

Dated

2014

National Park Enterprises

and

Those persons listed at Schedule 1

Members' Agreement

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This Deed is dated

2014

Between

- (1) National Park Enterprises, a company limited by guarantee incorporated and registered in England and Wales with company number [INSERT COMPANY NUMBER] of [REGISTERED OFFICE ADDRESS] (the "**Company**"); and
- (2) **THOSE PERSONS** whose details are listed at Schedule 1 (each a "**Member**" and together the "**Members**").

(each a "**party**" and together the "**parties**")

Background:

- (A) The Company is a company limited by guarantee and the liability of each of the Members is limited to £1.00.
- (B) The Parties have agreed to enter into this agreement for the purpose of regulating the exercise of their rights in relation to the Company and for the purpose of certain commitments set out in this agreement.

NOW IT IS HEREBY AGREED as follows:-

1. **Interpretation**

1.1. The following definitions shall apply in this agreement.

"Act"	the Companies Act 2006;
"Articles"	the new articles of association of the Company in the agreed form to be adopted on or prior to Completion, as set out at Schedule 2;
"Board"	the board of directors of the Company as constituted from time to time;
"Business"	the operation of a commercial enterprise to do any such things which are calculated to facilitate, be conducive or incidental to the accomplishment of the Members' statutory purposes as set out in the National Parks and Access to the Countryside Act 1949 (as amended from time to time) or which are expressly or impliedly permitted functions conferred on the Members by legislation;
"Business Day"	any day (other than a Saturday, Sunday or public holiday in the United Kingdom) on which clearing banks in the City of London are generally open for business;
"Business Plan"	an annual business plan for the Company prepared by the Board in respect of the Financial Year to which it relates;

"Completion"	the completion of the transactions in accordance with clause 3;
"Completion Date"	the date hereof or such other for Completion as may be agreed between the Parties in writing;
"Deed of Adherence"	a deed of adherence substantially in the form set out in Schedule 5;
"Director"	a director of the Company;
"Distribution"	has the meaning given in section 829 of the Act;
"Electronic form"	has the meaning given in section 1168 of the Act;
"Encumbrance"	any interest or equity of any person (including any right to acquire, option, right of pre-emption[, any agreement in respect of voting rights or commitment to give or create voting rights]) or any mortgage, charge, pledge, lien, assignment, hypothecation, security, title retention or any other security agreement or arrangement;
"Financial Year"	in relation to the Company, means its accounting reference period, as may be amended from time to time in accordance with the Act;
"Licence"	the agreement granting a perpetual licence of the Trademark to the Company, to be entered into by the Company and Dartmoor National Park Authority on the Completion Date, in agreed form;
"Member"	a person entered into the Company's register of members from time to time (and reference herein to " Members " shall be construed accordingly);
"Member Consent"	Members for the time being not less than 75% of the total number of Members (excluding, where relevant, a Member who is the subject of a particular Member Consent);
"Trademark"	the trade mark(s) set out in Schedule 4, including the listed registrations and applications and any registrations which may be granted pursuant to such applications.

- 1.2. Clause, Schedule and paragraph headings do not affect the interpretation of this agreement.
- 1.3. A reference to a clause or a Schedule is a reference to a clause of, or Schedule to, this agreement. A reference to a paragraph is to a paragraph of the relevant Schedule.
- 1.4. A "person" includes a natural person, a corporate or unincorporated body (whether or not having a separate legal personality).

- 1.5. Unless the context otherwise requires, words in the singular include the plural and in the plural include the singular.
- 1.6. Unless the context otherwise requires, a reference to one gender includes a reference to the other genders.
- 1.7. A reference to a particular statute, statutory provision or subordinate legislation is a reference to it as it is in force from time to time taking account of any amendment or re-enactment and includes any statute, statutory provision or subordinate legislation which it amends or re-enacts and subordinate legislation for the time being in force made under it provided that, as between the parties, no such amendment or re-enactment shall apply for the purposes of this agreement to the extent that it would impose any new or extended obligation, liability or restriction on, or otherwise adversely affect the rights of, any party.
- 1.8. Documents in agreed form are documents in the form agreed by the parties to this agreement and initialled by them or on their behalf for identification.
- 1.9. A reference in this agreement to a document is a reference to the document whether in paper or Electronic Form.
- 1.10. Unless otherwise expressly provided in this agreement, reference to "writing" or "written" includes email but not faxes.
- 1.11. Where the words "include(s)", "including" or "in particular" are used in this agreement, they are deemed to have the words "without limitation" following them.
- 1.12. Any obligation in this agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.13. Where the context permits, "other" and "otherwise" are illustrative and shall not limit the sense of the words preceding them.
- 1.14. References to times of day are, unless the context requires otherwise, to London time and references to a day are to a period of 24 hours running from midnight on the previous day.
- 1.15. Unless the context otherwise requires, words and expressions defined in the Articles shall have the same meaning when used in this agreement.

2. **Business of the Company**

- 2.1. The business of the Company shall be the Business.
- 2.2. Each Member shall promote (so far as is lawfully possible in the exercise of his rights and powers as a member of the Company) the success of and develop the Business for the benefit of its Members as a whole.

3. **Completion**

- 3.1. Completion shall take place on the Completion Date at the Company's registered office or such other location as the Parties may agree in writing.
- 3.2. At Completion:

- 3.2.1. [NAME OF MEMBER] shall pay £10,000 (ten thousand pounds sterling) by [AGREED METHOD OF PAYMENT] to the Company]; and
 - 3.2.2. Dartmoor National Park Authority and the Company shall execute the Licence pursuant to which Dartmoor National Park Authority shall grant a licence of the Trademark to the Company in accordance with the terms thereof.
- 3.3. Within the period of six calendar months commencing on the Completion Date, the Company shall (and the Members shall procure that the Company shall) adopt the Business Plan for the Financial Year in which the Company is formed, in agreed form.
4. **Member undertakings**
 - 4.1. Each Member shall, for as long as they remain a Member, procure (so far as is lawfully possible in the exercise of their rights and powers as a member of the Company) that the Company shall not take any of the actions set out in Schedule 3 without first obtaining Member Consent.
 - 4.2. Each Member shall, for as long as they remain a Member, act at all times in good faith in the exercise of their rights and powers as a member of the Company, to ensure that each Member benefits equally from the Business.
5. **Distribution Policy**
 - 5.1. Subject to the requirements of the Act, and unless the parties agree otherwise in relation to any particular Financial Year, the parties shall procure that the Company shall make a cash distribution of at least 95% of the profit of the Company in relation to each Financial Year but after making all necessary, reasonable and prudent provisions and reserves for taxation, as shown in the accounts for that year.
 - 5.2. Any cash distribution made by the Company shall be divided amongst the Members in equal proportions.
6. **Termination**
 - 6.1. This agreement shall terminate:
 - 6.1.1. when a resolution is passed by the members or creditors of the Company, or an order is made by a court or other competent body or person instituting a process that shall lead to the Company being wound up and its assets being distributed among the Company's creditors, members or other contributors; or
 - 6.1.2. the appointment of a receiver, administrator or administrative receiver over the whole or any part of the assets of the Company or the making of any arrangement with the creditors of the Company for the affairs, business and property of the Company to be managed by a supervisor; or
 - 6.1.3. when, as a result of the retirement or removal of Members made in accordance with this agreement or the Articles, only one person remains as a Member of the Company.

- 6.2. Termination of this agreement shall not affect any rights, remedies, obligations or liabilities of any of the parties that have accrued up to the date of termination, including the right to claims damages in respect of any breach of the agreement which existed at or before the date of completion.
- 6.3. Where, following an event referred to in clause 6.1.1, the Company is to be wound up and its assets distributed, the parties shall agree a suitable basis for dealing with the interests and assets of the Company and shall endeavour to ensure that, before dissolution:
 - 6.3.1. all existing contracts of the Company are performed to the extent that there are sufficient resources;
 - 6.3.2. the Company shall not enter into any new contractual obligations; and
 - 6.3.3. the Company's assets are distributed as soon as practical.

7. **Status of this agreement**

- 7.1. Each Member shall, to the extent that he is able to do so, exercise his voting rights and other powers of control lawfully available to him to procure that the provisions of this agreement are properly and promptly observed and given full force and effect according to the spirit and intention of the agreement.
- 7.2. If there is an inconsistency between any of the provisions of this agreement and the provisions of the Articles, the provisions of this agreement shall prevail as between the parties.
- 7.3. Each Member shall, when necessary, exercise his powers of voting and any other rights and powers lawfully available to him as a member of the Company to amend, waive or suspend a conflicting provision in the Articles to the extent necessary to permit the Company and its Business to be administered as provided in this agreement.

8. **No partnership or agency**

Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the parties or constitute any party the agent of another party.

9. **Confidentiality**

Except to the extent required by law or any legal or regulatory authority of competent jurisdiction:

- 9.1.1. no party shall at any time [during this agreement and for a period of [INSERT NUMBER] years after termination of this agreement] disclose to any person (other than his professional advisers) the terms of this agreement or any trade secret or other confidential information relating to the Company [or to any Member], or make any use of such information other than to the extent necessary for the purpose of exercising or performing his rights and obligations under this agreement;

9.1.2. no party shall make, or permit any person to make, any public announcement, communication or circular concerning this agreement without Member Consent.

10. **Inadequacy of damages**

Without prejudice to any other rights or remedies that a party may have, each party acknowledges and agrees that damages alone would not be an adequate remedy for any breach of the terms of clause 9 by that party. Accordingly, each other party shall be entitled to the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of the terms of clause 9 of this agreement.

11. **Notices**

11.1. A notice given to a party under or in connection with this agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post, recorded delivery or special delivery in each case to that party's address in each case to that Party's registered office address (or to such other address as that party may notify to the other party in accordance with this agreement).

11.2. Delivery of a notice is deemed to have taken place (provided that all other requirements in this clause 11 have been satisfied) if delivered by hand, at the time the notice is left at the address, or if sent by post on the second Business Day after posting unless, in each case, such deemed receipt would occur outside business hours (meaning 9.00 am to 5.30 pm Monday to Friday on a day that is not a public holiday in the place of deemed receipt), in which case deemed receipt will occur at 9.00 am on the day when business next starts in the place of deemed receipt (and, for the purposes of this clause 11, all references to time are to local time in the place of receipt).

11.3. This clause 11 does not apply to the service of any proceedings or other documents in any legal action.

12. **Severance**

If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this agreement.

13. **Variation and waiver**

13.1. No variation of this agreement shall be effective unless it is in writing and signed by or on behalf of each party for the time being.

13.2. A waiver of any right or remedy under this agreement or by law is only effective if it is given in writing and is signed by the party waiving such right or remedy. Any such waiver shall apply only to the circumstances for which it is given and shall not be deemed a waiver of any subsequent breach or default.

13.3. A failure or delay by any party to exercise any right or remedy provided under this agreement or by law shall not constitute a waiver of that or any other right or

remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy.

13.4. No single or partial exercise of any right or remedy provided under this agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

13.5. A party that waives a right or remedy provided under this agreement or by law in relation to one person, or takes or fails to take any action against that person, does not affect its rights or remedies in relation to any other person.

14. **Assignment and other dealings**

14.1. No party shall assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of his rights and obligations under this agreement (or any other document referred to in it) without Member Consent [(such consent not to be unreasonably withheld or delayed)].

14.2. Each party confirms that he is acting on his own behalf and not for the benefit of any other person.

15. **Costs and expenses**

Except as expressly provided in this agreement, each party shall pay its own costs and expenses incurred in connection with the negotiation, preparation and execution of this agreement (and any documents referred to in it).

16. **Entire agreement**

16.1. This agreement (together with the documents referred to in it) constitute the entire agreement between the parties and supersede and extinguish all previous discussions, correspondence, negotiations, drafts, agreements, promises, assurances, warranties, representations, arrangements and understandings between them, whether written or oral, relating to their subject matter.

16.2. Each party acknowledges that in entering into this agreement (and any documents referred to in it), he does not rely on, and 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 or those documents.

16.3. Nothing in this clause shall limit or exclude any liability for fraud.

17. **Third party rights**

17.1. A person who is not a party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

17.2. The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this agreement are not subject to the consent of any other person.

18. **Counterparts**

18.1. This agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

18.2. No counterpart shall be effective until each party has executed at least one counterpart.

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 or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

19.2. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

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

Schedule 1 – Parties

Name of Member	Member's Principal Office Address
Brecon Beacons National Park Authority	Plas y Ffynnon Cambrian Way Brecon LD3 7HP
The Broads Authority	Yare House 62-64 Thorpe Road Norwich NR1 1RY
The Cairngorms National Park Authority	14 The Square Grantown on Spey PH26 3HG
Dartmoor National Park Authority	Parke Bovey Tracey Newton Abbot Devon TQ13 9JQ
Exmoor National Park Authority	Exmoor House, Dulverton, Somerset, TA22 9HL
Lake District National Park Authority	Murley Moss Oxenholme Road Kendal LA9 7RL
Loch Lomond and The Trossachs National Park Authority	Loch Lomond & The Trossachs National Park Headquarters Carrochan Carrochan Road Balloch G83 8EG
New Forest National Park Authority	New Forest National Park Authority Lymington Town Hall Avenue Road Lymington SO41 9ZG
Northumberland National Park Authority	Eastburn, South Park, Hexham, Northumberland NE46 1BS

North York Moors National Park Authority	The Old Vicarage, Bondgate, Helmsley, York, North Yorkshire YO62 5BP
Peak District National Park Authority	Aldern House, Baslow Road, Bakewell, Derbyshire DE45 1AE
Pembrokeshire Coast National Park Authority	National Park Offices Llanion Park Pembroke Dock Pembrokeshire SA72 6DY
Snowdonia National Park Authority	National Park Office Penrhyndeudraeth Gwynedd LL48 6LF
South Downs National Park Authority	South Downs Centre North Street Midhurst West Sussex GU29 9DH
Yorkshire Dales National Park Authority	Yoredale Bainbridge Leyburn North Yorkshire DL8 3EL

Schedule 2 – New Articles of Association

Schedule 3 - Matters requiring Member Consent

1. Except as provided in clause 7.3, vary in any respect its Articles.
2. Permit the registration of any person as a member of the Company other than in accordance with this agreement or the Articles.
3. Alter its name or registered office.
4. Change the nature of its Business.
5. Adopt or amend its Business Plan in respect of each financial year.
6. Enter into any arrangement, contract or transaction:
 - 6.1. with a value exceeding £[AMOUNT]; or
 - 6.2. which is outside the normal course of the Business; or
 - 6.3. which is otherwise than on arm's length terms.
7. Create or grant any Encumbrance over the whole or any part of the Business, its undertaking or assets from time to time.
8. Incur any borrowings from time to time other than from its bankers in the ordinary and usual course of business, or issue any loan capital.
9. Make any loan (otherwise than by way of deposit with a bank or other institution the normal business of which includes the acceptance of deposits) or grant any credit (other than in the normal course of trading) or give any guarantee (other than in the normal course of trading) or indemnity.
10. Amalgamate or merge with any other company or business undertaking, form or acquire any subsidiary, directly or indirectly acquire shares in any other company or directly or indirectly participate in any partnership or joint venture.
11. Pass any resolution for its winding up or present any petition for its administration (unless it has become insolvent).

Schedule 4 – Trademark

Country	Mark	Registration No.	Date of Registration	Classes
United Kingdom	Britain's Breathing Spaces	UK00003034874	01 August 2014	3, 4, 5, 11, 25, 28, 30, 41.
EU	Britain's Breathing Spaces	EU012428884	7 May 2014	3, 4, 5, 11, 25, 28, 30, 41.

Schedule 5 – Deed of Adherence

THIS DEED OF ADHERENCE is made the [] day of [] by [] of [] (hereinafter called the "**Covenantor**")

SUPPLEMENTAL to a members' agreement dated [] and made between [] (the "**Members' Agreement**")

WITNESSETH as follows:

1. The Covenantor hereby confirms that [he] [it] has been supplied with a copy of the Members' Agreement and hereby covenants with each of the parties to the Members' Agreement from time to time to observe, perform and be bound by all the terms of the Members' Agreement which are capable of applying to the Covenantor and which have not been performed at the date hereof to the intent and effect that the Covenantor shall be deemed with effect from the date on which the Covenantor is registered as a member of the Company to be a party to the Members' Agreement and to be a Member (as defined in the Members' Agreement).
2. This Deed shall be governed by and construed in accordance with the laws of England.

EXECUTED as a deed the day and year first before written.

SIGNED AS A DEED (but not delivered until the date hereof)
[NAME OF COMPANY] acting by a director in the presence of:-

)
)
.....
Director

Witness Signature:

Witness Name:

Address:

Occupation:

THE SEAL of Brecon Beacons National Park Authority was hereunto affixed in the presence of:-

)
)
)

.....

[INSERT NAME], a duly authorised signatory.

THE SEAL of The Broads Authority was hereunto affixed in the presence of:-

)
)
)

.....

[INSERT NAME], a duly authorised signatory.

**THE SEAL of The Cairngorms
National Park Authority** was
hereunto affixed in the presence
of:-

)
)
)

.....

[INSERT NAME], a duly authorised
signatory.

**THE SEAL of Dartmoor National
Park Authority** was hereunto
affixed in the presence of:-

)
)
)

.....

[INSERT NAME], a duly authorised
signatory.

**THE SEAL of Exmoor National
Park Authority** was hereunto
affixed in the presence of:-

)
)
)

.....

[INSERT NAME], a duly authorised
signatory.

**THE SEAL of Lake District
National Park Authority** was
hereunto affixed in the presence
of:-

)
)
)

.....

[INSERT NAME], a duly authorised
signatory.

**THE SEAL of Loch Lomond and
The Trossachs National Park
Authority** was hereunto affixed in
the presence of:-

)
)
)

.....

[INSERT NAME], a duly authorised
signatory.

**THE SEAL of New Forest
National Park Authority** was
hereunto affixed in the presence
of:-

)
)
)

.....

[INSERT NAME], a duly authorised signatory.

THE SEAL of Northumberland National Park Authority was hereunto affixed in the presence of:-)
)
)

.....

[INSERT NAME], a duly authorised signatory.

THE SEAL of North York Moors National Park Authority was hereunto affixed in the presence of:-)
)
)

.....

[INSERT NAME], a duly authorised signatory.

THE SEAL of Peak District National Park Authority was hereunto affixed in the presence of:-)
)
)

.....

[INSERT NAME], a duly authorised signatory.

THE SEAL of Pembrokeshire)
Coast National Park Authority)
was hereunto affixed in the)
presence of:-)

.....

[INSERT NAME], a duly authorised signatory.

THE SEAL of Snowdonia)
National Park Authority was)
hereunto affixed in the presence)
of:-)

.....

[INSERT NAME], a duly authorised signatory.

THE SEAL of South Downs)
National Park Authority was)
hereunto affixed in the presence)

of:-

.....

[INSERT NAME], a duly authorised
signatory.

THE SEAL of Yorkshire Dales)
National Park Authority was)
hereunto affixed in the presence)
of:-

.....

[INSERT NAME], a duly authorised
signatory.