

**DATED**

**2013**

**SCARBOROUGH BOROUGH COUNCIL**

**AND**

**RYEDALE DISTRICT COUNCIL**

**AGREEMENT**

**Relating to the Inclusion of Ryedale District Council's Managed Off-Street Parking,  
Functions in connection with the Management in the Civil Parking Enforcement  
Designation Order and Civil Parking Enforcement Operational Model**

**Head of Legal and Democratic Services  
Scarborough Borough Council  
Town Hall  
St Nicholas Street  
Scarborough  
North Yorkshire  
YO11 2HG**

**AGREEMENT dated**

**2013**

**BETWEEN**

- (1) SCARBOROUGH BOROUGH COUNCIL (“the Borough Council”) of Town Hall,  
St Nicholas Street, Scarborough, North Yorkshire, YO11 2HG.**
- (2) RYEDALE DISTRICT COUNCIL (“the District Council”) of Ryedale House, Old  
Malton Rd, Malton, North Yorkshire YO17 7HH.**

**RECITALS**

1. The Borough Council and the District Council are Local Authorities for the purposes of the Local Government Acts of 1972 and 2000.
2. Under Section 101 of the 1972 Act the District Council is empowered to arrange for the discharge of any of its non-executive functions by (inter alia) another local authority and under Part 1A of the 2000 Act is empowered to arrange for the discharge of any of its non-delegable functions by another local authority.
3. Pursuant to Section 43 and Schedule 3 of the Road Traffic Act 1991 the Secretary of State has made the Designation Order dated 30<sup>th</sup> May 2013 which has designated the whole of the county of North Yorkshire as a permitted parking area and a special parking area as therein defined and which allows the Borough Council to carry out civil parking enforcement in the area of the District Council.
4. North Yorkshire County Council (the “County Council”) is the local traffic authority for all roads in the County of North Yorkshire other than those for which the Secretary of State is the traffic authority. The County Council has agreed with the Borough Council through a Deed of Arrangement dated xxxxx for the enforcement and consequential administration of all Traffic Regulation Orders relating to the control of on-street parking in the District of Ryedale by the Borough Council to be in accordance with the powers conferred by the Designation Order.
5. The parties have agreed to implement an arrangement for the integrated control of both on-street and off-street parking enforcement under the Traffic Management Act 2004. The District Council as a parking authority and the owner of certain car parks and having control over other off-street parking places in the District of Ryedale

has agreed to arrange for the integrated control of such car parks and places and the exercise of the relevant Functions by the Borough Council together with the related statutory on-street parking functions.

6. The parties are aware of and will have regard to the Statutory Guidance (“Guidance”) as published by the Secretary of State for Transport under Section 87 of the Traffic Management Act 2004 dated 28<sup>th</sup> February 2008.

**NOW IT IS AGREED** as follows:

## **1. DEFINITIONS**

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

“the 1972 Act” means the Local Government Act 1972

“the 1984 Act” means the Road Traffic Regulation Act 1984

“the 1991 Act” means the Road Traffic Act 1991

“the 2000 Act” means the Local Government Act 2000

“Business Day” means any day (other than a Saturday or Sunday) on which banks are open in London for normal banking business.

“Completion” means the performance by the parties of their respective obligations under clause 3.

“Completion Date” means the date on which Completion occurs.

“Contract Standards” means the standards prescribed within Schedule 2 of this agreement as required by the Borough Council or the District Council for the effective and efficient performance of the Functions in relation to off-street parking.

“the Designation Order” means the Order dated 30<sup>th</sup> May 2013 made by the Secretary of State for the County of North Yorkshire.

“the Functions” means the exercise of any power pursuant to the Designation Order so far as it relates to off-street parking in the District of Ryedale.

Without prejudice to the generality of the foregoing it is declared that the Functions also include: the issuing of Penalty Charges and any subsequent steps necessary to recover payments due; the operation of an adjudication service and collection of charges in connection therewith; and for the avoidance of doubt also includes the making of orders under Section 35 (1) of the 1984 Act the Designation Order and the 1991 Act and the issuing of notices under Sections 35C, 46A and 39(3) of the 1984 Act the Designation Order and the 1991 Act subject in both cases to the approval of the District Council and the provisions of clause 6.4 where appropriate.

“Indemnify” means to indemnify, keep indemnified and hold harmless the relevant party in full and on demand from and against all costs, expenses, liabilities, injuries, losses (including but not limited to any direct, indirect or consequential losses), damages, claims, penalties, proceedings (including all other reasonable legal and other professional fees and expenses) which the indemnified party incurs or suffers.

“Index” means the All Items Index of Retail Prices (RPI) published by the Office for National Statistics (or any government department upon which duties in connection with the completion or maintenance of the index shall have devolved) or in the event that the department shall cease to compile or publish the RPI such other Index as the parties hereto shall agree or in default of agreement such Index as shall be determined for the purposes of this Agreement as being an Index which gives an accurate indication of the rate of inflation of such items as are comprised in the RPI.

“Indexation” means an increase in line with any increase in the Index in relation to sums payable hereunder during the period commencing with June 2013 and ending with the actual increase for the year and month of payment of any such sum.

“Liabilities” means all costs, expenses, losses, claims, proceedings, awards and other liabilities (including reasonable legal and other professional fees and expenses) whenever arising or brought.

“Off Street Car Parks” means those car parks that are within the district of Ryedale and owned or controlled by the District Council.

“Parking Bays” means a part of a Parking Place marked out for the leaving of a vehicle.

“Parking Places” means those District Council managed purpose built car parks and areas of land designated by the District Council as “Off Street Car Parks” at the date of this Agreement.

1.2 The following have the meanings ascribed thereto in the 1991 Act:

“Parking Area”

“Parking Authority”

“Penalty Charge”

1.3 References in this Agreement to any statutory provision shall be deemed to include reference to any similar or corresponding provision in any subsequent enactment replacing or modifying the said provision so long as the provision as so replaced or modified is capable of forming the subject of agency arrangements.

1.4 In the interpretation of this Agreement the headings are for convenience only and shall not affect the interpretation of this Agreement and unless the context otherwise requires the singular shall include the plural and the masculine shall include the feminine and vice versa.

1.5 For the avoidance of doubt the Designation Order shall be considered to be a statutory provision.

1.6 The Schedules form part of this Agreement and will have the same force and effect as if expressly set out in the body of this Agreement.

## **2. AGREEMENT TO TRANSFER**

The District Council shall transfer and the Borough Council shall receive and discharge all of the Functions as herein provided with effect from the Completion Date for a period of 3 years subject to the termination provisions as set out in clause 5. The parties will review the operation of this agreement before the end of the 3 year period as set out in clause 16. The District Council shall have the option to extend this Agreement after the 3 year period for a further period of 2 years with the agreement of the Borough Council.

## **3. COMPLETION**

- 3.1 Completion of the transfer of the Functions shall take place on and with effect from the close of business on the date hereof or on such other date as is agreed between the parties when the following shall take place.
- 3.2 The District Council shall execute and deliver to the Borough Council all instruments of transfer necessary or desirable for the transfer of all of the District Council's rights, title and interest in the Functions.

#### **4. CONSIDERATION**

- 4.1 The District Council will retain all income from Penalty Charges Notices and Pay and Display ticket income from off street car parks.
- 4.2 The Borough Council shall be responsible for collecting and banking all revenues from penalty charge notices received in the ordinary operation of off-street parking within the district of Ryedale.

#### **5. TERMINATION**

This Agreement may be determined by either party giving to the other a minimum of 6 months notice in writing. If there is agreement between both parties termination may be made earlier but only up to a minimum of three months notice in writing.

#### **6. EXERCISE OF FUNCTIONS**

- 6.1 In exercising any Functions under this Agreement both parties shall carry out the same efficiently and with all due diligence and skill in accordance with the Contract Standards, included in Schedule 2.
- 6.2 The District Council may in consultation with the Borough Council and by three months written notice to the Borough Council withdraw or add to any off street Parking Places or Parking Bays within Parking Places for the operation of the Functions under this Agreement.
- 6.3 Subject to the provisions of Sections 35(C), 39, and 46A of the 1984 Act the District Council shall retain the right to determine in accordance with any legislation applicable from time to time:

6.3.1 Provision for traffic regulation orders as set out in Section 35(1) of the Road Traffic Regulation Act 1984 including but not limited to :

6.3.2 the level of charges for use of and in connection with the Parking Places;

6.3.3 the vehicles or classes of vehicles entitled to use the Parking Places; and

6.3.4 the conditions on which the Parking Places may be used; including the days and hours of operation and maximum periods for which vehicles may wait in the Parking Places.

6.4 The Borough Council will inform the District Council of any changes in the pricing information on the operation of the Agreement. The level of costs to be charged and estimated income received by each party is included in Schedule 4 of this Agreement.

## **7. MAINTENANCE**

7.1 The District Council shall at its own expense clean, maintain, repair and renew where necessary the Parking Places, all signage and surface markings installed at the Parking Places and all parking charge collection and/or pay and display machines.

## **8. THIRD PARTY ARRANGEMENTS**

8.1 Notwithstanding the terms of this Agreement the District Council reserves the right exercisable at any time upon notice to the Borough Council to conclude arrangements with third parties in respect of contract or other parking allocation in relation to car Parking Places or Parking Bays within Parking Places and the rights of the Borough Council herein contained shall be subject thereto and to any existing arrangements at the date hereof with third parties and with District Council employees in respect of the use of the same.

## **9. EXCLUSION OF RIGHTS OF THIRD PARTIES**

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

## **10. LIABILITIES AND APPORTIONMENTS**

- 10.1 Save as otherwise expressly provided, the District Council:
- 10.1.1 remains responsible for all Liabilities in connection with the Functions and parking places incurred up to the Completion Date.
  - 10.1.2 remains responsible for all claims in the connection with the Functions and parking places outstanding as at the Completion Date or any claims arising by reason of any act or omission of the Borough Council or in relation to the ownership or operation of the Functions up to the Completion Date.
  - 10.1.3 will deal with the Liabilities set out in clause 10.1.1 and where appropriate will settle the claims referred to in clause 10.1.2.
  - 10.1.4 will Indemnify the Borough Council as a result of the District Council's failure to comply with its obligations under clause 10.1.1 and 10.1.2.
- 10.2 Save as otherwise expressly provided, the Borough Council:
- 10.2.1 is responsible for all Liabilities in connection with the Function incurred after the Completion Date;
  - 10.2.2 will Indemnify the District Council as a result of the Borough Council's failure to comply with its obligations under clause 10.2.1.
- 10.3 All expenditure and outgoings in respect of the Functions and all payments received in respect of the Functions which, in each case, cover a period both before and after the Completion Date will be apportioned on a time basis so that such part of the relevant expenditure or payment received attributable to a period up to the Completion Date will be borne by, or for the benefit of, the District Council and such part of the relevant expenditure or payment received attributable to the period after the Completion Date will be borne by, or for the benefit of, the Borough Council.
- 10.4 The Borough Council and the District Council will within 28 days of Completion prepare a statement of adjustments setting out the net balance payable by either the Borough Council or the District Council to the other in accordance with clauses 10.1 and 10.2. All amounts due will be paid to the Borough Council or the District Council, as the case may be, within 28 days of completion of the statement of adjustments. Any payments pursuant to clauses 10.1 and 10.2 not included in such statement of adjustments but subsequently made or received by the Borough Council or the



District Council will be apportioned in accordance with clause 10.4 and any claim for reimbursement will be made by notice in writing supported by copy documentation evidencing the amount of the same and the calculation of the apportionment. All such sums due will be paid within 10 Business Days of a receipt of a notice of apportionment.

- 10.5 To the extent that any payment is made to the District Council after Completion in respect of the performance by the Borough Council or any contract with a customer or generally in relation to the carrying on of the Functions by the Borough Council after Completion the District Council will receive the same as trustee for the Borough Council and will account to the Borough Council for the same as soon as reasonably practicable and in any event within 5 Business Days following receipt.

## **11 COSTS**

- 11.1 Each party to this Agreement will bear its own costs and expenses relating to the negotiation, preparation and implementation of this Agreement and arrange for reimbursement by the County Council if applicable.

## **12 NOTICES**

- 12.1 Any notice or other communication given in connection with this Agreement will be in writing and will be delivered personally or sent by prepaid first class post to the recipient address set out below or to any other address which the recipient has notified in writing to the sender received not less than 7 Business Days before the notice was despatched:

Mr Stuart Clark  
Parking and Venues Manager  
Scarborough Borough Council  
Town Hall  
St Nicholas Street  
Scarborough  
North Yorkshire  
YO11 2HG

xxxxxxx

Head of Environment

Ryedale District Council  
Ryedale House  
Malton  
North Yorkshire  
YO17 7HH  
xxxxxx

12.2 A notice or other communication is deemed given:

12.2.1 if delivered personally, upon delivery at the address provided for in this clause; or

12.2.2 if sent by prepaid first class post, on the second Business Day after posting it

12.3 The provisions of this clause will not apply, in the case of service of court documents, to the extent that such provisions are inconsistent with the Civil Procedure Rules.

### **13. ASSIGNMENT**

13.1 The Borough Council may not assign the benefit of, or any of its rights under, this Agreement to any person whatsoever. The District Council may not assign the benefit of, or any of its rights under, this Agreement unless prior written consent has been obtained from the Borough Council such consent not to be unreasonably withheld.

### **14. DATA PROTECTION**

14.1 The parties shall (and shall procure that any of their employees involved in the provision of the agreement) comply with any notification requirements under the Data Protection Legislation and both parties will duly observe all their obligations under the Data Protection Legislation, which arise in connection with the agreement.

### **15. EQUALITIES**

15.1 Each party shall ensure that it does not unlawfully discriminate within the meaning and scope of any law, enactment, order, or regulation relating to discrimination (whether in race, gender, gender origin, religion, disability, sexual orientation or otherwise) in employment.

- 15.2 Each party shall take all reasonable steps to secure the observance of clause 15.1 by all servants, sub-contractors employees or agents of such party employed in performance of this Agreement.

## **16. SERVICE REVIEW AND GOVERNANCE**

- 16.1 The parties' Project Managers (Mr Stuart Clark for the Borough Council and xxxxxx for Ryedale District Council, unless there is notification of a difference in personnel designation) shall have regular meetings (**Regular Meetings**) to monitor and review the performance of this agreement, to discuss any changes proposed in accordance with clause 1.1 (b) of Schedule 2 and to discuss the Service Standards as set out in Schedule 2. These meetings shall be minuted by the Borough Council's Project Manager and / or representative and copies of those minutes shall be circulated to, and approved by, both parties.
- 16.2 Before each Regular Meeting, the Borough Council's Project Managers shall notify the District Council's Project Manager, and vice versa, of any problems relating to the provision of the Functions for discussion at the Regular Meeting. At each such meeting, the parties shall agree a plan to address such problems. In the event of any problem being unresolved or a failure to agree on the plan, the matter shall be resolved in accordance with the Dispute Resolution Procedure see clause 20. Progress in implementing the plan shall be included in the agenda for the next Regular Meeting.
- 16.3 A review meeting to assess the performance of the parties in the delivery of the Functions shall be held at threemonthly intervals (**Review Meeting**). Each meeting shall be attended by senior representatives of the parties, together with the Project Managers.
- 16.4 The parties shall review the Service Standards (as included as Schedule 5 of this Agreement) and the Agreement at each Review Meeting and will, in accordance with clause 1.1 (b) of Schedule 2, agree modifications to reflect changes in the parties' requirements for the Functions and Service Standards.

## **17. GENERAL**

- 17.1 This Agreement (and the documents referred to in it) constitute the entire agreement between the parties and supersede and replace any previous agreement,

understanding or arrangement of any nature whatsoever between the parties relating to the subject matter of this Agreement.

- 17.2 Each party will do, or procure the doing of, all acts and things and execute, or procure the execution of, all documents as are necessary to give full effect to the terms of this Agreement.
- 17.3 Failure or delay by any party in exercising any right or remedy under this Agreement will not in any circumstances operate as a waiver of it, nor will any single or partial exercise of any right or remedy in any circumstances preclude any other or further exercise of it or the exercise of any other right or remedy.
- 17.4 Any waiver of any breach of, or any default under, any of the terms of this Agreement will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of this Agreement.
- 17.5 The rights and remedies expressly for by this Agreement will not exclude any rights or remedies provide by law.
- 17.6 No variation of this Agreement will be valid unless it is in writing and signed by or on behalf of each party to this Agreement.

## **18. TUPE**

- 18.1 The parties agree that the provisions of Schedule 3 shall apply to any Relevant Transfer of staff under this agreement.

## **19. GOVERNING LAW AND JURISDICTION**

- 19.1 This Agreement will be governed by and construed in accordance with English law. The Courts of England will have exclusive jurisdiction to settle any dispute which arises out of or in connection with this Agreement and the parties agreed to submit to that jurisdiction.

## **20. COUNTERPARTS**

20.1 This Agreement may be executed in any number of counterparts each of which when executed and delivered will be an original, but all the counterparts will together constitute one and the same agreement.

## **21. DISPUTE RESOLUTION**

21.1 Any dispute hereunder which cannot be resolved by a nominated officer shall be referred to the appropriate managers at the Borough Council and the District Council. Either party may then convene a meeting which both parties shall attend to discuss the matters in dispute.

21.2 In the event of the dispute not being resolved following a meeting referred to in clause 21.1 above the matter shall be referred to a single independent arbitrator in accordance with the Arbitration Act 1996 (the Arbitrator).

21.3 The Arbitrator shall be appointed at the request of either of the parties by or on behalf of the President for the time being of the Chartered Institute of Arbitrators.

21.4 The decision of the Arbitrator shall be final and binding on the parties and the costs of the arbitration shall be borne as the Arbitrator may determine.

**THE COMMON SEAL of  
SCARBOROUGH COUNCIL  
was hereunto affixed  
in the presence of:**

**HEAD OF LEGAL SERVICES  
The officer appointed for this purpose  
HEAD OF SERVICE**

**THE COMMON SEAL of  
RYEDALE DISTRICT COUNCIL  
was hereunto affixed  
in the presence of**

.....  
**Clerk to the Council**