

THIS AGREEMENT is made the day of in the year two thousand and four.

BETWEEN

The COUNCIL

The COMPANY Drakes Group Ltd of 50 Broadway, Westminster, London, SW1 0BL

WHEREAS:

- 1 The Council shall request the Company from time to time to recover debts due to the Council from its debtors by the issue of Penalty Charges Notices under the provisions of The Enforcement of Road Traffic Debts (Certificated Bailiffs) Regulations 1993 No 2072 (L.17) and the Enforcement of Road Traffic Debts Order 1993 No 2073 (L.18) made by the Lord Chancellor in exercise of the powers conferred upon him under Section 78 of the Road Traffic Act 1991(a) (the Service')
- 2 the Company is willing to perform such Service in accordance with the provisions of this Agreement

NOW IT IS AGREED between the Council and the Company that:

1. the Agreement constitutes the Sole Agreement between the Council and the Company for the performance by the Company of the Service
2. the Company shall provide the Service in accordance with the provisions of this Agreement and to the satisfaction of the Council for the Agreement Period
3. the following documents shall together constitute the Agreement between the Council and the Company:
4. the Agreement
5. the Conditions of Agreement

AS WITNESSED BY

Signed for and on behalf of the Council

in the presence of _____ (witness)

Signed for and on behalf of the Company

in the presence of _____ (witness)



CONDITIONS OF AGREEMENT

1 Definitions

- 1.1 The 'Agreement' means the agreement entered into between the Council and the Company and incorporating the Conditions of Agreement
- 1.2 The 'Council' means Test Valley Borough Council
- 1.3 The 'Company' means Drakes Group Limited
- 1.4 The 'Authorised Officer' means the Head of Technical Services or other officer as the Council may appoint to act in the name of the Council for the purposes of the Agreement
- 1.5 The 'Debtor' means the debtor named in the warrant issued by the Council
- 1.6 The 'Bailiff(s)' means the certificated bailiff(s) employed by the Company to enforce the warrants issued by the Council

2 Duration

- 2.1 The Service will be provided from the date of this Agreement for a period of Three years or until sooner determination or extension in accordance with these Conditions of Agreement
- 2.2 The Agreement may be extended by such period as may be agreed between the parties hereto. The maximum period by which the Agreement may be extended at any one time is Three years

3 Company's Obligations

- 3.1 The Company shall carry out the Service on a non-exclusive basis (and will not limit the council to how many or whichever other bailiffs they wish to employ) to the standard agreed with the Council. In carrying out the Service, the Company shall, at its own cost and expense:
 - 3.1.1 comply with all statutory obligations and the provisions to be observed in connection with the performance of the Service, in particular, to recover debts allocated by the Council to the Company by the sending of letters, the text of which is to be agreed by the Council prior to dispatch, and the making of telephone calls to the debtors by the Company for a period not exceeding three months, the period to be extended to six months where Arrangements have been made, and in the event of non-payment, by the levying of execution by distress and the sale of the debtors goods wherever they may be found within England and Wales
 - 3.1.2 ensure the Service is carried out without causing unreasonable disturbance or interference with the rights of others and within the boundaries of the vulnerable debtor policies agreed with the council
 - 3.1.3 hold membership of the Certificated Bailiffs Association or the Association of Civil Enforcement Agencies
 - 3.1.4 abide by the Model Code of Practice and Guidelines for Bailiffs issued by the Certificated Bailiffs Association and or any guidelines appropriate to the Council
 - 3.1.5 ensure all bailiffs employed by the Company in the execution of warrants on behalf of the Council are certificated as defined by The Enforcement of Road Traffic Debts (Certificated Bailiffs) Regulations 1993 No 2072 (L.17)



- 1.6 keep and maintain detailed accounting records of all moneys recovered as the result of rendering the Service to the Council pursuant to the terms and provisions of the Agreement and allow the Council, under reasonable notice, to inspect all books, files and records under this Agreement in order to verify the accuracy of such accounting and to take copies thereof
- 3.1.7 maintain a client account separate to other moneys belonging to the Company and hold therein all moneys received on behalf of the Council under the terms and provisions of this Agreement and to remit to the Council all monies received on a weekly basis.(Being a 'distress warrant The councils debt will be discharged before any bailiff charges are taken)
- 3.1.8.1 make such weekly arrangements as are necessary for the collection of warrants from the Council's offices
- 3.1.8.2 upon receipt of such warrants, issue to the debtor named in the warrant, in writing, a notice ('the notice') in the form agreed between the Council and the Company
- 3.1.8.3 cause the notice to be delivered by hand or by post to the debtor within seven (7) days from the date of receipt of the warrant in accordance with an agreed enforcement timetable
- 3.1.8.4 not later than three months save, where Arrangements have been made, the period to be extended to six months from the date the aforementioned notice was delivered or anticipated to be delivered in the normal course of post, execute the warrant by levying distress or where there are insufficient goods to satisfy the distress, return such warrant to the Council
- 3.1.9 in all cases where goods have been removed send to the debtor a notice specifying a date upon which the goods will be sold
- 3.1.10 have regard to any unusual step that may appear appropriate in cases where debtors appear to be in a disadvantaged category
- 3.1.11 return to the Council within seven (7) days of the execution, all executed warrants and payment of sums recovered in respect of those warrants (except where sums collected remain to be cleared through the banking system) together with an account of all sums recovered in respect of those warrants together with a written account of proper costs and charges in their execution. Also to provide a monthly statement showing all part-payments and monies held in suspense.
- 3.1.12 notwithstanding any of the foregoing, return any warrant, whether executed or not, after a period of six months from the date of it having been received and any such warrant shall be accompanied by a report providing relevant details as to its execution or otherwise
- 3.1.13 provide at such intervals and in such forms as the Council may request any information which the Council may notify the Company it reasonably requires for the purposes of monitoring the activities undertaken by the Company in relation to the enforcement of warrants on behalf of the Council
- 3.1.14 by agreement between the parties, undertake to hold, or attend at, such meetings as may be deemed necessary for the purpose of reviewing the administrative arrangements of either party or monitoring performance



3.2 Provided the form and content of the relevant warrant is correct, the Company shall accept full responsibility for any acts or omissions on the part of its agents in relation to any warrants and agrees to indemnify the Council in relation to any claim against the Council arising from alleged negligence by the Company

3.3 The Company further agrees:

3.3.1 it shall take such steps as are necessary to seek to meet such performance targets or other targets as are agreed with the Council. Failure by the Company to meet a target agreed with the Council under this paragraph shall not in itself be a failure to meet an obligation under this Agreement.

3.3.2 to provide management information and status reports of individual accounts on demand or monthly

3.3.3 to keep a separate complaint log book of all complaints arising as a result of the implementation of the provisions of this Agreement and to ensure that full and complete details of all complaints are promptly registered therein together with details of all action taken to deal with the complaint and the time within which such steps were taken

3.3.4 to provide details of the Company's complaints procedure to members of the public when requested to do so as set out in Schedule IV hereto

3.3.5 to allow council officers reasonable access to the complaints file when required and to provide, on demand, details of the complaint log book and copies of responses to complaints made by debtors and any other action taken

4 Council's Obligations

4.1 The Council hereby confirms that each and every warrant allocated to the Company is a warrant in respect of a debt due, to the best knowledge of the Council, as a result of the issue of a Penalty Charge Notice

4.2 The Council by this Agreement does not guarantee the volume or numbers of warrants to be executed by the Company on behalf of the Council

4.3.1 The Council reserves the right to cancel any instruction in respect of any warrant previously allocated to the Company without notice, explanation or the payment of any fee, cost or charge to the Company

4.3.2 The Council shall ensure that where a warrant is withdrawn the Company is informed within two working days

5 Health and Safety

The Company shall at all times comply with all relevant legislation including the requirements of the Health and Safety at Work Act 1974 and any other provisions in any Act, Regulations, Orders or rules of law pertaining to health and safety and applying to work being carried out by the Company

6 Race Relations

The Company shall:

- a) comply with its statutory obligations under the Race Relations Act 1976 and accordingly make its practice not to treat one group of people less favourably



than others because of their colour, race, nationality or ethnic origin in relation to decisions to recruit, train or promote employees

- b) observe, as far as possible, the Commission for Racial Equality's Code of Practice for Employment, as approved by Parliament in 1983, which gives practical guidance to employers and others on the elimination of racial discrimination and the promotion of equality of opportunity in employment, including the steps that can be taken to encourage members of the ethnic minorities to apply for jobs or take up training opportunities

7 Human Rights

The Company, having been supplied with a copy of the Council's Human Rights Policy statement (the HR policy) shall:-

- in fulfilling its obligations under this Agreement, behave in a manner that does not prejudice any of the statutory duties imposed upon the Council by the Human Rights Act or the HR policy;
- notify the Council immediately of the origin and details of any complaint received by the Company in the course of the work being undertaken in accordance with this Agreement that indicates the Council may be been in breach of its obligations under the HR policy;
- provide such information as necessary relating to any complaint to enable the Council to defend any claim under the HR policy.

8 Confidentiality

The Company shall at all times keep confidential to the Council all information concerning the Council, its officers, employees and debtors acquired by the Company as a result of performing the duties and obligations hereunder and not sell exchange or use such information for any purpose other than the recovery of debts as herein provided and to comply in every particular with the provisions of the Data Protection Act 1998 or any subsequent relevant legislation. The data shall at all times remain the property of the Council

9 Indemnity and Insurance

- 9.1 The Company shall comply with the Employers Liability (Compulsory Insurance) Act 1969.
- 9.2 The Company shall, for the duration of the Agreement, hold professional indemnity insurance of not less than £500,000
- 9.3 The Company shall for the duration of the Agreement hold public liability insurance of not less than £5,000,000
- 9.4 The Company shall indemnify and render the Council harmless from any and against any and all claims and damages arising out of any act whether lawful or not or negligence on the part of the Company in connection with the provision of the Service by the Company under this Agreement and to maintain at its own cost a comprehensive policy of insurance to cover such claims and damages against which the Company so indemnifies the Council



10 Determination of Agreement

- 10.1 If the Council is of the opinion that the Company is in breach of its obligations under this Agreement or is failing to carry out the Agreement to the reasonable satisfaction of the Council it shall give notice in writing to the Company to this effect and if the breach is not remedied or the position materially improved to the reasonable satisfaction of the Council within twenty eight (28) days of the issue of such notice, the Council may at the expiry of that period give notice in writing of the termination of the Agreement to the Company to come into effect 14 days after the date of the notice
- 10.2 If the Company attempts to impose any charges over and above those set out in condition 11 (payment) without prior agreement with the Council, the Council may determine the Agreement void without notice
- 10.3 This Agreement may be terminated for whatever reason by either party giving the other three months notice to that effect in writing

11 Payment

- 11.1 The Service will be provided without any cost to the Council
- 11.2 The Company shall add to the sum to be recovered:
- 11.2.1 proper costs and charges of levying distress or enforcing payment as defined by the Lord Chancellor in regulations made under Section 78 of the Road Traffic Act 1991.
- 11.2.2 all costs and charges incurred in effecting removal, storage and sale of goods taken under the warrant or, where no sale takes place, the reasonable charges of taking and keeping the distress
- 11.2.3 in addition to any costs and charges at 11.2.1/2 in respect of the supply of goods and services on which VAT is chargeable there may be added a sum in respect of VAT calculated at the prevailing rate

12 Termination

- 12.1 If the Company:
- 12.1.1 commits a breach of any of its obligations under the Agreement
- 12.1.2 achieves results or supplies a standard of service to the Council which is materially less than might reasonably have been expected by the Council
- 12.1.3 becomes bankrupt or makes a composition or arrangements with its creditors or has a proposal in respect of its company for the voluntary arrangements for a composition of debts or scheme or arrangement proved in accordance with the Insolvency Act 1986
- 12.1.4 has an application made under the Insolvency Act 1986 in respect of its company to the court for appointment of an administrative receiver



- 12.1.5 has a winding-up order made or (except for the purpose of amalgamation or reconstruction) a resolution for voluntary winding-up passed
- 12.1.6 has a professional liquidator, receiver or manager of its business or undertaking duly appointed

- 12.1.7 has an Administrative Receiver as defined in the Insolvency Act 1986 appointed
- 12.1.8 has possession taken by or on behalf of holders of any debentures secured by a floating charge of any property comprised in or subject to the floating charge
- 12.1.9 is in circumstances which entitle the court or a creditor to appoint or have appointed a receiver, a manager or administrative receiver or which entitle the court to make a winding-up order

Then, in any such circumstances the Council may, without prejudice to any accrued rights or remedies under the Agreement, terminate the Company's employment under the Agreement by notice in writing having immediate effect

- 12.2 If the Company is taken over by another company the Council reserves the right to terminate the Agreement by notice in writing having immediate effect

13 **'Sub-Contracting'**

The Company shall not:

- 13.1 assign the Agreement or any part thereof or the benefit or advantage of the Agreement or any part thereof
- 13.2 'sub-contract' the provision of the Service or any part thereof to any person and the Company shall be responsible for the acts, defaults or neglect of its agents or employees in any respects as if they were the acts, defaults or neglect of the Company

14 **Rights of Inspection**

The Council shall have the right to inspect the records of the Company as they relate to the provision of the service to the Council during the term of the Agreement

15 **Severance**

If any provision of the Agreement shall become or be declared unenforceable in any way such invalidity or unenforceability shall in no way impair or effect any other provision of the Agreement all of which shall remain in full force and effect

16 **Corruption**

The Council shall be entitled to cancel this Agreement and recover any resulting losses if the Company or its employees or agents:

- a) has offered or given any gift or other benefit to an officer in an attempt to influence the outcome of a contract decision
- b) has shown any favour or disfavor to any person in relation to the contract



- c) commits an offence under the Prevention of Corruption Acts 1889 to 1916 or any subsequent amendments thereof
- d) gives any fee or reward that is an offence under Section 117(2) of the Local Government Act 1972.

