

Agreement

BETWEEN

Ceredigion County Council



and



Excel Civil Enforcement Limited

Registered Office: Excel House, 9 Conway Road, Colwyn Bay, LL29 7NT

Registered Number: 03266042

THIS AGREEMENT is made the sixteenth day of November in the year two thousand and seven.

BETWEEN

The COUNCIL Ceredigion County Council of Town Hall, Queen's Road, Aberystwyth, SY23 2EB

The COMPANY Excel Civil Enforcement Limited of registered office Excel House, 9 Conway Road, Colwyn Bay, LL29 7N

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 instructions in respect of Liability Orders obtained under the provisions of The Council Tax (Administration & Enforcement) Regulations 1992 (as amended) and the Non-Domestic Rating (Collection and Enforcement) (Local Lists) Regulations 1989 (as amended) (the Service).
and
- 2 the Company is willing to perform the Service in accordance with the provisions of this Agreement

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

1. this Agreement incorporating the attached conditions of 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 to the satisfaction of the Council for the Agreement Period

AS WITNESSED BY

Signed for and on behalf of the Council

IAIN WYN MARSHALLSAY

Name: marshallsay

Authorised Officer

Signed for and on behalf of the Cor

ISLWYD IERIS-JO
Name: Ieris-Jo

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 herein
- 1.2 The 'Council' means The Ceredigion County Council
- 1.3 The 'Company' means Excel Civil Enforcement Limited
- 1.4 The 'Authorised Council Officer' means the Senior Recovery Officer or other officer as the Council may appoint to act in the name of the Council for the purposes of the terms of this agreement
- 1.5 The 'Debtor' means the Debtor named in the instruction issued by the Council
- 1.6 The 'Bailiff(s)' means the certificated bailiff(s) employed by the Company to enforce the liability orders obtained by the Council
- 1.7 The 'Warrant' means the instruction from the Council to recover the debt under the terms of a liability order obtained by it

2 Duration

- 2.1 The Service will be provided from the date of this Agreement for a period of 3 years or until sooner determination or extension in accordance with the terms of this Agreement ('the Agreement Period')
- 2.2 The Agreement Period may be extended by such period as may be agreed between the parties hereto

3 Company's Obligations

- 3.1 The Company shall carry out the Service to the standard agreed with the Council and 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 and attending at the debtors' addresses and, in the event of non-payment, by the levying of distress and the sale of the goods of the Debtor
 - 3.1.2 ensure the service is carried out without causing unreasonable disturbance or interference with the rights of others
 - 3.1.3 maintain corporate membership of the Enforcement Services Association or the Association of Civil Enforcement Agencies
 - 3.1.4 abide by the Company's Codes of Practice for Bailiffs as set out in Schedule I hereto
 - 3.1.5 ensure all Bailiffs employed by the Company in the execution of Warrants on behalf of the Council are certificated as defined in Regulation 45(6A) of the Council Tax (Administration and Enforcement) (Amendment) Regulations 1998
 - 3.1.6 keep and maintain detailed accounting records of all monies recovered as the result of rendering the Service to the Council pursuant to the terms and provisions of this Agreement and allow the Council, under at least 7 days prior 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 monies belonging to the Company and hold therein all monies received on behalf of the Council under the terms and provisions of this Agreement
 - 3.1.7.1 make such weekly arrangements as are necessary for the collection or receipt of Warrants from the Council
 - 3.1.7.2 upon receipt of such Warrants, execute the Warrant by levying distress or where there are insufficient goods to satisfy the distress, return such warrant to the Council
 - 3.1.7.3 in all cases where goods have been removed send to the Debtor a notice specifying a date upon which the goods will be sold
 - 3.1.7.4 have regard to any unusual step that may appear appropriate in cases where debtors appear to be in a disadvantaged category (See Schedule I, paragraph 4)
 - 3.1.7.5 return to the Council within seven (7) days of the execution, all executed Warrants together with an account of all sums recovered (except where sums collected remain to be cleared through the banking system), taken or received in respect of those Warrants together with a written account of all proper costs and charges in their execution
 - 3.1.7.6 notwithstanding any of the foregoing, return any unexecuted Warrant (unless otherwise agreed) after a period of one hundred and eighty (180) days from the date of it having been received and any such Warrant shall be accompanied by a report providing relevant details as to the attempts of its execution
 - 3.1.7.7 provide at such intervals and in such forms as the Council may request any information which the Council may notify to the Company that 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
- 3.1.8 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 for 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 as a result from the said acts or omissions and/or from alleged negligence by the Company
- 3.3 The Company further agrees:
 - 3.3.1 to provide monthly, or on demand, management information and status reports relating to the Council's accounts
 - 3.3.2 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
 - 3.3.3 to provide details of the Company's complaints procedure to members of the public when requested to do so

- 3.3.4 to provide, on demand, details of the complaint log book and copies of responses to complaints made by debtors and any other action taken
- 3.3.5 Comply with the provisions of the Welsh Language Act 1993 by having the availability of all correspondence, forms and verbal communication in the Welsh language wherever requested

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 a liability order obtained due to non-payment of council tax or non domestic rate
- 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 The Council shall ensure that where a warrant is withdrawn the Company is informed within two working days
- 4.4 The Council shall ensure its employees do not, without prior notice, accept at the Council offices, whether by postal delivery or otherwise, any payment, whether whole or in part, in respect of any Warrant already issued to the Company for execution unless the payment includes the full costs of execution due at the time of payment

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 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 1988 and the data shall at all times remain the property of the Council

8 Indemnity and Insurance

- 8.1 The Company shall comply with the Employers Liability (Compulsory Insurance) Act 1969.
- 8.2 The Company shall, for the duration of the Agreement, hold professional indemnity insurance of not less than £1,000,000
- 8.3 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

9 Determination of Agreement

- 9.1 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 this Agreement to the Company to come into effect 14 days after the date of the said notice
- 9.2 Either party may give to the other six months prior written notice to determine this Agreement in any event and at any time

10 Payment

- 10.1 The Service will be provided to the Council at the following cost:
 - 10.1.2 for each Warrant which is requested to be returned to the Council without further action, the sum of twenty pounds (£20.00) plus VAT. All other returned warrants shall be without cost to the Council.
- 10.2 The Company shall add to the sum to be recovered from the Debtor:
 - 10.2.1 the costs and charges of levying distress or enforcing payment as defined under the Council Tax (Administration & Enforcement) Regulations 1992 and the Non-Domestic Rating (Collection and Enforcement) (Local Lists) Regulations 1989 (both as amended)
 - 10.2.2 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
 - 10.2.3 in respect of any costs and charges at 10.2.1 and 10.2.2 above in respect of the supply of goods and services on which VAT is chargeable the Company will submit an account for VAT on sums received by Debtors for payment by the Council

11 **Termination**

11.1 If the Company:

- 11.1.1 commits a breach of any of its obligations under the Agreement
- 11.1.2 achieves results or supplies a standard of service to the Council which is materially less than might reasonably have been expected by the Council
- 11.1.3 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
- 11.1.4 has an application made under the Insolvency Act 1986 in respect of the Company to the court for appointment of an administrative receiver
- 11.1.5 has a winding-up order made against the Company or (except for the purpose of amalgamation or reconstruction) a resolution for voluntary winding-up passed
- 11.1.6 has a professional liquidator, receiver or manager of its business or undertaking duly appointed
- 11.1.7 has an Administrative Receiver as defined in the Insolvency Act 1986 appointed
- 11.1.8 has possession taken by or on behalf of holders of any debentures secured by a floating charge of any property of the Company comprised in or subject to the floating charge
- 11.1.9 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

11.2 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

12 **'Sub-Contracting'**

The Company shall not:

- 12.1 assign this Agreement or any part thereof or the benefit or advantage of the Agreement or any part thereof
- 12.2 '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 any sub-contractor or its agents or employees in any respects as if they were the acts, defaults or neglect of the Company or its agents or employees

13 **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 subject to at least 7 days prior written notice to the Company by the Council

14 **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

15 **Corruption**

The Council shall be entitled to cancel this Agreement forthwith and recover any resulting losses if the Company or its employees or agents, in respect of this Agreement or any other Agreement or Contract between the Company and the Council:

- a) does anything improper to influence the Council either to award the Company this Agreement or to take action or to refrain from taking action in relation to this Agreement; or
- b) offers of any fee or reward, the acceptance of which, would constitute an offence under the Prevention of Corruption Acts 1889 to 1916 or Section 117(2) of the Local Government Act 1972.

16 Reference to any Act or Regulation herein shall include reference to any statutory re-enactment or modification thereof.

Finally in the event of any dispute or challenge between the company and the Council, then Ceredigion County Council's general conditions of contract will prevail.

SCHEDULE I



CODE OF PRACTICE FOR BAILIFFS

1. **Presentation:** bailiffs must, at all times, be well presented. A suit is not essential but collar and tie is compulsory for male staff. Jeans, trainers and T shirts are not permitted.
2. **Manner:** bailiffs will be courteous to defaulters, householders or anyone contacted in the execution of their duties, referring to defaulters by name and appropriate term (e.g. Mr Smith, Mrs Jones etc). Inappropriate references such as 'mate' and 'luv' will not be used.
3. **Identification:** bailiffs will carry at all times, and produce when required, their identity card and, where appropriate, the written authorisation of the court or local authority.
4. **Discretion:** bailiffs will exercise discretion where it is clear that the defaulter is in a category which requires a high degree of sensitivity (e.g. pensioner, single parent, disabled person). Unless immediate payment is proffered, the circumstances should be reported to the line manager before any further action is taken.
5. **Confidentiality:** bailiffs will ensure that enquiries made in the execution of their duties are discreet and do not breach confidentiality or the Data Protection Act.
6. **Transparency:** bailiffs will issue an official written receipt for every payment accepted.
7. **Clarity:** bailiffs must ensure, so far as they are able, that the goods they intend to seize and/or remove qualify for seizure according to the appropriate regulations or common law.
8. **Reputation:** bailiffs will at all times uphold the reputation of the company while on duty. This includes acting without aggression or intimidation and extends to smelling of alcohol. Alcohol may not be consumed during working hours and bailiffs may not smell of alcohol even when it has been consumed out of working hours. Bailiffs will not be permitted to work under these circumstances and may face disciplinary action.
9. **Accuracy:** bailiffs will not exaggerate available sanctions or make similar threats regarding the affect of any warrant. It is sufficient to advise a defaulter of what may lawfully be undertaken in execution of a warrant and the consequences of non-compliance without embellishment. Bailiffs must also ensure, as far as they are able, the accuracy of data at the point of execution.

10. **Response:** bailiffs will observe the philosophy of tactical communication when interacting with defaulters. They will not over react or react badly to signs of aggression or actual aggression but safely withdraw using only reasonable force and only if necessary. Bailiffs will always employ the assistance of the police when necessary and not call for the assistance of other bailiffs which even if justified will always be perceived as mob handedness.
11. **Reasonable:** bailiffs will be reasonable in the execution of their duties which includes attending at reasonable hours according to the circumstances of the case.
12. **Care:** bailiffs will be mindful of defaulters' circumstances and take care not to position themselves in a situation which could be misinterpreted (e.g. lone members of the opposite sex or unattended minors).
13. **Efficiency:** bailiffs will adhere to all timescales for the execution of warrants and ensure comprehensive attention to each and every warrant issued, regardless of locality, value or historical failure.
14. **Discipline:** bailiffs will not, under any circumstances offer personal opinions to defaulters or amend, alter or add written comment to any notices or forms, other than that required to properly complete the document.

Bailiffs will have full regard to this Code of Practice, the National Standards for Enforcement Agents as issued by the Ministry of Justice (a copy of which is issued to all staff), the Code of Practice issued by the Enforcement Services Association to which the company subscribes, and any relevant client guidelines and additional company directions, whether written or verbal.

Bailiffs who act unreasonably in contradiction of this code will face disciplinary action.