

West Berkshire Council

Parish Devolution Scheme Agreement

THIS AGREEMENT is made **BETWEEN:**

1) **West Berkshire Council** (“the Council”) of Market Street, Newbury, RG14 5LD

and

2) **[Local Council name]** (“the Local Council”) of [address 1, address 2, town, post code]

together the Parties

Agreed terms

Interpretation & Definitions

The definitions and rules of interpretation in this clause apply in this Agreement:

- **Commencement Date:** [dd/mm/year]
- **Council's Representative:** the Council's Representative appointed under clause 4.1
- **Devolved Functions:** those activities detailed in Clause 3 of this Agreement subject to the conditions and limitations detailed therein.
- **Force Majeure Event:** any cause affecting or delaying the performance by a party of its obligations arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control including (but without limiting the generality thereof) governmental regulations, fire, flood or any disaster or an industrial dispute affecting a third party for which a substitute third party is not reasonably available. Any act, event, omission, happening or non-happening will only be considered a Force Majeure Event if it is not attributable to the wilful act, neglect or failure to take reasonable precautions of the affected party, its agents or employees.
- **Functions:** means powers and duties and includes the power to do anything which is calculated to facilitate or is conducive or incidental to the discharge of functions.
- **Service Provider:** the person or persons engaged or employed by the Local Council in order to perform services under the Devolved Functions.
- **Working Day:** Monday to Friday excluding English Bank Holidays.

The Schedules form part of this Agreement and shall have effect as set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedules.

NOW IT IS AGREED as follows:

1. Recitals

- 1.1 The Council is willing to enter into arrangements with the Local Council pursuant to section 101 of the Local Government Act 1972 and section 9EA of the Local Government Act 2000 and the Local Authorities (Arrangements for the Discharge of Functions) Regulations 2012 and all of the other enabling powers for the discharge of the Functions by the Local Council on the following terms.

2. Commencement and Duration

- 2.1 This Agreement shall commence on the Commencement Date.
- 2.2 This Agreement shall continue until this Agreement is terminated by either party giving not less than 6 months' notice in writing.

3. Devolvement of Functions

- 3.1 In consideration of the provisions of this Agreement and pursuant to the above mentioned powers the Council devolves to the Local Council and the Local Council accepts the devolvement of the Council's Functions as respects the administrative area of the Local Council so as to enable the Local Council to carry out the Devolved Functions and subject to the conditions and restrictions agreed.
- 3.2 Devolvement of the Council's Functions does not include devolvement of the Council's statutory responsibilities to deliver the Functions.
- 3.3 The Council warrants to the Local Council that it has the statutory powers to undertake the Devolved Functions and that the Council has validly resolved to arrange for the discharge of the Devolved Functions by the Local Council.

4. Council's obligations

- 4.1 The Council shall appoint the Council's Representative on the Commencement Date and inform the Local Council of this appointment in writing together with their contact details. The Council Representative shall act as the initial point of contact in relation to this Agreement. The Council may replace the person fulfilling this role from time to time and inform the Local Council of this in writing as soon as reasonably practicable to do so.

5. Local Council's Responsibilities

- 5.1 The Local Council shall:
- (a) co-ordinate and manage delivery of the Devolved Functions;
 - (b) appoint a Parish Representative who shall act as the initial point of contact in relation to this Agreement;

- (c) provide the Council Representative, by the Commencement Date, with an email address, address and contact telephone number for the Parish Representative;
- (d) have in place a process to ensure that formal complaints received with reference to the Devolved Functions are recorded, monitored and managed appropriately (Appendix D gives an example of the data presently recorded by the Council);
- (e) attend any necessary meetings with the Council as are required;
- (f) monitor the standards of Devolved Functions performed in their administrative area, meeting at least the minimum standards;
- (g) share your Annual Report with the Council. This should include:
 - (i) Details of how any complaints have been handled
 - (ii) XXX

5.2 The Local Council undertakes and warrants to the Council that they have read and understood, and raised any matters not understood to the Council, the following documents viewable on the Council's Parish Portal, the link to which has been provided by the Council:

[Services to be listed from the Prospectus]

The Local Council will cascade information from the above documents as extensively as possible to their staff, and/or volunteers and any other person engaged in the provision of the Devolved Functions.

6. Funding

6.1 The Council shall pay to the Local Council the funding in accordance with the following payment schedule

or

The Local Council shall pay to the Council the funding in accordance with the following schedule:

- (a) 2016-2017 [£xxxx.xx] 1st April 2016
- (b) 2017-2018 [£xxxx.xx] 1st April 2017
- (c) 2018-2019 [£xxxx.xx] 1st April 2018

6.2 Subject to clause 6.3, in the event of this Agreement being terminated by either party howsoever arising the Local Council shall return to the Council any part of the Funding that remains unspent within that funding year within 14 days of any such request being made by the Council and the unspent Funding shall be that amount that remains unspent at the date of the Council's request.

6.3 For the purpose of clause 6.2, all Funding at the time of the Council's request shall be returned to the Council save that which the Local Council is contractually obliged to pay to a Service Provider at the time of the Council's request.

7. Insurance Claims Handling

7.1 The Local Council will be expected to deal with any claim but they will be expected to notify the Council of any such claim (and vice versa). If the Council has to deal with any claim resulting from the work of the Local Council, the Local Council shall:

- Preserve any damaged or defective property/equipment for examination by the Council
- Provide any data, inspection records, training records or other documentation as required to investigate the claim to the Council
- Provide access to any employee/volunteer required for the investigation of any claim

7.2 The Local Council shall not make any settlement, admission of liability, payment or promise of payment to a third party on behalf of the Council.

8. Termination

8.1 This Agreement may without prejudice to Section 101(4) of the Local Government Act 1972 or section 9EA of the Local Government Act 2000 and the regulations 5 and 6 of the Local Authorities (Arrangements for the Discharge of Functions) Regulations 2012 be terminated with immediate effect should either party have to utilise clause 8.2 of this Agreement.

8.2 Without prejudice to any other rights or remedies which the parties may have, either party may terminate this Agreement without liability to the other immediately on giving notice to the other if:

- (a) the other party commits a breach of any of the terms of this Agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach. We may agree a longer term, in writing, on a case by case basis; or
- (b) the other party repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement.

8.3 On termination of this Agreement for any reason:

- (a) The accrued rights, remedies, obligations and liabilities of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination; and
- (b) Clauses which expressly or by implication have effect after termination shall continue in full force and effect, including the following clause: clause 9 (limitation of liability).

9. Entire Agreement

- 9.1 This Agreement constitutes the entire Agreement between the parties and supersedes and extinguishes all previous drafts, arrangements, understandings or agreements between them, whether written or oral, relating to the subject matter of this Agreement.
- 9.2 Each party acknowledges that in entering into this Agreement it does not rely on, and shall have no remedies in respect of, any representation or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each party agrees that its only liability in respect of those representations and warranties that are set out in this Agreement (whether made innocently or negligently) shall be for breach of contract.
- 9.3 Nothing in this clause shall limit or exclude any liability for fraud.

10. Assignment

- 10.1 The Local Council shall not, without the prior written consent of the Council, assign, transfer, charge, mortgage, subcontract, declare a trust of or deal in any other manner with all or any of its rights or obligations under this Agreement providing that for the avoidance of doubt this clause does not prohibit the subcontracting of the undertaking of the Devolved Activities to a Service Provider.
- 10.2 Each party that has rights under this Agreement is acting on its own behalf and not for the benefit of another person.

11. Confidentiality and the Council's/Local Council's Property

- 11.1 Subject to clause 12.2 the Council and the Local Council shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the other party, its employees, agents, consultants or sub-contractors and any other confidential information concerning (as the case may be) the Council's or the Local Council's business for its products which the other party may obtain.
- 11.2 The Council and the Local Council each acknowledge that the other party is subject to the requirements of the Environmental Information Regulations 2004 (EIR) and the Freedom of Information Act 2000 (FOIA). Each party shall take reasonable steps to notify the other party of any requests it receives for confidential information relating to the Devolved Activities and shall have due regard to any representations made by the other party when considering the disclosure of information under the EIR and FOIA.
- 11.3 The Agreement will operate to the mutual benefit of both parties.

12. No Partnership or Agency

- 12.1 Nothing in this Agreement is intended to, or shall operate to, create a legal partnership between the parties.

12.2 Nothing in this Agreement is intended to, or shall operate to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power) provided that nothing in this clause shall restrict the proper and lawful performance of the Devolved Functions by the Local Council in accordance with the other terms of this Agreement.

12.3 This Agreement will operate to the mutual benefit of both parties.

13. Rights of Third Parties

13.1 A person who is not a party to this Agreement shall not have any rights under or in connection with it.

14. Variation

14.1 This Agreement may be varied from time to time by agreement in writing between the parties.

15. Monitoring

15.1 The Council will monitor the Devolved Activities performed by Local Councils and feed back to them any items which it feels require their attention. Monitoring will be performed on the Council's behalf by the XXXXXXXX who will do this activity as part of their duties while travelling the county, working with Local Councils to provide advice and guidance to resolve any items which they feel require attention.

16. Good Faith and Collaborative Working

16.1 The parties shall at all times act in good faith towards each other and shall establish, develop and implement a collaborative relationship based on trust, fairness and mutual co-operation, and shall freely share information, with the objective of enabling the Local Council to effectively provide the Devolved Activities for the benefit of the Local Council's administrative area.

IN WITNESS of which this Agreement has been duly executed by the parties on the date and year stated at the beginning of this deed

Executed as a Deed by the Council by affixing THE COMMON SEAL of WEST BERKSHIRE DISTRICT COUNCIL and authenticated by Authorised signatory	
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Executed as a Deed by the Local Council by XXX	
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