

DATED

4th November 2015

**VEHICLE ACTIVATED SIGNAGE
HIRE AGREEMENT**

between

NORTH YORKSHIRE COUNTY COUNCIL

and

KIRKBYMOORSIDE TOWN COUNCIL

THIS AGREEMENT is dated

15th July 2015

PARTIES

- (1) North Yorkshire County Council of County Hall, Northallerton, North Yorkshire, DL7 8AD (**Lessor**).
- (2) KIRKBYMOORSIDE TOWN COUNCIL, NORTH YORKSHIRE (**Lessee**).

AGREED TERMS

1. INTERPRETATION

- 1.1 The definitions and rules of interpretation in this clause apply in this agreement.

Business Day: a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

Commencement Date: the date that the Lessee takes Delivery of the Equipment.

Delivery: the transfer of physical possession of the Equipment to the Lessee at the Site.

Equipment: means the vehicle activated sign with attached pole and attached solar power source, all substitutions, replacements or renewals of such equipment and all related accessories, manuals and instructions provided for it.

Payment Schedule: Schedule 1 which sets out the sums payable under this agreement.

Site: as agreed on site

Rental Period: the period of hire as set out in clause 3.

Total Loss: due to the Lessee's default the Equipment is, in the Lessor's reasonable opinion or the opinion of its insurer(s), damaged beyond repair, lost, stolen, seized or confiscated.

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 The schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement and any reference to this agreement includes the schedules.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and vice versa.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension or re-enactment, and includes any subordinate legislation for the time being in force made under it.
- 1.8 A reference to **writing** or **written** includes faxes but not e-mail.

1.9 References to clauses and schedules are to the clauses and schedules of this agreement. References to paragraphs are to paragraphs of the relevant schedule.

1.10 Any words following the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2. EQUIPMENT HIRE

2.1 The Lessor shall hire the Equipment to the Lessee for use at the Site for four years during the Rental Period in accordance with Schedule 2 subject to the terms and conditions of this Agreement.

2.2 The Lessor shall not, other than in the exercise of its rights under this Agreement or applicable law, interfere with the Lessee's quiet possession of the Equipment.

3. RENTAL PERIOD

The Rental Period starts on the Commencement Date and shall continue for a period of four (4) years unless this Agreement is terminated earlier in accordance with its terms.

The Equipment during the Rental Period shall be rotated as per the Rotation Plan at Schedule 2. The Lessee shall receive a guaranteed deployment of eighteen (18) weeks per annum. All dates in Schedule 2 are subject to change as to dates of deployment.

4. PAYMENTS

4.1 The Lessee shall pay all the charges set out in the Payment Schedule to the Lessor .

4.2 All payments are exclusive of VAT and any other applicable taxes and duties or similar charges which shall be payable by the Lessee at the rate and in the manner from time to time prescribed by law.

4.3 All payments to be made by either party under this Agreement shall be made without withholding or set-off on account of disputes, counterclaims or for any other reason whatsoever.

4.4 The Lessee shall be allowed to defer the payment sums due in the year 2015/16 such payments due to the Lessor being added without the addition of interest to the sums due to the Lessor over the following three years of this Agreement. Such payments to be made by way of annual payment by the lessee -such annual payment to be made on 1st April of each year of this Agreement. Or

4.5 The Lessee shall make all payments due under the Payment Schedule at the commencement of this Agreement. Or

4.6 The Lessee shall make the first payment by way of an annual payment for the year 2015/16 and shall make the further payments over the following three years such amounts being paid annually and paid on 1st April of each year of this Agreement.

4.7 The Lessee must confirm in writing to the Lessor at least seven days before signing this Agreement which of the three payment options the Lessee wishes to utilise. Schedule 1 of this Agreement will reflect the payment option selected by the Lessee.

4.8 Once the Lessee has selected a payment option the Lessee must abide by the terms of this payment option for the duration of the Agreement, The Lessee will not be permitted to nominate another payment option once the Lessee has confirmed a payment option with the Lessor

4.9 Should this Agreement terminate for any reason the Lessor shall be entitled to claim in full and within 14 days of termination any payments due under this Agreement,

5. DELIVERY AND INSTALLATION

5.1 Delivery of the Equipment shall be made by the Lessor. The Lessor shall use all reasonable endeavours to effect Delivery by the date and time agreed between the parties.

5.2 The Lessor shall at the Lessee's expense install and remove the Equipment at the Site in accordance with Schedule 2.

6. TITLE & RISK

6.1 The Equipment shall at all times remain the property of the Lessor, and the Lessee shall have no right, title or interest in or to the Equipment (save the right to possession and use of the Equipment subject to the terms and conditions of this agreement).

6.2 The risk of loss, theft, damage or destruction of the Equipment shall at all times remain with the Lessor who shall take out adequate insurance to protect against such risks.

6.3 The Lessee shall give immediate written notice to the Lessor in the event of any loss, accident or damage to the Equipment or arising out of or in connection with the Lessee's hire of the Equipment.

7. LESSEE'S RESPONSIBILITIES

7.1 The Lessee shall during the term of this agreement:

- (a) not use the Equipment for any unlawful purpose;
- (b) not do or permit to be done anything which could invalidate the insurances referred to in clause 6.

8. WARRANTY

8.1 The Lessor warrants that the Equipment shall substantially conform to its specification (as made available by the Lessor), be of satisfactory quality and fit for the purpose held out by the Lessor. The Lessor shall use reasonable endeavours to remedy, free of charge, any material defect in the Equipment which manifests itself during the Rental Period.

8.2 Insofar as the Equipment comprises or contains equipment or components which were not manufactured or produced by the Lessor, the Lessee shall be entitled only to such warranty or other benefit as the Lessor has received from the manufacturer.

9. LIABILITY

- 9.1 Without prejudice to clause 9.2, the Lessor's maximum aggregate liability for breach of this agreement (including any liability for the acts or omissions of its employees, agents and subcontractors), whether arising in contract, tort (including negligence), misrepresentation or otherwise, shall in no circumstances exceed the total value of any payments made in accordance with the Payment Schedule.
- 9.2 Nothing in this Agreement shall exclude or in any way limit:
- (a) either party's liability for death or personal injury caused by its own negligence;
 - (b) either party's liability for fraud or fraudulent misrepresentation; or
 - (c) liability for any breach of the terms implied by section 8 of the Supply of Goods (Implied Terms) Act 1973 or any other liability which cannot be excluded by law.
- 9.3 This Agreement sets forth the full extent of the Lessor's obligations and liabilities in respect of the Equipment and its hiring to the Lessee. In particular, there are no conditions, warranties or other terms, express or implied, including as to quality, fitness for a particular purpose or any other kind whatsoever, that are binding on the Lessor except as specifically stated in this Agreement. Any condition, warranty or other term concerning the Equipment which might otherwise be implied into or incorporated within this Agreement, whether by statute, common law or otherwise, is expressly excluded.

10. TERMINATION

- 10.1 The Lessor may, without prejudice to any other right or remedy which may be available to it, terminate this agreement immediately by written notice to the Lessee if:
- (a) the Lessee defaults in any of its payment obligations;
 - (b) the Lessee commits a material breach of this agreement which breach is irremediable, or which breach (if remediable) is not remedied within ten (10) Business Days after the service of written notice from the Lessor requiring it to do so;
 - (c) the Lessee becomes insolvent.
- 10.2 This Agreement shall automatically terminate if a Total Loss occurs in relation to the Equipment.
- 10.3 Upon termination of this Agreement, however caused:
- (a) the Lessor's consent to the Lessee's possession of the Equipment shall terminate and the Lessor may, by its authorised representatives, without notice, retake possession of the Equipment and for this purpose may enter the Site or any premises at which the Equipment is located; and
 - (b) without prejudice to any other rights or remedies of the Lessee, the Lessee shall pay to the Lessor on demand all sums due but unpaid at the date of such demand;

- 10.4 Termination of this Agreement shall be without prejudice to the rights and obligations of the parties accrued up to the date of termination.

11. FORCE MAJEURE

Neither party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control.

12. CONFIDENTIAL INFORMATION

- 12.1 Neither party shall, during and after termination of this Agreement, without the prior written consent of the other party, use or disclose to any other person any information of the other party which is identified as confidential or which is confidential by its nature other than in accordance with the Freedom of Information Act 2000 or any other lawful demand for disclosure.

13. ASSIGNMENT AND SUBCONTRACTING

- 13.1 The Lessee shall not , without the prior written consent of the Lessor , assign, transfer, or deal in any other manner with this Agreement.
- 13.2 The Lessor may sub-contract its obligations under this contract to anybody without the consent of the Lessee.

14. ENTIRE AGREEMENT AND VARIATION

- 14.1 This Agreement constitutes the whole Agreement between the parties and supersedes all previous agreements between the parties relating to its subject matter.
- 14.2 Each party acknowledges that, in entering into this Agreement, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) other than as expressly 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.
- 14.3 Nothing in this clause shall limit or exclude any liability for fraud or for fraudulent misrepresentation.
- 14.4 No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

15. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

- 15.1 A person who is not a party to this agreement shall not have any rights under or in connection with it by virtue of the Contracts (Rights of Third Parties) Act 1999

16. NOTICES

- 16.1 Any notice or other communication required to be given under this agreement, shall be in writing and shall be delivered personally, or sent by pre-paid post or recorded delivery or by commercial courier, to each party required to receive the notice or communication.
- 16.2 Any notice or other communication shall be deemed to have been duly received:
- (a) if delivered personally, when left at the address and for the contact referred to in this clause;
 - (b) if sent by commercial courier, on the date and at the time of signature of the courier's delivery receipt; or
 - (c) if sent by pre-paid post or recorded delivery, 9.00 am on the second Business Day after posting.

17. NO WAIVER

No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

18. SEVERANCE

- 18.1 If any court or competent authority finds that any provision of this Agreement (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this Agreement shall not be affected.

19. GOVERNING LAW AND JURISDICTION

- 19.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter shall be governed by and construed in accordance with English law.

This Agreement has been entered into on the date stated at the beginning of it.

Schedule 1 Payment Schedule

The Lessee shall make the first payment by way of an annual payment for the year 2015/16 and shall make the further payments over the following three years such amounts being paid annually and paid on 1st April of each year of this Agreement.

£4000 to pay over 4 years

Schedule 2 Rotation Plan (provisional)

The Equipment shall be installed at the Site during the following periods:

<u>Period</u>	<u>Installation date</u>	<u>Removal date</u>
Period 1	Dates to be confirmed on receipt of signed agreement	
Period 2		
Period 3		
Period 4		
Period 5		
Period 6		
Period 7		
Period 8		
Period 9		
Period 10		
Period 11		
Period 12		

The Lessor may for any reason amend the Installation and Removal dates by notice to the Lessee.

Signed by a duly authorised
representative of North Yorkshire
County Council

.....
Authorised Signatory

Signed by

.....
Authorised Signatory

And

.....
Authorised Signatory

for and on behalf of Rudby Parish
Council.