

DRAFT DATE: 07/08/15

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DATED

COLLABORATION AGREEMENT

between

- (1) DERBYSHIRE COUNTY COUNCIL**
- (2) BOLSOVER DISTRICT COUNCIL**
- (3) CHESTERFIELD BOROUGH COUNCIL**
- (4) SOUTH DERBYSHIRE DISTRICT COUNCIL**

RELATING TO

THE DERBYSHIRE CARELINE PARTNERSHIP

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THIS AGREEMENT is dated [DATE]

PARTIES

- (1) **DERBYSHIRE COUNTY COUNCIL** of { }County Hall, Smedley Street Matlock, DE3 4AG (“DCC”)
- (2) **BOLSOVER DISTRICT COUNCIL** of The Arc, High Street, Clowne S43 4JY (“BDC”)
- (3) **CHESTERFIELD BOROUGH COUNCIL** of Town Hall, Rose Hill, Chesterfield S40 1LP (“CBC”) and
- (4) **SOUTH DERBYSHIRE DISTRICT COUNCIL** of Civic Offices, Civic Way, Swadlincote DE11 0AH (“SDDC”).

(each a “Party” together the “Parties”)

BACKGROUND

- (A) The parties are acting together to provide high quality low cost alarm call and telecare monitoring services to the people of Derbyshire [and elsewhere] who are publicly funded in respect of such services (the “Derbyshire Careline Partnership”)
- (B) The Parties have the common objectives of generating efficiencies whilst maintaining the level of service in relation to the said alarm call and telecare monitoring services.
- (C) The Parties are entering into this agreement in the public interest in order to secure the health and well-being of the service users and to ensure a smooth transition from those service users moving from being publicly to privately funded and vice versa.

AGREED TERMS

1. INTERPRETATION

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

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

Completion Date: has the meaning given in clause 5.2.

Conditions: the conditions set out in clause 6.

Confidential Information: has the meaning given in clause 191915.

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Created IPR: all Intellectual Property Rights developed or created by a party for the purposes of the Derbyshire Careline Partnership

Financial Year: means the period between the 1st April and 31st March in any year.

Financial Principles: means those financial principles which are agreed between the Parties as a guide to working together to agree the Partnership Costs although for the avoidance of doubt to the extent of any inconsistency between Financial Principles and this Deed the terms of this Deed will prevail

Governance Board: means the board overseeing the activities of the Derbyshire Careline Partnership

Intellectual Property Rights: means patents, utility models, rights to inventions, copyright and neighbouring and related rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the word.

Joint Business Plan: has the meaning given in clause 778.

Law: means any applicable Act of Parliament, sub-ordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the Royal Prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, bye-law, regulatory policy, guidance or industry code, judgement of a relevant court of law, or directives or requirements of any regulatory body of which the Parties are bound to comply

Partnership Costs: means the costs of the Derbyshire Careline Partnership as more particularly defined in clause 11.1 which will be met by the Parties in accordance with clause 11

Services: means the services set out in Schedule [] which is the subject matter of the Derbyshire Careline Partnership cooperation.

1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this agreement.

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- 1.3 References to clauses and Schedules are to clauses of and Schedules to this agreement and references to paragraphs are to paragraphs of the relevant Schedule.
- 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. Any reference to this agreement includes the Schedules.
- 1.5 A reference to **this agreement** or to any **other agreement or document referred to in this agreement** is a reference to this agreement or such other agreement or document as varied or novated in accordance with its terms from time to time.
- 1.6 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.7 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.8 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.9 A reference to any **party** shall include that party's successors and permitted assigns.
- 1.10 A reference to **writing** or **written** includes faxes and electronic forms and the sending or supply of notices in electronic form.
- 1.11 Any words following the terms **including, include, in particular, for example** 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.
- 1.12 Where the context permits, **other** and **otherwise** are illustrative and shall not limit the sense of the words preceding them.
- 1.13 References to a document in **agreed form** are to that document in the form agreed by the parties and initialled by them or on their behalf for identification
- 1.14 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time [provided that, as between the parties, no such amendment, extension or re-enactment made after the date of this agreement 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].
- 1.15 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.16 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.17 Unless the context requires otherwise, words and expressions defined in the Articles shall have the same meaning when used in this agreement.

2. PRINCIPLES OF COLLABORATION

2.1 The parties shall in respect of this Agreement adhere to the following principles of collaboration:-

- a) co-operation between all parties
- b) accountability of each party for its roles and responsibilities
- c) pro-activity to establish and develop the Derbyshire Careline Partnership
- d) development of the full potential of the Derbyshire Careline Partnership
- e) adherence to statutory requirements and best practice.
- f) timely action
- g) effective management of stakeholders
- h) deployment of appropriate resources
- i) action in good faith to support the mutual objectives set out in Clause 3
- j) equality of opportunity and non-discrimination on grounds of race, ethnicity, religion, nationality, gender, disability or sexuality and the promotion of good relations between all sections of the community
- k) dealing in good faith and adherence to [Members Code of Conduct] and the other standards of public life recognised from time to time

Comment [peterwa1]: This is defined at the moment. On the basis there is no standard one now and on the basis that the respective codes are likely to apply to individual members conduct rather than that of the organisations it may not be relevant here?

Comment [GM2]: This should relate to the relevant Local Authorities Code of Conduct for Members.

3. MUTUAL OBJECTIVES

The parties agree that:-

3.1 The service to be provided through this Agreement shall be known as the Derbyshire Careline Partnership.

3.2 The Derbyshire Careline Partnership will provide high quality low cost alarm call and telecare monitoring services to residents of Derbyshire maintaining a local link between service users and the service provider so as to aid accountability and maximum integration with other care and health services in Derbyshire and elsewhere. [Insert ~~other features of the the signed~~ Heads of Terms as an annex to this if appropriate ~~if appropriate~~].

3.3 The Parties have the common objectives of generating efficiencies whilst maintaining the level of service in relation to the said alarm call and telecare monitoring services.

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3.4 The Parties are entering into this agreement in the public interest in order to secure the health and well-being of the service users and to ensure a smooth transition from those service users moving from being publicly to privately funded and vice versa.

3.5 Operation of the Derbyshire Careline Partnership service shall commence on [or before] 1st April 2016.

3.6 The Derbyshire Careline Partnership service shall be provided for a period of five (5) years with optional extensions by agreement for two further periods of five (5) years following a review at the end of each five year period.

4. CONDITIONS PRECEDENT

4.1 Clauses [] of this Agreement shall be conditional upon []

5. COMPLETION

5.1 Completion shall take place at [TIME] on the Completion Date at:

- a) the offices of [NAME OF PARTY]; or
- b) any other place agreed in writing by the parties.

5.2 Completion Date means [DATE] but if the Conditions have not been satisfied or waived in accordance with clause 6 (conditions) on or before that date means:

- a) the second Business Day after they are all satisfied or waived; or
- b) any other date agreed in writing by the parties.

5.3 At Completion the parties shall adopt the Joint Business Plan for the Financial Year [15/16 and] 16/17 in agreed form.

6. CONDITIONS

6.1 Completion is conditional on the satisfaction or waiver of the following Conditions:

- a) -[the parties have received confirmation in terms satisfactory to them that the proposals for the Derbyshire Careline Partnership and the terms of this Agreement have been approved and no objections have been raised by: [internal Council/Cabinet/Executive/Committee approvals]
- b) [all other necessary regulatory and governmental consents having been obtained.]
- e) [approval by each Council]

Comment [GM3]: We need to have some provision in here for after these 15 years

Comment [peterwa4]: How does this sit alongside clause 6?

Comment [GM5]: Not sure we have anything but if you can think of anything Owen please advise

Comment [peterwa6]: As the agreement has conditions precedent what does completion here mean. If it is in relation to the fulfilment of the CPs then the agreement will need provisions that make it operative from execution?

Comment [GM7]: Can you think of anything Owen?

Comment [peterwa8]: What are these going to be?

Comment [peterwa9]: How is this different from a)?

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⊕c) [any other third party consents having been obtained.]

⊕d) [no person having threatened or commenced any proceedings to prohibit or otherwise challenge the transaction.]

⊕e) [no legislation or regulation being proposed or passed that would prohibit or materially restrict the implementation of the agreement]

⊕f) [ANY OTHER SPECIFIC CONDITIONS]

Comment [GM10]: What could these be?

Comment [peterwa11]: What are these going to be?

Comment [peterwa12]: Is this a jr/procurement challenge? Is threatened enough?

Comment [peterwa13]: This is quite subjective for it to be a testable condition which is met or not?

Comment [GM14]: Do we need or can we enforce this?

6.2 The parties shall use all reasonable endeavours to procure that the Conditions are satisfied as soon as practicable and in any event no later than 6.00 pm:

a) on [DATE ON WHICH PARTIES EXPECT ALL CONDITIONS TO BE SATISFIED]; or

b) where a later date has been agreed in writing by the parties, on that date.

6.3 A Condition may only be waived by all parties in writing.

6.4 If at any time either party becomes aware of a fact or circumstance that might prevent a Condition being satisfied, it shall immediately inform the other parties.

6.5 If the Conditions have not been satisfied or waived by 6.00 pm on [LONG STOP DATE], the parties shall use all reasonable endeavours to agree how and when the outstanding conditions will be satisfied with a view to implementing this agreement as soon as reasonably practicable.

~~7 CONTRIBUTIONS TO THE COLLABORATION~~

~~7.1 The parties shall make the following contributions to the Derbyshire Careline Partnership:-~~

~~a) DCC shall contribute [_____]~~

~~b) BDC shall contribute [_____]~~

~~c) CBC shall contribute [_____]~~

~~d) SDDC shall contribute [_____]~~

~~Provided that the parties may agree a charge payable by any of them for any such contribution in accordance with [the Joint Business Plan] and in respect of any further contribution for such price and other terms as the parties may agree..~~

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87 JOINT BUSINESS PLAN

8.17.1 The Joint Business Plan is a rolling 5 year (annually reviewed) business plan [including financial model] for the Derbyshire Careline Partnership prepared by the parties and it shall include in relation to the Financial Year to which it relates:

- a) a cashflow statement giving:
 - i. an estimate of the working capital requirements; and
 - ii. an indication of the amount (if any) that it is considered prudent to retain, for the purpose of meeting those requirements, out of the revenues of the previous Financial Year that are available for such purpose;
- b) a monthly projected profit and loss account;
- c) an operating budget (including capital expenditure requirements);
- d) a management report giving business objectives for the [year] [plan period]; and
- e) a financial report which shall include an analysis of the estimated results for the previous Financial Year compared with the Joint Business Plan for that year, identifying variations in revenues, costs and other material items.

8.27.2 The Joint Business Plan for the Financial Year commencing 1 April 2016 [and any period of operation prior thereto] shall be in agreed form and adopted by the parties at Completion.

8.37.3 The Joint Business Plan for every other Financial Year shall be:

- a) prepared by the parties in consultation with each other at least [NUMBER] days before the end of the preceding Financial Year; and
- b) adopted and approved by all the parties as soon as possible after it has been prepared.

8 GOVERNANCE BOARD

8.1 Subject always to any limitations set out in this Deed, including any matter being a Reserved Decision, the Governance Board shall:

- a) be responsible for the strategic decisions, oversight and monitoring of the Services and in particular reviewing and setting the service level obligations set out in [#####];
- b) to ensure that the Joint Business Plan is adhered to and kept up to date

Comment [GM15]: Agree with PW comment

Comment [peterwa16]: Probably best to agree this and append to the agreement?

Comment [peterwa17]: I have inserted some governance board provisions and it could be approved by them Agreed MG

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- c) review and monitor a risk register for all aspects of the Service operations;
- d) be responsible for any matter relating to the Derbyshire Careline Partnership not specifically reserved to any Party;
- e) determine and review the charging and funding mechanisms of the operation of the Derbyshire Careline Partnership; and
- f) resolve any conflict reported to them by [##] pursuant to clause [##] or any direct complaint made by [###].

8.2 The Governance Board will comprise [##] or [##] their respective nominees.

8.3 The Governance Board may decide to expand its membership to include up to two further nominees from each Party.

8.4 Quorum for meetings of the Governance Board will be at least one attendee from each Party.

8.5 The [###] will also be required to attend meetings although will not have a vote.

8.6 Regardless of the number of officers or members in attendance the Parties will have only one vote each on any matter, if agreement cannot be reached on any matter it may be referred to the dispute resolution provisions of clause [###].

8.7 The Chair of the Governance Board shall be ~~rotated between Parties-DCC and does not hold a second~~ or casting vote.

8.8 The venue for Governance Board meetings shall be rotated between Parties or as otherwise agreed.

8.9 Unless otherwise agreed by the Parties the Governance Board meetings will be held every ~~three~~ months.

8.10 The [##] shall ensure that members of the Governance Board are sent papers for meetings (including but not limited to an agenda and details of any specific resolutions to be put to the meeting) not less than ~~five~~ Business Days before the date of such meeting.

8.11 The Governance Board will approve an annual report prepared by [##] of the activities of the Derbyshire Careline Partnership and that report will be sent to ~~the [Leader]~~ of each Party for their information (the “Annual Report”).

Comment [GM18]: Membership will be 3 DCC, 1 BDC, 1 CBC and 1 SDDC

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Comment [GM19]: Voting will be 3 votes for DCC and 1 each for CBC, BDC and SDDC

Comment [GM20]: Would this be Officers or Secretariat?

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9 INSURANCE

9.1 Each Party shall ensure that it puts in place, and keeps in place, throughout the duration of this Deed insurance to the levels set out in clause 9.2 and any other such insurances which may be required by Law;

- a) the insurance obtained is effective no later than the date on which the relevant risk commences;
- b) it is responsible for meeting and promptly pays all costs of all insurance premia for the insurances referred to in clause 9.2; and
- c) upon written request it provides to the other Party making the written request:
 - i. copies of all insurance policies required under this clause; and
 - ii. evidence that all of the premia payable under such insurance policies have been paid in full; and
 - iii. evidence that the insurances remain in full force and effect.
- d) that the interests of the other Party is noted on such policy to the extent relevant in respect of the Derbyshire Careline Partnerships.

9.2 Each Party shall ensure that at all times an [adequate] level of insurance is maintained by it in respect of the provision of the Services and in particular but without limitation that the following insurances are put in place:

- a) Officials Indemnity with a cap on liability of no less than £5 million;
- b) Employee Liability; and
- c) Public Liability.

9.3 Where any Party allows its premises to be used by the Staff of another Party to deliver any element of the Services that Party shall ensure that adequate insurance cover is effected and maintained to cover employee liability, public liability and any other insurance requirements which may accord with good practice.

9.4 Each Party warrants to the other that:

- a) it has provided a copy of this Deed to its insurer (in this clause 8, the "Insurer"); and,
- b) upon receipt of a notice from an Insurer to a Party that the terms of the insurances required under this clause 8 have changed or that the Insurer withdraws its insurance

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Comment [peterwa21]: It would be better to set figures out but I assume that the Councils will have what they have.

Comment [GM22]: Owen – is this correct from your legal perspective?

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that Party shall promptly notify the other and use its best endeavours to forthwith obtain replacement insurance as required under this clause 8.

10 COSTS AND LIABILITIES IN RESPECT OF THE DERBYSHIRE CARELINE PARTNERSHIP

10.1 Partnership Costs will be calculated and paid in accordance with the provisions of clause 11. All other extraordinary costs not catered for in that cost sharing mechanism will be dealt with pursuant to this clause 10 working on the general principle that no one Party should accept an unfair financial burden and that all reasonable efforts will be made to minimise losses and in particular each Party will retain their own risk and will not attempt to subrogate their loss from the other party.

10.2 Subject always to clause 10.3 any liability which arises as a result of any negligent advice, act or omission of a Party, acting in its role as host and deliverer of the Services or any part of them (the "Provider") , will be met by the Party which receives or is intended to receive such Service and, as a consequence, suffers the liability (the "Paying Council") for the avoidance of doubt where a Party provides a Service to itself (and it suffers a liability) then it will be the Paying Council for the purposes of this clause.

10.3 The Paying Council will not seek to recover such claims, damages, charges, losses, liabilities, costs and expenses ("Losses") from the Provider and the Paying Council shall indemnify and hold harmless the other Party or Parties and each of their respective directors, officers, members, employees, agents and advisors from and against any Losses which may be incurred by, or asserted or awarded against the Paying Council in respect of any liability which is suffered in accordance with clause 10.2 save (and only save) in circumstances where the Provider is able and agrees to recover Losses from a third party. Where the Provider has recovered such Losses from a third party the Paying Council shall not seek to recover any Losses or any other costs in excess of the sums so recovered by the Provider.

10.4 As set out in Clause 8 above, each of the Parties will ensure at all times that they have sufficient insurance cover to meet those liabilities which are to be dealt with in accordance with clause 10.3. The terms of any insurance or the amount of cover shall not relieve the Partys of any liabilities under this Deed.

10.5 For the avoidance of doubt the provisions of clause 10.2 and 10.3 only relate to liability arising from or resulting from the negligent advice, act or omission of a Party providing the Services or any part of them pursuant to the Derbyshire Careline Partnership.

10.6 Subject always to the obligations of Confidentiality contained in clause [##] the Parties agree that, as soon as practicable after they become aware of any claim or potential claim under the provisions of clause 10.2, they will provide all relevant

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information and practical support to the insurance manager of the Paying Party relating to such claim and in particular the Partys agree that they will not make any contact with any third party who may have a right of action against a Paying Party without the agreement of the Paying Party.

10.7 In circumstances other than as provided for in clause 10.6 the Provider agrees to ensure that the Assistant Director of Corporate Governance and Joint Head of Legal Services provides details of any potential claims that it or the Derbyshire Careline Partnership is aware of against each Party to the insurance manager of the relevant Party, such information is to be made available on written request and in any event details of all material potential claims shall be provided at least 20 Business Days prior to each Party's insurance renewal date (for the purposes of this clause 10.7 the required level of materiality, the detail required in relation to such claims and the renewal date shall be provided by each Party not less than 40 Business Days prior to such renewal date).

10.8 For the avoidance of doubt, the provisions contained in clause 10.1 and 10.2 will include matters relating to the employment and transfer of staff, losses, costs, expenses or liabilities arising from contracts with third parties and in relation to assets provided that any Party acts in accordance with any [Policies or Procedures].

10.9 This clause 10 shall survive the expiry or determination of this Deed or exit of a Party and shall apply to the liabilities which arise during any Party's involvement in the Derbyshire Careline Partnership.

11 FUNDING OF THE DERBYSHIRE CARELINE PARTNERSHIP

DN this is is just an example clause only as the method of charging needs to be traced through.

11.1 For the purposes of this Deed the definition of Partnership Costs shall mean all costs of the Derbyshire Careline Partnership, save as may be agreed between the Parties from time to time, which for the avoidance of doubt shall ~~not~~ include costs of accommodation, Support Services employees costs and all costs which the Parties agree acting reasonably agree to be costs of the Derbyshire Careline Partnership.

DN THE BASIS OF WHAT IS INCLUDED IN COST WILL BE IMPORTANT,

11.2 the *[name the officers who will prepare the budget]* with support from *[the Finance Officers each Party]* in accordance with the Financial Principles to prepare a base budget (the draft budget) for the Derbyshire Careline Partnership in respect of each Financial

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Year by reference to the resources approved within the Joint Business Plan, Partnership Costs and any other costs detailed in this deed or approved unanimously by the Governance Board.

11.3 The draft budget will be considered by the Governance Board who will, once they have considered it and agreed such changes as they consider necessary, approve it. Agreement of the draft budget will be the “Annual Budget”. The Parties agree that the overriding financial principle in the operation of the Derbyshire Careline Partnership shall be to ensure that expenditure is contained within the overall Annual Budget.

11.4 The Parties agree that funding of the Derbyshire Careline Partnership shall be paid in accordance with [####]

11.5 An account detailing the expenditure and income of the Derbyshire Careline Partnership in each Financial Year shall be prepared by the Finance Officer to the Derbyshire Careline Partnership with support from [151 officer#] and delivered to the Parties by [##] or as soon thereafter as is reasonably practicable such draft accounts will be prepared on the basis of [###] usual accounting principles (the “Annual Accounts”).

11.6 The Parties shall within 5 Business Days of the delivery of the Annual Accounts either confirm their agreement to the figures set out or give written notice to each and every other Party of where they disagree. The provisions of clause [##] will apply to the resolution of any dispute over the Annual Accounts.

11.7 Upon agreement or determination of the Annual Accounts the Parties agree that any surplus of the Derbyshire Careline Partnership be distributed in accordance with [##] and any deficit between the Partnership Costs will be met in accordance with [##] or otherwise as agreed by the Governance Board. All payments due under this clause will be made within 28 Business Days.

11.8 The Auditors, Section 151 Officers and other authorised officers of the Parties shall have access at all reasonable times and with due notice to the relevant financial records of the Derbyshire Careline Partnership and shall be entitled to seek explanations concerning queries relating thereto.

11.9 Invoices shall be issued *[DN how is charging going to work]* on the 25th of each month (or such alternative date as is mutually agreed) and shall be payable by the Parties within 28 Business Days of the date of the invoice

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912 ACCOUNTING AND OTHER INFORMATION

9-112.1 The parties shall at all times maintain accurate and complete accounting and other financial records and related documents and correspondence relating to the Derbyshire Careline Partnership in accordance with the requirements of all applicable laws and generally accepted accounting principles applicable in the United Kingdom.

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9.212.2 The parties shall supply each other with the financial [and other] information necessary to keep the party informed about how effectively the Derbyshire Careline Partnership is performing

9.312.3 The parties shall, as soon as possible, comply with any request made by a party, to provide any documents, information and correspondence necessary (at the cost of the party making the request) to enable the relevant party to assess the performance of the Derbyshire Careline Partnership.

1013 TAX MATTERS

Note: Finance Officers to indicate if any provisions for tax matters are required

14 MATTERS REQUIRING UNANIMOUS APPROVAL

14.1 Notwithstanding any other provisions of this Deed, any matter of the Derbyshire Careline Partnership which exclusively affects any Party's ability to attain or fulfil its public-interest objectives in full at all times shall require the consent in writing of such Party.

14.2 Unless otherwise agreed by the Parties in writing the Derbyshire Careline Partnership will not undertake those matters set out in Schedule [###] ("Reserved Decisions") and the Parties will exercise their respective powers under this Agreement, and otherwise, to ensure that the Derbyshire Careline Partnership will not undertake or carry out the Reserved Decisions without such agreements.

Meaning of Deadlock

14.3 For the purposes of this clause 14 there shall be a Deadlock if:

- a) a matter constituting a Reserved Decision has been considered by the Parties; and
- b) no resolution has been carried by the Parties in relation to the matter because of a failure of any Council to consent to such resolution; and
- c) the matter is not resolved within 10 Business Days from the date of the date of referral to the Parties for consent (as appropriate).

Parties' Obligations

14.4 In any case of Deadlock each of the Parties shall (at the request of any Council) within 15 Business Days of Deadlock having arisen or become apparent, cause its appointees on the Governance Board to prepare and circulate to the Parties a memorandum or other form of statement setting out its position on the matter in respect of which the Deadlock has arisen and its reasons for adopting that position, but on the basis that such memorandum or statement shall always be prepared and delivered on a "without

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prejudice” basis. Each Party shall then refer the Deadlock to dispute resolution provisions of clause 15 of the Deed.

Failure to resolve Deadlock or Dispute

14.5 If a resolution of a Deadlock or a dispute referred pursuant to clause 0 is not resolved or is not agreed in accordance with that clause (or such longer period as the Parties may agree in writing) then either:

- a) There will be no change to existing arrangements; or
- b) If this cannot be unanimously agreed between the Parties the Party who has failed to agree the motion in question will be deemed to have issued notice to withdraw its membership of the Derbyshire Careline Partnership and the provisions of clause 17 of the Deed will apply.

15 ESCALATION OF DISPUTE RESOLUTION

15.1 If any dispute or difference arises in connection with this agreement, the parties will attempt to settle it by consultation between the respective Heads of Service for Adult Social Care/Housing[]. If agreement shall not be reached within 14 days, the dispute or difference may be referred for consultation between the respective Chief Executives. If agreement shall not be reached within a further 14 days, the parties will attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator will be nominated by CEDR. To initiate the mediation a party must give notice in writing (ADR Notice) to the other parties requesting mediation. A copy of the request should be sent to CEDR. The mediation will start not later than [] days after the date of the ADR notice.

16 INTELLECTUAL PROPERTY

16.1 This Agreement does not transfer any interest in Intellectual Property Rights. All Intellectual Property Rights developed or created by a party pursuant to the Derbyshire Careline Partnership shall be owned by that party

16.2 Each party grants to the other parties a non-exclusive, personal, royalty-free licence during the term of this agreement to use its Created IPR to the extent necessary for the other party to carry out its obligations in relation to the Derbyshire Careline Partnership.

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~~12.3~~16.3 At the expiry or termination of this agreement, a party licensed to use Created IPR under clause 12.2 shall cease to use that Created IPR (including any copies) in its possession or control and shall return all such material to the other party.

~~12.4~~16.4 Each party shall immediately give written notice to the other party of any actual, threatened or suspected infringement of any party's Intellectual Property Rights (including Created IPR) used in connection with the Derbyshire Careline Partnership of which it becomes aware.

~~13~~17 **EXIT AND TERMINATION**

~~13.1~~17.1 [Exit procedure

- a) not less than [] months' notice to other parties
[any other grounds?]

Note: wording above is outline only, detailed drafting to be added later

~~13.2~~17.2 On termination of this agreement, the following clauses shall continue in force:

- a) Clause 1 (interpretation);
- b) Clause 10 (tax matters);
- c) this clause;
- d) Clause 15 (confidentiality);
- e) Clause 19 (assignment and other dealings);
- f) Clause 20 (entire agreement);
- g) Clause 21 (variation and waiver);
- h) Clause 22 (costs);
- i) Clause 23 (no partnership or agency);
- j) Clause 26 (notices);
- k) Clause 27 (severance);
- l) Clause 31 (governing law and jurisdiction); [and]
- m) [INCLUDE ANY OTHER RELEVANT PROVISIONS].

~~13.3~~17.3 Termination of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination.

~~14~~18 STATUS OF THE AGREEMENT

~~14.1~~18.1 Each party shall, to the extent that it is able to do so, exercise all its rights and other powers in this agreement 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.

~~15~~19 CONFIDENTIALITY

~~15.1~~19.1 In this clause, **Confidential Information** means any information (however recorded or preserved) which:

- a) any party may have or acquire (whether before or after the date of this agreement) in relation to the customers, [suppliers,] business, assets or affairs [or plans, intentions] [and the operations, processes, product information, know-how, designs, trade secrets or software] of another party, as a consequence of the negotiations relating to this agreement or any other agreement or document referred to in this agreement or the performance of the agreement or any other agreement or document referred to in this agreement (including without limitation, any information provided pursuant to clause 9); or
- b) relates to the contents of this agreement (or any agreement or arrangement entered into pursuant to this agreement),

but excludes the information in clause ~~19.2~~~~19.2~~15.2.

~~15.2~~19.2 Information is not Confidential Information if:

- a) it is or becomes generally available to the public (other than as a result of its disclosure in breach of this agreement); or
- b) a party can establish to the reasonable satisfaction of another party that it found out the information from a person not connected with the other party and that such person is not under any obligation of confidence in respect of the information; or
- c) a party can establish to the reasonable satisfaction of another party that the information was known to the first party before the date of this agreement and that it was not under any obligation of confidence in respect of the information; or

d) the parties agree in writing that it is not confidential.

~~15.3~~19.3 Each party shall at all times keep confidential (and use all reasonable endeavours to ensure that its employees, agents, subsidiaries, and the employees and agents of such subsidiaries, shall keep confidential) any Confidential Information and shall not use such Confidential Information except for the purpose of exercising or performing its rights and obligations under or in connection with this agreement, and shall not disclose such Confidential Information except:

- a) to a party to this agreement, or to a party's professional advisers where such disclosure is for a purpose related to the operation of this agreement; or
- b) with the written consent of the relevant party that the information relates to; or
- c) as may be required by law or by the rules of any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause, it takes into account the reasonable requests of the other party in relation to the content of such disclosure; or
- d) a party may, provided it has reasonable grounds to believe that the other party is involved in activity that may constitute a criminal offence under the Bribery Act 2010, disclose Confidential Information to the Serious Fraud Office without first informing the other party of such disclosure; or
- e) to any tax authority to the extent reasonably required for the purposes of the tax affairs of the party concerned.

~~15.4~~19.4 Each party shall inform (and shall use all reasonable endeavours to procure that any subsidiary shall inform) any officer, employee or agent or any professional adviser advising it in relation to the matters referred to in this agreement, or to whom it provides Confidential Information, that such information is confidential and shall require them:

- a) to keep it confidential; and
- b) not to disclose it to any third party (other than those persons to whom it has already been disclosed in accordance with the terms of this agreement).

~~15.5~~19.5 On termination of this agreement, each party shall (and shall use all reasonable endeavours to procure that its subsidiaries, and its officers and employees and those of its subsidiaries shall):

- a) return to the other party all documents and materials (and any copies) containing, reflecting, incorporating or based on a party's Confidential Information; and
- b) erase all of a party's Confidential Information from computer and communications systems and devices used by it, including such systems and data storage services provided by third parties (to the extent technically and legally practicable),

provided that a recipient party may retain documents and materials containing, reflecting, incorporating or based on the other party's Confidential Information to the extent required by law or any applicable governmental or regulatory authority.

~~15.6~~19.6 The provisions of this clause 15 shall continue to apply after termination of this agreement for any cause.

~~16~~20 ANNOUNCEMENTS

~~16.1~~20.1 Subject to clause 16.2 and clause 16.3, neither party shall make, or permit any person to make, any public announcement, communication or circular (**announcement**) concerning this agreement without the prior written consent of the other parties [(such consent not to be unreasonably withheld or delayed)]. The parties shall consult together on the timing, contents and manner of release of any announcement.

~~16.2~~20.2 Where an announcement is required by law or any governmental or regulatory authority, or by any court or other authority of competent jurisdiction, the party required to make the announcement shall promptly notify the other parties. The party concerned shall make all reasonable attempts to agree the contents of the announcement before making it.

~~16.3~~20.3 On the signing of this agreement the parties shall issue a joint announcement about launch of the Derbyshire Careline Partnership in agreed form.

~~17~~21 WARRANTIES

~~17.1~~21.1 Each party warrants and represents to the other parties that:

- a) it has full power and authority and has obtained all necessary authorities and consents to enter into and perform its obligations under this agreement and such other agreements and arrangements referred to in this agreement; and
- b) the signing of this agreement and the performance of its obligations under this agreement and the other agreements and arrangements referred to in this agreement will not result in a breach of any other agreement or arrangement to which it is a party, nor give rise to any right of termination of any other agreement or arrangement to which it is a party.

18.22 FURTHER ASSURANCE

18.22.1 Without prejudice to clause 5 Completion, at its own expense each party shall, and shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute and deliver such documents and perform such acts as the other parties may reasonably require from time to time for the purpose of giving full effect to this agreement.

19.23 ASSIGNMENT AND OTHER DEALINGS

19.23.1 No party shall assign, transfer, mortgage, charge, sub-contract, declare a trust over or deal in any other manner with any or all of its rights and obligations under this agreement (or any other document referred to in it) without the prior written consent of the other parties [(such consent not to be unreasonably withheld or delayed)].

19.23.2 Each party confirms that it is acting on its own behalf and not for the benefit of any other person.

20.24 ENTIRE AGREEMENT

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

20.24.2 Each party acknowledges that in entering into this agreement (and any documents referred to in it), it 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.

20.24.3 [Nothing in this clause shall limit or exclude any liability for fraud.]

21.25 VARIATION AND WAIVER

21.25.1 No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

21.25.2 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 person 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.

21.25.3 A failure or delay by any person 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.

~~21.4~~25.4 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.

~~21.5~~25.5 A person that waives any 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.

~~22~~26 COSTS

~~22.1~~26.1 The parties shall share equally the costs and expenses incurred in connection with the negotiation, preparation, execution and performance of this agreement (and any documents referred to in it).

~~23~~27 NO PARTNERSHIP OR AGENCY

~~23.1~~27.1 Nothing in this agreement is intended to, or shall be deemed to, establish any partnership between the parties or constitute any party the agent of another party.

~~24~~28 FREEDOM OF INFORMATION

24.1 Definitions

- a) **Commercially Sensitive Information:** information of a commercially sensitive nature relating to the parties or any other person, its intellectual property rights or its business or which the parties or any other person has indicated to the relevant party that, if disclosed by the relevant party would cause the parties or any other person significant commercial disadvantage or material financial loss.
- b) **Confidential Information:** any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel and suppliers of the parties or any other person, including intellectual property rights, together with all information derived from the above and any other information clearly designated as being confidential (whether or not it is marked as “confidential”) or which ought reasonably to be considered to be confidential, including Commercially Sensitive Information.
- c) **Environmental Information Regulations:** the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

- d) **FOIA:** the Freedom of Information Act 2000, and any subordinate legislation made under the Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.
- e) **Information:** has the meaning given under section 84 of FOIA.
- f) **Request for Information:** a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations.

24.228.2 The parties acknowledge that all parties are subject to the requirements of the FOIA and the EIRs. The parties shall:

- a) provide all necessary assistance and cooperation as reasonably requested by each other to enable them to comply with their obligations under the FOIA and EIRs;
- b) [alert] [transfer to] the relevant party all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;
- c) provide the relevant party with a copy of all Information belonging to the relevant party requested in the Request For Information which is in its possession or control in the form that the relevant party requires within 5 Working Days (or such other period as the relevant party may reasonably specify) of the receipt of the Request for Information; and
- d) co-operate with the relevant party in identifying and disclosing information relevant to the request.

24.328.3 The parties acknowledge that any party as a local authority may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the other parties. Any party receiving a Request for Information shall take reasonable steps to notify the others of a Request For Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practicable for it to do so but (notwithstanding any other provision in this Agreement.) Such party shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

25.29 DATA PROTECTION, DATA SHARING AND DATA SECURITY

~~25.1~~29.1 Each party shall ensure that it complies with the requirements of all legislation and regulatory requirements in force from time to time relating to the use of personal data, including without limitation, the Data Protection Act 1998 and the Human Rights Act 1998.

~~25.2~~29.2 The parties [have undertaken a privacy impact assessment in respect of the proposed operation of the Derbyshire Careline Partnership and] shall comply with the provisions of the Code of Practice on Data Sharing published by the Information Commissioners Office.

~~25.3~~29.3 [The parties shall operate a single point of access system in respect of all personal data and subject access requests relating to the Derbyshire Careline Partnership in accordance with [protocol].]

26.30 NOTICES

~~26.1~~30.1 A notice given to a party under or in connection with this agreement:

- a) shall be in writing and in English;
- b) shall be signed by or on behalf of the party giving it;
- c) shall be sent to the relevant party for the attention of the contact and to the address or fax number specified in clause 38.2, or such other address, fax number or person as that party may notify to the other in accordance with the provisions of this clause38; and
- d) shall be:
 - i. delivered by hand; or
 - ii. sent by fax; or
 - iii. sent by pre-paid first class post, recorded delivery or special delivery; or
 - iv. [sent by email to an email address notified by the relevant party to the other party for such purpose (only in the case of a notice served or given under any of clause 10.5 to clause 10.11); and]
- e) [unless proved otherwise] is deemed received as set out in clause 38.4.

~~26.2~~30.2 The addresses and fax numbers for service of notices are:

- a) Derbyshire County Council

address: [~~ADDRESS~~County Hall, Smedley Street, Matlock DE3 4AG]

for the attention of: [~~NAME~~DCC to confirm]

fax number: [NUMBER]

b) Bolsover District Council

address: The Arc, High Street, Clowne, S43 4JY

for the attention of: The Solicitor to the Council

fax number: [NUMBER]

c) Chesterfield Borough Council

address: Town Hall, Rose Hill, Chesterfield, S40 1LP

for the attention of: The Local Government and Regulatory Law Manager

fax number: []

d) South Derbyshire District Council

address: Civic Offices, Civic Way, Swadlincote, DE11 OAH

for the attention of: The Head of Corporate Services

fax number: []

~~26.3~~30.3 A party may change its details for service of notices as specified in clause 38.2 by giving notice to the other party, provided that the address for service is an address in the United Kingdom following any change. Any change notified pursuant to this clause shall take effect at 9.00 am on the later of:

- a) the date (if any) specified in the notice as the effective date for the change; or
- b) [five] Business Days after deemed receipt of the notice.

~~26.4~~30.4 Delivery of a notice is deemed to have taken place (provided that all other requirements in this clause have been satisfied):

- a) if delivered by hand, or at the time the notice is left at the address; or
- b) if sent by fax, at the time of transmission; or

- c) if sent by pre-paid first class post, recorded delivery or special delivery to an address in the United Kingdom, at 9.00 am on the [second] Business Day after posting; or
- d) if sent by email, [one] hour after the notice was sent; and
- e) if deemed receipt under the previous paragraphs of this clause ~~30.430.426.4~~ is not within 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), at 9.00 am on the day when business next starts in the place of deemed receipt. For the purposes of this clause, all references to time are to local time in the place of deemed receipt.

~~26.530.5~~ To prove service, it is sufficient to prove that:

- a) if delivered by hand or by courier, the notice was delivered to the correct address; or
- b) if sent by fax, a transmission report was received confirming that the notice was successfully transmitted to the correct fax number; or
- c) if sent by post the envelope containing the notice was properly addressed, paid for and posted; or
- d) if sent by email, the notice was properly addressed and sent to the email address of the recipient.

~~26.630.6~~ This clause 38 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

~~27.31~~ SEVERANCE

~~27.431.1~~ 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.

~~27.231.2~~ If one party gives notice to the other of the possibility that any provision or part-provision of this agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

28.32 THIRD PARTY RIGHTS

~~28.4~~32.1 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.

~~28.2~~32.2 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 person.

29.33 COUNTERPARTS

~~29.4~~33.1 This agreement may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

~~29.2~~33.2 Transmission of the executed signature page of a counterpart of this agreement by:

- a) fax; or
- b) email (in PDF, JPEG or other agreed format),

shall take effect as delivery of an executed counterpart of this agreement. If either method of delivery is adopted, without prejudice to the validity of the agreement thus made, each party shall provide the others with the original of such counterpart as soon as reasonably possible thereafter.

~~29.3~~33.3 No counterpart shall be effective until each party has executed at least one counterpart.

30.34 RIGHTS AND REMEDIES

~~30.4~~34.1 [Except as expressly provided in this agreement,] the rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

31.35 GOVERNING LAW AND JURISDICTION

~~31.4~~35.1 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. 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 agreement has been entered into on the date stated at the beginning of it.

The Common Seal of
DERBYSHIRE COUNTY COUNCIL
Was hereto affixed
In the presence of

.....
Authorised Officer

The Common Seal of
BOLSOVER DISTRICT COUNCIL
Was hereto affixed
In the presence of

.....
Authorised Officer

The Common Seal of
CHESTERFIELD BOROUGH COUNCIL
Was hereto affixed
In the presence of

.....
Authorised Officer

The Common Seal of
SOUTH DERBYSHIRE DISTRICT COUNCIL
Was hereto affixed
In the presence of

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Authorised Officer

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