

APPENDIX A

THIS AGREEMENT is made the [] day of [] 2011

PARTIES

(1) North East Derbyshire District Council of the Council House Saltergate
Chesterfield Derbyshire (“NEDDC”); and

(2) Bolsover District Council of Sherwood Lodge Bolsover Derbyshire (“BDC”)

(collectively referred to as “the Councils”)

RECITALS

(A) The Councils are local authorities within the meaning of the Local Government Act 1972. Consequently the parties are subject to the duty under section 3 of the Local Government Act 1999 to make arrangements to secure continuous improvement in the way in which their functions are exercised, having regard to a combination of economy, efficiency and effectiveness.

(B) The Councils have agreed that a Strategic Alliance will improve the viability of services, provide value for money, build in greater resilience, reduce risk, and encourage the spread of best practice across the Councils

(C) The Councils have agreed that they should create a management service to serve them both with the objective of improving the economy, efficiency and effectiveness of their management functions.

(D) This Agreement is made pursuant to the Councils’ powers under the Local Authorities (Goods and Services) Act 1970, the Local Government Act 1972 sections 101(5), 111, and 113, and the Local Government Act 2000 sections 2 and 20 together with all other enabling powers

IT IS HEREBY AGREED AS FOLLOWS

1 Definitions

1.1 In this Agreement, unless the context otherwise requires, the following expressions have the following meanings:

- “the Commencement Date” means the date of this Agreement
- “Dissolution Date” means the effective date of the expiry of a notice served in accordance with any of clauses 11.1, 12.1 and 16.5
- “a Force Majeure Event” means any event preventing the performance of any provision of this Agreement arising from or attributable to acts, events, omissions or accidents that are beyond the reasonable control of the parties, such as (without limitation) any abnormally inclement weather, fire, explosion, earthquake, subsidence, structural damage, epidemic or other natural physical disaster, failure or shortage of power supplies, military operations, public disorder, industrial action, act or threatened act of terrorism and/or any legislation, regulation, ruling, decision or omission (including failure to grant any necessary permissions) of any relevant authority, including any court, government agency or governing body
- “Function” means powers and duties and includes the power to do anything which is calculated to facilitate or is conducive or incidental to the discharge of functions
- “Material Breach” means: the commission of any significant breach or other persistent breaches of this Agreement by a Council; a failure to pay any monies owing by one Council to the other within 90 days of being requested in writing to do so; or conduct likely to have a serious adverse effect upon the other Council.
- “the Term” has the meaning given by Clause 3 below

2 Interpretation

2.1 The headings and recitals in this Agreement are included for convenience only and shall not affect the construction or interpretation of this Agreement.

2.2 In this Agreement where the context so permits, words importing the masculine gender shall include the feminine and neuter genders and vice versa and words importing the singular number shall include the plural number and vice versa.

2.3 Where any of the schedules are inconsistent with the clauses, the clauses shall prevail.

2.4 A reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the same as amended by any subsequent statute, enactment order, regulation or instrument or as contained in any subsequent re-enactment thereof.

3 Term

3.1 This Agreement will start on the Commencement Date and will remain in force for a period of 4 years and thereafter from year to year subject to the provisions of clauses 11 and 12 below

4 Governing Principles

4.1 The Councils agree that the following principles shall govern their approach to this Agreement. In particular:

4.1.1 During the continuance of this Agreement all joint working entered into by the Councils under this Agreement shall be conducted in good faith and on the basis set out in this Agreement;

4.1.2 Each Council shall at all times act in good faith, with transparency, honesty and openness, towards the other and use all reasonable endeavours to ensure the observance of the terms of this Agreement.

4.1.3 Each Council shall do all things necessary or desirable to give effect to this Agreement provided always that any disagreement between the Councils shall be resolved in accordance with the Dispute Resolution provisions in Schedule 1.

4.1.4 Each Council has an equal standing within the Agreement, regardless of size, or financial contribution.

4.1.5 No Council shall seek to make a surplus or reduce a loss at the expense of the other Council; and

4.1.6 Where one of the Councils fails to meet its responsibilities and liabilities under this Agreement at any time the cost of any resulting penalties losses liabilities or loss shall fall on that Council.

4.1.6 Employees appointed pursuant to this Agreement will be employed to work jointly for the Councils during the continuance of the Agreement and all costs arising from their employment shall be borne in equal parts by the Councils.

4.1.7 For superannuation purposes service rendered by an employee of one of the Councils whose services are placed at the disposal of the other under this Agreement is service rendered to the Council by whom they are employed but any such employee shall be treated for the purposes of any enactment relating to the discharge of functions as an employee of the other Council and those employees may act and shall have powers to act under the constitutions of the Councils.

4.1.8 Employees appointed pursuant to this Agreement shall divide their time fairly and reasonably between the Councils and shall not show bias towards one Council or the other.

4.2 Each Council agrees that it will:

4.2.1 Commit to provide agreed resources within agreed timescales.

4.2.3 Subject to clause 4.1.6 share responsibility for liabilities arising from the operation of the services pursuant to this Agreement.

4.2.4 Before considering making a significant business change they will discuss with the other Council its possible impact on the vision and objectives of that Council and on the objectives of the Strategic Alliance.

5 The Strategic Alliance Joint Committee

5.1 The Councils have established the Strategic Alliance Joint Committee.

5.2 The Councils will agree how administrative support for the Strategic Alliance Joint Committee shall be provided and shall review such agreement from time to time. Administrative support shall include the provision of a suitable meeting venue and committee administration services.

6 The Strategic Alliance Management Team

6.1 The Councils shall establish a Strategic Alliance Management Team.

7 Financial Provisions

7.1 The costs and savings arising pursuant to this Agreement shall be apportioned as follows:

7.1.1 The one-off redundancy, associated pension costs and the one-off costs of recruitment consultants (if any are engaged), on-going salary and on-costs, superannuation, training, travel and incidental costs of the Strategic Alliance and the costs incurred in administering the Strategic Alliance Joint Committee shall be apportioned equally unless there are material factors that dictate that a different apportionment is appropriate in any particular financial year provided always that any proposal to apportion or share on-going costs other than on an equal shares basis in any particular financial year shall be made following a resolution of the Councils acting on the recommendation of the Strategic Alliance Management Team.

7.2 The Section 151 Officer shall account to each of the Councils annually regarding the expenses and costs of administering the Strategic Alliance by no later than 30 June following the end of each financial year.

7.3 In the event of a dispute between the Councils as to the amount which may be due to or from each of them the disputed amount may be dealt with in accordance with the Dispute Resolution Procedure set out in Schedule 1.

7.4 Whenever in respect of this Agreement any sum of money shall be recoverable from, or payable by, one party to the other, the same may not be deducted from any sum due, or which at any time thereafter may become due, to the other.

7.5 In the event that a Council does not make payment of an invoice by the appropriate due date or it is determined that the Council has wrongly disputed a sum claimed then the Council to whom the payment is due shall be entitled to charge daily interest at an annual rate of 4% above the Bank of England base lending rate on the unpaid invoice from the due date of payment to the actual date of payment. Any such interest so charged shall be properly invoiced by the Council to whom the payment is due and shall be payable on the terms set out in this clause.

7.6 In the event that the Council in default does not make payment or account to a Council of sums in respect of which it is obliged to issue a credit note in accordance with this clause 7, then the relevant Council shall be entitled to charge daily interest at an annual rate of 4% above the Bank of England base lending rate on the uncredited sum from the due date for such credit note to the date of its issue. Any such interest so charged shall be properly invoiced by the Council to whom the payment is due and shall be payable on the terms set out in this clause.

7.7 For the avoidance of doubt, a Council may still dispute charges which it has paid by raising such disputes through Dispute Resolution as set out in Schedule 1, in the event that it is determined that the relevant Council has been overcharged then a service credit note will be raised and interest will be chargeable as set out in this clause 7.

8 Staffing

8.1 The Councils agree that they will each provide sufficient staffing resources for the effective support and administration of the Strategic Alliance Management Team and the Strategic Alliance Joint Committee

9 Accommodation

9.1 Each Council agrees that they will each provide sufficient accommodation resources working space and associated facilities and services as shall from time to time be necessary for the effective delivery of the services of the Strategic Alliance and the meetings of the Strategic Alliance Joint Committee in such locations as are required.

9.2 Each Council hereby licences all appropriately authorised employees to enter its premises for the purposes of the performance of the functions of the Strategic Alliance pursuant to this Agreement and to use such associated services and facilities as shall be provided by each Council from time to time pursuant to clause 9.1

9.3 Employees authorised pursuant to clause 9.2 shall follow any reasonable instructions issued by the host Council when upon their premises and abide by relevant policies whilst undertaking delivery of services pursuant to this Agreement.

10 Intellectual Property

10.1 Nothing in this Agreement is intended to transfer from one Council to another any Intellectual Property Rights owned by that Council as at the Commencement Date unless otherwise agreed in writing.

10.2 Each Council hereby grants to the other Council a non-exclusive, perpetual, revocable, royalty-free licence to use and copy materials the Intellectual Property Rights which vest in either Council for the purpose of the Strategic Alliance.

10.3 All and any Intellectual Property Rights in materials developed for or on behalf of the Councils in pursuance of this Agreement and during its Term shall vest in the Councils jointly.

10.4 On expiry or termination of this Agreement for any reason each Council grants to the other Council a non-exclusive, perpetual, revocable, royalty-free licence to use and copy materials the Intellectual Property Rights that previously vested in them jointly for the purposes of the Strategic Alliance.

10.5 Nothing in clause 10.4 shall require a Council to provide or disclose to the other Council any materials to the extent that they contain confidential information or attract legal professional privilege where such provision or disclosure would put that Council or any of its employees in breach of any legal obligation.

11 Termination of the whole of this Agreement – no material breach

11.1 Without prejudice to the Local Government Act 1972 Section 101(4) if at anytime any Council shall give to the other Council notice of its wish to terminate this Agreement (provided that such notice shall be of a duration not less than 6 months to expire on 31 March in any year) then on the expiry of the notice Clauses 13 and 14 of this Agreement will apply.

12 Termination of the whole of this Agreement – material breach

12.1 If either Council shall commit a material breach of this Agreement then the other Council may by notice in writing given to the defaulting Council be entitled to invoke the provisions of this clause 12.

12.2 If the Council on whom such notice is served ('the Recipient') shall within 30 Working Days of the date of service of the said notice serve on the other Council ("the Server") a counter-notice denying the allegations or give good reason why this clause 12 should not be invoked and if the Recipient shall do so within the period of 30 Working Days the dispute shall be referred for determination under clause 20 and the operation of the notice under clause 12.1 shall be suspended.

12.3 Such a period of suspension shall be ended by either:

12.3.1 Written notice of acceptance served by the Recipient on the Server; or

12.3.2 The successful conclusion of the dispute resolution process in clause 20.

12.4 In the event that either the Recipient does not serve a counter-notice under clause 12.2, or the period of suspension is ended in accordance with the provisions of clause 12.3 the arrangements provided for in this Agreement shall be dissolved with effect from the close of business on the date 12 months from the date 30 Working Days from the date of service of the notice under clause 12.1 or the expiry of the period of suspension whichever is the later.

13 Dissolution

13.1 In the event of the service of a notice in accordance with the provisions of clause 11.1 the arrangements provided for in this Agreement shall be dissolved with effect from the close of business on the date of the expiry of the notice.

13.2 After the Dissolution Date the authority of any Council to bind the other Council shall be limited to such matters and such period as are necessary for the implementation of the terms of clause 15 of this Agreement and not further or otherwise.

14 Consequences of Termination

14.1 Following the service of a notice under clauses 11, 12 or 16 for any reason the Councils shall continue to provide the arrangements provided for in this Agreement and shall ensure that there is no degradation in the services provided pursuant to this Agreement between the date of any notice and the date of termination or the Dissolution Date (as the case may be).

14.2 Between the date of a termination notice and the date of termination or the Dissolution Date (as the case may be), and for a reasonable period thereafter each Council will provide reasonable assistance to the other to enable a smooth transition of functions. As part of providing such reasonable assistance each Council will take all such steps as may be reasonably necessary to agree with the other Council a plan for the orderly transition of the functions to that Council or another provider, so as to cause the minimum of interruption and inconvenience to the Councils and the public.

14.3 At the date of termination or the Dissolution Date (as the case may be) each Council shall cease to provide the arrangements provided for in this Agreement except work started before the date of termination or the Dissolution Date which the Councils authorise them to complete and to complete it in accordance with the terms of this Agreement (PROVIDED ALWAYS that any continued performance of a Service shall not constitute or be construed as a renewal or continuation of this Agreement)

14.4 Within six months of the date of termination or the Dissolution Date each Council will prepare and submit final accounts for payment and any surplus after the payment of the debts shall be shared between the Councils equally or as the Councils may otherwise have agreed.

14.5 Except as provided in Clause 14.2 each Council will release each other from all of their contractual obligations and all other legal obligations to one another arising under or in connection with this Agreement or its termination, and whether such obligations arise, and/or are in respect of events occurring, before or after its termination

14.6 At the date of termination each Council shall return to the other Council or otherwise dispose of or destroy as the other Council directs all signs, advertising materials, stationery, invoices, forms, specifications, designs, records, data, samples, models, programmes and drawings pertaining to or concerning the arrangements provided for in this Agreement in its possession or under its control

14.7 The disposal or transfer of fixed assets shall be agreed in writing between the Councils

14.8 Notwithstanding the termination of this Agreement the Councils each agree to do all such acts and things and execute all such documents as each of them reasonably requires.

15 Indemnities

15.1 Each of the Councils shall indemnify and shall keep indemnified the other Council in respect of all actions, claims, demands, costs, charges and expenses including professional services and legal expenses which may arise out of or in consequence of any breach by that Council of this Agreement including, but not limited to death or personal injury to any person; loss or damage to property; or breach of any contractual obligation.

16 Audit

16.1 Throughout the period of this Agreement each Council shall:

16.1.1 Allow the other Council, its authorised servants and agents and the Auditor access at all reasonable times to all of the employees and to all books, records, correspondence, receipts, invoices and other papers of every kind in the possession of the other Council, pertaining to this Agreement required by the Council and the Auditor to and for the purposes of examining compliance with this Agreement;

16.1.2 Allow the other Council, its authorised servants and agents and the Auditor access to its and their sub-contractors' premises and to all facilities in relation to the functions referred to in this Agreement at any time for the purpose of monitoring the operation of this agreement and for the purposes set out in this clause 16.

16.2 Each Council shall retain (and shall procure that their sub-contractors shall retain) the documents and records referred to in clause 16.1.1 for a period of 2 years from termination of this Agreement. Each Council shall continue to allow the other Council access to its employees and to all records and to their premises and facilities as set out in clause 16.1.1 for the purposes of investigating and verifying the costs and charges in relation to this Agreement.

16.3 The other Council may at any time request the Auditor to audit the compliance by the other Council with its obligations under this Agreement.

16.4 If the Auditor or either of the Councils identifies any non-compliance by any Council with regard to their obligations and the performance of the work, functions and other actions arising under this Agreement, then:

16.4.1 Clause 12 will apply;

16.4.2 Otherwise, the other Council will propose action it considers necessary to ensure compliance by the relevant Council with this Agreement ('the Compliance Plan').

16.5 If the Councils fail to agree on the Compliance Plan, or any agreed Compliance Plan is not implemented by the relevant Council or not implemented within any time constraints or other criteria that may be agreed between the parties, then clause 12 will apply.

17 Confidentiality

17.1 For the purpose of this clause "Confidential Information" shall mean all information of a commercially sensitive nature including (but not limited to) specifications, drawings, computer readable media, documents, techniques and know-how which are disclosed by one Council to another for use in or in connection with the performance of this Agreement.

17.2 The Councils hereto agree to use all reasonable endeavours to ensure that any Confidential Information disclosed or submitted in writing or any other tangible form to a Council ("the Receiving Party") by the other Council ("the Disclosing Party") shall be treated with the same care and discretion to avoid

disclosure as the Receiving Party uses with its own similar information which it does not wish to disclose. Any information disclosed orally that is identified by the Disclosing Party as Confidential Information shall be treated the same as if it had been reduced to writing at the time of disclosure to the Receiving Party.

17.3 The Receiving Party shall not, during a period of 7 years after the termination of this Agreement, use any such Confidential Information for any purpose other than the carrying out of its obligations under this Agreement or other than in accordance with the terms of this Agreement.

17.4 The undertaking in Clause 17.3 above shall not apply to Confidential Information:

17.4.1 Which, at the time of disclosure, has already been published or is otherwise in the public domain other than through breach of the terms of this Agreement:

17.4.2 Which, after disclosure to the Councils is subsequently published or comes into the public domain by means other than an action or omission on the part of any of the Councils;

17.4.3 Which a Council can demonstrate was known to it or subsequently independently developed by it and was not acquired as a result of the terms of this Agreement;

17.4.4 Lawfully acquired from third parties who had a right to disclose it with no obligations of confidentiality to the other Council; or

17.4.5 Is required to be disclosed by applicable law or court order or by any regulatory body, which is empowered by Statute or Statutory Instrument, but only to the extent of such disclosure and the Receiving Party, shall notify the Disclosing Party promptly of any such request.

17.5 employees of the Councils and any agents, consultants or sub-contractors engaged to work will be subject to the principles of confidentiality outlined in this Clause 17.

18 Data Protection

The Councils will comply with the Data Protection Act 1998.

19 Freedom of Information

The Councils are covered by the Freedom of Information Act 2000 and other statutory provisions relating to freedom of information. There may be occasions where a Council will be obliged to disclose information to third parties. However a Council will only do so in circumstances where a Council judges that it is under a statutory obligation to do so or if ordered by a court or tribunal of competent jurisdiction

20 Determination of disputes

In the event of any dispute under or arising out of this Agreement (other than one for which a separate method of resolution has been provided):

20.1 The Councils shall follow the dispute resolution procedure set out in Schedule 1

20.2 Unless otherwise agreed each Council shall be responsible for its own costs incurred in connection with the resolution of any dispute.

20.3 The doctrines of laches, waiver or estoppel shall not be considered in any dispute resolution procedure.

20.4 Nothing in this clause 20 shall preclude the making of an application to the court for injunctive relief to restrain a breach or apprehended breach of this Agreement.

21 Equal Opportunities

The Councils agree that in the execution of the terms of this Agreement they will not discriminate on the grounds of sex, race, colour, age, religion, sexual orientation or disability.

22 Variation

Any terms of this Agreement may at any time be varied or amended and any such variation or amendment shall be evidenced by a document in writing executed by the Councils.

23 Contracts (Rights of Third Parties) Act 1999

Any right of any third party to enforce the whole or any part of this Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999 is hereby excluded.

24 Counterparts

This Agreement may be executed in any number of counterparts or duplicates each of which shall be an original but such counterparts or duplicates shall together constitute one and the same agreement.

25 Governing Law

This Agreement is governed by and shall be interpreted in accordance with English law.

The common seals of the parties hereto were affixed to this Agreement in the presence of:

North East Derbyshire District Council:

Leader

Principal Solicitor

Bolsover District Council:

Chair

Solicitor to the Council

SCHEDULE 1

Dispute Resolution

1 In the event of any dispute or disagreement arising out of or in connection with or under with this Agreement or any breach thereof ('the Dispute') a Council may serve notice upon the other setting out brief details of the Dispute that has arisen ('Notice of Dispute') and the Notice of Dispute shall be considered by the Alliance Management Team the members of which shall use their reasonable endeavours to settle such dispute by good faith negotiation.

2 If the Alliance Management Team do not reach such a settlement within a period of 90 days from service of the Notice of Dispute then upon notice ("Referral Notice") by either Council to the other the Dispute shall be referred to the Alliance Joint Committee the members of which shall use their reasonable endeavours to settle such dispute by good faith negotiation.

3 If the Alliance Joint Committee does not reach such a settlement within a period of 90 days from service of the Referral Notice it shall be referred to a sole arbitrator ('the Arbitrator') who shall be appointed by the Councils in dispute or, failing agreement, by the President of the Chartered Institute of Arbitrators.