

Appendix 2 – Draft legal agreement

DATED

20[]

(1) EAST LINDSEY DISTRICT COUNCIL

and

(2) SOUTH HOLLAND DISTRICT COUNCIL

**MERGED SERVICES PARTNERSHIP
AGREEMENT**

THIS DEED OF AGREEMENT is made the _____ day of
20[]

BETWEEN

(1) *EAST LINDSEY DISTRICT COUNCIL of Tedder Hall, Manby Park, Louth, LN11 8UP ("ELDC") and*

(2) *SOUTH HOLLAND DISTRICT COUNCIL of Council Offices, Priory Road, Spalding, PE11 2XE ("SHDC")*

(together "the Councils")

BACKGROUND

- (A) The Councils have resolved to pursue a finalised business case for the merger of back office and high volume transactional services and (if approved) to merge the said services.
- (B) This document is intended to be a legally binding agreement to cover the implementation period to 31 March 2010.
- (C) It builds on the Lincolnshire Shared Services Collaboration Agreement dated 4 September 2008 and its supplemental deed of variation dated []. The same statutory powers relied on to formally enable that agreement also enable this partnership. These are;
- Sections 101, 102, 111 of the Local Government Act 1972
 - Section 2, 19 and 20 of the Local Government Act 2000
 - Section 93 of the Local Government Act 2003
 - Local Authorities (Goods and Services) Act 1970
- (D) This agreement is subsequent to the Phase 2 Concordat and Agreement signed by the Councils with Boston Borough Council and dated 16th March 2008

1 DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement the words and expressions set out below shall have the meanings set out below unless inconsistent with the context

Word/Expression	Meaning
"Agreed Proportion"	ELDC 63% and SHDC 37% based on the Councils' respective populations such proportions to be reviewed prior to any agreement in respect of the Operational Phase
"Ambitions"	the ambitions of the parties as set out in Schedule 1;
"Cabinet Office Statement"	The Cabinet Office Statement of Practice on Staff Transfers in the Public Sector
"Completed"	The establishment of a Vehicle and the entering into of contracts or similar between the Vehicle and the Councils for the delivery by the Vehicle to the Council of the Services;
"Communications Protocol"	The document attached at Appendix 1 as it may be amended from time to time;
"FBC"	The Finalised Business Case for [] to be developed by the Councils in accordance with clause 3.2;
"the FBC Savings"	That level of savings identified as realisable by each of the Councils in the FBC;
"Intellectual Property Rights"	any and all patents, trade marks, service marks, logos, copyright, rights in databases, moral rights, rights in a design, know-how, confidential information and all or any other intellectual or industrial property rights whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world together with all or any goodwill relating or attached thereto.
"Operational Phase"	The period following the assumption by the Vehicle of responsibility for

	the delivery of the Services to the Councils;
"Principles and Values"	the values and principles of the parties set out in Schedule 1;
"the Project"	all work necessary to prepare a finalised business case for merged services on the basis that the Councils establish a Vehicle for the delivery by the Vehicle to the Councils of the Services and (if so approved by both Councils) to establish a Vehicle and develop a contract for the delivery by the Vehicle to the Councils of the Services;
"the Services"	IT, Finance, Human Resources, Customer Services and Revenues and Benefits;
"Staff Transfer Obligations"	The obligations of the Councils pursuant to TUPE the Workforce Matters Code, the Cabinet Office Statement and any other obligations relating to staff transfers applicable to the Councils or either of them from time to time;
"TBC"	The Tribal Business Case for [] attached at Appendix 4
"the TBC Savings"	That level of savings identified as realisable by each of the Councils in the TBC;
"TUPE"	The Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended)
"the Vehicle"	An arms length organisation howsoever constituted formed by the Councils for the performance of the Services;
"Workforce Matters Code"	The Code of Practice on Workforce Matters in Public Sector Service Contracts.

2 COMMENCEMENT, DURATION AND VARIATION

2.1 This Agreement shall commence on 1st October 2009 and remain in force until 31 March 2010 unless

2.1.1 the Project is successfully Completed prior to the expiry of the period;

2.1.2 the Agreement is terminated under clause 8 or clause 9;
or

2.1.3 the Agreement is extended under clause 2.2

2.2 This Agreement may be extended with the agreement of both Councils by such period as the Councils shall agree.

2.3 This Agreement shall not be varied except in writing signed by both parties.

3 RESPONSIBILITIES OF THE PARTNERS

3.1 Each of the Councils agrees that:-

3.1.1 during the continuance of this Agreement all transactions entered into by the Councils shall be conducted in good faith and on the basis set out in this Agreement and under the terms of their Constitutions and all documents arising under this Agreement;

3.1.2 each of the Councils shall at all times act in good faith towards the other for the achievement of the Ambitions and shall at all times observe the Values and Principles;

3.1.3 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 clause;

3.1.4 neither Council shall seek to make a surplus or reduce a loss at the expense of the other Council;

3.1.5 each Council shall be responsible for obtaining all necessary formal authority for supporting delivery and implementation of each decision or milestone to be implemented within the Project.

3.2 The Councils shall jointly develop and fund (in the Agreed Proportions) and procure a finalised business case for the provision of the Services in accordance with Schedule 2

3.3 Subject to the provisions of this Agreement the Councils agree to work together to implement the Project.

6.3 The provisions of this Agreement cover the implementation of the Project. They will have to be reviewed and further arrangements or revisions made or a new agreement entered into to govern the Operational Phase.

4 JOINING OF NEW PARTNERS

4.1 The Councils may admit additional parties to this Agreement subject to

4.1.1 both Councils agreeing in writing the identity of the new party and the terms of their participation in the Project; and

4.1.2 the new party signing a deed of adherence in a form acceptable to both Councils.

4.2 It shall be a condition of the participation of any third party in this agreement that

- 4.2.1 the new party meets in full the additional costs of their participation in the Project;
- 4.2.2 the new party contributes in a proportion acceptable to the Councils towards costs incurred in pursuing the Project prior to the date of the new party's participation; and
- 4.2.3 agreement is reached acceptable to the Councils of revised Agreed Proportions in respect of the sharing of costs [and benefits] arising out of the Project after the date of the new party's participation

5 GOVERNANCE ARRANGEMENTS

- 5.1 The Councils shall operate the governance arrangements for the carrying out of the Project set out in Appendix 4 of the Council report 28 September 2009.

6 FINANCIAL PROVISIONS

- 6.1 The Councils shall contribute to the costs of the Project in the Agreed Proportions [and the benefits and savings will be similarly apportioned].
- 6.2 It has been agreed that East Lindsey District Council will act as the accountable body for the Project and will:
 - 6.2.1 maintain an accurate record of income and expenditure incurred by both parties in relation to the Project;
 - 6.2.2 place orders for goods and services as required for the Project and pay for these ensuring 6.2.1. above is maintained;
 - 6.2.3 provide regular financial monitoring information as required; and
 - 6.2.4 ensure all VAT and other taxes are correctly accounted for.

- 6.3 The Councils shall agree a protocol to define what is to be classified as a 'cost of the Project' and therefore charged against the sharing arrangement established by this clause. If on the expiry of the period of [] days after the commencement of this Agreement the Councils have not agreed the said protocol any dispute may be referred by either party to expert determination in accordance with clause 17.3.
- 6.4 Each Council shall set up adequate internal arrangements to ensure all income and expenditure can be accounted for, tracked and verified and a summary of transactions will be provided to the Accountable Body by each authority on a monthly basis.
- 6.5 At the end of each financial year (at least), a reconciliation of each Council's income and expenditure will be verified and any appropriate contribution to/from the Accountable Body shall be made so as to ensure contributions to the costs of the Project are made in accordance with the Agreed Proportions as set out in clause 6.1.
- 6.6 The accounts for the Project will be inspected by the current provider of internal audit services to the Accountable Body and they will have access to all documents, data and information in relation to the Project as requested subject always to clauses 14 and 15.1 of this agreement.
- 6.7 Each Council's S151 officer shall be responsible for the integrity of the financial procedures put in place for the Project and will liaise regularly with their relevant External Audit Manager on any issues and to keep them informed of how the Project is progressing.
- 6.8 Where possible, all external funding bids will be submitted by the Accountable Body in the names of both Councils jointly. If this is not possible, they will be submitted in the name of the Accountable Body. Each Council hereby undertakes to the other to comply with all the terms of such external funding

and not to do or omit to do anything that may cause the other Council to be in breach of any such terms and agrees to indemnify the other Council against any losses incurred by that Council as a result of any breach of the undertaking given in this clause.

7 RESOURCES

Staff

- 7.1 All staff engaged in the Project shall remain at all times employed by and be the responsibility of their employing Council.
- 7.2 Staff of either one of the Councils may during the course of the Project have occasion to provide advice to the other Council on which that other Council relies. The Councils hereby agree that all losses whatsoever and howsoever caused incurred by either Council arising out any negligent activity of an employee of the other Council shall be borne by the parties in the Agreed Proportions and that the liability of each Council for such losses shall be limited accordingly.
- 7.3 Nothing in clause 7.2 shall limit or exclude any liability on the part of either Council in respect of personal injury caused by the negligence of that Council its employees servants or agents or losses caused by any fraudulent misstatement.
- 7.4 Each Council undertakes to the other to comply with its Staff Transfer Obligations where such arise and agrees to indemnify the other against all losses incurred by the other Council as a result of any breach of its obligations under this clause

Data

- 7.5 Data and records owned by either Council prior to the Project or generated by either party during the Project shall remain the property of that Council. Each Council agrees to make that data available to the other and licenses the other to use

the same for the purposes of the Project in accordance with the Information Sharing Protocol attached at Appendix 3.

- 7.6 Each party shall ensure that it is and remains able to comply with clause 7.4 without breach of the Data Protection Act 1998.

Procurement of assets

- 7.7 The Councils may jointly or separately procure assets for the purposes of the Project some or all of which may be transferred to the Vehicle.
- 7.8 Jointly procured assets shall be owned jointly by the parties. Assets procured separately shall be owned by the procuring Council and held in trust for the procuring Council and the other Council for the purposes of the Project.
- 7.9 Each Council undertakes to transfer to the Vehicle all assets owned by it (including jointly owned assets) and the benefit and burden of all license, leases, agreements and contracts which the parties agree shall transfer to the Vehicle and to do all acts and things and to execute all documents necessary to effect such transfer.
- 7.10 Each Council will use its reasonable endeavours to ensure that any software or other asset which may be licensed or leased to that Council is so licensed or leased on terms that permit the benefit and burden of that license or lease to be transferred to the Vehicle

Intellectual Property

- 7.11 All intellectual property rights owned by either of the Councils prior to the date of this Agreement shall remain in the ownership of that Council.
- 7.12 All Intellectual Property Rights in materials developed by either Council in the course of the Project shall be jointly owned.

7.13 Each Council shall use reasonable endeavours to ensure that all third parties procured to deliver services in respect of the Project do so on terms that Intellectual Property Rights in all materials developed by that third party in the delivery of those services either:-

7.13.1 vests in the Council procuring those services or if both Councils procure the services, both Councils jointly; or

7.13.2 the Council procuring the services is licensed (with a power to sub-licence both the other Council and the Vehicle) to use the said Intellectual Property Rights for all purposes in connection with the Project and its Completion and the delivery by the Vehicle of the Services

7.14 Any benefits accruing to the Councils or either of them from the commercial exploitation of Intellectual Property Rights that are the subject matter of clauses 7.10 to 7.12 shall be shared in the Agreed Proportions

8 TERMINATION

8.1 This Agreement may be terminated by either of the Councils at any time by the giving of not less than 1 months' written notice to expire at any time where

8.1.1 the FBC Savings for that Council are materially less than the OBC Savings for that Council

8.1.2 a change in Law means that the Councils or either of them do not have legal power to pursue the Project

8.1.3 the Councils having acted reasonably and in good faith have not by [date] agreed the form and constitution of the Vehicle

8.1.4 the Councils having acted reasonably and in good faith have not by [date] agreed the service

standards to be met by the Vehicle in the delivery of the Services

8.1.5 the Councils having acted reasonably and in good faith have not by [date] agreed a contract or similar between the Council concerned and the Vehicle.

8.2 Subject to the terminating Council concerned having fulfilled its obligation to act reasonably and in good faith under clauses 3.1.1, 3.1.2, 8.1.3, 8.1.4 and 8.1.5 on termination under this clause 8, but without prejudice to accrued liabilities, the said Council shall have no liability to the other save for its contribution to the costs of the Project in the Agreed Proportions.

9 TERMINATION FOR BREACH

9.1 Either Council may terminate this Agreement if the other Council is in material breach of its obligations hereunder and has failed to remedy the same within 21 days of receipt of notice specifying the breach and requiring it to be remedied

9.2 On termination under this clause, but subject at all times to clause 9.3, the Council in breach shall indemnify and hold harmless the other Council who shall have suffered as aforesaid against all such actual and provable direct loss as shall be or have been as a direct consequence of the said breach caused to and suffered by that Council.

9.3 Nothing in clause 9.2 shall give rise to any liability in respect of matters referred to in clause 7.2 or in respect of any other indemnity contained in this Agreement which liability shall be governed by the relevant clause.

10 LIABILITY

10.1 Save as set out in clause 9.2 neither Council shall have any liability to the other whether in tort breach of contract or otherwise arising out of its performance or non-performance of this Agreement PROVIDED THAT the Councils agree that

10.1.1 subject to clause 9.2 any losses incurred by either Council in the development of the Project shall be treated as costs of the Project and shall be contributed to by the other Council in the Agreed Proportions; and

10.1.2 the limitation of liability contained in this clause 10.1 shall not apply to the indemnities contained in clauses 6.10, 7.4 and 11.1 of this Agreement

10.2 Without prejudice to the generality of clause 10.1 neither party shall have any liability to the other for any indirect or consequential loss to include without limitation loss of profits, loss of income or loss of anticipated savings

11 INDEMNITY

11.1 Subject to clause 7.2, each Council shall indemnify and hold harmless the other from and against any action claim demand or proceeding in respect of personal injury or loss of or damage to property howsoever caused arising out the negligence of the Council its employees servants or agents in the performance of this Agreement and against all damages, liability, costs, charges and expenses in respect thereof or in relation thereto.

12 INSURANCE

12.1 The Councils shall ensure that they maintain in force throughout the term of this Agreement and for such period as

may be prudent after its termination for whatever reason (where necessary) adequate insurance cover with a reputable insurer to meet all potential liabilities under the terms of this Agreement.

13 CONFLICTS OF INTEREST

13.1 The Councils shall each act in good faith towards the other to minimize the impact of any conflict of interest on the pursuit of the Project

14 CONFIDENTIALITY

14.1 Each Council shall use its reasonable endeavours to keep in strict confidence, and shall bind all its employees and agents to keep in strict confidence, all and any commercial and technical information or confidential information relating to the Project or the affairs of or concerning each Council in whatever form acquired by it (whether directly or indirectly) in consequence of this Agreement. Neither Council shall use or disclose any such confidential information other than for the purposes of the Project or as expressly permitted by this Agreement. This restriction shall not apply to:

14.1.1 information which at the time of disclosure is generally available to the public;

14.1.2 information which the receiving Council can show was in its possession prior to disclosure and which was not acquired directly or indirectly from the partner Council; and

14.1.3 Information which is required to be disclosed by law or any lawful authority.

14.2 The confidentiality obligations set out in Clause 14.1 shall survive the termination of this Agreement until such time as the information ceases to be confidential or the Councils as defined at the beginning of this agreement as appropriate consents to its disclosure or for a period of five years (whichever is the earliest).

15 DATA PROTECTION AND FREEDOM OF INFORMATION

15.1 The parties acknowledge their obligations under the Data Protection Act 1998 and agree and declare that they will at all times when acting in connection with the Project have due regard to those obligations including, without limitation, the obligation to comply with the Data Protection Principles set out in the Data Protection Act 1998.

15.2 The Councils acknowledge that they may be required to disclose information relating to the Project or to this Agreement to a person or to each other to comply with obligations under the Freedom of Information Act 2000 and hereby agree to consult with each other in the event that any or all of them receives such a request, prior to making any disclosure.

16 ADVERTISING/PUBLICITY

16.1 Each of the Councils shall comply with the Communications Protocol.

17 DISPUTE RESOLUTION

17.1 Subject to clause 17.3, in the event of any dispute or difference arising between the Councils as to the construction or application of this Agreement, or as to any issue arising under it, the matter shall be referred in the first instance to a

joint meeting of the Chief Executives of both Councils who shall take all reasonable steps that shall lie within their power to conciliate and resolve such dispute or difference.

17.2 Subject to clause 17.3, if within [] of the reference of the dispute to them the Chief Executives have failed to resolve the dispute it shall be referred at the request of either Council to mediation through the Centre for Effective Dispute Resolution.

17.3 Nothing in clause 17.1 or clause 17.2 shall apply to any dispute permitted or required by this Agreement to be referred to expert determination. Such a dispute shall be referred to an independent third party to be agreed between the Councils or, if not so agreed within 14 days of a request by either Council to the other to agree on such a third party, nominated by the President for the time being of the Chartered Institute of Arbitrators. Such third party shall act as an expert not an arbitrator and their decision shall be final and binding on the Councils. Unless ordered otherwise by the expert, the costs of the expert shall be borne equally by the Councils and each Council shall bear its own costs of the reference to expert determination.

17.4 Nothing in this clause shall prevent either party making application for injunctive relief.

18 FORCE MAJEURE

18.1 The parties shall have no liability to each other in respect of any event excusing performance beyond the control of the Councils including without limitation events occurring by reason of acts of God, war, or legislative changes.

19 SURVIVAL OF TERMS

19.1 No term shall survive expiry or termination of this Agreement unless expressly provided or where it comprises an obligation which has not yet been complied with.

20 WAIVER

20.1 The failure by any Council to enforce at any time or for any period any one or more of the terms or conditions of this Agreement shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions of this Agreement.

21 SEVERANCE

21.1 If any term or provision of this Agreement shall in whole or in part be held to any extent to be illegal or unenforceable under any enactment or rule of law then that term or provision or part shall to that extent be deemed not to form part of this Agreement and the enforceability of the remainder of this Agreement shall not be affected.

22 THIRD PARTY RIGHTS

22.1 A person who is not a party to this Agreement has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any terms of this Agreement.

23 GOVERNING LAW

23.1 The validity, construction and performance of this Agreement shall be governed by English law.

24 COSTS OF PREPARING THIS AGREEMENT

24.1 Each of the Councils shall pay any costs and expenses incurred by it in the preparation of this Agreement.

SCHEDULE 1

AMBITIONS, PRINCIPLES AND VALUES

AMBITIONS

- Through the merging of services, the Councils have ambitions to:-
- Increase levels of citizen satisfaction
- Provide high quality, seamless services focused on local communities, neighbourhood and service users
- Provide significant capacity to deliver value for money services and maximize opportunities for economies of scale and efficiency gains
- Produce real cash savings
- Strengthen and share skills, expertise and learning in local authorities and their staff
- Increase the Councils influence locally, regionally and nationally in order to secure a 'better deal' for all our communities and the authorities
- Demonstrate strong democratic accountability capable of ensuring collaboration and joined up service delivery at the local level
- Develop the partnership's membership and potentially seek external customers

PRINCIPLES AND VALUES

The principles underpinning the way the Councils will work together are as follows:-

- Commitment to build strong working relations between members and officers based on trust and respect for the mutual benefit of South Holland District Council and East Lindsey District Council
- The two Councils are independent organizations and equal partners within the partnership
- An equitable sharing of risks, costs, investments and savings
- Further, the Councils will continue to use the innovative nature of this project to jointly seek external funding to support its development
- A willingness to compromise for the common good
- Common communications with consistent clear messages
- Neither of the Councils will take unilateral decisions that will inhibit our ability to work together and merge services without discussing first with the other partner

SCHEDULE 2

FINALISED BUSINESS CASE

Include the principles on which the Finalised Business Case will be built

APPENDIX 1

Communications Protocol for Implementation Phase of the Merged Services Project

South Holland and East Lindsey District Councils agree to undertake joint communication, engagement and consultation with the media, members and officers in respect of this project. The two Councils are keen to take advantage of all opportunities to promote the work their work around merged services and raise the profiles of the Districts in a positive manner. However, any statement or quotation supplied to the media or other external body should reflect the joint nature of the work and include mention of both Districts. The two Chief Executives will act as the officer spokespersons and the two Leaders will act as the Member spokespersons.

The Communications Theme Lead in the Implementation Team will provide the single point of contact for communications with regard to the project and will be responsible for the drafting of all statements, briefings etc.

APPENDIX 2

Governance Arrangements for the Merged Services Programme – Phase 3 Implementation

Please refer to Appendix 4 of the Council Report 28 September 2009

APPENDIX 3

Information Sharing Protocol

APPENDIX 4

Tribal Business Case