

This **“Agreement”** is made \_\_\_\_ day of \_\_\_\_\_ 2012 between:

1) Mr Karl Austin, residing 36 Welbeck Street, Whitwell, Derbyshire, S80 4TW.

and

2) Whitwell Parish Council, situated at Whitwell Community Centre, Portland Street, Whitwell, Derbyshire, S80 4QR (**“WPC”**).

## **BACKGROUND**

A) Mr Austin would like to record the meetings of the Whitwell Parish Council in audio format.

B) WPC undertakes to allow this within the confines of this Agreement.

## **IT IS AGREED AS FOLLOWS**

### **1. Definitions and Interpretation**

1.1 In this Agreement, the following terms shall have the following meanings except where the context otherwise requires:

Recording	means the audio recording of any meeting taken by Mr Austin.
Website	means the website available at <a href="http://www.whitwell.info">www.whitwell.info</a>
Transcript	means any full or partial written record of the meeting produced from the Recording.

1.2 In this agreement unless otherwise specified:

1.2.1 reference to a party is reference to a party to this agreement and includes his permitted assignees and the respective successors in title to substantially the whole of his undertaking;

1.2.2 reference to a person includes any person, individual, company, firm, corporation, government, state or agency of a state, or any undertaking whether or not having separate legal personality and irrespective of the jurisdiction in or under the law of which it was incorporated or exists;

1.2.3 words denoting the singular include the plural and vice versa and words denoting any gender include all genders;

1.2.4 reference to a numbered clause, paragraph or schedule is to that clause, paragraph or schedule of this agreement;

- 1.2.5 **'this Agreement'** shall, unless the context otherwise requires, mean and include the schedules;
- 1.2.6 'includes' and 'including' mean includes and including without limitation; and
- 1.2.7 the index to and the headings in this agreement are for information only and shall be ignored in construing it.

## **2. Duties**

Subject to the terms of this Agreement Mr Austin shall record the meetings of WPC.

## **3. Recording**

3.1 The recordings shall:

- 3.1.1 Commence when the meeting officially opens.
- 3.1.2 Cease when the meeting officially closes.
- 3.1.3 Cover all agenda items, except where they are of a confidential nature and/or members of the public and press are excluded from the meeting.
- 3.1.4 Be made on a best efforts basis. Where Mr Austin is not available for a meeting then Mr Austin will endeavour to either send someone in his place or loan the recording equipment to WPC for the duration of the meeting for no charge.
- 3.1.5 Remain the property of Mr Karl Austin.
- 3.1.6 Be made available in full as recorded, save for editing to improve the quality of the recording on the Website.
- 3.1.7 Be made available to WPC within 7 days, as recorded, save for editing to improve the quality of the recording, for:
  - 3.1.7.1 use on their own website.
  - 3.1.7.2 providing copies to members of the public, providing a copyright notice is clearly shown.
  - 3.1.7.3 producing written transcripts of the meetings, providing the recording is identified as the source of the transcript.
  - 3.1.7.4 general record keeping purposes.

3.2 Where clips or excerpts of the recording are used both parties agree that they will make listeners aware of where they can obtain or listen to the full recording. If this is to be done via a website then a link to the full recording must be provided and be clearly identifiable.

3.3 Where a transcript is produced, both parties agree that they will make the reader aware of where they may listen to and/or obtain the full recording and that the transcript is produced from the recording.

## **4. Duration**

4.1 This Agreement shall run for a period of 12 months commencing on the date first appearing in this Agreement.

4.2 This Agreement shall be automatically renewed for a further 12 month periods if no termination notice is given.

## **5. Termination**

5.1 Either party may terminate this Agreement by providing not less than 90 days written notice to the other party that this Agreement shall be terminated at the end of the current 12 month period.

5.2 Either party may terminate this Agreement if the other party is in breach of this Agreement by providing not less than 21 days written notice to the other party that they are in breach of this Agreement and the other party failing to remedy the breach within 21 days.

## **6. Assignments**

Neither party shall assign, transfer, or sub-contract the benefit and/or burden of this agreement, make it the subject matter of a trust or in any other manner make it over to any third party without the prior written consent of the other party.

## **7. Waiver**

7.1 A waiver of any term, provision or condition of this Agreement shall be effective only if given in writing and signed by the waiving party and then only in the instance and for the purpose for which it is given.

7.2 No failure or delay on the part of any party in exercising any right, power or privilege under this agreement shall operate as a waiver of it, nor shall any single or partial exercise of any right, power or privilege preclude any other or further exercise of it or the exercise of any other right, power or privilege.

7.3 No breach of any provision of this Agreement shall be waived or discharged except with the express written consent of the parties.

## **8. Invalidity**

8.1 If any provision of this agreement is or becomes invalid, illegal or unenforceable in any respect under the law of any jurisdiction, whether pursuant to any judgment or otherwise:

8.1.1 the validity, legality and enforceability under the law of that jurisdiction of any other provision; and

8.1.2 the validity, legality and enforceability under the law of any other jurisdiction of that or any other provision,

shall not be affected or impaired in any way.

8.2 If any provision of this agreement is held to be void or declared illegal, invalid or unenforceable for any reason whatsoever, that provision shall be divisible from this agreement and shall be deemed to be deleted from it and the validity of the remaining provisions shall not be affected. If any such deletion materially affects the interpretation of this agreement, the parties shall use their best endeavours to

negotiate in good faith with a view to agreeing a substitute provision as closely as possible reflecting the commercial intention of the parties.

**9. Entire agreement**

This Agreement embodies and sets forth the entire agreement and understanding of the parties and supersedes all prior oral or written agreements, understandings or arrangements relating to the subject matter of this Agreement. Neither party shall be entitled to rely on any agreement, understanding or arrangement not expressly set forth in this Agreement save for any representation made fraudulently.

**10. Relationship of the parties**

Nothing in this Agreement and no action taken by the parties pursuant to this agreement shall constitute, or be deemed to constitute, the parties a partnership, association, joint venture, the agents of each other or any other co-operative entity.

**11. Exclusion of third party rights**

The Contracts (Rights of Third Parties) Act 1999 shall not apply to this agreement and no person other than the parties to this agreement shall have any rights under it, nor shall it be enforceable under that Act by any person other than the parties to it.

**12. Applicable Law and Jurisdiction**

12.1 This Agreement, and any dispute, controversy, proceedings or claim of whatever nature arising out of or in any way relating to it or its formation, shall be governed by and construed in accordance with the laws of England.

12.2 The parties irrevocably submit to the exclusive jurisdiction of the courts of England to hear and determine any suit, action or proceedings or settle any disputes arising out of or in connection with this agreement and to enforce any judgment against their respective assets

**SIGNED** by the parties through their authorised signatories on the date first appearing in this Agreement.

SIGNED BY:

SIGNED BY:

Name: Karl Austin

Name: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

For an on behalf of Whitwell Parish Council