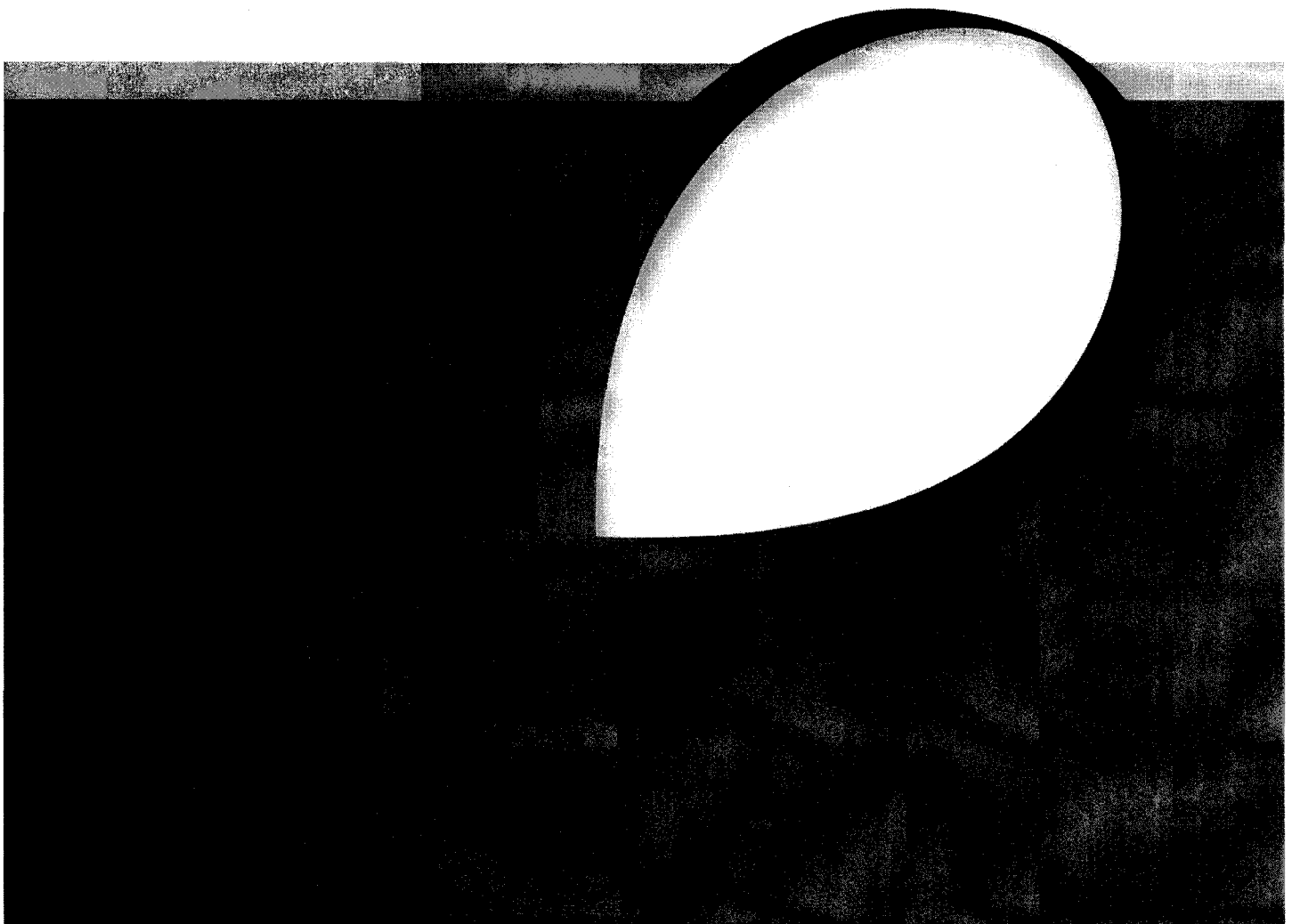




ITEM # 18-0805

City of Santa Fe, NM

Extended Parts Warranty Agreement



Revision History

01	08/29/2012	L. DEPERROIS	Initial revision

Reference document

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1. PARTIES TO AGREEMENT / PERIOD OF PERFORMANCE

- 1.1 This Agreement, dated as of April 13, 2018 is made by and between PARKEON Inc. ("Parkeon") a corporation organized and existing under the laws of the State of Delaware, having an office at 40 Twosome Drive, Suite 7, Moorestown, NJ 08057, USA and the city of Santa Fe, NM or "Customer").
- 1.2 Parkeon is to provide the services listed below to the Customer upon the terms and conditions outlined in Article 2 commencing July 1, 2018 for an initial period of twelve (12) months (the "Initial Period"). At the end of the Initial Period, the Agreement shall be automatically renewed for one (1) additional Services Agreement Period of twelve (12) months upon the same terms and conditions, unless one Party gives written notice of non-renewal or price increase to the other Party at least sixty (60) calendar days prior to the end of the Initial Period.

Individually referred to as the "Party", collectively to as the "Parties".

- 1.3 Parkeon reserves the right to adjust the pricing for the services annually. Any price adjustment will be implemented on the renewal date of this Agreement.
- 1.4 Failure of the Parties to agree to new pricing within sixty (60) calendar days will entitled Parkeon to terminate the Agreement with immediate effect by serving written notice to the Customer.

4. GENERAL TERMS AND CONDITIONS

4.1. PARKEON DELIVERY OF SERVICES UNDER AGREEMENT

- 4.1.1 Parkeon will provide Level II Remote Technical Support when Customer consistent with Level I training and diagnosis/Service materials is not able to adequately service the Multi-space meters,
- 4.1.2 Parkeon will provide parts replacement as specified in Appendix C.
- 4.1.3 Parkeon will provide the Services with care and skill consistent with applicable industry standards.
- 4.1.4 Parkeon will maintain a properly staffed Level II Remote Call-in Service operation to assist Customer with the full range of diagnostics and repair activities. Support will be available during Parkeon's regular business hours (Monday-Friday 8:00am/8:00pm EST) excluding holidays.
- 4.1.5 Parkeon will maintain a log of all Service incidents which will document the service problem, and relevant hardware/network environment as applicable and contact information. This log will be available to Customer upon reasonable request.
- 4.1.6 Parkeon will take all technical and commercially reasonable measures to provide a resolution within four (4) business hours of receipt of Owner's request for assistance.
- 4.1.7 Parkeon will escalate back office support requests to Level III if, within four (4) business hours, a resolution is not implemented.
- 4.1.8 Parkeon will convene regular Service review meetings with Customer to review Service history.
- 4.1.9 Parkeon will guard and maintain the confidentiality of all, logins, passwords and personal identification provided in connection with the Services against unauthorized use of the Services.
- 4.1.10 Parkeon will be entitled to subcontract in part or whole performance of the Services to be provided under this Agreement with prior written consent of Customer, such written consent not being unreasonably withheld.

4.2. CUSTOMER PARTICIPATION

- 4.2.1 Customer is responsible for Level I Technical Service and maintenance for all machines as specified in Appendix B.
- 4.2.2 Prior to requesting Level II support services, Customer will have attempted to service the Multi-space meters, consistent with Level I training and diagnosis/Service materials and encountered issues that it cannot resolve.
- 4.2.3 Customer will submit all requests into Parkeon's Technical Support using the contact method specified in Appendix A and provide all necessary information to permit Parkeon to perform the required services.

Customer will update Parkeon in writing of any changes to such information (especially any change of address) and be available to work with the Parkeon's support resource assigned to the support request.

- 4.2.4 Customer will maintain a local supply of spare parts sufficient to meet the desired repair timelines. The standard Return of Materials Authorization procedure is attached in Appendix D.
- 4.2.5 Customer will protect technical information and know-how from unnecessary disclosure, maintain the confidentiality of all logins, passwords and personal identification used in connection with the Services and generally safeguard such information to ensure that there is no unauthorized use of the Services.

4.3. ADDITIONAL WORK

The following Services are not within the scope of this Agreement. Upon request, Parkeon will provide to Customer a technical and cost proposal to provide related requested additional services ("Additional Work"). Prior to performance, Customer shall authorize in writing the scope of such Additional Work and compensation payable to Parkeon for the full performance of the Additional Work.

- 4.3.1 Evaluation or Procurement of new software or hardware.
- 4.3.2 Evaluation or approval of new software or hardware for use by the Customer in conjunction with Parkeon products or Services including Customer and third party systems.
- 4.3.3 Deployment of a new software release at the machine.
- 4.3.4 Tariff or parameters changes.
- 4.3.5 Additional training for Customer technicians with respect to basic maintenance, troubleshooting, repairs, component replacement and operations such as programming and inventory.
- 4.3.6 Providing of a qualified technician, on mutual agreed upon date and duration to perform On-Site Level II support or remedial maintenance. At least two (2) weeks advance notice is required to ensure that Level II on-site support is available. To insure Parkeon's proposal properly addresses Customer's needs, Parkeon requests that Customer identify at the time of the request the issues that need to be addressed during the on-site visit and have available the necessary spare parts and consumables needed to restore the Multi-space meter up to Parkeon specification.
- 4.3.7 Assistance with Parkfolio back office or Multi-space meters usage when unsupported or non-standard hardware or software has resulted in unexpected behavior of otherwise reliable systems.
- 4.3.8 Adaptive maintenance: Defined as activities relating to upgrades or conversions of Parkfolio back office application, the Multi-space meters or its associated operating environment, in which the Parkeon products are functioning.
- 4.3.9 Modifications, updates or enhancements to original application required or desirable on account of changes in Customer's organization or business needs (such as a reorganization or change in the business practice) may make the current specification obsolete..
- 4.3.10 Re-training of staff and any additional new hire training after initial training.

4.3.11 Remove, reinstall or relocate the Multi-space meters.

4.4. FEES – INVOICING AND PAYMENT OBLIGATIONS

In consideration for receiving the Services, Customer shall pay to Parkeon the fees as set forth in the Article 2 Scope of Services above as follows:

- 4.4.1 Parkeon will send invoices to the Customer as per the invoicing frequency period and the currency set forth in the Article 3 above which invoice is due and payable within thirty (30) days of receipt.
- 4.4.2 In the event that there is an increase in the number of units being provided under this Agreement, then each additional Multi-space meter shall likewise have a Service charge based on the monthly per machine charge in effect at the time of installation provided.
- 4.4.3 Absent prior notification to and approval of the Customer, the total amount payable to Parkeon under this Agreement for the full twelve (12) month term of the Agreement, plus any subsequent renewal terms of twelve (12) months, shall not exceed \$11,430.00 per twelve month period. This amount will be increased accordingly upon article 4.4.2. This amount is excluding any applicable taxes relating to the base Service provided under the terms of this Agreement.
- 4.4.4 To the extent that a disagreement arises in connection with the sum due and owing under the Agreement, Customer agrees to pay the undisputed amount of the invoice within the contractual deadline set forth in the 4.4.1 above.
- 4.4.5 If amounts due and owed to Parkeon remain unpaid past the due date, Parkeon shall be entitled to interest of two percent (2.00%) commencing on the due date of the payment.
- 4.4.6 If amounts due and owed to Parkeon remain unpaid past sixty (60) calendar days of the due date, Parkeon shall be entitled to terminate the Agreement with immediate effect by serving written notice to the Customer.



4.5. TERMINATION

4.5.1 Termination for Non-Appropriation of Funds. This Agreement shall terminate without penalty at such time as appropriated funds are not available to satisfy the obligations of Customer hereunder. The failure of Customer to make an appropriation in any given year shall not be deemed a breach of this Agreement, nor give rise to any cause of action by Parkeon for legal or equitable relief. Customer shall, provide Parkeon written notice sixty (60) calendar days prior to such non-appropriation termination and shall pay to Parkeon all sums due and owing under the Agreement.

4.5.2 Termination for Convenience. Notwithstanding any other provision of this Agreement, Customer may terminate this Agreement (in whole or in part) without cause sixty (60) days following delivery of a written Notice of Termination to Parkeon.

4.5.2.1 Upon receipt of a Notice of Termination, and except as otherwise agreed between Parkeon and Customer, Parkeon shall immediately proceed with the following actions:

4.5.2.1.1 Stop work as specified in the Notice.

4.5.2.1.2 Place no further orders for materials, services, or facilities, except as necessary to complete any part of the Agreement not subject to termination.

4.5.2.1.3 Cancel all cancelable orders and terminate all subcontracts to the extent they relate to the Work terminated.

4.5.2.1.4 Assign to Customer, and deliver to the work site, any non-cancelable orders for material and equipment that is not capable of use except in the performance of this Agreement.

4.5.2.1.5 Take all reasonable measures to mitigate Customer's liability under this section.

4.5.2.1.6 Complete performance of non-terminated work.

4.5.2.2 Upon termination of the Agreement without cause, Customer shall immediately pay Parkeon all amounts due and owing under the Agreement up to the date of termination, all non-cancelable costs for material and equipment that cannot be used other than in connection with this Agreement, ~~and ten (10%) percent of the difference between the Total Agreement Price and all payments due to Parkeon prior to termination of the Agreement.~~



4.5.3 Other Termination. Without prejudice to any other rights or remedies to which the Parties may be entitled, either Party may:

4.5.3.1 Terminate the Agreement in the event of a material breach of this Agreement which, if capable of remedy, is not remedied within thirty (30) calendar days of its notification to remedy such breach to the other Party in writing and setting forth in reasonable detail the nature of the alleged breach;

4.5.3.2 Immediately upon (i) appointment of a receiver or administrator over the other Party or its assets or if the other Party is subject to court-ordered bankruptcy, liquidation or any analogous proceedings under laws of any competent jurisdiction or (ii) the other Party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its activity under this Agreement;

- 4.5.3.3 In the event of a Force Majeure affecting the Agreement for an uninterrupted period of over three (3) months (an event beyond the control of the Parties such as but not limited to fire, flood, trade disputes, strikes, mobilization, levy, embargo, lack of transportation, lack of supplies) impeding or rendering prohibitive the fulfillment of the obligations under this Agreement as of the date of the notice of Force Majeure.
- 4.5.4 On termination of the Agreement by Customer for any reason under 4.5.3, Parkeon shall be paid any amounts owed under the Agreement up to the date of termination.
- 4.5.5 Parkeon shall not by reason of the termination of this Agreement be liable to Customer for reimbursement or damages on account of the loss of prospective profits or on account of expenditures, investment, leases or commitments in connection with the business or goodwill of Parkeon or of the Customer or otherwise or for costs associated with substituted performance.

4.6. INTELLECTUAL PROPERTY

- 4.6.1 Customer agrees that all Intellectual Property Rights, confidential know-how, tools, methods, skills, trade secrets, graphics, logos and trade names used by Parkeon in performing its obligations under this Agreement ("Intellectual Property Rights") are, and will remain, the property of Parkeon (or the third-party who has granted Parkeon the right to use them) and nothing in this Agreement or Parkeon's performance under this Agreement will be deemed to transfer to Customer any such Intellectual Property Rights of Parkeon or any third-party.
- 4.6.2 Customer acknowledges that the name "PARKEON" and any other trademark, brand name, trade name and logotype associated with the Products or services of Parkeon (hereinafter referred to as "PARKEON Trademarks") whether or not registered, are and shall remain the property of the owner of the Trademarks, being Parkeon or one of its affiliates, and that Customer has no right, title or interest in PARKEON Trademarks during the term of this Agreement or thereafter except as provided otherwise herein.
- 4.6.3 The Parties both agree that except as otherwise provided herein, neither Party can utilize the intellectual property rights of the other.
- 4.6.4 Parkeon shall defend or, at its option, settle any claim or action brought against Customer alleging that the use of the Services as provided under the Agreement and as used within the scope of the Services granted to Customer, infringes the Intellectual Property Rights of a third-party, provided that (i) this infringement claim is not attributable (a) to a use other than in accordance with this Agreement regardless of whether the use is in combination with any service(s) not furnished by Parkeon, or (b) to the use of a non-current release of the Software and that (ii) Customer gives reasonable notice and cooperation to Parkeon in connection with the defense of such claim, makes no admission or settlement in respect of such claim and that Parkeon directs and controls such defence.

- 4.6.5 Software licensing: Parkeon will provide Customer a license to use Pay Station software and Parkfolio back office. Parkeon does not provide software or licensing for software being used with Parkeon products that is not part of the Parkeon Pay Station, Parkfolio back office, or other Parkeon products provided by Parkeon to Customer under this Agreement. Customer shall provide such software and licensing as needed.

4.7. PROPRIETARY AND CONFIDENTIAL INFORMATION


- 4.7.1 Proprietary Information (hereafter "Proprietary Information") means object code, source code and any benchmark tests for the Services, pricing and other information Identified as proprietary, but excludes: (a) information made available to the general public without restriction by the disclosing Party or by an authorized third-party, (b) information known to the receiving Party independent of disclosures by the disclosing Party, (c) information independently developed by the receiving Party without access to or use of the disclosing Party's Proprietary Information, or (d) information related to the Agreement that the receiving Party may be required to disclose pursuant to the applicable Freedom of Information statutes or pursuant to subpoena or other lawful process initiated by a governmental authority or by the disclosing Party, provided that the receiving Party notifies the disclosing Party of the lawful process to allow the disclosing Party to appear before the governmental authority and protect its interests, and such disclosure complies with applicable law.
- 4.7.2 Confidential Information (hereafter "Confidential Information") means non-disclosable data, but shall exclude (a) information known to the receiving Party independent of disclosures by the disclosing Party, (b) information independently developed by the receiving Party without access to or use of the disclosing Party's confidential information, or (c) Information related to the Agreement that the receiving Party is required to disclose pursuant to applicable Freedom of Information statutes or pursuant to subpoena or other lawful process initiated by a governmental authority or by the disclosing Party, provided that the receiving Party notifies the disclosing Party of the lawful process in a timely manner to allow the disclosing Party to appear before the governmental authority and protect its interests, and such disclosure complies with applicable law.
- 4.7.3 The Parties shall use reasonable efforts to protect each other's Proprietary and Confidential Information from disclosure. Neither Party is entitled to disclose the other Party's Confidential or Proprietary Information without prior written consent of the other Party, which may be withheld in the other Party sole and absolute discretion.

Provided the other Party's prior written consent has been obtained, the Party may disclose in confidence the other Party's Confidential or Proprietary Information on a need-to-know basis to such Party's contractors and subcontractors that have executed a non-disclosure agreement, and the Party making that disclosure shall be responsible for that person's compliance with these restrictions on disclosure and use.

- 4.7.4 Upon termination of this Agreement, the Parties shall securely dispose of all information received and shall make no further use of it. The termination shall not serve to release any Party from its obligations regarding confidentiality under this article that shall remain in force for a period of two (2) years after the date of termination.
- 4.7.5 As a municipal corporation, Customer may have an obligation to disclose public records pursuant to applicable Freedom of Information statutes. To avoid disclosure of Parkeon Proprietary Information, any documents that contain trade secrets will be clearly marked "Proprietary" prior to submission to Customer. Upon citizen request for disclosure pursuant to the applicable statutes, all documents marked "Proprietary" shall be immediately returned to Parkeon, and notice shall be given allowing Parkeon to contest such disclosure.

4.8. LIABILITY AND WARRANTY

- 4.8.1 This clause sets out the liability of Parkeon in its entirety (including any liability for the acts or omissions of its employees, agents, consultants and subcontractors) to Customer in respect of any claims relating to (i) Parkeon's performance of the Agreement (ii) any breach of this Agreement (iii) any use made by the Customer of the Services, or (iv) any representation, statement or act or omission (including negligence) of Parkeon arising under or in connection with this Agreement.
- 4.8.2 Notwithstanding any other provision of this Agreement or rule of law or statutory provision, in no event shall Parkeon be liable to Customer whether in tort, contract, innocent misrepresentation or in any other legal theory, for (i) any special, indirect, incidental or consequential loss, costs, damages, charges or expenses; or (ii) loss of profits, or (iii) loss of business, contracts, business opportunities; or (iv) loss of income, anticipated savings; or (v) damage to reputation or (vi) loss of anticipated savings or (vii) loss or corruption of data or information; or (viii) any degradation which occurs in relation to the network or associated software or hardware of the Customer as a result of the performance of the Services.
- 4.8.3 Parkeon shall not be liable for any failure arising from the cellular communication network or any product or service supplied by a third-party. Parkeon does not warrant that the cellular communication network will be fault free or free of interruptions. Parkeon Multi-space meters communicate through public cellular communication networks. The cellular providers may experience capacity, interference, equipment and other problems which are unforeseeable and outside Parkeon's ability to correct. The cellular providers may make unannounced changes to their Services which impact communications. It may also happen that the cellular provider announces the end of life of the Services. Parkeon is in no way liable for the impacts caused by the actions of the cellular providers, including loss of revenue and hardware upgrade requirements. Parkeon provides no guarantee regarding the time for the cellular provider to resolve the problem. Parkeon's sole obligation in this regard is to treat communications problems that impact Multi-space meters performance as a priority issue and work with the cellular provider to resolve the problem.

- 4.8.4 Data is saved in accordance with current data protection and back up standards. However, complete security cannot be guaranteed. In the event of data loss or data errors, Parkeon shall not be held liable unless this was the result of gross negligence. Customer must archive their data and historical analysis for data older than 90 days.
- 4.8.5 Parkeon shall not be held liable for any direct, indirect and/or consequential damages, consecutive or not, resulting to the Customer from attempted fraud, trespass, misappropriation, malfunction of a third-party system, acts or omissions of a third-party, infiltration or disruption of Parkeon services by a third-party by any means, including without limitation, DDoS attacks, software viruses, Trojan horses, worms, time bombs or any software programs or technology designed to disrupt or delay the Parkeon's services or other catastrophes or any other occurrences which are beyond such Parties' reasonable control.
- 4.8.6 Parkeon's maximum aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or any other legal theory for damages arising out of or relating to this Agreement, is limited to an amount equivalent to the sum of Parkeon fees, ~~paid in the three (3) months preceding any such claim.~~ 
- 4.8.7 Parkeon makes no warranty express or implied that all security threats and breaches and vulnerabilities will be detected. Parkeon may be required to reduce or suspend Services for a limited period to enable technical or maintenance operations to be improved, upgraded or conducted or to avoid an imminent threat of material harm to Parkeon or to anyone else and Parkeon will use best efforts to minimize any inconvenience to the Customer caused by such reduction or suspension of Services.

4.9. EXTENSION OF TIME FOR FORCE MAJEURE

- 4.9.1 Should a case of Force Majeure arise or any circumstances beyond the control of the Parties (such as but not limited to fire, flood, trade disputes, strikes, mobilization, levy, embargo, lack of transportation, lack of supplies) impeding or rendering prohibitive the fulfillment of the obligations under this Agreement, the period allowed to fulfill these obligations shall be extended by the duration of said events and the performance of said obligations shall be resumed spontaneously and immediately upon termination of these events. In order to benefit from this extension, the Party wishing to invoke a case of Force Majeure must immediately inform the other Party in writing, of its commencement as well as of its termination.
- 4.9.2 In such event, the affected Party shall promptly notify the other Party and will do its best efforts to eliminate, cure or overcome any such causes and to resume performance of its obligations with all possible speed.
- 4.9.3 If as a result of a Force Majeure event, performance of this Agreement within a reasonable period is rendered impossible, each Party shall have the right to cancel said Agreement by a simple written notice, without having to request court consent to cancellation.

4.10. GOVERNING LAW AND JURISDICTION



4.10.1 This Agreement made in two original counterparts in the English language shall be governed by and construed in accordance with the laws of the State of ~~New York~~ New Mexico.

4.10.2 All disputes or claims arising under this Agreement shall be amicably solved. In the event the dispute or claim cannot satisfactorily be resolved amicably, the Parties agree to submit such disputes or claim to binding arbitration. Arbitration shall be held in ~~Moorestown, New Jersey~~ Santa Fe, New Mexico. The commercial arbitration rules of the American Arbitration Association shall apply. Any judgment, decision, or award by the arbitrators shall be final and binding on the Parties and may be enforced in any court having jurisdiction over a Party against whom any such judgment, decision, or award is to be enforced. The Parties shall bear their own costs and expenses (including attorney's fees) for any arbitration, unless otherwise directed by the arbitrator.

4.11. CONTRACTUAL DOCUMENTS

4.11.1 The contractual documents which govern the dealings between the Parties are as follows, listed by order of precedence:

- Changes, modifications, amendments and extension of this Agreement
- The Agreement including its Appendices,
- Parkeon's Response to Bid # _____ dated _____
- Customer's Request for Proposal or Information for Bidders issued _____ as amended.

4.12. NOTICES

4.12.1 Addresses may be changed by either Party from time to time and shall be notified to the other Party. All notices and other communication hereunder shall be deemed to have been given as of the date of delivery by hand, or five (5) working days after posting when mailed by registered or certified mail, postage prepaid, or twenty-four (24) hours after dispatch if sent by facsimile during business hours of the receiving Party. Refusal to accept delivery has the same effect as receipt.

4.12.2 Notices or other communications to either Party shall be made in writing and addressed to the relevant Party at its address as stated below:

PARKEON INC.
40 TWOSOME DRIVE, UNIT #7
MOORESTOWN, NJ 08057
USA
Attention: Mr. Lionel DEPERROIS

CITY OF SANTA FE, NM

USA
Attention: _____

4.13. GENERAL

- 4.13.1 This Agreement including appendices represents the entire agreement between the Parties.
- 4.13.2 This Agreement supersedes and cancels all other agreements, written or oral, between the Parties relating to the Extended Warranty Services. All prior or contemporaneous agreements, understandings, and statements, oral or written, are merged into this Agreement.
- 4.13.3 The failure of any Party to insist upon strict performance of any of the terms or conditions herein, irrespective of the length of time for which such failure shall continue, shall not be a waiver of that Party's right to demand strict compliance in the future. No consent or waiver, express or implied, to or of any breach or default in the performance of any obligation under this Agreement shall constitute a consent or waiver to or of any other breach or default in the performance of the same or any other obligation of this Agreement. No waiver or consent shall be effective unless in writing and signed by the Party against whom such waiver or consent is asserted.
- 4.13.4 The terms and conditions of this Agreement shall be binding only upon written agreement signed by the duly qualified representatives of each Party.
- 4.13.5 The Parties may amend or modify this Agreement at any time, provided that such amendment(s) or modification(s) make specific reference to this Agreement, and are executed in writing by a duly authorized representative of both Parties. Such amendment(s) or modification(s) shall not invalidate this Agreement, nor relieve or release the Parties from their obligations under this Agreement.
- 4.13.6 Neither Party shall be bound by any condition, definition, guarantee or representation other than those set forth in this Agreement.
- 4.13.7 Nothing contained in this Agreement is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer and employee between the Parties. Parkeon shall at all times remain an independent contractor with respect to the services to be performed under this Agreement. The Customer shall carry no workers' compensation insurance, health or accident insurance to cover Parkeon for any type of loss which might result to Parkeon or its employees, in connection with the performance of the services set forth in this Agreement. The Customer shall not pay any contribution to Social Security, unemployment insurance, federal or state withholding taxes, nor provide any other contributions or benefits which might otherwise be expected in an employer-employee relationship, it being specifically agreed that Parkeon is not an employee of the Customer.
- 4.13.8 Provided the other Party's prior written consent has been obtained, each Party shall have the right to make reference to the name, trademarks and logo of the other Party (provided that such reference shall not refer to the content of this Agreement) in any marketing literature, on all websites, on any media and any commercial documents and brochures of the other Party.
- 4.13.9 The officials who executed this Agreement hereby represent and warrant that they have full and complete authority to act on behalf of Parkeon and Customer, respectively, and that their signatures below, the terms and provisions hereof, constitute valid and enforceable obligations of each.

4.13.10 In the event any section, subsection, subdivision, paragraph, subparagraph, item, sentence, clause, phrase, or word of this Agreement is declared or adjudged to be invalid or unconstitutional, such declaration or adjudication shall not affect the remaining provisions of the Agreement, as if such invalid or unconstitutional provision was not originally a part of the Agreement.

IN WITNESS WHEREOF, THE DULY AUTHORIZED REPRESENTATIVES OF THE PARTIES HAVE EXECUTED THIS AGREEMENT.

Approved as to Legality and Form:

For CITY OF SANTA FE, NM SEE ATTACHED SIGNATURE PAGE By signing I confirm that, - I have read, understood and accepted the general terms and conditions of this agreement.	For PARKEON Date: <u>7/16/10</u> Name: Ron KROES as Title: Chief Finance Officer for PARKEON INC. Signature: _____ By signing I confirm that, - I have read, understood and accepted the general terms and conditions of this agreement.
---	--

CITY OF SANTA FE :


ERIK LITZENBERG, INTERIM CITY MANAGER

DATE: 7/5/18

ATTEST:


YOLANDA Y. VIGIL, CITY CLERK *oew*

APPROVED AS TO FORM:

 6/21/18
GEMO ZAMORA, INTERIM CITY ATTORNEY

APPROVED:

 7/2/18
BRADLEY FLUETSCH, INTERIM FINANCE DIRECTOR

52156.520300
Business Unit/Line Item

CRS # 03198329004
City of Santa Fe 2018 Business License # 18-00121766
Parkeon Service Extended Parts Warranty Agreement

CITY OF SANTA FE / PARKEON (CONTRACTOR) ADDENDUM

INDEMNIFICATION

The Contractor shall indemnify, hold harmless and defend the City from all losses, damages, claims or judgments, including payments of all attorney's fees and costs on account of any suit, judgment, execution, claim, action or demand whatsoever arising from Contractor's performance under this Agreement as well as the performance of Contractor's employees, agents, representatives and subcontractors.

NEW MEXICO TORT CLAIMS ACT

Any liability incurred by the City of Santa Fe in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Section 41-4-1, et. Seq. NMSA 1978, as amended. The City and its "public employees" as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, do not waive any defense and do not waive any limitation of liability pursuant to law. No provision in this Agreement modifies or waives any provision of the New Mexico Tort Claims Act.

APPROPRIATIONS

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the City for the performance of this Agreement. If sufficient appropriations and authorization are not made by the City, this Agreement shall terminate upon written notice being given by the City to the Contractor. The City's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final.

THIRD PARTY BENEFICIARIES

By entering into this Agreement, the parties do not intend to create any right, title or interest in or for the benefit of any person other than the City and the Contractor. No person shall claim any right, title or interest under this Agreement or seek to enforce this Agreement as a third party beneficiary of this Agreement.

APPENDIX A

LEVEL II REMOTE TECHNICAL SUPPORT

Parkeon will provide Level II Remote Technical Support between the hours of 8:00AM and 8:00PM EST Monday through Friday excluding company holidays. The primary method of contacting Parkeon is via email:

parkfolio_support@moorestown.parkeon.com

A request number will be generated and can be referred to in correspondence and discussions to the issue.

In a situation where Level I Service is exhausted and is of an urgent nature you may contact Parkeon Level II Remote Technical Support via telephone at:

Toll free: 1 (800) 732 - 6868 x 244.

APPENDIX B

LEVEL I TECHNICAL SERVICE AND MAINTENANCE

Customer is responsible, through its trained staff, for performing Level I Technical service and maintenance for all Pay Stations covered through this Agreement.

Technical Services

1. Open the machine and remove or replace any internal component.
2. Execute self diagnostic and other repair processes, which was outlined in Service training and are also documented in the Service Guide and other documentation that were provided at the time of training.
3. Installation of the programming changes to the Pay Station using the maintenance procedures that are available at the maintenance keyboard on the Pay Station and explained during Level I service training.
4. Maintain a log of repair activities performed by the technicians, which will be available for reference purposes during a call to Level II Technical Support.
5. Ensure that the Service staff working on the Parkeon's devices has successfully completed the full training program provided by Parkeon and maintain the certification level of all staff members that are performing technical Service to the Multi-space meters or operating ParkFolio back office software.
6. Completion of all prescribed Level I diagnostics and repair steps prior to escalating the problem to Level II support.
7. Ensuring that trained Level I service staff, as described in subsection above, are the people making contact to the Level II helpdesk.
8. Use their own appropriate IT group to provide desktop client, server, network, and infrastructure Service necessary to maintain the proper functioning of the ParkFolio system.
9. Provide all information required to open a support request with Parkeon Level II Service and make themselves available to work with the Parkeon support resource assigned to the support request.
10. Complete the recommended Multi-space meters preventative maintenance process and intervals to maximize useful life of the parts within the Multi-space meters.
11. Maintain the concrete mounting pad and mounting hardware per installation specifications.
12. Maintain all electrical installation accessories other than those that form an integral part of the Multi-space meters, as well as electrical connections to the Multi-space meters.
13. Maintain a log of all parts replacements which will be made available to Parkeon upon demand.
14. The Customer must archive their data and historical analysis for data older than 90 days.

Parkfolio Services

1. Maintenance of desktop and file server computers, LAN connections, internet connections and other aspects of the operating environment in a manner that allows the operation of and compatibility with the Parkfolio software.
2. Requiring all staff using Parkfolio to have successfully completed the full Parkfolio training program as provided by Parkeon.
3. Creation, execution and management of various reports regarding use of data in Parkfolio.
4. Completion of all prescribed Level I diagnosis and repair steps prior to escalating the problem for Level II Service.
5. Customer will use their own appropriate Information Technology or Information Services group to provide server, network, firewall, and infrastructure support services, including Web server, authentication software, WebObjects' Monitor, software installation, application installation on production servers, database connections, and database changes.
6. Customer will provide all information required to open a support request with Parkeon Level II support and make themselves available to work with the Parkeon support resource assigned to the support request.

APPENDIX C

EXTENDED PARTS WARRANTY

***Note :** To enroll in this program, the appropriate option must be checked in section 2.*

The Extended Parts Warranty program provides the Customer an insurance program for the most frequently used and most costly parts. Subscribing to this program provides replacement to these parts at no additional cost, for the duration of the agreement.

The Customer will replace defective part(s) as part of its normal Level I diagnosis and repair process. Following the **Return Material Authorization (RMA)**, detailed in Appendix D, the Customer will ship any parts that require repairs back to Parkeon. During this process, a sales order will be generated for the replacement part(s) from this RMA.

Parkeon will replace parts with repaired or refurbished parts that are tested to insure that they meet the performance specifications of a new part. Replacement parts warranty is ninety (90) days or to the end of the support agreement period for the unit the part is installed in whichever comes first. This warranty does not include "wear and usage items" such as paper and batteries. Labor is not covered under this hardware part replacement agreement.

Parts included in this Extended Parts Warranty are :

- Main Board
- Bank note Acceptor (on STRADA BNA model)
- Coin Selector
- Banking Card Reader
- Main Display
- Printer
- Modem
- Coin Escrow
- User Interface Button Board
- Electronic Lock
- Mechanical Lock
- Electronic interfaces

To maximize multi-space meters uptime, Parkeon recommends to the Customer to order and maintain at any time a spare parts lot. Parkeon can provide guidance to the Customer regarding a suggested number of parts to be included in this spare parts lot and will also provide a pricing proposal.

Any repair of damage resulting from acts of vandalism, accident (vehicle impact), failures in the electrical supply to the multi-space meters, flooding, operator errors (e.g. but not limited to : no ticket stock, no coin box fitted, wrong time/date), lack of Level I preventative maintenance, misuse or the use of non-approved ticket stock on the Multi-space meters are not covered under this agreement. Parkeon will provide estimates of this repair cost upon receipt of a written request from the Customer. The terms "vandalism" or "vandalized" shall mean any willfull damage caused which affects the appearance or operation of the Multi-space meters or interferes with the normal use of the Multi-space meters.

Alterations made to the equipment by the Customer may result in this warranty being voided in its entirety. Parkeon makes the final determination of the extent of any warranty impact due to the modification of the quipment by the Customer.

For avoidance of doubt, obsolescence of components is not covered by this agreement.

Parkeon Reponsibilities

1. Parkeon reserves the right to assess at Customer's costs all the machines at the start of this agreement to make sure that meters conditions conform to standard operational conditions. After this assessment, all meters found with troubles will have to be repaired at Customer's costs. Customer's failure to perform the required fix will result in the exclusion of the machine(s) from the scope of this agreement.
2. Return a repaired or refursbished part that is equal in quality to the part received.

Customer Reponsibilities

In addition to Level I responsibilities

1. Complete all the necessary Level I diagnosis steps before determining that a part is faulty and in need of repair.
2. Follow all RMA instructions including frequency of shipping and quantity limitation per shipment.
3. Complete the recommended Multi-space meters preventative maintenance process and intervals to maximize useful life of the parts within the machines.
4. Replace any Multi-space meters when no longer capable of repair, for whatever reason. (Excluding the fault or negligence of Parkeon)
5. Remove, reinstall or relocate the Multi-space meters as needed.

APPENDIX D

PARKEON RETURN MATERIALS AUTHORIZATION ('RMA')

Email us at:

SalesAdmin@moorestown.parkeon.com

Phone: Please call 1-800-732-6868 x 245

Hours of operation: Monday – Friday: 8:00 AM – 5:00 PM Eastern Standard Time

All requests for parts, machine changes and miscellaneous sales should be directed to the above contact point. For parts being returned for repair or replacement a Return Material Authorization (**RMA**) is required **PRIOR** to the physical return of the product:

1. Parkeon will issue an RMA number and provide shipping instructions.
2. Customer will ship the defective parts back to Parkeon and clearly mark the outside of the carton or the shipping label with the RMA number. Each assigned RMA is limited to 20 individual items.
3. Customer agrees to properly wrap each defective part and package them securely within a box to assure no further damage will occur to these parts.
4. Customer is responsible for freight charges on items being returned to Parkeon. Parkeon is responsible for standard ground freight charges of replacements.

Parts will be shipped at : **Parkeon INC**
40 Twosome Drive, Unit 7
Attn : Warranty Parts Dpt. RMA # xxxxx
MOORESTOWN, NJ 08057

5. Once Parkeon has received the defective parts, replacement parts will be shipped within 72 hours via two (2) business-day delivery if parts are covered under standard warranty. If parts are covered under a Parkeon Extended Warranty Agreement, replacement parts will be shipped within 24 hours via two (2) business-day delivery
6. Parkeon will cross reference all parts against its warranty/contract database and determine if the part is covered. Customer will be notified if parts are not covered under warranty and will be advised of available options by the Sales Administration Dept.
7. Customer is responsible for testing of parts before returning. Parkeon will inspect and test parts to determine reason for return. If any parts are determined to be functional with no problem found or found functional after a standard cleaning procedure, Customer will be charged \$175.00 dollars per unit for Preventative Maintenance charge to clean and restock.

8. Customer is responsible for all replacement charges for parts out of warranty or not covered under contract.
9. Customer is responsible for all expedited shipping charges.
10. Customer should ship all defective parts to Parkeon and reorder on a regular weekly basis in order to provide a smooth flow of replacement parts and eliminate the need for expedited requests. Bulk RMAs (> 20 items) or multiple RMAs per week will result in processing and handling delays.

APPENDIX E

PREVENTATIVE MAINTENANCE

Note : To enroll in this program, the appropriate option must be checked in section 2.

Preventative maintenance is critical for the continued maintenance of the Multi-space meters. The following checks should be carried out according to the frequency of use of the pay stations. Parkeon recommends a comprehensive preventative maintenance be completed at least every 6 months.

The preventative maintenance includes the following activities :

- Check the functionality of the **printer** and **escrow block**,
- Clean the **printer** using Parkeon recommended cleaning kits,
- Check the functionality of the **credit card reader**,
- Clean the **credit card reader** using Parkeon recommended cleaning kits,
- Check the **coin selector** operation,
- Clean the **coin selector** using Parkeon recommended cleaning kits,
- Check the operation of the **bill note acceptor** (STRADA BNA model only),
- Clean the **bill note acceptor** using Parkeon recommended cleaning kits (STRADA BNA model only),
- Test **battery** voltages,
- Lubricate **locks** and hinge mechanisms,
- Check the **housing** general conditions,
- Check the condition of all **external buttons, controls** and other **user interfaces**,
- Check the operation of the **graphic display**,
- Perform general **housekeeping** of the pay station maintenance compartment.
- Check the operation of the machine.