

PARKING SERVICES COMMERCIAL AGREEMENT

BETWEEN

Stratford-on-Avon District Council

and

Beaudesert & Henley-in-Arden Joint Parish Council

and

Kerb Ltd (CN: 11161617)

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THIS AGREEMENT is made on the 31st day of August 2022

PARTIES:

- (1) **Stratford-on-Avon District Council**, whose administrative offices are at Elizabeth House, Church Street, Stratford-upon-Avon, Warwickshire, CV37 6HX (**SDC**), and;
- (2) **Beaudesert & Henley-in-Arden Joint Parish Council**, whose administrative offices are at Heritage Centre, 150 High Street, Henley in Arden, Warwickshire, B95 5BS (**JPC**), and;
- (3) **KERB LTD**, incorporated and registered in England and Wales with company number ACN 11161617, whose registered office is at 2nd Floor College House, 17 King Edwards Road, Ruislip, London, Great Britain, HA4 7AE (**KERB**).

SDC, JPC, and KERB are together referred to as the "**Parties**" and each as a "**Party**".

BACKGROUND:

- A. The exclusive partnership contemplated by this Agreement is of mutual interest and benefit to the Parties for implementing a pay-by-app parking system in Henley-in-Arden. The exclusive partnership shall be referred to as the "**Project**".
- B. Beaudesert & Henley-in-Arden Joint Parish Council is seeking a pay-by-app parking system for its car park at 1 The Croft, Henley-in-Arden B95 5DY, which shall be referred to as the "**Parking Facility**".
- C. The Parking Facility falls under the geographic legislation of Stratford-on-Avon District Council, which shall be referred to as "**Stratford-on-Avon District Council**".
- D. KERB has the ability to provide a pay-by-app parking software service respectively for the purposes of the project, which shall be referred to as the "**Pay-by-App Service**".
- E. KERB has partnered with Metric Elite LS Payment Terminal to provide a physical pay station for parkers who are unable or unwilling to use KERB's pay-by-app parking software service. Metric Elite's service shall be referred to as "**Pay-by-Terminal Service**".

THE PARTIES AGREE as follows:

1 Definitions and Interpretations

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

"**Agreement**" means this exclusive partnership agreement (whose expression shall be deemed to include its Schedules and any part thereof).

"**Confidential Information**" means all information obtained by any of the Parties from any of the other Parties pursuant to this Agreement, which is expressly marked as confidential or which is manifestly of a confidential nature or if verbally communicated which is confirmed in writing to be confidential within 30 days of its disclosure and includes the terms of this Agreement itself.

“Effective Date” means [signing date].

“Enforcement” means KERB’s enforce-by-app feature, which will be provided free-of-charge to the Parking Facility’s parking attendants.

“Intellectual Property” means trademarks, software, hardware, know-how, trade secrets and other confidential information, rights in design (registered and unregistered), copyright (including, without limitation, rights in computer software and hardware), data, database rights and *sui generis* rights, rights affording equivalent protection to copyright, trademarks, service marks, logos, domain names, business names, trade names, brand names, certification marks, assumed names and other indicators or origin, rights in any drawings, designs, plans, specifications, manuals, computer software or hardware, assets, writings and other works, whether copyright or not.

“Know-how” means unpatented, technical information (including, without limitation, information relating to software code or hardware devices, discoveries, concepts, methodologies, models, development and testing procedures, the results of experiments, tests and trials, processes, research or experimental results, techniques and specifications, quality control data, analyses, reports and submissions) that is not in the public domain.

“Markings” mean the painted lines and numbers which demarcate individual Parking Bays.

“On-site visits” means monthly visits by KERB staff to the Parking Facility.

“Parking Bay” means an individual parking area, space or slot, whose purpose is to park a single vehicle.

“Parking Facility” means The Croft car park, Henley-in-Arden.

“Pay-By-App Service” means **KERB LTD.**

“Pay-by-Terminal Service” means **Metric Elite’s LS Payment Terminal**, which shall be installed onsite at The Croft car park.

“Project” means the exclusive partnership between the Parties to deliver a pay-by-app parking system in Henley-in-Arden..

“Representative” means the representative of each Party as specified in respect of each Party, as may be notified to either Party from time to time.

“Results” means all information, Know-how, Intellectual Property, results, software, hardware, works, discoveries, Parking Facilities and revenue generated, as a direct result of the Project.

“Setup Fee” means the fee charged to the Parking Facility by KERB for listing The Croft car park on its platform.

“Signage Design” means the design of signage, delivered in digital format by KERB, for printing and installation by the Parking Facility.

“Software Services Fee” means the per-transaction fee collected by KERB for providing its pay-by-app service to the Parking Facility.

“Technology” means KERB’s car park management software, its Peer-to-Peer parking service, its digital parking access and payment system; and its KERB Box™ hardware device;

“Term” means the period of **five (5) years** from the Effective Date, unless the Agreement is terminated pursuant to Clause 11 of this Agreement.

“Territory” means Henley-in-Arden, UK.

“Third Party” means any person, group, company, organization or other entity of any nature whatsoever which is not a Party to this Agreement.

“Ticket Machine” means the Metric Elite LS Payment Terminal that will be installed at the Parking Facility.

“Transaction Fee” means the per-booking fee payable by the Operational Service Providers to the Technical Service Provider, as determined from year to year in accordance with Clauses 5.2 and 5.3.

1.2 In this Agreement the following interpretations shall apply:

- (a) The headings in this Agreement are for ease of reference only and shall not affect the interpretation or meaning of this Agreement;
- (b) The singular shall include the plural and vice versa and, unless the context otherwise requires, references to words in one gender include references to the other gender;
- (c) The expressions “include”, “includes”, “including”, “in particular” and similar expressions shall be construed without limitation;
- (d) Words such as “hereunder”, “hereto”, “hereof” and “herein” and other words commencing with “here” shall, unless the context clearly indicates to the contrary, refer to the whole of this Agreement and not to any particular section or clause thereof;
- (e) A reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended, consolidated, modified, extended or replaced in whole or in part, by any subsequent statute, enactment, order, regulation or instrument or as contained in any subsequent re-enactment thereof;
- (f) A reference to a Party shall mean any of the individual Parties to this Agreement, as appropriate, together with their respective permitted successors and assigns;
- (g) Nothing in this Agreement shall affect any statutory rights or provisions granted by mandatory statutory law or regulatory authority, which cannot be waived or limited by contract. In the event and to the extent only of any conflict or ambiguity between the terms of this Agreement and mandatory statutory law or regulatory authority, then the latter shall prevail;
- (h) A reference to “an”, “the” or “a” shall refer to the particular matter or item in

question;

- (i) Each Party shall comply with any express obligation in this Agreement to comply with any document, statute, order, enactment, regulation or other similar instrument that is referenced in this Agreement;
- (j) No provisions of this Agreement shall be interpreted as requiring or permitting any act or omission by either Party which is contrary to any mandatory statutory law or regulatory authority; and
- (k) The Parties have participated jointly in the negotiating and drafting of this Agreement. If an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of the provisions of this Agreement.

2 Scope of Project

- 2.1 Subject to the terms and conditions of this Agreement, the Parties shall collaborate in the manner, and shall perform their obligations, as set out in Schedule 1.
- 2.2 The Parties shall commence the Project promptly on the Effective Date, shall carry on the Project for the Term and shall use commercially reasonable endeavors to perform and complete the Project substantially in accordance with the terms and conditions of this Agreement and, in particular, in accordance with the terms of Schedule 1 and Schedule 2.
- 2.3 If the Agreement is entered into after the Effective Date, it will apply retrospectively to work carried out in relation to the Project on or after the Effective Date.
- 2.4 None of the Parties undertakes that the Project will lead to any particular outcome or Results and does not guarantee a successful outcome to the Project.
- 2.5 The activities of the Project will be conducted through the contractual powers of the Parties to this Agreement. This Agreement defines the terms and conditions under which the Parties shall perform their obligations for the Project.

3 Warranties and Representations

- 3.1 Each of the Parties represents and warrants to the others that:
 - (a) it has full right and authority to enter into this Agreement and perform its obligations under this Agreement and that, wherever and whenever required, such Party has or shall secure in a timely manner, all necessary notifications, authorizations and approvals;
 - (b) there are no outstanding obligations or agreements to which it is party that are inconsistent or in conflict with the entering into or performance of this Agreement;
 - (c) it is the owner of, or is otherwise fully entitled to provide and license, the computer software and hardware which it makes available to the other Parties pursuant to the provisions of this Agreement;
 - (d) except to the extent disclosed to the other Parties at the time of making the computer software and hardware available, that computer software and

hardware is capable of being used as part of the Project without requiring the consent of any third party; and

- (e) it will not assign its rights in, encumber or dispose of the computer software and hardware during such time and in a manner that would prevent or otherwise limit its intended use as part of the Project.

4 Fees

- 4.1 Service Fees and Transaction Fees shall be paid monthly, or at agreed intervals, as per the details in Schedule 2;
- 4.2 Fees will be subject to a yearly review as part of the Annual Meeting between the Parties.

5 Confidential Information

- 5.1 Each Party (as a **“Receiving Party”**) shall treat as confidential the Confidential Information of the other Party (the **“Disclosing Party”**) and shall not release or disclose it to third parties without the prior written consent of the Disclosing Party. Confidential Information of a Disclosing Party should not be disclosed to employees or consultants of the Receiving Party who are not actually working on the Project unless such personnel are members of the management or “decision makers” within the Receiving Party.
- 5.2 The obligation of confidentiality set out in Clause 5.1 shall not apply to Confidential Information which:
 - (a) is announced or published pursuant to Clause 7;
 - (b) is or becomes public knowledge prior to the receipt of such Confidential Information by the Receiving Party, other than by breach of this Clause 6 or Clause 7;
 - (c) is in the possession of the Receiving Party without restriction in relation to the disclosure before the date of receipt from the Disclosing Party;
 - (d) is independently developed by the Receiving Party without access to Confidential Information of the Disclosing Party;
 - (e) is received by the Receiving Party from a third party that has received it without restriction and who is under no obligation to restrict its disclosure;
 - (f) is required to be disclosed to the Receiving Party’s professional advisors, provided that such disclosure is to the extent necessary only for such advisors and on terms no less onerous than those set out in this Clause 6; or
 - (g) is required to be disclosed by law or final mandatory order of a court or other competent authority to which the Receiving Party is subject.
- 5.3 Each of the Parties shall ensure that its respective employees and agents who participate in the Project shall comply with the obligations of confidentiality set out in this Clause 5 as though they were Parties to this Agreement and each of the Parties shall ensure that where any of the aforementioned employees cease to be employed by that Party, they shall continue to be bound by such obligations of confidentiality.
- 5.4 Each Party agrees to use its Representatives for sending, receiving and storing

Confidential Information under this Agreement.

6 Marketing and Promotion

- 6.1 KERB agrees that SDC and JPC may use its name, brand and trademark in any advertising, promotional materials, presentations or publicity, with the prior written approval of KERB and provided that the all usage of the KERB name or brand is fully compliant with the [KERB Brand Guidelines](#).

7 Limitation of Liability and Indemnity

- 7.1 Save:

- (a) in respect of death or personal injury caused by the negligence of any of the Parties and subject to the provisions of Clause 9.2; or
- (b) in the case of a breach of this Agreement whereby any of the Parties provides, passes on or makes available to any Third Party in any way whatsoever information or data received as a result of that Party's involvement in the Project; and
- (c) without prejudice to the provisions of clauses 9.4 and 9.5,

each of the Parties liability for any claim whether in contract, tort (including negligence) or otherwise, for any loss or damage, arising out of or in connection with this Agreement or otherwise, shall in no case exceed GBP5,000.

- 7.2 None of the Parties shall be liable to any of the others for any indirect, consequential or special loss or damage and / or for any of the following:

- (a) loss of profits;
- (b) loss of goodwill;
- (c) loss of business;
- (d) loss of anticipated savings; or
- (e) loss arising from delay.

- 7.3 Save as expressly set out in this Agreement, all warranties, conditions, representations, statements, terms and provisions, express or implied by statute, common law or otherwise, are hereby excluded by each of the Parties to the fullest extent permitted by law and, for the avoidance of doubt, all such warranties by each of the Parties are expressly excluded in respect of any use of the Results by the other Parties.

- 7.4 Each Party (the "**Relevant Party**") undertakes to defend each of the other Parties from and against any claim or action brought against that other Party in connection with any use of the Results by the Relevant Party and any third party allegation of personal injury or property damage arising from the design, manufacture, use, licensing or sale of products which utilize or incorporate, directly or indirectly, the outcome of the Project including, without limitation, the Results and agrees to fully indemnify, keep indemnified and hold harmless the other Party from and against all costs, claims, demands, liabilities, expenses, damages or losses (including, without limitation, all interest, penalties and legal and other professional costs and expenses) arising out of or in connection with any Claim.

8 Termination

- 8.1 Subject to the provisions of this Clause 9, this Agreement shall continue in full force and effect for the Term unless all Parties agree to terminate it.
- 8.2 Subject to the provisions of Clause 20, any of the Parties may withdraw from the Project (and cease being a Party to this Agreement) at any time by giving not less than ninety (90) days' prior written notice to the other Parties.
- 8.3 Subject to the provisions of Clause 9 and notwithstanding anything else contained herein:
- (a) if any Party commits a material breach of any term of this Agreement and (in the case of a breach capable of being remedied) fails, within 30 days after the receipt of a notice in writing requesting it to remedy the breach; or
 - (b) if any Party shall have a receiver, examiner or administrator appointed to it or over any part of its undertakings or assets or shall pass a resolution for winding-up (otherwise than for the purpose of a *bona fide* scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction shall make an order to that effect or if the Party shall become subject to an administration order or shall enter into any voluntary arrangement with its creditors or shall cease or threaten to cease to carry on business or any analogous situation shall arise in relation to that Party,

then,

- (i) in the case of a Party to this Agreement may, forthwith on giving notice to the Party concerned, expel that Party from the Project, whereupon such Party shall cease being a Party to this Agreement; and
- (ii) in the case of either SDC or JPC or KERB, the remaining Party to the Agreement shall have the right to continue operations under the Project or terminate the agreement at that Parties sole discretion.

9 Effects of Termination/Withdrawal or Expulsion

- 9.1 Subject to the terms of this Agreement, any termination of this Agreement (howsoever occasioned) shall not affect any accrued rights or liabilities of any Party, nor shall it affect the coming into force or the continuance in force of any provision of this Agreement which is expressly or by implication intended to come into or continue in force on or after such termination.
- 9.2 Subject to the terms of this Agreement, the withdrawal or expulsion of a Party from the Project pursuant to Clause 9.2 or Clause 9.3 shall not affect any accrued rights or liabilities of any Party, nor shall it affect the coming into force or the continuance in force of any provision of this Agreement which is expressly or by implication intended to come into or continue in force on or after such withdrawal or expulsion.
- 9.3 Upon termination of this Agreement, for any reason:
- (a) each of the Parties undertakes to each of the other Parties that it will cease using the Intellectual Property, Know-how and Results provided or made available by the other Parties pursuant to this Agreement; and
 - (b) KERB undertakes to make available to the Parking Facility the database and all

relevant information and material held by them in relation to the Project and shall transfer such information and material to a nominee of the Parking Facility (to be agreed among them) as soon as reasonably practicable following termination.

- 9.4 Where a Party withdraws or is expelled from the Project pursuant to Clause 9.2 or Clause 9.3, that Party:
- (a) undertakes to each of the other Parties that it will cease using the Intellectual Property, Know-how and Results provided or made available by the other Parties pursuant to this Agreement;
 - (b) agrees, that data provided by it pursuant to the Agreement shall remain available to be used by the remaining Parties in accordance with the terms of the Agreement; and
 - (c) acknowledges and agrees that it shall no longer have any rights of ownership to the Intellectual Property and Know-how in the Results and that any such rights that it may have obtained are immediately relinquished and shall be transferred to the remaining Parties.

10 Notices

- 10.1 Any notice or communication which a Party is required or authorized by this Agreement to serve on another Party shall be sufficiently served if sent to the other Party at the address for that Party specified in Schedule 1
- (a) by registered post or recorded delivery;
 - (b) by electronic mail confirmed by a recorded delivery message.
- 10.2 Notices sent by registered post or recorded delivery shall be deemed to have been served fifteen days following the day of posting. Notices sent by electronic mail, where such is an established means of communication between the Parties, shall be deemed to have been served on the day of transmission, if transmitted before 16.00hours (in the receiving party's time zone) on a working day, but otherwise on the next working day.
- 10.3 The Parties hereby agree that:
- (a) words in electronic form shall be deemed to be "writing" for the purposes of all applicable legislation where "writing" is required;
 - (b) electronic evidence shall be admissible in any court or other quasi-judicial proceedings between the Parties; and
 - (c) the Parties shall agree the format of electronic communications between them.

11 Force Majeure

- 11.1 If the performance by either the Pay-by-App Service or the Pay-by-Terminal Service is delayed or prevented by circumstances beyond its reasonable control, including acts of God, pandemics, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lockouts, strikes or other labour disputes, KERB will not be in breach of this Agreement because of that delay in performance. However, if the delay in performance is more than 3 months, the other parties may terminate this Agreement with immediate effect by giving not less than 1 (one) month written notice to KERB.

12 Amendment

- 12.1 Any variation of this Agreement or to the performance of the Project shall only take effect upon the written agreement of the terms between the Parties.

13 Further Assurance

- 13.1 The Parties shall use all reasonable endeavors to do or procure to be done all such further acts and things and to execute or procure the execution of all such other documents as may be reasonably required from time to time for the purpose of giving each Party the full benefit of the provisions of this Agreement.

14 Waiver of Remedies

- 14.1 No delay or failure of any Party in enforcing against any other Party any term or condition of this Agreement and no partial exercise by any Party of any right under this Agreement shall be deemed to be a waiver of any right of that Party under this Agreement.

15 Entire Agreement

- 15.1 The Parties have read and understood this Agreement and agree that it constitutes the complete and exclusive statement of the agreement between them with regard to the subject matter hereof and supersedes all proposals, representations, understanding and prior agreements, whether oral or written, and all other communications between them relating to this Agreement.
- 15.2 Each of the Parties acknowledges and agrees that in entering into this Agreement and the documents referred to in it, it does not rely on and shall have no remedy in respect of any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to this Agreement or not) other than as expressly set out in this Agreement. The only remedy available to it for breach of this Agreement shall be for breach of contract under the terms of this Agreement. Nothing in this clause shall, however, operate to limit or exclude any liability for fraud.

16 Exclusive partnership

- 16.1 During the Term, the Parties shall grant to each other an exclusive partnership for the Project and neither Party shall conduct or involve in any solicitation, discussions, conversations, negotiations or other communication with any third party relating to the Project or with an intent to collaborate with such third party in a project having similar nature as the Project.

17 No Agency

- 17.1 No provision of this Agreement creates a partnership between the Parties and none of the Parties shall act or describe itself as the agent of the other, nor shall it make or represent that it has authority to make commitments on any other Party's behalf.

18 Assignment

- 18.1 This Agreement is personal to the Parties and none of the Parties may assign, transfer, sub-contract or otherwise part with this Agreement or any right or obligation under it without the prior written consent of the other Parties (such consent not to be unreasonably withheld or delayed).

19 Dispute Resolution

- 19.1 The Parties to this Agreement shall seek to resolve any dispute between the Parties or any of them arising out of, or relating to, this Agreement, amicably.
- 19.2 All disputes between the Parties or any of them arising out of or relating to this Agreement shall be referred in writing, in the first instance to the Working Group for resolution.
- 19.3 If any dispute cannot be resolved by the Working Group within a period of fourteen (14) days following referral, then the dispute shall be referred to all the Representatives for resolution.
- 19.4 If the dispute cannot be resolved by the Representatives within a period of fourteen (14) days following referral, then the Parties shall first seek settlement of the dispute by mediation in accordance with the Alternative Dispute Resolution (ADR), whose rules are deemed to be incorporated by reference into this Clause.
- 19.5 If the dispute is not settled by mediation within 90 days of the appointment of the mediator, or such further period as the Parties shall agree in writing, the dispute shall be referred to and finally resolved by arbitration under the London Court of International Arbitration (LCIA) Rules, whose rules are deemed to be incorporated by reference into this Clause. In any arbitration commenced pursuant to this Clause the number of arbitrators shall be one and the seat or legal place of arbitration shall be London, UK.

20 Severability

- 20.1 In the event that any provision of this Agreement is declared by any judicial or other competent authority to be void, voidable, illegal or otherwise unenforceable, the Parties shall amend that provision in such reasonable manner as achieves the intention of the Parties without illegality, or such provision may be severed from this Agreement and the remaining provisions of this Agreement shall remain in full force and effect.

21 Execution by PDF Electronic Mail and Counterpart

- 21.1 This Agreement may be executed in any number of counterparts, each of which, when so executed, shall be an original, but all counterparts shall together constitute one and the same instrument.
- 21.2 The Parties agree that PDF Electronic Mail copy of this Agreement, including its signature pages, shall be deemed to be an original, however, notwithstanding this, the Parties shall arrange to deliver original signed copies of the Agreement to each other as soon as practicable after signing.

22 Costs

- 22.1 Each of the Parties shall bear their own legal and professional advisers costs and expenses in connection with the negotiation and entering into of this Agreement.

Part B – SDC, PDC, KERB

Name	Address	Contact Details	Representative(s)
Stratford-on-Avon District Council	Elizabeth House, Church Street, Stratford-upon-Avon, Warwickshire, CV37 6HX	contact@email.com	First Last Name
Beaudesert & Henley-in-Arden Joint Parish Council	Heritage Centre, 150 High Street, Henley in Arden, Warwickshire, B95 5BS	contact@email.com	First Last Name
KERB LTD	2 nd Floor College House 17 King Edwards Road Ruislip London GRB HA4 7AE	paul.birkin@kerb.works rob.brown@kerb.works	Paul Birkin Rob Brown

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Schedule 1

SCOPE OF PROJECT

1. Scope of Works
 - 1.1 KERB will provide the following resources (human and other):
 - 1.2 The Parking Facility will provide the following resources (human and other):

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Schedule 2

Transaction & Service Fees

2. FINANCIAL CONTRIBUTION

2.1 The Parking Facility's financial contribution will be:

2.2 KERB's financial contribution will be:

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Schedule 3

Conflicts of Interest

It is in the interests of the Parties to declare and manage conflicts of interest. To this end, the Parties should ensure that they have policies and procedures in place to identify and, if necessary, address conflicts of interest. The Parties should declare to all other Parties, in writing prior to signing this Agreement, and within thirty (30) days of any conflict of interest arising during the course of the Project, the nature of the conflict of interest.

In particular, the Parties should

- establish procedures that help research employees to recognise areas where conflicts of interest may occur;
- maintain a policy for the management of conflicts of interests;
- encourage full disclosure of potential areas of conflict through open discussion between the parties at an early stage of the Project;
- document any identified conflicts in writing;
- agree how identified conflicts will be managed; and
- manage and resolve conflicts as they occur.

EXECUTION PAGES

EXECUTED on the _____ day of September 2022

The Parking Facility

Beaudesert & Henley-in-Arden Joint Parish Council

SIGNED by a duly authorised signatory for and on behalf of
Beaudesert & Henley-in-Arden Joint Parish Council

By: _____

Signature: _____

Title: _____

Witness: _____

Stratford-on-Avon District Council

SIGNED by a duly authorised signatory for and on behalf of
Stratford-on-Avon District Council

By: _____

Signature: _____

Title: _____

Witness: _____

The Pay-by-App Service Provider

KERB LTD

SIGNED by a duly authorised signatory for and on behalf of
KERB LTD

By: _____

Signature: _____

Title: _____

Witness: _____