director Signature

.....

.....  
Director Name (BLOCK CAPITALS)

## Annex 1 - Plan of the borough to be provided.



## **Annex 2 – Permitted Parking locations**

**A Permitted Vehicle is allowed to park within the operating area identified in Annex 1. Where a Controlled Parking Zone (CPZ) is operational within this area, parking is allowed in bays signed as:**

- **Residents parking bays (excluding housing estates and private roads) unless excluded in Annex 3**
- **Shared use (resident/pay-and-display) bays (Except where excluded in Annex 3)**
- **Pay and Display only bays**

-  
:

### **Parking is NOT allowed in:**

- Any bay outside of the operating area identified in Annex 1
- Disabled badge holders bays (except when displaying a valid blue badge)
- Car Club bays
- Electric Vehicle Charging Point Spaces (except when charging – maximum charging periods may apply)
- Business Permit Only bays
- Doctors bays
- Suspended bays
- Ambulance bays
- Taxi Ranks
- Motorcycle bays
- Coach bays
- Streets and roads where national parking restrictions apply. (i.e. yellow lines, red routes, junction boxes, zig zag lines, pedestrian crossings)
- Barnet housing estates and private roads
- Any location on the Transport for London Road Network (TLRN) for which Transport for London are the Highway and Traffic Authority. Note this includes sections of the side road off the TLRN.
- Parking bays in part-time bus lanes at times when they are bus lanes

- Parking bays where peak hour parking bans are in operation
- Selected streets or areas as defined by Barnet Council, either permanently or for temporary events as directed by the Council and informed to the Company during the operation of the Agreement. A list of some of the known annual temporary events is provided below for information only and is not warranted or guaranteed by the Council.

DRAFT

**Annex 3**

**Excluded (Red Flagged) Permitted bay locations**

<b>None</b>			

DRAFT



## **Annex 4    Authorised Representative**

### **Barnet**

Will Warrington, Interim DLO Coordinator  
Jamie Cooke, AD Transportation and Highways Commissioning  
Jamie Blake, Strategic Director- Environment

### **DriveNow**

Stephen Bee  
James Taylor

DRAFT

**Annex 5 Known Temporary Events**

DRAFT