

Agenda Item No. 4(b)

DERBYSHIRE COUNTY COUNCIL

CABINET MEMBER – HIGHWAYS, TRANSPORT AND INFRASTRUCTURE

28 February 2019

Report of the Strategic Director – Economy, Transport and Environment

**CIVIL PARKING ENFORCEMENT PARTNERSHIP AGREEMENT 2019 –
REPORT ON RE-DRAFTED AGREEMENT**

(1) **Purpose of Report** To advise the Cabinet Member on the redrafting of the Civil Parking Enforcement (CPE) Partnership Agreement with the purpose of allowing the County Council to bring the management of on-street enforcement in-house, and to recommend that the agreement be endorsed and implemented from 1 April 2019.

(2) **Information and Analysis** Derbyshire County Council commenced CPE in February 2009, following a successful application to the Department for Transport (DfT) to become a Civil Enforcement Area (CEA), taking on powers provided by the Traffic Management Act 2014 (Part 6).

As part of the DfT application and approval, the County Council established a CPE Parking Board alongside the eight district and borough councils (which were individually responsible for their own off-street enforcement). This Partnership allows for the sharing of both the County Council's enforcement contract and the contract with Nottinghamshire County Council for their Central Processing Unit to process all Penalty Charge Notices (PCNs). The constitution and arrangements of the Parking Board were determined through a Partnership Agreement on the introduction of CPE in Derbyshire (see Appendix A).

The conditions of the original agreement included an arrangement that five of the Derbyshire district and borough councils (excluding Bolsover, North East Derbyshire and South Derbyshire) would manage on-street enforcement activities on behalf of the County Council, for which a management fee would be applied annually. This includes receiving and responding to requests for enforcement; handling complaints; issuing dispensations and processing any requests for restrictions to be suspended. The County Council directly manages off-street enforcement for the three remaining councils and a management fee is also charged for this Service.

Despite the arrangement for five of the district and borough councils to manage on-street enforcement for the Authority, the County Council's CPE Team routinely receive enquires from residents within those areas, with members of the public confused over which authority is responsible for on-street enforcement. The management fees paid to the district and borough councils for this service amounted to in excess of £82,000 in 2017-18.

Officers Comment

A key objective of on-street CPE is that it becomes cost-neutral to the Authority. In order to achieve this objective, it is important that staffing costs are kept to a minimum and that the Authority is effective in its deployment of enforcement capability, to ensure that the resources available are being directed to those areas where parking issues are most prevalent and having the greatest impact in terms of road safety, congestion and negative impacts on the local economy.

Whilst the assistance of the borough and district councils in managing on-street enforcement has been valuable, officers consider that the arrangement creates confusion for the general public. Furthermore, despite the arrangements, the County Council's own Civil Parking Enforcement Team continues to receive a considerable number of requests from these areas. It is no longer considered that the current arrangement provides value for money.

As such, officers have redrafted the existing Partnership Agreement, which will allow both the County Council (and their partners, should they choose to do so), the opportunity to bring enforcement back 'in-house'. This process has been subject to close consultation with all of the member authorities. Officers consider that bringing on-street enforcement back in-house will give the Authority closer control over where on-street enforcement takes place and, with it, the opportunity to increase efficiency. It will also give clearer direction to residents as to where responsibility for on-street enforcement rests. Furthermore, the savings of over £82,000 in annual management fees will assist greatly in the County Council's objective in achieving cost-neutral on-street enforcement. The additional work generated from bringing on-street enforcement in-house will be offset by the recruitment of a Civil Parking Officer into a 0.8 full time equivalent (FTE) post which currently sits vacant but which is included in the operating budget.

In redrafting the 2019 Partnership Agreement (see Appendix B), officers have also taken the opportunity to amend some minor typographical errors, refresh and update elements relating to new data protection legislation, the introduction of GDPR (General Data Protection Regulation) and also establishes new roles for both Data Controllers and Data Processors within the Parking Board.

The County Council will remain in partnership with all eight of the district and borough councils through the Parking Board. All authorities will continue to share in an enforcement contract, with the same uniformed Civil Enforcement officers enforcing both on-street and off-street restrictions. Similarly, all authorities will continue to utilise the resources at Nottinghamshire County Council for the purpose of notice processing. However, under the new agreement, each authority will be responsible for its own functions as an authority; either off-street for the district and borough councils, or on-street and Countryside Car Parks for the County Council.

(3) **Financial Considerations** The introduction of the new Partnership Agreement will allow the County Council to bring the management of all on-street enforcement into the Authority's own CPE Team, saving over £82,000 in annual fees currently paid out to five of the eight district and borough councils.

(4) **Legal Considerations** The CPE Partnership Agreement represents a binding contractual agreement, with all member authorities required to give two years notice of intention to leave the Partnership. The enforcement contract and processing agreement with Nottinghamshire County Council's Central Processing Unit are separate contracts to the Partnership Agreement.

(5) **Social Value Considerations** The County Council will continue to utilise the existing parking enforcement contract and the processing agreement in place with Nottinghamshire County Council.

Other Considerations

In preparing this report the relevance of the following factors has been considered: prevention of crime and disorder, equality and diversity, human resources, environmental, health, property and transport considerations.

(6) **Key Decision** No.

(7) **Call-In** Is it required that call-in be waived in respect of the decisions proposed in the report? No.

(8) **Background Papers** Held on file within the Economy, Transport and Environment Department. Officer contact details – Paul Jameson, extension 38671.

(9) **OFFICER'S RECOMMENDATIONS** That:

9.1 The draft 2019 Civil Parking Enforcement Partnership Agreement be endorsed as it appears in Appendix B.

- 9.2 The existing member authorities be invited to commit to the new Agreement.
- 9.3 All management of on-street enforcement activities be brought back in-house with effect from 1 April 2019.

Mike Ashworth
Strategic Director - Economy, Transport and Environment

DATED THE

DAY OF

2009

DERBYSHIRE COUNTY COUNCIL

-and-

AMBER VALLEY BOROUGH COUNCIL

-and-

BOLSOVER DISTRICT COUNCIL

-and-

CHESTERFIELD BOROUGH COUNCIL

-and-

DERBYSHIRE DALES DISTRICT COUNCIL

-and-

EREWASH BOROUGH COUNCIL

-and-

HIGH PEAK BOROUGH COUNCIL

-and-

NORTH EAST DERBYSHIRE DISTRICT COUNCIL

-and-

SOUTH DERBYSHIRE DISTRICT COUNCIL

AGREEMENT RELATING TO
THE CIVIL ENFORCEMENT OF PARKING IN THE
ADMINISTRATIVE COUNTY OF DERBYSHIRE

1	DEFINITIONS	4
2	DISCHARGE OF FUNCTIONS	8
3	EXERCISE OF FUNCTIONS	11
4	IT SYSTEM	12
5	AREA COVERED BY THIS AGREEMENT	12
6	DURATION, TERMINATION AND REVIEW OF THE AGREEMENT	13
7	INDEMNIFICATION AND INSURANCE	13
8	REVIEW OF OPERATIONAL ARRANGEMENTS AND THE BOARD	14
9	FINANCIAL	15
10	CENTRAL PROCESSING UNIT	
11	APPOINTMENT OF THE ENFORCEMENT CONTRACTOR	20
12	EMPLOYEES	21
13	EFFECT OF TERMINATION	22
14	DISPUTE RESOLUTION	23
15	NEW PARTIES	24
16	UNLAWFUL FETTER ON THE PARTIES' STATUTORY POWERS	25
17	GENERAL	25
	SCHEDULE 1	30
	SCHEDULE 2	32
	SCHEDULE 3	34
	SCHEDULE 4	35
	SCHEDULE 5	37

2009

- (1) **DERBYSHIRE COUNTY COUNCIL** of County Hall, Matlock, Derbyshire, DE4 3AG (the “County Council”);
- (2) **AMBER VALLEY BOROUGH COUNCIL** of Town Hall, Market Place, Ripley, Derbyshire DE5 3BT (“Amber Valley Borough Council”);
- (3) **BOLSOVER DISTRICT COUNCIL** of Sherwood Lodge, Bolsover, Derbyshire S44 6NF (“Bolsover District Council”);
- (4) **CHESTERFIELD BOROUGH COUNCIL** of Town Hall, Rose Hill, Chesterfield, Derbyshire S40 1LP (“Chesterfield Borough Council”);
- (5) **DERBYSHIRE DALES DISTRICT COUNCIL** of Town Hall, Bank Road, Matlock, Derbyshire, DE4 3NN (“Derbyshire Dales District Council”);
- (6) **EREWASH BOROUGH COUNCIL** of Ilkeston Town Hall, Wharnccliffe Way, Ilkeston, Derbyshire DE7 5RP (“Erewash Borough Council”);
- (7) **HIGH PEAK BOROUGH COUNCIL** of Hayfield House, Chapel-en-le-Frith, High Peak, Derbyshire, SK23 0QJ (“High Peak Borough Council”);
- (8) **NORTH EAST DERBYSHIRE DISTRICT COUNCIL** of Council House, Saltergate, Chesterfield, Derbyshire, S40 1LF (“North East Derbyshire District Council”) and
- (9) **SOUTH DERBYSHIRE DISTRICT COUNCIL** of Civic Offices, Civic Way, Swadlincote, Derbyshire DE11 0AH (“South Derbyshire District Council”).

BACKGROUND

- (A) The County Council and each Borough/District Council are local authorities as defined by Section 270(1) of the 1972 Act.
- (B) For the purposes of the 1984 Act, the County Council is the Traffic Authority for all roads in the County of Derbyshire (other than motorways and all purpose trunk roads).
- (C) This Agreement is intended to regulate the exercise of On-Street and Off-Street Parking.
- (D) By virtue of Section 19 of the 2000 Act and the 2000 Regulations, the executive of a local authority may arrange for functions which are the responsibility of the executive of the local authority to be discharged by another local authority and in accordance with these provisions the

Executive has authorised each of the Borough/District Councils to discharge certain functions of the County Council relating to roads in each of the Borough/District Council's administrative area.

- (E) By virtue of each Designation Order the Secretary of State has, on application by the County Council, designated the whole of each of the District Council's administrative area as Civil Enforcement Areas and as Special Enforcement Areas in accordance with Part 6 of the 2004 Act.
- (F) It is acknowledged by the Parties that certain amendments may need to be made to this Agreement following implementation of further Acts and that there will be need to work together in good faith to make such changes or amendments as are necessary.

IT IS AGREED AS FOLLOWS:

1 DEFINITIONS

- 1.1 In this Agreement (including the Background and the Schedules) unless the context otherwise requires, the following words and phrases shall have the meanings given to them below:

“1972 Act” - the Local Government Act 1972;

“1984 Act” - the Road Traffic Regulation Act 1984;

“2000 Act” - the Local Government Act 2000;

“2004 Act” - the Traffic Management Act 2004;

“2000 Regulations” - The Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2000 (No 2000/2851);

“Adjudication Service” - the Traffic Penalty Tribunal (TPT) or such other organisation as is approved by the Secretary of State and charged with, amongst other things, the responsibility of dealing with disputes between local authorities (including the District Council) within the County of Derbyshire (and other local authorities) and appellants;

“Adjudication Service Levy” – the amounts levied by the Adjudication Service and payable in accordance with clause 9.18.1;

“Annual Budget” as agreed pursuant to clause 9.9;

“Area” - the area administered by each District Council under the provisions of the 1972 Act together the “Areas” as identified in Schedule 2;

“Board” – is the group of the CNO and each DNO or such other person who may be nominated by a Party to attend board meeting(s) in their

place, who shall meet and have the responsibilities set out in this agreement;

“Borough Councils” for the purposes of this agreement means together [] Borough Council, [] Borough Council, [] Borough Council and [] Borough Council each being a “Borough Council”;

“Capital IT Set Up Costs” means the costs of providing the IT System;

“Civil Enforcement Officer” - has the same meaning as in the 2004 Act;

“Commencement Date” - the date the Designation Order for Civil Parking Enforcement comes into operation in each particular District;

“County Nominated officer (CNO)” - the officer nominated by the County Council’s Strategic Director of Environmental Services as being responsible for the management of all aspects of this Agreement on behalf of the County Council;

“Central Processing Unit” (CPU) – the central PCN Ticket processing unit for Derbyshire administered by Nottinghamshire County Council on behalf of all the District Councils and the County Council;

“days” means calendar days;

“Designation Order” – means each or any of:

The Civil Enforcement of Parking Contraventions (County of Derbyshire County Council) Designation Order 2009;

together the “Designation Orders”

“Dispensations” means a permit or similar item to allow a motorist to park in contravention of a prescribed Designation Order;

“District Councils” for the purposes of this agreement means together [] District Council, [] District Council, [] District Council and [] District Council each being a “District Council”;

“District Nominated Officer (DNO)” - the Officer nominated by each Borough/District Council as being responsible for all aspects of this Agreement on behalf of the Council;

“Civil Enforcement Area” - has the meaning ascribed to it in the 2004 Act and is the area more particularly set out in each Designation Order;

“CPE” – Civil Parking Enforcement;

“Enforcement Contractor” – the organisation contracted by the County Council to supply an enforcement service for call off by Boroughs/Districts;

“Executive” - the Executive of the County Council;

“Expiry Date” - means the date on which the agreement is terminated pursuant to Clause 6.1

“Financial Year” - means each period of 12 months beginning on 1 April in one year and ending on 31 March in the next year, or such other period of 12 months in substitution as may be designated by the County Council and in relation to part years at the beginning and end of this Agreement means such periods of less than 12 months as run from (i) the date of this Agreement to the first 31 March thereafter and (ii) the last 1 April to the date on which this Agreement is terminated;

“Framework Agreement” means the agreement entered into between the Council and the Enforcement Contractor for the provision of on and off street parking enforcement services.

“Functions” - the functions and services described in clauses 2.2 and 2.3;

“IT System” means the IT hardware and software deemed necessary by the County Council to undertake the functions associated with the issuing and processing of Penalty Charge Notices;

“Lines” – has the same meaning as in the Traffic Signs Regulations and General Directions 2002;

“Model” - the financial model business plan or such later version or versions as are agreed between the parties;

“Off-Street Parking Account” - the account established under clause 9.4;

“Off-Street Operational Parking Policy” - means any part of the Policy which relates solely to the enforcement of parking within the confines (and only within the confines) of the off-street car parks operated or controlled by the appropriate District

“On-Street Parking Account” - the account established under clause 9.3;

“Parking Adjudicator” - has the same meaning as in the 2004 Act;

“Parties” means all the parties to the Agreement;

“Penalty Charge Notice” or (PCN)” - has the same meaning as in the 2004 Act;

“Penalty Charge” - has the same meaning as in the 2004 Act;

“The Policy” – the operational parking enforcement policy referred to in clause 2.10 which for the avoidance of doubt may only cover the following matters unless otherwise agreed by all the Parties:

- Issuing of Penalty Charge Notices-contraventions, observation times, exemptions to contraventions and related issues
- Processing of issued Penalty Charge Notices-amount of levy, administrative targets ,appeals procedure, typical grounds for appeal and related issues

and it may not cover matters set in clauses 11.7 and 11.8 unless otherwise agreed by all the Parties;

“Relevant Proportion” has the meaning ascribed in clause 9.5;

“The Secretary of State” - the Secretary of State for Transport or such other person charged with general responsibility under the 1984 and 2004 Acts in relation to England;

“the Strategic Director of Environmental Services” - the Strategic Director of Environmental Services for the time being of the County Council, or such officer as the County Council may designate as replacing him;

“Suspensions” means the temporary suspension of the prevailing Traffic Regulation Order to facilitate approved works or activities;

“Terms of Reference” means the Parking Board’s terms of reference as set out in the Constitution at Appendix D

“Traffic Regulation Orders” – Traffic Regulation Orders made under the 1984 Act and signed in accordance with the Traffic Signs and General Directions Regulations 2002;

“TUPE” Transfer of Undertakings (Protection of Employment) Regulations 2006;

“Traffic Signs” – has the meaning ascribed in the Traffic Signs Regulations and General Directions 2002;

- 1.2 Where the context so admits the expressions “the County Council” and “the Borough/District Council” shall include their respective successors in title.
- 1.3 References to any clause or schedule shall be a reference to the clause or schedule of this Agreement. The schedules form part of this Agreement, and have the same force and effect as if set out expressly in the body of this Agreement.
- 1.4 Reference in this Agreement to any statute or order shall include any statutory extension modification or re-enactment thereof and any order regulation or byelaw made there under.
- 1.5 Words importing the singular number only shall include the plural number and vice versa and words importing any particular gender shall include masculine, feminine and neuter genders.
- 1.6 Headings are included in this Agreement for ease of reference only and shall not affect the construction of this Agreement.

2 DISCHARGE OF FUNCTIONS

- 2.1 In exercise of the powers contained in Section 19 of the 2000 Act and the 2000 Regulations, and subject to the terms and conditions of this Agreement, the Executive of the County Council hereby delegates to each Borough/District Council the obligation to perform the Functions within the Civil Enforcement Area and Special Enforcement Area of each Borough/District Council as more particularly set out in schedule 2.
- 2.2 The Functions are the exercise of all duties and powers of the County Council pursuant or incidental to the provisions of Schedule 8 of the 2004 Act and/or those provisions of the 1984 Act or the 2004 Act as are amended by the Designation Orders PROVIDED THAT the Functions shall not include any duties or powers of the County Council pursuant to section 77 of the 2004 Act as amended by the Designation Orders nor the functions of the street authority as defined under the New Roads and Street Works Act 1991.
- 2.3 Without prejudice to clause 2.2 above, it is agreed that the Functions include as a necessity 2.3.1, to the extent each Borough/District will participate under legislative requirements, 2.3.2 to 2.3.6 below. For the avoidance of doubt the County Council shall be responsible for decisions and the associated processes from Post Notice to Owner and formal representations for on street contraventions, 2.3.2, 2.3.3 and 2.3.5 below:-
 - 2.3.1 issuing of Penalty Charge Notices in both the Civil Enforcement and Special Enforcement Areas on-street and off-street. All PCNs will be

issued in the name of the Enforcement Authority in that Borough/District; for the avoidance of doubt Derbyshire County Council is the 'enforcement authority' for all on street contraventions;

- 2.3.1 dealing with the representations, correspondence, and appeals arising from issuing Penalty Charge Notices by liaison with and instructions to the CPU as required;
- 2.3.2 taking steps to recover payments due, including instructing registered or certificated bailiffs by liaison with and instructions to the CPU as required;
- 2.3.3 subject to clause 2.7, the exercise of the powers for immobilisation and the removal, recovery, storage and disposal of vehicles. The collection of charges in connection with the above activities will be by the CPU;
- 2.3.4 the registration of debts by liaison with and instructions to the CPU as required including the completion of any statutory declarations and other required paperwork; and
- 2.3.5 the issuing of suspensions and dispensations on a local basis by liaison with and instructions to the CPU as required.

Nothing in this clause 2.3 shall prevent, in each circumstance, a Borough/District Council from using the services of the County Council or the Enforcement Contractor to perform some or all of the Functions notwithstanding that they shall remain responsible pursuant to the terms of this Agreement.

- 2.4 The County Council will maintain all Traffic Signs Lines and Pay and Display Machines that have been put in place by the County Council and that are required for the purposes related to the Functions for on street parking control within each particular Borough/District Council Area.
- 2.5 For the avoidance of doubt, a Borough/District Council shall be fully responsible for the provision and maintenance of all Traffic Signs Lines and Pay and Display Machines within off-street car parks operated or controlled by a Borough/District Council
- 2.6 Each Borough/District Council agrees and delegates that the CPU will on behalf of each Borough/District Council collect charges, including all Penalty Charges and additional Penalty Charges as defined in section 92 of the 2004 Act and all other matters set out in section 2 of the Policy issued for contraventions for on-street and off-street parking within the Civil Enforcement Areas and Special Enforcement Areas. This will not include the administration of residents' parking schemes or the collection of charges for on street parking.

- 2.7 No Borough/District Council shall commence the exercise of powers under the 2004 Act for the immobilisation, removal, recovery, storage and disposal of vehicles in respect of the Functions until the County Council has given written consent for the use of those powers by the Borough/District Council in accordance with the Policy.

2.8 IN THIS AGREEMENT:

- 2.8.1 (notwithstanding that the Board may consider and recommend additional Traffic Regulation Orders to the County Council) nothing confers upon any of the Borough/District Councils the power or right to implement new pay and display schemes for on-street parking bays or make Traffic Regulation Orders which, for the avoidance of doubt, shall remain within the sole discretion of the County Council, and
- 2.8.2 nothing prevents the County Council at its own expense from (amongst other things) installing and carrying out any on-street related work in respect of Traffic Signs, plates and road markings within the Civil Enforcement Area and Special Enforcement Area.
- 2.9 The County Council and the Borough/District Councils will join the Adjudication Service (TPT), in order to provide the adjudication facility required by the 2004 Act. The County Council, in conjunction with the Borough/District Councils through the CPU, will establish, operate and administer an appeals procedure which will allow recourse to the Parking Adjudicators appointed by the TPT and each party agrees to comply with or implement any decision or recommendation made following the completion of any adjudication carried out by the TPT.

2.10 THE POLICY

- 2.10.1 The draft Policy for all Areas is as set out in schedule 1 to this Agreement, following execution of the Agreement one or more meetings of the Board will be held to consider the form of the Policy and the Parties agree to give all reasonable assistance to the Board and their respective appointees so as to ensure that the form of the Policy is agreed by the Board within 60 Days of the execution of this Agreement it will then be submitted to Strategic Director of Environmental Services for final approval.
- 2.10.2 Subject to clause 2.10.4 the prior approval of the Strategic Director of Environmental Services will be required for any amendments to be made to the Policy once agreed (such approval not to be unreasonably withheld or delayed).
- 2.10.3 In seeking the approval of the Strategic Director of Environmental Services in accordance with clause 2.10.2 a Party seeking to vary the

Policy shall in the first instance approach the Board and shall provide such information (in writing) as the Board may reasonably require. The Board may then seek the approval of the Strategic Director of Environmental Services for a variation to the Policy and the Strategic Director of Environmental Services will take such representations into account when making his decision.

- 2.10.4 Amendments to the Policy which relate solely to Off-Street Operational Parking Policy in all the Areas, may be made by the Board (without the prior approval of the Strategic Director of Environmental Services) in accordance with clause 8.2 provided that any proposed changes are notified to the Strategic Director of Environmental Services 5 Working Days prior to the Board meeting in question and for the purposes of this clause 2.10.4 only, the provisions of clause 8.3 shall not apply to the decision of the Board.
- 2.11 The Borough/District Council shall at their own cost retain such staff as are necessary to fulfil their obligations under this agreement and for the avoidance of doubt this cost shall not be rechargeable to the accounts set up pursuant to clauses 9.3 or 9.4 other than the management fee as agreed.

3 EXERCISE OF FUNCTIONS

- 3.1 In exercising the Functions, each Borough/District Council hereby agrees with the County Council to discharge the Functions in its Area in accordance with the Policy and to have regard to and comply with all statutory and legislative requirements associated with the Functions.
- 3.2 The County Council may only alter the full and/or discounted monetary amount of on-street Penalty Charges within any Borough/District Council's Area following consultation with the Borough/District Council in question and subject, where necessary, to the approval of the Secretary of State.
- 3.3 The County Council shall retain the right to introduce or change on street paid for parking charging and to approve the level of on-street paid for parking charges including residents' and other parking permits PROVIDED THAT the County Council will consult the appropriate Borough/District Council in writing of such proposals in advance and, before implementing such proposals, shall consider any response received in writing within 30 days of the date of such notification by the County Council to the Borough/District Council.
- 3.4 If any Borough/District Council wishes to make any change in the management of its off-street car parks, including any adjustment by notice or otherwise to the level of parking charges in any off-street car park, it may do so PROVIDED THAT the Borough/District Council will consult the

County Council in writing of its proposals in advance and, before implementing such proposals, shall consider any response received in writing within 30 days of the date of such notification by any Borough/District Council to the County Council.

4 IT SYSTEM

4.1 Each Borough/District Council shall co-operate and work with the County Council to establish a compatible IT system to undertake and support the Functions and the operation of the CPU including linking in with the Borough/District Council's own IT systems.

4.2 The County Council agrees that in consultation with the Board:

4.2.1 it will Procure the IT System at its reasonable cost as necessary for the CPU service;

4.2.2 it will fund the Capital IT Set Up Costs;

4.2.3 it will ensure that the IT System is supported for as long as it is commercially reasonable to do so.

4.2.4 Each Borough/District Council severally agrees that in respect of its individual use of and requirements in relation to the IT System;

4.2.5 it will fully comply with the terms of any licence required for the use of the IT System;

4.2.6 use it only in accordance with any maintenance manuals or instructions given by the County Council or the supplier of the IT System (or any part of it); and

4.2.7 install and maintain, at their own cost, all IT hardware and ancillary software necessary to access the IT System at their offices.

5 AREA COVERED BY THIS AGREEMENT

5.1 The Areas covered by this Agreement are more particularly set out in Schedule 2.

5.2 The Area for each Borough/District Council is specifically identified in Schedule 2 and extends (in each case) to the area edged black on the plan shown in schedule 2, being the area designated by the Secretary of State as a Civil Enforcement Area and Special Enforcement Area in the Designation Order and excludes roads shown with a broken blue line.

- 5.3 For the avoidance of doubt the Borough/District Councils shall only have responsibilities and obligations under this Agreement for the Area identified as being their Borough/District Area in Schedule 2 unless otherwise agreed by the Parties.

6 DURATION, TERMINATION AND REVIEW OF THE AGREEMENT

- 6.1 This Agreement shall commence on the Commencement Date and shall continue thereafter unless terminated sooner by the unanimous agreement of all the Parties.
- 6.2 Any individual Party may withdraw from the relationship created by this Agreement or may be removed from the relationship created by this Agreement in the following circumstances:
- 6.3 Where any Party is considered by the Board or the County Council to be in a material breach of this Agreement, the Board or the County Council will give the defaulting party a minimum of 30 days notice in writing specifying the breach and requiring it to be remedied within that period. If the defaulting party continues to be in breach at the end of the notice period that Party will be expelled from the relationship created by this Agreement PROVIDED THAT if the recipient of the notice disputes that it is in breach and elects to submit the dispute to resolution under clause 14 then there shall be deemed to be no breach unless and until the finding of a breach by the person appointed under clause 14; or
- 6.4 any Party giving a minimum of two years notice in writing to the Board to expire on the thirty-first day of March.

In either circumstance the removal of such party will be without prejudice to the continuance of the Agreement which shall continue in accordance with its terms with the remaining parties until the expiry of the Agreement in accordance with clause 6.1.

7 INDEMNIFICATION AND INSURANCE

- 7.1 Each Borough/District Council shall severally indemnify and keep indemnified the County Council against all actions, claims, demands, proceedings, damages, losses, costs, charges and expenses whatsoever in respect of or in any way arising out of their provision of the Functions or any part of them, or other work carried out by them pursuant to this Agreement including injury to or death of any person and loss of or damage to any property (including property belonging to the County Council or any other Borough/District Council) except and to the extent that it may arise out of the act, default or negligence of the County Council or its officers.

- 7.2 Each Borough/District Council shall maintain, public liability insurance throughout the period of this Agreement. Each Borough/District Council may recharge to the relevant off-street account the amount of any additional insurance premium which reasonably relates to liabilities which may arise pursuant to this agreement, such amount of additional premium will be agreed with the relevant Borough/District Council and County Council each year. The minimum cover per incident under such policy at the date of this Agreement shall be at least five million pounds (£5,000,000), which sum may be amended in accordance with future discussions with the County Council who will act reasonably in requesting any amendments to the said sum.
- 7.3 Each Borough/District Council shall in its own name institute (which for these purposes shall include appealing against a decision of any Court tribunal or other judicial body) and defend all such claims or legal proceedings as may be necessary arising out of or in connection with the discharge and carrying out of any of the Functions by that Borough/District Council PROVIDED ALWAYS that such Borough/District Council shall keep the County Council regularly updated in relation to the prosecution and defence of any action, and it agrees that it will give prior notification to the County Council before agreeing any compromise or settlement of any proceedings (taken or defended in accordance with this clause) to which such Borough/District Council is a party.

8 REVIEW OF OPERATIONAL ARRANGEMENTS AND THE BOARD

- 8.1 The Board will consist of nine members comprising one from the County Council and one from each Borough/District Council. The Board shall meet at least four times per year with the time and place to be agreed at the preceding meeting and its principal functions will be as set out in Schedule 4 which may be varied from time to time by the unanimous agreement of the Parties. Special meetings may be called if deemed necessary to determine matters contained within this agreement.
- 8.2 The Board will endeavour to reach agreement on matters unanimously however, in the absence of unanimity, decisions of the Board shall be determined by a 75% majority of votes cast for or against each resolution by the members of the Board present and voting provided that the meeting is quorate with a minimum of six members is present at any meeting. At Board meetings each member shall have one vote provided always that there will only be one representative on the Board able to vote from each Party.
- 8.3 The Board shall have no power to take any executive decision (as defined in the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000 (as amended)) so as to bind any of the Parties. Any executive decision resulting from the Board's consideration

shall be taken either by each representative of the Parties on the Board if the decision is within their delegated powers or otherwise in accordance with the Parties' delegation arrangements.

- 8.4 On 31st March 2012, being the end of the third full Financial Year (and in the event that this Agreement has not been previously terminated in accordance with clause 6) the Board shall commence a review of this Agreement with particular reference to the costs, income and effectiveness of the arrangements and the Parties agree to give all reasonable assistance to the Board to conduct such a review and implement any recommendations which may include amendments to this Agreement.
- 8.5 It is agreed by the Parties that upon full implementation of the 2004 Act some of the terms of this agreement may be inconsistent with the provisions of that Act, and that upon full implementation of the 2004 Act the Parties agree that they will act in good faith and use all reasonable endeavours to amend this agreement so as to make any appropriate or necessary amendments.
- 8.6 The Parties shall have the opportunity of consulting with their own independent advisors on any proposed amendments to this Agreement under Clause 8.5 above following which any amendments shall only come into effect following ratification by the Board.
- 8.7 Notwithstanding the review provisions in clause 8.4, the County Council through its CNO, will on an annual basis formally review with each Borough/District Council (through the Borough/District Nominated Officer) the operation of the Functions the results of such meetings, may, as appropriate, be taken to the Board for further consideration.
- 8.8 Each Borough/District Council will take all reasonable steps to work in partnership with the County Council to satisfy its own requirements and those of the County Council as traffic authority in relation to this Agreement. In the unlikely event of any difference of opinion arising, the matter will be referred to mediation in accordance with clause 14.

9 FINANCIAL

- 9.1 The Parties declare their joint intention to use all reasonable endeavours to ensure that the Functions shall as far as possible be run efficiently and economically and aim to make the Functions in each Borough/District Council's Area self financing save as otherwise agreed by all the Parties. This applies equally to the on-street and off-street enforcement operation and administration thereof in each Borough/District Council's Area.
- 9.2 Having regard to clause 9.1, the parties agree that when:

- 9.2.1 considering the Annual Budget; and
- 9.2.2 considering taking any steps affecting the Functions, they will have proper regard to the objective of making both the off-street service provisions and on-street CPE self financing in each Borough/District Council's Area as soon as reasonably practicable.
- 9.3 The County Council shall establish an On-Street Parking Account in the name of each Borough/District Council. For the avoidance of doubt each account and the money contained within them shall, subject to the provisions of this agreement belong to the County Council. The County Council may on a monthly basis (during the term of this Agreement) debit each Borough/District Council's On-Street Parking Account with the sums required to be paid pursuant to clause 9.18.
- 9.4 The County Council shall establish an Off-Street Parking Account for each Borough/District Council such account (and monies contained within it from time to time) will be held on behalf of the Borough/District Council for whom it has been set up and named in the title of the account, and each Borough/District Council agrees that the County Council may on a monthly basis (during the term of this Agreement) debit each Borough/District Council's Off-Street Parking Account with the sums required to be paid pursuant to clause 9.18.
- 9.5 Each Borough/District Council's relevant proportion will be calculated on a pro rata basis on the number of PCNs issued in their Area as against the total issued countywide in the month invoiced (each being their "Relevant Proportion"), the working of this definition will be kept under review by the Board.
- 9.6 Income received in discharging the CPE service from off-street Penalty Charge Notices in each Borough/District Council's Area will be credited to that Borough/District Council's Off-Street Parking Account established pursuant to clause 9.4. This shall not include pay and display off-street income.
- 9.7 Income received in discharging the CPE service including, without limitation, income from on-street Penalty Charge Notices, income from charges for parking on-street, and also from other parking permits and clamping and removals but not residents' permits and if undertaken in each Borough/District Council's Area will be credited to that Borough/District Council's On-Street Parking Account established pursuant to clause 9.3.
- 9.8 The County Council may from time to time acting reasonably notify in writing to any Borough/District Council such part or parts of the income

and expenditure credited or debited to both their On-Street and Off-Street Parking Accounts that need to be distinguished separately in the Accounts from other income or expenditure credited or debited to the Accounts and the Borough/District Councils will be deemed to consent to this.

- 9.9 The County Council shall, not later than 15th January each year, prepare and use its reasonable endeavours to agree with each Borough/District Council a budget for the discharge of the Functions in their Area for the following Financial Year (once agreed the “Annual Budget”) the County Council will also use their reasonable endeavours to circulate a draft annual budget to each Borough/District Council by 31 October each year for their consideration prior to final agreement in the following January.
- 9.10 In the event that the parties are unable to agree the Annual Budget in accordance with clause 9.9, the dispute shall be referred for resolution in accordance with clause 14.
- 9.11 In discharging the Functions, the Borough/District Council shall conform to the Annual Budget set in accordance with clause 9.9 above.
- 9.12 A statement of income and expenditure subject to audit (to include a full statement of transactions) relating to both the On-Street and Off-Street Accounts shall be prepared annually by the County Council for each Borough/District Council as soon as practicable after the end of the Financial Year which shall be submitted to each respective Borough/District Council no later than 15th May. Following the submission of the statement of income and expenditure, the County Council will have the accounts of CPU audited (the auditor for which will be selected after consultation with the Board) and provide each Borough/District Council with a certified copy of these audited accounts the cost of the Audit exercise will be charged to each Borough/District Council's account in their Relevant Proportion (for the proceeding year in this instance rather than preceding quarter).
- 9.13 Following preparation of an annual statement of account in accordance with clause 9.12, for each On Street Account established pursuant to clause 9.3 if there is:
 - 9.13.1 a surplus of income over expenditure (the “On Street Surplus”) in a Borough/District Council Area, such On Street Surplus may be used by the County Council. Where the County Council deem that no further expenditure, over and above the initial 50% is required in that Borough/District then the County Council will retain their 50% surplus for expenditure across the county; or
 - 9.13.2 an excess of expenditure over income (the “On-Street Deficit”), the County Council will fund the deficit.

- 9.14 Following preparation of an annual statement of account in accordance with clause 9.15, for each Borough/District Council if there is, in relation to their Off-Street Parking Account:
- 9.14.1 a surplus of income over expenditure (the “Off-Street Surplus”), such Off Street Surplus will be returned to the Borough/District Council in question ;
 - 9.14.2 subject to clause 9.15 an excess of expenditure over income (the “Off-Street Deficit”), the Borough/District Council that has incurred the Off-Street Deficit shall make a payment for the deficit within 30 days of written request from the County Council.
- 9.15 Each Borough/District Council shall not be required to pay for any Off-Street Deficit incurred in the first 2 years after the opening of each Borough/District Council’s On Street and Off Street Account (the “Opening Date”) until the second anniversary of the Opening Date, any deficits incurred during the initial two year period will become payable in accordance with clause 9.17 (or in such phased payments as may be agreed between the parties) on the second anniversary of the Opening Date.
- 9.16 For the avoidance of doubt clause 9.15 only provides for the deferral of a payment of Off-Street Deficit and does not result in such deficits being cancelled.
- 9.17 All transfers or payments between the County Council and Borough/District Council arising from the provisions of clauses 9.13 and 9.14, subject to 9.15, shall take place no later than four months after the end of the Financial Year.
- 9.18 From the relevant On-Street and Off-Street Parking Accounts held by the County Council on behalf of each Borough/District Council the County Council shall:
- 9.18.1 pay the TPT PCN Levy and any annual fees as set by the TPT or imposed by statute direct to that organisation;
 - 9.18.2 pay the DVLA search fees as imposed by the DVLA;
 - 9.18.3 pay the debt registration fees to Northampton County Court. Debts can only be registered with the written approval of the issuing authority that issued the originating PCN;
 - 9.18.4 recover in the relevant proportion the direct running costs of providing and managing the CPU (for the avoidance of doubt any charges to be

recovered which relate to accommodation costs shall be calculated on the actual office space utilised by the CPU) on a monthly basis from the On-Street and Off-Street Parking Accounts;

- 9.18.5 recover the costs of any deficits as described in clauses 9.13 and 9.14 above; and
- 9.18.6 such other sums relating to this Agreement as the Board may direct acting reasonably.

9.19 GENERAL PAYMENT ITEMS

- 9.19.1 For the avoidance of doubt the full amount of the monthly invoice submitted by the Enforcement Contractor to the County Council for each Borough/District Council's Area (which the Borough/District Council shall have the opportunity to review in accordance with clause 11.4) will be debited from the relevant Borough/District Council's On-Street and Off-Street Parking Accounts in accordance with clause 11.
- 9.19.2 Revenue monies generated by off-street paid for parking will continue to go directly to the Borough/District Council and DCC Countryside budgets.
- 9.19.3 The policy for off-street charging levels for paid for parking will rest with the respective Borough/District Council.
- 9.19.4 Any future on-street cash collection will be co-ordinated by the County Council with a potential to utilise existing Borough/District Council's arrangements or the Enforcement Contractor.

10 CPU

- 10.1 The County Council will produce a financial statement at the end of each financial year to show the income and expenditure of the CPU.
- 10.2 In the event that the CPU has a surplus of income over expenditure the County Council will after consulting with the Board first retain such sums as it thinks are necessary as a reserve for future liabilities, thereafter the remaining surplus will be returned to each of the Borough/District Councils in their Relevant Proportion ie relating to the actual number of tickets issued in each Council, (calculated for the purposes of this clause only for the preceding year in this instance rather than preceding quarter). In the event of a deficit applying to the CPU account, such a deficit will again be apportioned pro-rata in the Relevant Proportion.

- 10.3 In the event that a Borough/Council has a query or dispute regarding the CPU the query or dispute shall be raised initially with the CNO. In the event that the query or dispute cannot be resolved by the CNO it shall be referred to the Board.

11 APPOINTMENT OF THE ENFORCEMENT CONTRACTOR

- 11.1 The Parties agree that the County Council will after consultation with the Board procure on behalf of all the Borough/District Councils an Enforcement Contractor. The arrangements with the Enforcement Contractor will allow the Borough/District Councils to call off services directly.
- 11.2 The Borough/District Councils agree that they will give all reasonable assistance to the County Council in the procurement of the Enforcement Contractor.
- 11.3 Each Borough/District Council agrees that they will utilise the services of the Enforcement Contractor to carry out the Functions delegated to it pursuant to this Agreement and they will do so fully in accordance with the Framework Agreement entered into between the County Council and the appointed Enforcement Contractor save as otherwise agreed by all the Parties.
- 11.4 Notwithstanding that the operational management, where agreed, between the County Council and the respective Borough/District Council for the provision of any services will be between the Borough/District Councils and the Enforcement Contractor, the Enforcement Contractor will send invoices to the County Council monthly for any services provided to a Borough/District Council, the County Council will forward the breakdown of the invoice amount to the Borough/District Council within 2 working days of receipt and the Borough/District Council shall confirm to the County Council the accuracy of the invoice amount provided by the Enforcement Contractor (the "Verified Amount") within 14 days of the date of the relevant invoice. In the absence of confirmation the accuracy of the invoice amount will be deemed to have been verified.
- 11.5 The County Council shall make the payment of the Verified Amount to the Enforcement Contractor from the Borough/District Council's On-Street and Off-Street Parking Accounts. The County Council will make payments on behalf of the Borough/District Councils to the Enforcement Contractor and any overpayments made as a result of a Borough/District Council error will be the responsibility of the Borough/District Council that verified the payment amount pursuant to clause 11.4 and such Borough/District Council shall have no recourse to the County Council save where the County Council was negligent in making such a payment.

- 11.6 The Borough/District Councils agree and acknowledge that the County Council shall not have any liability, either under this Agreement or otherwise, in respect of the provision of any additional services by the Enforcement Contractor to any Borough/District Council. The suitability of the terms of any framework agreement and call off arrangements, and the Enforcement Contractor to perform any additional services shall be entirely the responsibility of the Borough/District Council.
- 11.7 Subject to clause 11.8 the amount of Enforcement Contractor time utilised by each Borough/District Council pursuant to the terms of the Framework Agreement shall, in any one calendar year, be the number of hours set out in Schedule 5.
- 11.8 The initial number of deployed hours is as set out in Schedule 5. Minor variations of less than 20% annually against the initial agreed base number of deployed hours will be allowed under the terms of the agreement without recourse to amending the written agreement. Any minor variation to agreed base hours must be notified in writing to DCC within 5 working days of the contractor being asked to amend their hours. Variations to the agreed base hours must not be to the detriment of the service provision with particular reference to this being a traffic management initiative. Permanent variations of more than 20% of the agreed base number of hours for on street enforcement must have prior approval from DCC. Permanent variations of more than 20% of the agreed base number of hours for off street enforcement will be at the discretion of the managing authority. Both will require a period of 4 weeks notice prior to the change date to be given to the contractor. However it may also be necessary to vary the service provision to balance the accounts to run on a cost neutral basis.

12 EMPLOYEES

- 12.1 Where TUPE is likely to apply on the termination or expiration of the Agreement, or upon the engagement of the Enforcement Contractor or in any other circumstance connected with this Agreement, any Borough/District Council which has employees that will or may be subject to the provisions of TUPE (the "TUPE Employees") shall provide accurate and complete information relating to those TUPE Employees and such other relevant information as may be reasonably required by the other Parties in order to continue with the Agreement or engage the Enforcement Contractor.
- 12.2 Any Party which has supplied information pursuant to clause 12.1 shall advise the County Council immediately of any changes to these details and shall ensure that the information disclosed is accurate and up to date and that all known existing liabilities relating to the TUPE Employees have been discharged prior to any transfer under TUPE.

- 12.3 Any Borough/District Council providing information pursuant to clauses 12.1 and 12.2 shall indemnify the County Council against any claim made against the County Council at any time by any person in respect of the liability incurred by the County Council arising from any deficiency or inaccuracy in information, which that Party is required to provide under Clause 12.1.
- 12.4 Within ten working days of being so requested by the County Council, a Borough/District Council which is the employer or former employer of the TUPE Employees shall transfer to the County Council, or any person designated by County Council, free of charge, all computerised filing, recordings, documentation, planning and drawings held on software and utilised in the provision of the services. The transfer shall be made in a fully indexed and catalogued disk format to operate on a proprietary software package identical to that used by the County Council.

13 EFFECT OF TERMINATION

- 13.1 In the event of termination of this Agreement or upon the removal or withdrawal of any Borough/District Council, the On-Street Parking Account for each Borough/District Council or in the case of the withdrawal or removal of a single Borough/District Council pursuant to clause 6.2 the On Street Parking Account for the departing Borough/District Council shall for the avoidance of doubt belong to the County Council (subject to clause 13.3 below) and the County Council shall prepare a final account to be submitted to the Borough/District Council within three months of the date of termination, with the final financial settlement of any outstanding matters finalised within one month thereafter.
- 13.2 In the event of termination of this Agreement, or upon the removal or withdrawal of any Borough/District Council pursuant to clause 6.2 the Off Street Parking Account for the departing Borough/District Council shall accrue to the respective Borough/District Council or Borough/District Council (subject to clause 9.14) and the County Council shall prepare a final account to be submitted to the Borough/District Council within three months of the date of termination removal or withdrawal, with the final financial settlement of any outstanding matters finalised within the month thereafter.
- 13.3 In the event that an On-Street Parking Account is likely to be or is in deficit on the date of termination or the date of a withdrawal or removal of any Borough/District Council, the County Council shall be responsible for any such deficits. In such cases the Borough/District Council will at all times seek to employ good practice and best endeavours in order to minimise or eliminate any such deficits leading up to termination.

- 13.4 In the event that an Off-Street Parking Account is likely to be in deficit on the date of termination or the date of a withdrawal or removal of any one or more Borough/District Councils, the Borough/District Council(s) shall be responsible for such deficits except in situations where the deficits have arisen from failures on the part of the County Council in relation to their financial management of the Off-Street Parking Account(s) in question (and not for the avoidance of doubt any other accounts), and in which case the County Council shall be responsible for such deficits but only where agreement has been reached or final determination given under clause 14 in relation to the final account referred to in clause 13.2 and found the County Council to be responsible.
- 13.5 Upon Termination, withdrawal or removal the Borough/District Council (s) shall take responsibility for the processing of all Penalty Charge Notices issued by or on behalf of it (them) and appeals issued or made prior to the termination of this Agreement.
- 13.6 Notwithstanding the service of a notice pursuant to clause 6.2, the Parties shall continue to fulfil their obligations under this Agreement until the date set out in the notice (issued in compliance with this Agreement) or such other date as required under this Clause 13.
- 13.7 The Parties shall be entitled to require access to data or information arising from or out of this Agreement from each and every other Party for 7 years after the Expiry Date and the Parties agree that they will provide all reasonable access to such documentation upon receipt of 7 days written notice.
- 13.8 The provisions of any provision of this Agreement which by its terms is to be performed or observed notwithstanding termination or expiry or withdrawal or which is expressed to survive termination or expiry or withdrawal) shall survive the termination or expiry of this Agreement, together with any other provision which is either expressed to or by implication is intended to survive termination.
- 13.9 Termination, expiry or withdrawal shall be without prejudice to any rights acquired or which accrue prior to termination, expiry or withdrawal.

14 DISPUTE RESOLUTION

- 14.1 Each Party undertakes to co-operate in good faith with the others to facilitate the proper performance of the Agreement and in particular will:
- 14.1.1 use all reasonable endeavours to avoid unnecessary disputes and claims;

- 14.1.2 not interfere or in any other way hinder with the rights of any other Party and its servants agents representatives or contractors on its behalf from performing its obligations under the Agreement; and
- 14.1.3 assist the other Parties (and their servants agents representatives or contractors) in performing those obligations so far as is reasonably practicable.
- 14.2 If a dispute arises between any of the Parties ('the Dispute') which cannot be resolved by good faith negotiation within 30 days of either Party declaring that a Dispute has arisen, the Parties shall refer the Dispute to the chief executive of each Party for resolution.
- 14.3 In the event that the chief executives cannot resolve the dispute within 30 days of referring the Dispute to them, the Parties shall attempt to resolve the Dispute by mediation in accordance with the Centre for Dispute Resolution (CEDR) Model Mediation Procedure that is current at the time of the Dispute.
- 14.4 The mediation procedure shall be initiated by either Party giving notice in writing to the other party requesting mediation in accordance with this clause.
- 14.5 The CEDR Model Mediation Procedure will be amended to take account of:
 - 14.5.1 any relevant provisions in this Agreement; and
 - 14.5.2 any other agreement which the Parties may enter into in relation to the conduct of the mediation.
- 14.6 The costs of the mediation shall be borne as the mediator directs.
- 14.7 Neither Party may commence any court proceedings or arbitration in relation to any Dispute until they have attempted to resolve the Dispute by mediation and the mediation has terminated.

15 NEW PARTIES

- 15.1 The Parties may from time to time unanimously agree that new parties be accepted into the partnering arrangement created by this Agreement ("New Partners").
- 15.2 If an application for membership is approved by all the Parties, New Partners will be accepted into the partnering arrangement created by this Agreement provided that they agree to abide by the terms and conditions

of this Agreement by executing a Deed of Adherence in the form set out in Schedule 3.

16 UNLAWFUL FETTER ON THE PARTIES' STATUTORY POWERS

- 16.1 Notwithstanding any other provision contained in this Agreement a Party shall not be bound by any provision to the extent that it would constitute an unlawful fetter on any statutory power or obligation of that Party, but any such provision shall remain valid and binding as regards all other parties to which it is expressed to apply.

17 GENERAL

- 17.1 Notwithstanding clause 2.1, and as provided in Sections 19(4) and (5) of the 2000 Act, nothing contained in this Agreement shall prevent the County Council from exercising the Functions (or any part thereof) so far as they relate to on street parking ("On Street Parking Functions") PROVIDED THAT the County Council will not exercise any of the On Street Parking Functions unless there is some good and sufficient reason in the County Council's opinion, and then only after agreement with the Borough/District Council for the County Council to be responsible for the On Street Parking Functions from an agreed date. However the agreement of the Borough/District Council shall not be necessary where the urgency of the situation (in the reasonably held opinion of the County Council acting by the County Nominated Officer) does not permit such consultation or the situation is deemed to need urgent action.
- 17.2 Notwithstanding clause 2.1, a Borough/District Council may request the County Council to exercise any of the Functions, in which case the County Council may in its discretion exercise the Function or Functions to the extent of the request and to the exclusion of the Borough/District Council.
- 17.3 Written notice under this Agreement shall be by recorded delivery post, and:
- 17.3.1 in the event of notice served on the County Council these shall be sent to the County Nominated Officer at County Hall, Matlock, Derbyshire DE4 3AG or such other address as is notified to the other Parties from time to time; and
- 17.3.2 in the event of notice served on any Borough/District Council it shall be sent to the Borough/District Nominated Officer at the address set out in the front of the Agreement or such other address as is notified to the County Council from time to time; and
- 17.3.3 in each case shall be deemed to be served or given on the day it is received.

- 17.4 The terms of this Agreement may be varied at any time by written agreement between the Parties and shall be endorsed on or attached to this Agreement.
- 17.5 This Agreement shall be subject to English Law and shall be subject to the jurisdiction of the Courts of England.
- 17.6 The Parties agree that the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement.
- 17.7 The Parties shall, in the performance of this Agreement, comply with and follow best professional practice and all applicable legislation, regulations and guidance in relation to equal opportunities, race equality and human rights.
- 17.8 The Parties have entered into this Agreement with the object of providing an effective economic and efficient CPE service across Derbyshire. The Parties intend to seek to continuously improve delivery of the Functions in accordance with the principles of best value.
- 17.9 The functions covered by this Agreement shall be subject to internal review by all Parties to verify that robust controls and effective corporate governance arrangements are in place. Any review carried out under this clause will be in accordance with the principles contained in the County Council's 'Partnership Working Protocol and Toolkit'. For the purpose of any review carried out under this clause, the Parties agree to permit unrestricted access at all reasonable times to staff employed in connection with the provision of the functions and all relevant documents (including computerised documents and data) and will provide such explanations as are reasonably required for these purposes.
- 17.10 The Borough/District Councils shall not assign or transfer all or any part of this Agreement without the prior written consent of the County Council.
- 17.11 Each of the Parties will pay their own costs and expenses incurred in connection with the preparation negotiation and completion of this Agreement.

IN WITNESS whereof this Agreement has been entered into as a deed on the date of this Agreement

THE COMMON SEAL of)
DERBYSHIRE COUNTY)
COUNCIL was hereunto affixed)
in the presence of:-)

Authorised Signatory

THE COMMON SEAL of)
AMBER VALLEY BOROUGH)
COUNCIL was hereunto affixed in)
the presence of:-)

Authorised Signatory

THE COMMON SEAL of)
BOLSOVER DISTRICT COUNCIL was)
hereunto affixed in the presence of:-)

Authorised Signatory

THE COMMON SEAL of)
CHESTERFIELD BOROUGH COUNCIL)
Was hereunto affixed in the presence of:-)

Mayor

Authorised Signatory

THE COMMON SEAL of)
DERBYSHIRE DALES DISTRICT)
COUNCIL was)
hereunto affixed in the presence of:-)

Authorised Signatory

THE COMMON SEAL of)
EREWASH BOROUGH COUNCIL was)
hereunto affixed in the presence of:-)

Authorised Signatory

THE COMMON SEAL of)
HIGH PEAK BOROUGH COUNCIL was)
hereunto affixed in the presence of:-)

Chief Executive/Deputy Chief Executive

THE COMMON SEAL of)
NORTH EAST DERBYSHIRE)
DISTRICT COUNCIL was)
hereunto affixed in the presence of:-)

Chair

Chief Executive/Principal Solicitor

THE COMMON SEAL of)
SOUTH DERBYSHIRE)
DISTRICT COUNCIL was)
hereunto affixed in the presence of:-)

Vice Chairman

Chief Executive

SCHEDULE 1

The Draft Policy

SCHEDULE 2

The plan showing the Civil Enforcement Areas/ Special Enforcement Areas

SCHEDULE 3

Deed of Adherence

THIS DEED OF ADHERENCE is made the day of 2009

BY ♦ of ♦ (**Covenantor**) in favour of the persons whose names are set out in the Schedule to this Deed and is supplemental to the agreement dated ♦ 200 ♦ made by ♦ (**Agreement**).

Terms defined in the Agreement shall bear the same meanings herein.

It is agreed

In consideration of the Covenantor being accepted as a party for the purposes of the Agreement by the existing parties to the Agreement, as from [insert date] the Covenantor hereby confirms that it shall be a party to the Agreement as a Party to that agreement and agrees to be bound by all of the relevant provisions of the Agreement as if it had been an original party thereto.

This Deed is governed by English law.

In witness whereof this Deed has been executed by the Covenantor and is intended to be and is hereby delivered on the date first above written

SCHEDULE

[Parties to the Agreement including those who have executed earlier deeds of adherence].

SCHEDULE 4

Board Functions

The Derbyshire Parking Board will:-

1. Adopt general policies, strategies and guidance for the introduction and on-going operation of Civil Parking Enforcement (CPE) in Derbyshire.
2. Ensure that the day to day operation of the enforcement service, the Enforcement Contractor and Central Processing Unit are discharged in an efficient and co-ordinated manner.
3. To receive reports, updates and recommendations from the Parties in respect of enforcement and related issues.
4. Adopt key performance measures for use by the District/Borough Councils and the County Council to enable best value and best practice to be achieved through target setting and benchmarking.
5. Assist with the setting of policies and advise on the implementation of guidance of:
 - (i) Residents' Parking Schemes (within the Residents' Parking Zone Policy);
 - (ii) on-street pay and display and related charges.
6. Agree Penalty Charge Notice Levels to be applied across Derbyshire in accordance with best practice and be at the maximum level permitted.
7. Where deemed appropriate, respond to consultations relevant to Civil Parking Enforcement and make representations to government departments and others in respect of Civil Parking Enforcement issues.
8. To review the operation and performance of financial matters arising within the terms of this Agreement and to ensure that appropriate accounting procedures are observed.
- 9 To approve any amendments to operating practice and to ensure that there is an ongoing cost effectiveness.
- 10 Prepare the annual report in accordance with current legislation to the Department for Transport.
- 11 Agree performance levels for the Central Processing Unit.
- 12 Advise on the levels of payment for the Central Processing Unit Function.

13 Oversee the letting of any subsequent Civil Parking Enforcement related contracts.

14 Agree the co-ordination and regulation of deployment of Civil Parking Enforcement Resources across Derbyshire.

15 To seek consensus on any issues arising within the operation of the scheme which may require amendment, consultation or review with a view to achieving an agreed settlement acceptable to all Parties.

16 To liaise and coordinate any related parking management issues relating to any of the Parties.

17 To consider and determine all such matters as all Parties may agree in writing

Nothing in this Constitution or the Terms of Reference shall override legislation relating to functions of Derbyshire County Council as the Highway Authority or the Borough or District Councils as the off street parking authorities.

The Board shall not seek to amend or review any policy related matters without giving each Party an equal and fair opportunity of giving proper consideration to that matter. Any proposed amendment or review shall not fall due for consideration without adequate prior written notice being given to each Party by the Party seeking amendment or review.

The Board will be the arbiter of and determine whether any matter is a “policy related matter”.

SCHEDULE 5
Enforcement Hours for each Area

COUNCIL / AUTHORITY	WEEKLY DEMAND FOR ENFORCEMENT (hours)		WEEKLY DEMAND FOR ENFORCEMENT		PROJECTED PCNs	
	Parking Attendants On-Street Hours	Parking Attendants Off-Street Hours	Parking Attendants On-Street	Parking Attendants Off-Street	On-Street	Off-Street

Amber Valley Borough	60.20	83.5	1.56	2.09	2,377	3870
Bolsover District	16.13	0.00	0.47	0.00	805	0
Chesterfield Borough	150.50	104.18	3.76	2.60	7,689	3,044
Derbyshire Dales District	107.73	98.7	2.69	2.53	4,508	1,216
Erewash Borough	54.80	40.35	1.42	1.01	2,049	1,605
High Peak Borough	91.38	35.55	2.36	0.90	3,569	2,255
North East Derbyshire District	21.10	4.81	0.53	0.12	899	219
South Derbyshire District	16.61	4.32	0.42	0.1	743	225
DCCs Countryside Section	Not Applicable	23 Summer 8 Winter	Not Applicable	0.5 Summer 0.2 Winter	Not Applicable	Not Available at present
Peak District National Park	Not Applicable	Not Available at present	Not Applicable	Not Available at present	Not Applicable	Not Available at present

TOTALS:	518	371.41*	12.95	9.35*	22,639	12,434
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* excludes countryside hours in totals

APPENDIX A

Flow chart for illustration purposes only

APPENDIX B

In accordance with Clause 9.1 and 11.3 of the Agreement the Parties agree and acknowledge the following:

Bolsover District Council ("BDC"), North East Derbyshire District Council ("NEDDC") and South Derbyshire District Council ("SDDC") currently makes no charge for existing off street parking facilities.

Should these Districts introduce a charging regime in their off-street car parks it shall be the responsibility of that District to introduce the appropriate off-street order and install signs, lines and pay and display machines at their cost. Pay & Display equipment may be obtained at the prices submitted in the Tender for the enforcement contract. Subject to approval from DCC the extension/amendment of the enforcement service into those off-street car parks will be permitted. Where required new off-street accounts will be established for each district to receive the related PCN income and to pay for the enforcement in the off-street areas in that district.

APPENDIX C

Memorandum of Understanding

APPENDIX D

Parking Board Constitution

DATED THE

DAY OF

2019

DERBYSHIRE COUNTY COUNCIL

-and-

AMBER VALLEY BOROUGH COUNCIL

-and-

BOLSOVER DISTRICT COUNCIL

-and-

CHESTERFIELD BOROUGH COUNCIL

-and-

DERBYSHIRE DALES DISTRICT COUNCIL

-and-

EREWASH BOROUGH COUNCIL

-and-

HIGH PEAK BOROUGH COUNCIL

-and-

NORTH EAST DERBYSHIRE DISTRICT COUNCIL

-and-

SOUTH DERBYSHIRE DISTRICT COUNCIL

AGREEMENT RELATING TO
THE CIVIL ENFORCEMENT OF PARKING IN THE
ADMINISTRATIVE COUNTY OF DERBYSHIRE

1	DEFINITIONS	4
2	DISCHARGE OF FUNCTIONS	9
3	POLICY	11
4	EXERCISE OF FUNCTIONS	12
5	IT SYSTEM	12
6	DATA CONTROL AND DATA SHARING	13
7	AREA COVERED BY THIS AGREEMENT	15
8	DURATION, TERMINATION AND REVIEW OF THE AGREEMENT	15
9	REVIEW OF OPERATIONAL ARRANGEMENTS AND THE PARKING BOARD	16
10	INDEMNIFICATION AND INSURANCE	17
11	FINANCIAL	17
12	CENTRAL PROCESSING UNIT	20
13	APPOINTMENT OF THE ENFORCEMENT CONTRACTOR	20
14	EFFECT OF TERMINATION	21
15	DISPUTE RESOLUTION	22
16	NEW PARTIES	23
17	FREEDOM OF INFORMATION	24
18	COMPLAINTS AND INVESTIGATIONS	25
19	UNLAWFUL FETTER ON THE PARTIES' STATUTORY POWERS	25
20	GENERAL	25
SCHEDULE 1	ENFORCEMENT POLICY	
SCHEDULE 2	CIVIL ENFORCEMENT AREAS/ SPECIAL ENFORCEMENT AREAS	
SCHEDULE 3	DEED OF ADHERENCE	
SCHEDULE 4	BOARD FUNCTIONS	
SCHEDULE 5	COUNCILS OVERSEEING ENFORCEMENT ON BEHALF OF ANOTHER COUNCIL	
APPENDIX A	NEW OFF STREET CHARGING REGIMES	
APPENDIX B	PARKING BOARD CONSTITUTION	

THIS AGREEMENT is made the _____ day of _____ 2019

BETWEEN

- (1) **DERBYSHIRE COUNTY COUNCIL** of County Hall, Matlock, Derbyshire, DE4 3AG (the “County Council”);
- (2) **AMBER VALLEY BOROUGH COUNCIL** of Town Hall, Market Place, Ripley, Derbyshire DE5 3BT (“Amber Valley Borough Council”);
- (3) **BOLSOVER DISTRICT COUNCIL** of The Arc, High Street, Clowne, Chesterfield S43 4JY (“Bolsover District Council”);
- (4) **CHESTERFIELD BOROUGH COUNCIL** of Town Hall, Rose Hill, Chesterfield, Derbyshire S40 1LP (“Chesterfield Borough Council”);
- (5) **DERBYSHIRE DALES DISTRICT COUNCIL** of Town Hall, Bank Road, Matlock, Derbyshire, DE4 3NN (“Derbyshire Dales District Council”);
- (6) **EREWASH BOROUGH COUNCIL** of Ilkeston Town Hall, Wharncliffe Road, Ilkeston, Derbyshire DE7 5RP (“Erewash Borough Council”);
- (7) **HIGH PEAK BOROUGH COUNCIL** of Buxton Town Hall, Town Hall, Buxton, SK17 6EL (“High Peak Borough Council”);
- (8) **NORTH EAST DERBYSHIRE DISTRICT COUNCIL** of 2013 Mill Lane, Wingerworth, Chesterfield, Derbyshire, S42 6NG (“North East Derbyshire District Council”) and
- (9) **SOUTH DERBYSHIRE DISTRICT COUNCIL** of Civic Offices, Civic Way, Swadlincote, Derbyshire DE11 0AH (“South Derbyshire District Council”).

(together the “Parties”)

BACKGROUND

- (A) The County Council and each Borough/District Council are local authorities as defined by Section 270(1) of the 1972 Act.
- (B) For the purposes of the 1984 Act, the County Council is the Traffic Authority for all roads in the County of Derbyshire (other than motorways and all-purpose trunk roads).
- (C) This Agreement is intended to regulate the exercise of On-Street and Off-Street Parking.
- (D) By virtue of Section 19 of the 2000 Act and the 2000 Regulations, the executive of a local authority may arrange for functions which are the responsibility of the executive of the local authority to be discharged by another local authority.

- (E) By virtue of each Designation Order, the Secretary of State has, on application by the County Council, designated the whole of each of the Borough/District Council's administrative area as Civil Enforcement Areas and as Special Enforcement Areas in accordance with Part 6 of the 2004 Act.
- (F) It is acknowledged by the Parties that certain amendments may need to be made to this Agreement following implementation of further Acts and that there will be a need to work together in good faith to make such changes or amendments as are necessary.

IT IS AGREED AS FOLLOWS:

1 DEFINITIONS

- 1.1 In this Agreement (including the Background and the Schedules) unless the context otherwise requires, the following words and phrases shall have the meanings given to them below:

“1972 Act” - the Local Government Act 1972;

“1984 Act” - the Road Traffic Regulation Act 1984;

“2000 Act” - the Local Government Act 2000;

“2004 Act” - the Traffic Management Act 2004;

“2000 Regulations” - The Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2000 (No 2000/2851);

“GDPR” – General Data Protection Regulation – **the legal framework that sets guidelines for the collection and processing of personal information within the European Union (EU). The regulation forms part of the Data Protection Act and came into effect on 25 May 2018.**

“Adjudication Service” - the Traffic Penalty Tribunal (TPT) or such other organisation, as is approved by the Secretary of State and charged with, amongst other things, the responsibility of dealing with disputes between local authorities (including the Borough/District Councils) within the County of Derbyshire (and other local authorities) and appellants;

“Adjudication Service Levy” – the amounts levied by the Adjudication Service and payable in accordance with clause **11.11.1**;

“Agreed Purposes” – **the agreed purposes for which personal data is collected and held in order to serve a Penalty Charge Notice and enforce parking restrictions;**

“Annual Statement” as agreed pursuant to clause 11.8;

“Area” - the area administered by each Authority under the provisions of the 1972 Act together the “Areas” as identified in Schedule 2;

“Authority/ies” means the County Council or any of the District or Borough Councils, or Peak District National Park Authority within Derbyshire County Council;

“Board” – is the group of the County Nominated Officer (CNO) and each District Nominated Officer (DNO) or such other person who may be nominated by a Party to attend board meeting(s) in their place, who shall meet and have the responsibilities set out in this agreement;

“Borough Councils” for the purposes of this agreement means together Amber Valley Borough Council, Chesterfield Borough Council, Erewash Borough Council and High Peak Borough Council each being a “Borough Council”;

“Capital IT Set Up Costs” means the costs of providing the IT System;

“Civil Enforcement Officer” - has the same meaning as in the 2004 Act;

“Commencement Date” - the date the Designation Order for Civil Parking Enforcement comes into operation in each particular Borough/District;

“Controller”, “Processor”, “Data Subject”, “Personal Data”, “Personal Data Breach”, “Processing” and “Appropriate Technical and Organisational Measures” shall have the meanings set out in the UK Data Protection Legislation in force at the time;

“County Nominated Officer (CNO)” - the Officer nominated by the County Council’s Strategic Director of Economy, Transport and Environment as being responsible for the management of all aspects of this Agreement on behalf of the County Council;

“Central Processing Unit” (CPU) – the central Penalty Charge Notice (PCN) Ticket processing unit for Derbyshire administered by Nottinghamshire County Council on behalf of all the Borough/District Councils and the County Council;

“Civil Enforcement Area” - has the meaning ascribed to it in the 2004 Act and is the area more particularly set out in each Designation Order;

“CPE” – Civil Parking Enforcement;

“Data Discloser” - means a party that discloses Shared Personal Data to the other party;

“Data Protection Legislation” – the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications); and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party;

“Days” means calendar days;

“Designation Order” – means each or any of:

The Civil Enforcement of Parking Contraventions (County of Derbyshire County Council) Designation Order 2016, or subsequent orders;

together the “Designation Orders”;

“Dispensations” means a permit or similar item to allow a motorist to park in contravention of a prescribed Designation Order;

“District Councils” for the purposes of this agreement means together Bolsover District Council, Derbyshire Dales District Council, North East Derbyshire District Council and South Derbyshire District Council each being a “District Council”;

“District Nominated Officer (DNO)” - the Officer nominated by each Borough/District Council as being responsible for all aspects of this Agreement on behalf of the Council;

“EIR” – means the Environmental Information Regulations 2004;

“Enforcement Contractor” – the organisation contracted by the County Council to supply an enforcement service for call off by Boroughs/Districts Councils;

“Executive” - the Executive of the County Council;

“Expiry Date” - means the date on which the agreement is terminated pursuant to Clauses 8.1 and 8.2.

“Financial Year” - means each period of 12 months beginning on 1 April in one year and ending on 31 March in the next year, or such other period of 12 months in substitution as may be designated by the County Council and

in relation to part years at the beginning and end of this Agreement means such periods of less than 12 months as run from (i) the date of this Agreement to the first 31 March thereafter and (ii) the last 1 April to the date on which this Agreement is terminated;

“FOIA” – means the Freedom of Information Act 2000 and any subordinate legislation (as defined in Section 84 of the Freedom of Information Act 2000) made under the Freedom of Information Act 2000 from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such Act;

“Framework Agreement” means the agreement entered into between the **County** Council and the Enforcement Contractor for the provision of on and off street parking enforcement services.

“Functions” means all duties and powers of the County Council or Borough Council or District Council pursuant or incidental to the provisions of Schedule 8 of the 2004 Act and/or those provisions of the 1984 Act or the 2004 Act as are amended by the Designation Orders PROVIDED THAT the Functions shall not include any duties or powers of the County Council pursuant to section 77 of the 2004 Act as amended by the Designation Orders nor the functions of the street authority as defined under the New Roads and Street Works Act 1991;

“IT System” means the **Information Technology** hardware and software deemed necessary by the County Council to undertake the functions associated with the issuing and processing of PCNs;

“Lines” – has the same meaning as in the Traffic Signs Regulations and General Directions 2016;

“Model” - means the financial model business plan or such later version or versions as are agreed between the Parties;

“Off-Street Parking Account” - the account established under Clause 11.3;

“Off-Street Operational Parking Policy” - means any part of the Policy which relates solely to the enforcement of parking within the confines (and only within the confines) of the off-street car parks operated or controlled by the **County or** appropriate District or Borough Council.

“On-Street Parking Account” - the account established under Clause 11.2;

“Parking Adjudicator” - has the same meaning as in the 2004 Act;

“Parties” means all the parties to the Agreement;

“Penalty Charge Notice or PCN” - has the same meaning as in the 2004 Act;

“Penalty Charge” - has the same meaning as in the 2004 Act;

“Permitted Recipients” - means the Parties to this Agreement, the employees of each Party, any third parties engaged to perform obligations in connection with this Agreement;

“The Policy” – the operational Parking Enforcement Policy referred to in Clause 3 which, for the avoidance of doubt, may only cover the following matters unless otherwise agreed by all the Parties:

- Issuing of PCNs-contraventions, observation times, exemptions to contraventions and related issues;
- Processing of issued PCNs-amount of levy, administrative targets, appeals procedure, typical grounds for appeal and related issues;

and it may not cover matters set out in Clause 11 unless otherwise agreed by all the Parties;

“Relevant Proportion” has the meaning ascribed in Clause 11.4;

“Secretary of State” - the Secretary of State for Transport or such other person charged with general responsibility under the 1984 and 2004 Acts in relation to England;

“Shared Personal Data” – means the personal data to be shared between the parties pursuant to this Agreement. Shared Personal Data shall be confined to the following categories of information relevant to the following categories of data subject:

- a) Vehicle details;
- b) Names;
- c) Postal and electronic addresses and other contact details;

“Strategic Director of Economy, Transport and Environment” - the Strategic Director of Economy, Transport and Environment for the time being of the County Council, or such officer as the County Council may designate as replacing that person;

“Suspensions” means the temporary suspension of the prevailing Traffic Regulation Order to facilitate approved works or activities;

“Terms of Reference” means the Parking Board’s terms of reference as set out in the Constitution at Appendix B;

“Traffic Regulation Orders” – Traffic Regulation Orders made under the 1984 Act and signed in accordance with the Traffic Signs and General Directions Regulations 2016;

“Traffic Signs” – has the meaning ascribed in the Traffic Signs Regulations and General Directions 2016;

“UK Data Protection Legislation” - means all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

- 1.2 Where the context so admits the expressions “the County Council” and “the Borough/District Council” shall include their respective successors in title.
- 1.3 References to any clause or schedule shall be a reference to the clause or schedule of this Agreement. The schedules form part of this Agreement, and have the same force and effect as if set out expressly in the body of this Agreement.
- 1.4 Reference in this Agreement to any statute or order shall include any statutory extension modification or re-enactment thereof and any order regulation or byelaw made thereunder.
- 1.5 Words importing the singular number only shall include the plural number and vice versa and words importing any particular gender shall include masculine, feminine and neuter genders.
- 1.6 Headings are included in this Agreement for ease of reference only and shall not affect the construction of this Agreement.

2 DISCHARGE OF FUNCTIONS

- 2.1 The Parties shall exercise the Functions in accordance with this Clause 2.
- 2.2 For the avoidance of doubt, each Council shall be responsible for decisions and the associated processes from Post Notice to Owner and formal representations for contraventions which each Council shall enforce. This shall include:

2.2.1 issuing of PCNs in both the Civil Enforcement and Special Enforcement Areas on-street and off-street. All PCNs will be issued

in the name of the Enforcement Authority in that Borough/District; for the avoidance of doubt Derbyshire County Council is the 'enforcement authority' for all on-street contraventions across the County;

- 2.2.2 dealing with the representations, correspondence, and appeals arising from issuing Penalty Charge Notices for which a Council is the Enforcement Authority, by liaison with and instructions to the CPU as required;
 - 2.2.3 taking steps to recover payments due, including instructing registered or certificated bailiffs by liaison with and instructions to the CPU as required for PCNs which a Council is the Enforcement Authority;
 - 2.2.4 subject to Clause 3.2, the exercise of the powers for immobilisation and the removal, recovery, storage and disposal of vehicles;
 - 2.2.5 the registration of debts by liaison with and instructions to the CPU as required including the completion of any statutory declarations and other required paperwork for which a Council is the Enforcement Authority; and
 - 2.2.6 the issuing of suspensions and dispensations on a local basis by liaison with and instructions to the CPU as required. For avoidance of doubt, the County Council will issue these on-street and in Countryside car parks, and District and Borough Councils in their **respective** car parks.
- 2.3 The County Council will maintain all traffic signs, lines and pay and display machines that have been put in place by the County Council and that are required for the purposes related to the Functions for on-street parking control within each particular Borough/District Council Area and within its Countryside Car Parks.
 - 2.4 For the avoidance of doubt, a Borough/District Council shall be fully responsible for the provision and maintenance of all traffic signs, lines and pay and display machines within off-street car parks operated or controlled by a respective Borough/District Council.
 - 2.5 Each Council agrees and delegates that the CPU will, on behalf of each Council, collect charges, including all Penalty Charges and additional Penalty Charges as defined in Section 92 of the 2004 Act and all other matters set out in Section 2 of the Policy issued for contraventions for on-street and off-street parking within the Civil Enforcement Areas and Special Enforcement Areas. This will not include the administration of residents' parking schemes or the collection of charges for on-street parking.

2.6 IN THIS AGREEMENT:

- 2.6.1 (Notwithstanding that the Parking Board may consider and recommend additional Traffic Regulation Orders to the County Council) nothing confers upon any of the Borough/District Councils the power or right to implement new pay and display schemes for on-street parking bays or make Traffic Regulation Orders which, for the avoidance of doubt, shall remain within the sole discretion of the County Council; and
- 2.6.2 nothing prevents the County Council at its own expense from (amongst other things) installing and carrying out any on-street related work in respect of Traffic Signs, plates and road markings within the Civil Enforcement Area and Special Enforcement Area;
- 2.6.3 the County Council and the Borough/District Councils will remain as members of the Adjudication Service (TPT), or similar acceptable service, in order to provide the adjudication facility required by the 2004 Act. The County Council, in conjunction with the Borough/District Councils through the CPU, will establish, operate and administer an appeals procedure which will allow recourse to the Parking Adjudicators appointed by the TPT and each party agrees to comply with or implement any decision or recommendation made following the completion of any adjudication carried out by the TPT.

3 THE POLICY

- 3.1 The Policy for all Areas is as set out in Schedule 1 to this Agreement.
 - 3.1.2 Subject to Clause 3.1.4, the prior approval of the Strategic Director of Economy, Transport and Environment will be required for any **on-street (or Countryside Car Parks)** amendments to be made to the Policy once agreed (such approval not to be unreasonably withheld or delayed).
 - 3.1.3 In seeking the approval of the Strategic Director of Economy, Transport and Environment in accordance with Clause 3.1.2, a Party seeking to vary the Policy shall, in the first instance, approach the Parking Board and shall provide such information (in writing) as the Parking Board may reasonably require. The Parking Board may then seek the approval of the Strategic Director of Economy, Transport and Environment, for a variation to the Policy and the Strategic Director of Economy, Transport and Environment will take such representations into account when making his decision.
 - 3.1.4 Amendments to the Policy which relate solely to Off-Street Operational Parking Policy in all the Areas, may be made by the

Parking Board (without the prior approval of the Strategic Director of Economy, Transport, and Environment) in accordance with clause 9.2 provided that any proposed changes are notified to the Strategic Director of Economy, Transport, and Environment 5 Working Days prior to the Parking Board meeting in question and for the purposes of this Clause 3.1.4 only, the provisions of Clause 9.3 shall not apply to the decision of the Parking Board.

- 3.2 All Councils shall, at their own cost, retain such staff as are necessary to fulfil their obligations under this agreement and for the avoidance of doubt this cost shall not be rechargeable to the accounts set up pursuant to clauses 11.2 or 11.3 other than fees agreed.

4 EXERCISE OF FUNCTIONS

- 4.1 The County Council shall retain the right to introduce or change on-street paid for parking charging and to approve the level of on-street paid for parking charges including residents' and other parking permits PROVIDED THAT the County Council will consult the appropriate Borough/District Council in writing of such proposals in advance and, before implementing such proposals, shall consider any response received in writing within 30 days of the date of such notification by the County Council to the Borough/District Council.
- 4.2 If any Borough/District Council wishes to make any change in the management of its off-street car parks, including any adjustment by notice or otherwise to the level of parking charges in any off-street car park, it may do so PROVIDED THAT the Borough/District Council will consult the County Council in writing of its proposals in advance and, before implementing such proposals, shall consider any response received in writing within 30 days of the date of such notification by any Borough/District Council to the County Council.
- 4.3 The County Council is responsible for enforcement of on-street parking restrictions and within its off-street car parks, i.e. The Functions. Each Borough/District Council, or other partner, is responsible for parking enforcement within its car parks.
- 4.4 Any Council within this Partnership may ask another member council to oversee the Functions, or its responsibilities, within its area. If this is the case then Schedule 5 to this agreement should be utilised.

5 IT SYSTEM

- 5.1 Each Borough/District Council shall co-operate and work with the County Council to establish a compatible IT system to undertake and support the

Functions and the operation of the CPU, including linking in with the Borough/District Councils own IT systems.

5.2 The County Council agrees that in consultation with the Parking Board:

5.2.1 it will Procure the IT System at its reasonable cost as necessary for the CPU service;

5.2.2 it will ensure that the IT System is supported for as long as it is commercially reasonable to do so;

5.2.3 Each Borough/District Council severally agrees that in respect of its individual use of and requirements in relation to the IT System;

5.2.3.a. it will fully comply with the terms of any licence required for the use of the IT System;

5.2.3.b. use it only in accordance with any maintenance manuals or instructions given by the County Council or the supplier of the IT System (or any part of it); and

5.2.3.c. install and maintain, at their own cost, all IT hardware and ancillary software necessary to access the IT System at their offices.

6 DATA CONTROL AND DATA SHARING

6.1 This Clause sets out the framework for the sharing of Personal Data between the Parties as Controllers. Each Party acknowledges that one Party (referred to in this clause as the **Data Discloser**) will regularly disclose to the other Party Shared Personal Data collected by the Data Discloser for the Agreed Purposes.

6.2.1 Each party shall comply with all the obligations imposed on a Controller under the UK Data Protection Legislation, and any material breach of the UK Data Protection Legislation by one Party shall, if not remedied within 30 days of written notice from the other Party, give grounds for the removal of the other Party from this Agreement in accordance with Clause 8.2.

6.3 Each Party shall:

6.3.1 ensure that it has all necessary notices and consents in place to enable lawful transfer of the Shared Personal Data to the Permitted Recipients for the Agreed Purposes;

6.3.2 give full information to any Data Subject whose Personal Data may be processed under this Agreement of the nature of such processing.

This includes giving notice that, on the termination of this Agreement, Personal Data relating to them may be retained by or, as the case may be, transferred to one or more of the Permitted Recipients, their successors and assignees;

- 6.3.3 process the Shared Personal Data only for the Agreed Purposes;
- 6.3.4 not disclose or allow access to the Shared Personal Data to anyone other than the Permitted Recipients;
- 6.3.5 ensure that all Permitted Recipients are subject to written contractual obligations concerning the Shared Personal Data (including obligations of confidentiality) which are no less onerous than those imposed by this Agreement;
- 6.3.6 ensure that it has in place Appropriate Technical and Organisational Measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data;
- 6.3.7 not transfer any Personal Data received from the Data Discloser outside the European Economic Area (EEA) unless the transferor:
 - 6.3.7.1 complies with the provisions of Articles 26 of the GDPR (in the event the third party is a Joint Controller); and
 - 6.3.7.2 ensures that (i) the transfer is to a country approved by the European Commission as providing adequate protection pursuant to Article 45 of the GDPR; or (ii) there are appropriate safeguards in place pursuant to Article 46 GDPR; or (iii) Binding corporate rules are in place or (iv) one of the derogations for specific situations in Article 49 GDPR applies to the transfer.
- 6.4 Where applicable, each Party shall assist another or others in complying with all applicable requirements of the UK Data Protection Legislation.
- 6.5 Each Party shall indemnify all other Parties against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the indemnified Party arising out of or in connection with the breach of the UK Data Protection Legislation by the indemnifying Party, its employees or agents, provided that the indemnified Party gives to the indemnifier prompt notice of such claim, full information about the circumstances giving

rise to it, reasonable assistance in dealing with the claim and sole authority to manage, defend and/or settle it.

7 AREA COVERED BY THIS AGREEMENT

- 7.1 The Areas covered by this Agreement are more particularly set out in Schedule 2.
- 7.2 The Area for each Council is specifically identified in Schedule 2 and extends (in each case) to the area edged black on the plan shown in Schedule 2, being the area designated by the Secretary of State as a Civil Enforcement Area and Special Enforcement Area in the Designation Order and excludes roads shown with a broken blue line.
- 7.3 For the avoidance of doubt, each member shall only have responsibilities and obligations under this Agreement for the Area identified as being their Area in Schedule 2 unless otherwise agreed by the Parties.

8 DURATION, TERMINATION AND REVIEW OF THE AGREEMENT

- 8.1 This Agreement shall commence on the Commencement Date and shall continue thereafter unless terminated sooner by the unanimous agreement of all the Parties.
- 8.2 Any individual Party may withdraw from the relationship created by this Agreement or may be removed from the relationship created by this Agreement in the following circumstances:
 - 8.2.1 Where any Party is considered by the Parking Board to be in a material breach of this Agreement, the Parking Board will give the defaulting party a minimum of 30 days' notice in writing specifying the breach and requiring it to be remedied within that period. If the defaulting party continues to be in breach at the end of the notice period that Party will be expelled from the relationship created by this Agreement PROVIDED THAT if the recipient of the notice disputes that it is in breach and elects to submit the dispute to resolution under Clause 15 then there shall be deemed to be no breach unless and until the finding of a breach by the person appointed under Clause 15; or
 - 8.2.2 Any Party giving a minimum of two years notice in writing to the Parking Board to expire on the thirty-first day of March.

In either circumstance, the removal of such party will be without prejudice to the continuance of the Agreement which shall continue in accordance with its terms with the remaining Parties until the expiry of the Agreement in accordance with Clause 8.1.

9 REVIEW OF OPERATIONAL ARRANGEMENTS AND THE PARKING BOARD

- 9.1 As detailed in Appendix B, the Parking Board will consist of nine members comprising one from the County Council and one from each Borough/District Council. The Parking Board shall meet at least four times per year with the time and place to be agreed at the preceding meeting and its principal functions will be as set out in Schedule 4 which may be varied from time to time by the unanimous agreement of the Parties. Special meetings may be called if deemed necessary to determine matters contained within this agreement.
- 9.2 The Parking Board will endeavour to reach agreement on matters unanimously. However, in the absence of unanimity, decisions of the Parking Board shall be determined by a 75% majority of votes cast for or against each resolution by the members of the Parking Board present and voting provided that the meeting is quorate with a minimum of six members being present at any meeting. At Parking Board meetings, each member shall have one vote provided always that there will only be one representative on the Parking Board able to vote from each Party.
- 9.3 The Parking Board shall have no power to take any executive decision (as defined in the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000 (as amended)) so as to bind any of the Parties. Any executive decision resulting from the Parking Board's consideration shall be taken either by each representative of the Parties on the Parking Board if the decision is within their delegated powers or otherwise in accordance with the Parties' delegation arrangements.
- 9.4 On 31st March 2022, being the end of the third full Financial Year (and in the event that this Agreement has not been previously terminated in accordance with Clause 8), the Parking Board shall commence a review of this Agreement with particular reference to the costs, income and effectiveness of the arrangements and the Parties agree to give all reasonable assistance to the Parking Board to conduct such a review and implement any recommendations which may include amendments to this Agreement.
- 9.5 It is agreed by the Parties that upon full implementation of the 2004 Act, some of the terms of this Agreement may be inconsistent with the provisions of that Act and that upon full implementation of the 2004 Act, the Parties agree that they will act in good faith and use all reasonable endeavours to amend this Agreement so as to make any appropriate or necessary amendments.
- 9.6 The Parties shall have the opportunity of consulting with their own independent advisors on any proposed amendments to this Agreement

under Clause 9.5 above following which any amendments shall only come into effect following ratification by the Parking Board.

10 INDEMNIFICATION AND INSURANCE

- 10.1 Each Member Council shall, in its own name, institute (which for these purposes shall include appealing against a decision of any Court tribunal or other judicial body) and defend all such claims or legal proceedings as may be necessary arising out of or in connection with the discharge and carrying out of any of the Functions and responsibilities by that Council.
- 10.2 Each Borough/District Council shall maintain, public liability insurance throughout the period of this Agreement.
- 10.3 Each Council shall, in its own name, institute (which for these purposes shall include appealing against a decision of any Court tribunal or other judicial body) and defend all such claims or legal proceedings as may be necessary arising out of or in connection with the discharge and carrying out of any of the Functions by that council PROVIDED ALWAYS that such council shall keep the Parking Board regularly updated in relation to the prosecution and defence of any action, and it agrees that it will give prior notification to the Parking Board before agreeing any compromise or settlement of any proceedings (taken or defended in accordance with this clause) to which such council is a party.

11 FINANCIAL

- 11.1 The Parties agree that when:

- 11.1.1 considering the Annual Accounts; and

- 11.1.2 considering taking any steps affecting the Functions;

they will have proper regard to the objective of making both the off-street service provisions and on-street CPE self-financing.

- 11.2 The County Council shall establish one On-Street Parking Account. For the avoidance of doubt, this account and the money contained within it shall, subject to the provisions of this agreement, belong to the County Council. The County Council may on a monthly basis (during the term of this Agreement) debit this On-Street Parking Account with the sums required to be paid pursuant to Clause 11.11.
- 11.3 The County Council shall establish an Off-Street Parking Account for each Borough/District Council such account (and monies contained within it from time to time) will be held on behalf of the Borough/District Council for whom it has been set up and named in the title of the account, and each

Borough/District Council agrees that the County Council may on a monthly basis (during the term of this Agreement) debit each Borough/District Council's Off-Street Parking Account with the sums required to be paid pursuant to clause 11.11.

- 11.4 Each Borough/District Councils relevant proportion will be calculated on a pro rata basis on the number of PCNs issued in their Area as against the total issued countywide in the month invoiced (each being their "Relevant Proportion"); the working of this definition will be kept under review by the Parking Board.
- 11.5 Income received in discharging the CPE service from off-street PCNs in each Borough/District Council's Area will be credited to that Borough/District Councils Off-Street Parking Account established pursuant to Clause 11.3. This shall not include pay and display off-street income.
- 11.6 Income received in discharging the CPE service including, without limitation, income from on-street PCNs, income from charges for parking on-street, also from residents' permits and other parking permits and clamping and removals, will be credited to the County Council's On-Street Parking Account established pursuant to Clause 11.2.
- 11.7 A statement of income and expenditure subject to audit (to include a full statement of transactions) relating to both the On-Street and Off-Street Accounts shall be prepared annually by the County Council for each Borough/District Council as soon as practicable after the end of the Financial Year which shall be submitted to each respective Borough/District Council no later than 15th May. Following the submission of the statement of income and expenditure, the County Council will have the accounts of CPU audited (the auditor for which will be selected after consultation with the Parking Board) and provide each Borough/District Council with a certified copy of these audited accounts. The cost of the Audit exercise will be charged to each Borough/District Councils account in their Relevant Proportion (for the proceeding year in this instance rather than preceding quarter).
- 11.8 Following preparation of an annual statement of account in accordance with Clause 11.7, for the On-Street Account established pursuant to Clause 11.2 if there is an excess of expenditure over income (the "On-Street Deficit"), the County Council will fund the deficit.
- 11.9 Following preparation of an annual statement of account in accordance with Clause 11.7, for each Borough/District Council if there is, in relation to their Off-Street Parking Account:

- 11.9.1 a surplus of income over expenditure (the “Off-Street Surplus”), such **Off-Street** Surplus will be returned to the Borough/District Council in question;
- 11.9.2 an excess of expenditure over income (the “Off-Street Deficit”), the Borough/District Council that has incurred the Off-Street Deficit shall make a payment for the deficit within 30 days of written request from the County Council.
- 11.10 All transfers or payments between the County Council and Borough/District Council arising from the provisions of clauses 11.2 and 11.3, shall take place no later than four months after the end of the Financial Year.
- 11.11 From the relevant On-Street and Off-Street Parking Accounts held by the County Council on behalf of each Borough/District Council the County Council shall:
- 11.11.1 pay the TPT PCN Levy and any annual fees as set by the TPT or imposed by statute direct to that organisation;
 - 11.11.2 pay the Driver and Vehicle Licensing Agency (DVLA) search fees as imposed by the DVLA;
 - 11.11.3 pay the debt registration fees to Northampton County Court. Debts can only be registered with the written approval of the issuing authority that issued the originating PCN;
 - 11.11.4 recover in the relevant proportion the direct running costs of providing and managing the CPU (for the avoidance of doubt any charges to be recovered which relate to accommodation costs shall be calculated on the actual office space utilised by the CPU) on a monthly basis from the On-Street and Off-Street Parking Accounts;
 - 11.11.5 recover the costs of any deficits as described in clauses 11.2 and 11.3 above; and
 - 11.11.6 such other sums relating to this Agreement as the Parking Board may direct acting reasonably.

11.12 GENERAL PAYMENT ITEMS

- 11.12.1 For the avoidance of doubt the full amount of the monthly invoice submitted by the Enforcement Contractor to the County Council for each Borough/District Council's Area (which the Borough/District Council shall have the opportunity to review in accordance with Cclause 13.4) will be debited from the relevant

Borough/District Council's On-Street and Off-Street Parking Accounts in accordance with clause 13.

- 11.12.2 Revenue monies generated by off-street paid for parking will continue to go directly to the Borough/District Council or the County Council Countryside budgets.
- 11.12.3 The policy for off-street charging levels for paid for parking will rest with the respective Borough/District Council.
- 11.12.4 Any future on-street cash collection will be co-ordinated by the County Council with a potential to utilise existing Borough/District Council's arrangements or the Enforcement Contractor.

12 CENTRAL PROCESSING UNIT

- 12.1 The County Council will produce a financial statement at the end of each financial year to show the income and expenditure of the CPU.
- 12.2 In the event that the CPU has a surplus of income over expenditure, the County Council will, after consulting with the Parking Board, first retain such sums as it thinks are necessary as a reserve for future liabilities. *Thereafter*, the remaining surplus will be returned to each of the Borough/District Councils in their Relevant Proportion i.e. relating to the actual number of tickets issued in each Council, (calculated for the purposes of this clause only for the preceding year in this instance rather than preceding quarter). In the event of a deficit applying to the CPU account, such a deficit will again be apportioned pro-rata in the Relevant Proportion.
- 12.3 In the event that a Borough/District Council has a query or dispute regarding the CPU, the query or dispute shall be raised initially with the CNO. In the event that the query or dispute cannot be resolved by the CNO, it shall be referred to the Parking Board.

13 APPOINTMENT OF THE ENFORCEMENT CONTRACTOR

- 13.1 The Parties agree that the County Council will, after consultation with the Parking Board, procure on behalf of all the Borough/District Councils an Enforcement Contractor. The arrangements with the Enforcement Contractor will allow the Borough/District Councils to call off services directly.
- 13.2 Each Member Council agrees that they will utilise the services of the Enforcement Contractor to carry out its Functions pursuant to this Agreement and they will do so fully in accordance with the Framework Agreement entered into between the County Council and the appointed Enforcement Contractor save as otherwise agreed by all the Parties.

- 13.3 The Borough/District Councils agree that they will give all reasonable assistance to the County Council in the procurement of the Enforcement Contractor.
- 13.4 Notwithstanding that the operational management, where agreed, between authorities for the provision of any services between authorities and the Enforcement Contractor, the Enforcement Contractor will send invoices to the County Council on a monthly basis for any services provided to all authorities. The County Council will forward the breakdown of the invoice amount to all authorities within two working days of receipt and all authorities shall confirm to the County Council the accuracy of the invoice amount provided by the Enforcement Contractor (the “Verified Amount”) within 14 days of the date of the relevant invoice. In the absence of confirmation, the accuracy of the invoice amount will be deemed to have been verified.
- 13.5 The County Council shall make the payment of the Verified Amount to the Enforcement Contractor from the various On-Street and Off-Street Parking Accounts. The County Council will make payments on behalf of the Borough/District Councils to the Enforcement Contractor and any overpayments made as a result of a Borough/District Council error will be the responsibility of the Borough/District Council that verified the payment amount, pursuant to Clause 13.4, and such Borough/District Council shall have no recourse to the County Council save where the County Council was negligent in making such a payment.
- 13.6 The Borough/District Councils agree and acknowledge that the County Council shall not have any liability, either under this Agreement or otherwise, in respect of the provision of any additional services by the Enforcement Contractor to any Borough/District Council. The suitability of the terms of any framework agreement and call off arrangements, and the Enforcement Contractor to perform any additional services shall be entirely the responsibility of the Borough/District Council.
- 13.7 The amount of Enforcement Contractor time utilised by each Borough/District Council pursuant to the terms of the Framework Agreement shall, in any one calendar year, be the number of hours set out in the Framework Agreement.

14 EFFECT OF TERMINATION

- 14.1 In the event of termination of this Agreement, or upon the removal or withdrawal of the County Council, or any other authority pursuant to Clause 8.2, the respective Parking Account for the departing authority shall accrue to the respective authority (subject to Clause 11.4) and the County Council shall prepare a final account to be submitted to the departing authority within three months of the date of termination, removal or withdrawal, with the final

financial settlement of any outstanding matters finalised within the month thereafter.

- 14.2 In the event that a Parking Account is likely to be in deficit on the date of termination or the date of a withdrawal or removal of the County Council, and any one or more Borough/District Councils, the departing authority (s) shall be responsible for such deficits except in situations where the deficits have arisen from failures on the part of the County Council in relation to their financial management of the Off-Street Parking Account(s) in question, and in which case the County Council shall be responsible for such deficits but only where agreement has been reached or final determination given under clause 15 in relation to the final account referred to in Clause 14.1 and found the County Council to be responsible.
- 14.3 Upon termination, withdrawal or removal, the Borough/District Council(s) shall take responsibility for the processing of all PCNs issued by or on behalf of it (them) and appeals issued or made prior to the termination of this Agreement.
- 14.4 Notwithstanding the service of a notice pursuant to Clause 8.2, the Parties shall continue to fulfil their obligations under this Agreement until the date set out in the notice (issued in compliance with this Agreement) or such other date as required under this Clause 14.
- 14.5 The Parties shall be entitled to require access to data or information arising from or out of this Agreement from each and every other Party for seven years after the Expiry Date and the Parties agree that they will provide all reasonable access to such documentation upon receipt of seven days written notice.
- 14.6 Termination, expiry or withdrawal shall be without prejudice to any rights acquired or which accrue prior to termination, expiry or withdrawal.

15 DISPUTE RESOLUTION

- 15.1 Each Party undertakes to co-operate in good faith with the others to facilitate the proper performance of the Agreement and, in particular, will:
- 15.1.1 use all reasonable endeavours to avoid unnecessary disputes and claims;
 - 15.1.2 not interfere or in any other way hinder with the rights of any other Party and its servants, agents, representatives or contractors on its behalf from performing its obligations under the Agreement; and

- 15.1.3 assist the other Parties (and their servants, agents, representatives or contractors) in performing those obligations so far as is reasonably practicable.
- 15.2 If a dispute arises between any of the Parties ('the Dispute') which cannot be resolved by good faith negotiation within 30 days of either Party declaring that a Dispute has arisen, the Parties shall refer the Dispute to the Chief Executive of each Party for resolution.
- 15.3 In the event that the Chief Executives cannot resolve the dispute within 30 days of referring the Dispute to them, the Parties shall attempt to resolve the Dispute by mediation in accordance with the Centre for Dispute Resolution (CEDR) Model Mediation Procedure that is current at the time of the Dispute.
- 15.4 The mediation procedure shall be initiated by either Party giving notice in writing to the other party requesting mediation in accordance with this clause.
- 15.5 The CEDR Model Mediation Procedure will be amended to take account of:
- 15.5.1 any relevant provisions in this Agreement; and
 - 15.5.2 any other agreement which the Parties may enter into in relation to the conduct of the mediation.
- 15.6 The costs of the mediation shall be borne as the mediator directs.
- 15.7 Neither Party may commence any court proceedings or arbitration in relation to any Dispute until they have attempted to resolve the Dispute by mediation and the mediation has terminated.

16 NEW PARTIES

- 16.1 The Parties may, from time to time, unanimously agree that new Parties be accepted into the partnering arrangement created by this Agreement ("New Partners").
- 16.2 If an application for membership is approved by all the Parties, New Partners will be accepted into the partnering arrangement created by this Agreement provided that they agree to abide by the terms and conditions of this Agreement by executing a Deed of Adherence in the form set out in Schedule 3.

17 FREEDOM OF INFORMATION

- 17.1 The Councils acknowledge that they are subject to the provisions of the Freedom of Information Act 2000 (“**FOIA**”) and the Environmental Information Regulations 2004 (“**EIR**”) and each Council shall, where reasonable, assist and co-operate with the other Council(s) (at its own expense) to enable the other Council(s) to comply with these information disclosure obligations.
- 17.2 Where a Council (the “**Receiving Council**”) receives a request for information under either the FOIA or the EIR in relation to information which it is holding on behalf of another Council (the “**Other Council**”) in relation to any matters the subject of this Agreement, the Receiving Council shall:
- 17.2.1 transfer the request for information to the Other Council as soon as practicable after receipt and in any event within two (2) Business Days of receiving a request for information;
 - 17.2.2 provide the Other Council with a copy of all information in its possession or power in the form that the Other Council requires within ten (10) Business Days (or such longer period as the Other Council may specify) of the Other Council requesting that information; and
 - 17.2.3 provide all necessary assistance as reasonably requested by the Other Council to enable the Other Council to respond to a request for information within the time for compliance set out in the FOIA or the EIR.
- 17.3 Each Authority shall be responsible for determining in its absolute discretion whether any information requested under the FOIA or the EIR:
- 17.3.1 is exempt from disclosure under the FOIA or the EIR; and/or
 - 17.3.2 is to be disclosed in response to a request for information.
- 17.4 Each Authority acknowledges that the other Authority may be obliged, under the FOIA or the EIR, to disclose information:
- 17.4.1 without consulting the other Authority where it has not been practicable to achieve such consultation; or
 - 17.4.2 following consultation with the other Authority and having taken its views into account.

18 COMPLAINTS AND INVESTIGATIONS

- 18.1 The Parties shall deal with all complaints regarding ...in the first instance through the respective Council's complaints procedures.
- 18.2 The Parties shall each fully comply with any investigation by the Ombudsman, including providing access to information and making staff available for interview.

19 UNLAWFUL FETTER ON THE PARTIES' STATUTORY POWERS

- 19.1 Notwithstanding any other provision contained in this Agreement, a Party shall not be bound by any provision to the extent that it would constitute an unlawful fetter on any statutory power or obligation of that Party, but any such provision shall remain valid and binding as regards all other Parties to which it is expressed to apply.

20 GENERAL

- 20.1 Written notice under this Agreement shall be by recorded delivery post, and:
 - 20.1.1 in the event of notice served on the County Council, these shall be sent to the County Nominated Officer at County Hall, Matlock, Derbyshire DE4 3AG or such other address as is notified to the other Parties from time to time; and
 - 20.1.2 in the event of notice served on any Borough/District Council, it shall be sent to the Borough/District Nominated Officer at the address set out in the front of the Agreement or such other address as is notified to the County Council from time to time; and
 - 20.1.3 in each case shall be deemed to be served or given on the day it is received.
- 20.2 The terms of this Agreement may be varied at any time by written agreement between the Parties and shall be endorsed on or attached to this Agreement.
- 20.3 This Agreement shall be subject to English Law and shall be subject to the jurisdiction of the Courts of England.
- 20.4 The Parties agree that the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement.
- 20.5 The Parties shall, in the performance of this Agreement, comply with and follow best professional practice and all applicable legislation, regulations

and guidance in relation to equal opportunities, race equality and human rights.

- 20.6 The Parties have entered into this Agreement with the object of providing an effective economic and efficient CPE service across Derbyshire. The Parties intend to seek to continuously improve delivery of the Functions in accordance with the principles of best value.
- 20.7 The functions covered by this Agreement shall be subject to internal review by all Parties to verify that robust controls and effective corporate governance arrangements are in place. Any review carried out under this clause will be in accordance with the principles contained in the County Council's 'Partnership Working Protocol and Toolkit'. For the purpose of any review carried out under this clause, the Parties agree to permit unrestricted access at all reasonable times to staff employed in connection with the provision of the functions and all relevant documents (including computerised documents and data), and will provide such explanations as are reasonably required for these purposes.
- 20.8 No Council shall assign or transfer all or any part of this Agreement without the **relevant** prior written notice to the Parking Board.
- 20.9 Each of the Parties will pay their own costs and expenses incurred in connection with the preparation negotiation and completion of this Agreement.
- 20.10 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the Parties, constitute any Party the agent of another Party, or authorise any Party to make or enter into any commitments for or on behalf of any other Party except as expressly provided for in this Agreement.
- 20.11 This Agreement constitutes the entire agreement between the Parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 20.12 Each Party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each Party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.

IN WITNESS whereof this Agreement has been entered into as a deed on the date of this Agreement

THE COMMON SEAL of)
DERBYSHIRE COUNTY)
COUNCIL was hereunto affixed)
in the presence of:-)

Authorised Signatory

THE COMMON SEAL of)
AMBER VALLEY BOROUGH)
COUNCIL was hereunto affixed in)
the presence of:-)

Authorised Signatory

THE COMMON SEAL of)
BOLSOVER DISTRICT COUNCIL was)
hereunto affixed in the presence of:-)

Authorised Signatory

THE COMMON SEAL of)
CHESTERFIELD BOROUGH COUNCIL)
Was hereunto affixed in the presence of:-)

Mayor

Authorised Signatory

THE COMMON SEAL of)
DERBYSHIRE DALES DISTRICT)
COUNCIL was)
hereunto affixed in the presence of:-)

Authorised Signatory

THE COMMON SEAL of)
EREWASH BOROUGH COUNCIL was)
hereunto affixed in the presence of:-)

Authorised Signatory

THE COMMON SEAL of)
HIGH PEAK BOROUGH COUNCIL was)
hereunto affixed in the presence of:-)

Chief Executive/Deputy Chief Executive

THE COMMON SEAL of)
NORTH EAST DERBYSHIRE)
DISTRICT COUNCIL was)
hereunto affixed in the presence of:-)

Chair

Chief Executive/Principal Solicitor

THE COMMON SEAL of)
SOUTH DERBYSHIRE)
DISTRICT COUNCIL was)
hereunto affixed in the presence of:-)

Vice Chairman

Chief Executive

SCHEDULE 1

The Enforcement Policy

(current version on www.parksmarter.org.uk)

SCHEDULE 2

The plan showing the Civil Enforcement Areas/ Special Enforcement Areas

SCHEDULE 3

Deed of Adherence

THIS DEED OF ADHERENCE is made the day of [year]

BY ♦ of ♦ (**Covenantor**) in favour of the persons whose names are set out in the Schedule to this Deed and is supplemental to the agreement dated ♦ [tbc] ♦ made by ♦ (**Agreement**).

Terms defined in the Agreement shall bear the same meanings herein.

It is agreed

In consideration of the Covenantor being accepted as a party for the purposes of the Agreement by the existing Parties to the Agreement, as from [insert date] the Covenantor hereby confirms that it shall be a party to the Agreement as a Party to that Agreement and agrees to be bound by all of the relevant provisions of the Agreement as if it had been an original party thereto.

This Deed is governed by English law.

In witness whereof this Deed has been executed by the Covenantor and is intended to be and is hereby delivered on the date first above written

SCHEDULE

[Parties to the Agreement including those who have executed earlier deeds of adherence].

SCHEDULE 4

(as included within the Terms of Reference of the Parking Board Constitution,
detailed within Appendix B)

Parking Board Functions

The Derbyshire Parking Board will:-

1. Adopt general policies, strategies and guidance for the introduction and on-going operation of Civil Parking Enforcement (CPE) in Derbyshire.
2. Ensure that the day to day operation of the enforcement service, the Enforcement Contractor and Central Processing Unit are discharged in an efficient and co-ordinated manner.
3. To receive reports, updates and recommendations from the Parties in respect of enforcement and related issues.
4. Adopt key performance measures for use by the District/Borough Councils and the County Council to enable best value and best practice to be achieved through target setting and benchmarking.
5. Assist with the setting of policies and advise on the implementation of guidance on:
 - (i) Residents' Parking Schemes (within the Residents' Parking Zone Policy);
 - (ii) on-street/off-street pay and display and related charges.
6. Agree Penalty Charge Notice Levels to be applied across Derbyshire in accordance with best practice and be at the maximum level permitted.
7. Where deemed appropriate, respond to consultations relevant to Civil Parking Enforcement and make representations to government departments and others in respect of Civil Parking Enforcement issues.
8. To review the operation and performance of financial matters arising within the terms of this Agreement and to ensure that appropriate accounting procedures are observed.
- 9 To approve any amendments to operating practice and to ensure that there is an ongoing cost effectiveness.
- 10 Prepare the annual report in accordance with current legislation to the Department for Transport.

- 11 Agree performance levels for the Central Processing Unit.
- 12 Advise on the levels of payment for the Central Processing Unit Function.
- 13 Oversee the letting of any subsequent CPE related contracts.
- 14 Agree the co-ordination and regulation of deployment of CPE Resources across Derbyshire.
- 15 To seek consensus on any issues arising within the operation of the scheme which may require amendment, consultation or review with a view to achieving an agreed settlement acceptable to all Parties.
- 16 To liaise and coordinate any related parking management issues relating to any of the Parties.
- 17 To consider and determine all such matters as all Parties may agree in writing.

Nothing in this Constitution or the Terms of Reference shall override legislation relating to functions of Derbyshire County Council as the Highway Authority or the Borough or District Councils as the [off-street](#) parking authorities.

The Parking Board shall not seek to amend or review any policy related matters without giving each Party an equal and fair opportunity of giving proper consideration to that matter. Any proposed amendment or review shall not fall due for consideration without adequate prior written notice being given to each Party by the Party seeking amendment or review.

The Parking Board will be the arbiter of and determine whether any matter is a “policy related matter”.

SCHEDULE 5

COUNCILS OVERSEEING ENFORCEMENT ON BEHALF OF ANOTHER COUNCIL

Introduction:

[A] Council has been asked by [B] Council to undertake the civil enforcement of the highway/the car parks in [B] on behalf of the [B] Council under powers available within the Traffic Management Act 2004 (TMA 2004), from [date].

For Civil Parking Enforcement under the TMA 2004 to take place, the highway MUST be covered by a Traffic Regulation Order (TRO) and a car park MUST be covered by an [off-street](#) Parking Places Order made under the Road Traffic Regulation Act 1984 and not by local byelaws.

A Service Level Agreement (SLA) covering the principles of the methods of working, degree of delegation, responsibility for the administration of the penalty charges and, most importantly, the financial aspects of this service is required between [A] and [B].

This briefing note sets out a draft method of working around which the SLA for each council can be devised.

Detail

The [County Council](#) will procure a central enforcement contractor who will provide a specific hourly rate for the provision of a Civil Enforcement Officer within core hours (Monday to Saturday 07.30 hours to 22.30 hours and Sunday 10.00 hours to 16.00 hours). For clarity, times outside these periods and bank holidays are deemed as outside of core hours.

[B] Council will inform [A] Council as to how much enforcement it initially requires.

[B] Council agrees that [A] Council will manage the enforcement of the highway/car parks by dealing directly with the contractor on behalf of [B]. This will involve the Councils agreeing a random deployment matrix with the contractor and the Councils will have sight of this to give their approval or otherwise. As [A] Council will have the responsibility for the deployment of staff, they will also have to manage the variations in hours required to ensure the service is cost effective, i.e. where more or less demand is required as a result of improved compliance, less Penalty Charge Notices (PCNs) being issued or special events for instance. Although [A] Council will make these minor decisions on a daily basis, any major variations would be notified to [B] Council for information purposes.

The administration of the PCNs is to be undertaken by the Central Processing Unit (CPU) at Nottinghamshire County Council on behalf of all the borough/districts and County.

All PCNs issued will have the name of [B] Council on the top as the 'issuing authority'.

Financial

The process must be cost effective and should show an overall surplus from the income received from the penalty charges against expenditure of the whole service provision. Within the SLA, the councils must decide who is responsible for any deficit in the parking account, and who accrues any surplus. It is imperative that the councils agree oversight of the enforcement service so that measures can be quickly implemented should deficits be noticed during the financial year.

The County Council will maintain individual on/off-street accounts for each council to which will accrue all the PCN income from [B] Council's enforcement service.

EXPENDITURE incurred to be covered by the parking account:

- a) The cost of the enforcement service using the enforcement contractor can be extrapolated using the hourly rate above. The County Council will pay these costs on a monthly basis and will regain the money from the relevant account.
- b) The CPU administrative function on a per PCN issued levy basis; levy confirmed annually at a Parking Board. This will be invoiced to the County by the CPU. County will pay the CPU and reclaim the money from the respective account.
- c) The cost of Driver and Vehicle Licensing Agency (DVLA) checks by the CPU to determine vehicle ownership will be paid from the account direct to the DVLA (or third party provider) by the CPU.
- d) The cost of the Traffic Penalty Tribunal (TPT) charge will be paid to the TPT by the CPU from the respective account.
- e) The cost of registering a debt at the Traffic Enforcement Centre (TEC), will be paid from the respective account by the CPU direct to the TEC.
- f) The cost of [] Council managing [] Council's enforcement and administration process on behalf of [] Council shall be determined between each council and laid out in detail in the SLA. For instance, a management fee based on the number of hours of enforcement undertaken in [] multiplied by a staff hourly cost.

APPENDIX A TO SCHEDULE 5

POSSIBLE SLA

2 DISCHARGE OF FUNCTIONS

- 2.1 In exercise of the powers contained in Section 19 of the 2000 Act and the 2000 Regulations, and subject to the terms and conditions of this Agreement, the Executive of the [B] Council hereby delegates to [A] Council the obligation to perform the Functions within the Civil Enforcement Area and Special Enforcement Area of [B] Council as more particularly set out in Schedule 2.
- 2.2 The Functions are the exercise of all duties and powers of [B] Council pursuant or incidental to the provisions of Schedule 8 of the 2004 Act and/or those provisions of the 1984 Act or the 2004 Act as are amended by the Designation Orders PROVIDED THAT the Functions shall not include any duties or powers of [B] Council pursuant to Section 77 of the 2004 Act as amended by the Designation Orders nor the functions of the street authority as defined under the New Roads and Street Works Act 1991.
- 2.3 Without prejudice to Clause 2.2 above, it is agreed that the Functions include as a necessity 2.3.1, to the extent [A] Council will participate under legislative requirements, 2.3.2 to 2.3.6 below. For the avoidance of doubt, [B] Council shall be responsible for decisions and the associated processes from Post Notice to Owner and formal representations for on/off-street contraventions, 2.3.2, 2.3.3 and 2.3.5 below:
- 2.3.1 issuing of PCNs in both the Civil Enforcement and Special Enforcement Areas on-street and off-street. All PCNs will be issued in the name of the Enforcement Authority in that Borough/District; for the avoidance of doubt, Derbyshire County Council is the 'enforcement authority' for all [on-street](#) contraventions;
- 2.3.1 dealing with the representations, correspondence, and appeals arising from issuing PCNs by liaison with and instructions to the CPU as required with;
- 2.3.2 taking steps to recover payments due, including instructing registered or certificated bailiffs by liaison with and instructions to the CPU as required;
- 2.3.3 subject to Clause 2.6, the exercise of the powers for immobilisation and the removal, recovery, storage and disposal of vehicles. The collection of charges in connection with the above activities will be by the CPU;

2.3.4 the registration of debts by liaison with and instructions to the CPU as required, including the completion of any statutory declarations and other required paperwork; and

2.3.5 the issuing of suspensions and dispensations on a local basis by liaison with and instructions to the CPU as required.

Nothing in this Clause 2.3 shall prevent, in each circumstance, [B] Council from using the services of another partner Council or the Enforcement Contractor to perform some or all of the Functions notwithstanding that they shall remain responsible pursuant to the terms of this Agreement.

2.4 The County Council will maintain all traffic signs, lines and pay and display machines that have been put in place by the County Council and that are required for the purposes related to the Functions for on-street parking control within each particular Borough/District Council Area.

2.5 For the avoidance of doubt, [B] Council shall be fully responsible for the provision and maintenance of all traffic signs, lines and pay and display machines within its off-street car parks operated or controlled by that Council, unless separate agreement is in place.

2.6 No Council shall commence the exercise of powers under the 2004 Act for the immobilisation, removal, recovery, storage and disposal of vehicles in respect of the Functions until [B] Council has given written consent for the use of those powers by [...] Council in accordance with the Policy.

3 EXERCISE OF FUNCTIONS

3.1 In exercising the Functions, [A] Council hereby agrees with [B] Council to discharge the Functions and responsibilities in its Area in accordance with the Policy and to have regard to and comply with all statutory and legislative requirements associated with the Functions.

5 AREA COVERED BY THIS AGREEMENT

5.1 For the avoidance of doubt, [A] Council shall only have responsibilities and obligations under this Agreement for the Area identified as being their Council Area in Schedule 2 unless otherwise agreed by the Parties.

7 INDEMNIFICATION AND INSURANCE

7.1 [A] Council shall severally indemnify and keep indemnified [B] Council against all actions, claims, demands, proceedings, damages, losses, costs, charges and expenses whatsoever in respect of or in any way arising out of

their provision of the Functions, responsibilities, or any part of them, or other work carried out by them pursuant to this Agreement, including injury to or death of any person and loss of or damage to any property (including property belonging to [...] Council or any other Council) except and to the extent that it may arise out of the act, default or negligence of [...] Council or its officers.

- 7.3 [...] Council shall, in its own name, institute (which for these purposes shall include appealing against a decision of any Court tribunal or other judicial body) and defend all such claims or legal proceedings as may be necessary arising out of or in connection with the discharge and carrying out of any of the Functions by that Council PROVIDED ALWAYS that such Council shall keep [...] Council regularly updated in relation to the prosecution and defence of any action, and it agrees that it will give prior notification to [...] Council before agreeing any compromise or settlement of any proceedings (taken or defended in accordance with this clause) to which such Council is a party.

9 FINANCIAL

- 9.1 The Parties declare their joint intention to use all reasonable endeavours to ensure that the Functions, and responsibilities shall, as far as possible, be run efficiently and economically and aim to make the Functions in each Council's Area self-financing, save as otherwise agreed by all the Parties. This applies equally to the on-street and off-street enforcement operation and administration thereof in each Council's Area.

- 9.2 Having regard to Clause 9.1, the Parties agree that when:

9.2.1 considering the Annual Account; and

9.2.2 considering taking any steps affecting the Functions,

they will have proper regard to the objective of making both the off-street service provisions and on-street CPE self-financing in each Council's Area.

11 APPOINTMENT OF THE ENFORCEMENT CONTRACTOR

- 11.8 The initial number of deployed hours is as set out in the enforcement contract. Minor variations of less than 20% annually against the initial agreed base number of deployed hours will be allowed under the terms of the [Agreement](#) without recourse to amending the written [Agreement](#). Any minor variation to agreed base hours must be notified in writing to [] within five working days of the contractor being asked to amend its hours. Variations to the agreed base hours must not be to the detriment of the service provision with particular reference to this being a traffic management initiative. Permanent variations of more than 20% of the

agreed base number of hours for [on/off]-street enforcement must have prior approval from []. This will require a period of notice, as listed in the enforcement contract, prior to the change date to be given to the contractor. However it may also be necessary to vary the service provision to balance the accounts to run on a cost neutral basis.

SERVICE LEVEL AGREEMENT

[...] Council and [...] Council will agree a Service Level Agreement (SLA) which must include performance indicators to ensure [...] Council is getting the service required and notice of termination schedules

APPENDIX A – NEW OFF STREET CHARGING REGIMES

In accordance with clauses 9.1 and 13.3 of the Agreement, the Parties agree and acknowledge the following:

Bolsover District Council (“BDC”), North East Derbyshire District Council (“NEDDC”) and South Derbyshire District Council (“SDDC”) currently make no charge for existing off-street parking facilities.

Should these Districts introduce a charging regime in their off-street car parks, it shall be the responsibility of that District to introduce the appropriate off-street order and install signs, lines and pay and display machines at their cost. Pay and display equipment may be obtained at the prices submitted in the Tender for the enforcement contract. Subject to approval from the County Council the extension/amendment of the enforcement service into those off-street car parks will be permitted. Where required, new off-street accounts will be established for each district to receive the related PCN income and to pay for the enforcement in the off-street areas in that district.

Appendix B

Parking Board Constitution

The [Joint Derbyshire Parking Board] (“the Board”) will consist of nine (9) members, ie one from the County Council and one from each of the Derbyshire District and Borough Councils.

The Board will meet at least four times per year and will have a quorum of six members present at any meeting.

A Chair will be provided by Derbyshire County Council. **The County Council's board member will be the Chair of the board.**

Each board member shall have one vote at Board meetings provided always that there will only be one representative on the Board able to vote from each member authority. The Board will endeavour to reach agreement on matters unanimously, however, in the absence of unanimity, decisions of the Board shall be determined by a 75% majority of votes cast for or against each resolution by the members of the Board present and voting provided that the meeting is quorate.

Any other person may be invited to attend a Board meeting in a non-voting capacity.

The Board may set up working groups to consider specific issues and co-opt additional advisors as it sees fit.

Derbyshire County Council will provide the secretariat for the Board.

Terms of Reference

The Derbyshire Parking Board will:-

1. Adopt general policies, strategies and guidance for the introduction and on-going operation of Civil Parking Enforcement (CPE) in Derbyshire.
2. Ensure that the day to day operation of the enforcement service, **and** the effective supervision of the Enforcement Contractor and Central Processing Unit outputs are discharged in an efficient and co-ordinated manner.
3. To receive reports, updates and recommendations from the members in respect of enforcement and related issues.
4. Adopt key performance measures for use by the District/Borough Councils and the County Council to enable best value and best practice to be achieved through target setting and benchmarking.

5. Assist with the setting of policies and advise on the implementation of guidance of:
 - (i) Residents' Parking Schemes (within the Residents' Parking Zone Policy); and
 - (ii) on-street pay and display and related charges.
6. Manage and advise on Parking Charge Banding Levels across Derbyshire in accordance with national guidance.
7. Respond to consultations relevant to CPE and make representations to Government departments and others in respect of CPE issues.
8. To review the operation and performance of financial matters arising within the terms of the Partnering Agreement and to ensure that appropriate accounting procedures are observed.
9. To approve any amendments to operating practice and to ensure that there is an ongoing cost effectiveness.
10. Prepare the annual report in accordance with current legislation to the Department for Transport.
11. Agree performance levels for the Central Processing Unit.
12. Advise on the levels of payment for the Central Processing Unit Function.
13. Oversee the letting of any subsequent Civil Parking Enforcement related contracts/contract variations.
14. Agree the co-ordination and regulation of deployment of Civil Parking Enforcement Resources across Derbyshire.
15. To seek consensus on any issues arising within the operation of the scheme which may require amendment, consultation or review with a view to achieving an agreed settlement acceptable to all Parties.
16. To liaise and coordinate any related parking management issues relating to any of the members.
17. To consider and determine all such matters as all Parties may agree in writing.

Nothing in this Constitution or the Terms of Reference shall override legislation relating to functions of Derbyshire County Council as the Highway Authority or the Borough or District Councils as the [off-street](#) parking authorities.

The Board shall not seek to amend or review any policy related matters without giving each member an equal and fair opportunity of giving proper consideration to that matter. Any proposed amendment or review shall not fall due for consideration without adequate prior written notice being given to each member by the member seeking amendment or review.

The Board will be the arbiter of and determine whether any matter is a “policy related matter”.