

**MEMORANDUM OF AGREEMENT**

**BETWEEN**

**BOSTON BOROUGH COUNCIL**

**AND**

**EAST LINDSEY DISTRICT COUNCIL**

**AND**

**SOUTH HOLLAND DISTRICT COUNCIL**

**RELATING TO AN INTEGRATED SHARED WORKFORCE STRUCTURE AND THE  
DEVELOPMENT OF AN ALLIANCE BETWEEN THE THREE COUNCILS (TO BE  
KNOWN AS THE SOUTH EAST LINCOLNSHIRE COUNCILS PARTNERSHIP)**

**Commented [SM1]:**

General Note 1 – external legal advice will be obtained on the drafting of this Agreement generally, but also on some specific points flagged throughout the Agreement. This may lead to some changes to the Agreement.

General Note 2 – some matters yet to be incorporated in the Agreement, or yet to be agreed are also flagged.

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## Memorandum of Agreement

Dated: XXXXXX

### The Parties

- (1) **East Lindsey District Council** whose principal office is at Tedder Hall, Manby Park, Louth, Lincolnshire LN11 8UP

and

- (2) **Boston Borough Council** whose principal office is at The Municipal Buildings, West Street, Boston, Lincolnshire PE21 8QR.

and

- (3) **South Holland District Council** whose principal office is at Council Offices, Priory Road, Spalding PE11 2XE

### 1. Introduction

1.1 This Memorandum of Agreement between the Councils sets out:

- a) The purpose and aims of the South East Lincolnshire Councils Partnership.
- b) The purpose and aims of the shared workforce structure and agreed areas of joint working; and
- c) The basis on which the Councils shall operate.

### 2. Background and Overview

2.1 Section 113 (1) of the Local Government Act 1972 provides that a local authority may enter into an agreement with another local authority for the placing at the disposal of the latter for the purposes of their functions, on such terms as may be provided by the agreement, the services and officers employed by the former. An officer placed by one local authority at the disposal of another remains employed by the first local authority.

2.2 East Lindsey District Council and Boston Borough Council entered into a Strategic Alliance on 1<sup>st</sup> July 2020 and that alliance will be superseded by the South East Lincolnshire Councils Partnership. Those councils placed certain members of their staff at the disposal of the other pursuant to an agreement under s113 of the Local Government Act 1972 dated 1 July 2021.

2.3 South Holland District Council was formerly part of a shared management arrangement with Breckland District Council. Those arrangements came to an end on 30 April 2021. Some services (Legal Services and Procurement,

together with one Environmental Services Officer) continue to be provided by Breckland District Council to South Holland District Council.

**Commented [SM2]:** Local Plan arrangements with BBC to be added to recitals

- 2.4 East Lindsey District Council and Boston Borough Council and South Holland District Council respectively decided to prepare proposals for an integrated Shared Management Team that is intended to facilitate the development of a South East Lincolnshire Councils Partnership and any additional posts agreed by the Councils to be incorporated in the Shared Workforce Structure between the three councils.
- 2.5 The Shared Management Team structure is set out at Schedule 4.
- 2.6 At their respective meetings on 28<sup>th</sup> July 2021, East Lindsey District Council and 2<sup>nd</sup> August 2021, Boston Borough Council and 29<sup>th</sup> July 2021, South Holland District Council resolved to enter into the South East Lincolnshire Councils Partnership supported by the Shared Management Team but with the potential for the Councils to agree to share additional posts. The development of the South East Lincolnshire Councils Partnership is to be overseen and implemented by the joint Head of Paid Service.
- 2.7 At its meeting on 28<sup>th</sup> July 2021 East Lindsey District Council agreed to continue to place its Chief Executive and Head of Paid Service at the disposal of South Holland District Council supported by similar approval by Boston Borough Council at its meeting on 2 August 2021 and at its meeting on 29<sup>th</sup> July 2021 South Holland District Council approved the continuation of the designation of its Chief Executive and Head of Paid Service in a joint arrangement with East Lindsey District Council and Boston Borough Council.
- 2.8 At its meeting on 29<sup>th</sup> July 2021 South Holland District Council agreed to place its Monitoring Officer and Section 151 Officer at the disposal of East Lindsey District Council and Boston Borough Council and at their meetings on 28<sup>th</sup> July 2021 and 2<sup>nd</sup> August 2021 East Lindsey District Council and Boston Borough Council respectively designated the holders of those posts as their Monitoring Officer and Section 151 Officer in a joint arrangement with South Holland District Council.
- 2.9 More particularly, at its meeting on 1 July 2021, South Holland District Council approved the designation of East Lindsey District Council's Head of Paid Service as South Holland District Council's Head of Paid Service and Chief Executive for an interim period being the period necessary to prepare and submit to the Council a business case, draft Memorandum of Agreement and proposed Senior Management Team structure .
- 2.10 The objects of the South East Lincolnshire Councils Partnership facilitated by a Shared Workforce Structure are:
  - o To provide adequate capacity and resilience to the three Councils so that they are individually and collectively better able to deliver on their priorities to local people.

- Acting together to develop, promote jointly and secure investment in strategic infrastructure that will benefit the three Council areas by assisting economic growth and regeneration, including, but not limited to roads, railways, flood defences and land drainage, educational, health and well-being infrastructure and acknowledging that East Lindsey District Council and Boston Borough Council have been awarded funding under the Towns Fund for Boston, Mablethorpe and Skegness.
- For each council individually to continue to exercise democratically accountable local government in their respective areas and have their own governance arrangements whilst sharing management of agreed internal and external services.
- To provide opportunity and ease the transition to more joint commissioning of services and sharing resources where a business case supports such a decision.
- To provide more efficient and economical services to local people whilst maintaining or improving the quality of the services that are provided to them.
- To make financial savings to the combined staffing costs of the existing management structures.
- To provide an operating platform which may have relevance for future devolved powers and/or Local Government structures.
- To create greater opportunities for the partnership's workforce to develop their careers.

2.11 Although the Shared Workforce Structure may provide opportunities and ease the transition to joint commissioning of services, this agreement does not commit any council to the commissioning of joint services.

2.12 East Lindsey District Council and Boston Borough Council acknowledge and confirm that their agreement dated 1 July 2020 has been terminated and superseded by this Agreement.

2.13 It is the intention of the Parties that a programme of service reviews will be agreed with a view to the Councils considering additional service areas in which the sharing of officers might be beneficial. In the absence of formal sharing of officers in any given service area, it is the intention of the Councils to offer each other mutual assistance and support informally and on an ad-hoc basis by adopting a 'one team' ethos.

**Commented [SM3]:**

Some specific advice is needed on the implications (if any) of the previous strategic alliance between ELDC and BBC on the new strategic alliance (which includes SHDC).

This will include advice as to whether SHDC should have an indemnity against any liabilities that may arise under the previous agreement.

**NOW IT IS HEREBY AGREED as follows**

**3. Definitions**

In this Agreement the following terms shall have the following meanings:

<b>Term</b>	<b>Meaning</b>
Chief Executive	the officer for the time being appointed as Chief Executive of the Councils
Clause	a Clause in this Agreement
Commencement Date	XXXXXX
Council	East Lindsey District Council or Boston Borough Council or South Holland District Council (as the case may be)
Councils	Boston Borough Council and East Lindsey District Council and South Holland District Council
Cabinet	The Executive of East Lindsey District Council or the Cabinet of Boston Borough Council or South Holland District Council as the case may be, appointed in accordance with Part II of the Local Government Act 2000
Executive Arrangements	Construed in accordance with Part II of the Local Government Act 2000
Expenses	Shall be interpreted in accordance with Clause 7
Head of Paid Service	The officer for the time being appointed under Section 4 of the Local Government and Housing Act 1989 (currently the Chief Executive)
Intellectual Property Rights	All patents, rights to inventions, copyright and related rights, trademarks and service marks, business names and domain names, rights in get-up, goodwill, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how) 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 world.

Leader of the Council	Leader of East Lindsey District Council or Leader of Boston Borough Council or Leader of South Holland District Council for the time being as the case may be.
The Joint Committees	the Joint Chief Officer Employment Panel, the Joint Appointments Appeals Committee
The Joint Appointment Appeals Committee	the Joint Appointment Appeals Committee established by the resolutions of the Councils at their respective meetings on XXXXX, XXXXX and XXXXX and the terms of reference set out at Schedule 2
The Joint Chief Officer Employment Panel	The Joint Chief Officer Employment Panel established by the resolutions of the Councils at their respective meetings on XXXX, XXXXX and XXXX and with the terms of reference set out at Schedule 1
The Joint Strategy Board	The advisory body established with the terms of reference set out at Schedule 3
Legal Adviser	The person for the time being appointed by East Lindsey District Council or Boston Borough Council or South Holland District Council to provide legal advice to the Council or Councils and may be an officer of the Council or Councils or an external person who is legally qualified
Monitoring Officer	The officer for the time being appointed under Section 5 of the Local Government and Housing Act 1989
Shared Workforce Structure	The Shared Management Team together with such other officers as the Councils may agree in writing from time to time all of whom shall be appointed by one Council and placed at the disposal of the other Councils.
Shared Management Team	The top three tiers of the Partnership's Management Structure more particularly detailed in Schedule 4 to this Agreement
Section 151 Officer	The officer for the time being appointed under Section 151 of the Local Government Act 1972
South East Lincolnshire Councils Partnership	A strategic alliance established under the terms of this Memorandum of Agreement comprising Boston

#### 4. Preliminary

4.1 This Agreement is made pursuant to

- (a) Sections 101 and 102 of the Local Government Act 1972 (delegation to joint committees);
- (b) Section 112 of the Local Government Act 1972 (duty to appoint officers);
- (c) Section 113 of the Local Government Act 1972 (power to place staff at the disposal of other local authorities);
- (d) Section 1 of the Localism Act 2011 (local authorities' general power of competence);
- (e) Sections 14 and 20 of the Local Government Act 2000 and The Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2000/2851 (joint arrangements for the exercise of executive functions)
- (f) Sections 19 and 20 of the Local Government Act 2000.

and all other enabling powers.

4.2 This Agreement has been entered into by the Councils by virtue of the resolutions of the Councils at their respective meetings on 28<sup>th</sup> July 2021 East Lindsey District Council and 2<sup>nd</sup> August 2021 Boston Borough Council and 29<sup>th</sup> July 2021 South Holland District Council

4.3 This Agreement shall commence on the Commencement Date and subject to Clause 8 (Termination and Review) shall continue in full force and effect unless and until the Councils agree to terminate it.

4.4 The Councils shall at all times co-operate with each other and shall observe the following key principles:

- trust, transparency, integrity, and respect
- effective working relationships
- co-operation, collaboration, and information-sharing whilst respecting the confidentiality of the other Council
- accountability to their council taxpayers and each other
- openness to change, including the addition of further partners
- to recognise the values and behaviours of each partner's culture.
- systematic and outcome focused in their approach to working together
- sensitivity to the fact each council operates in a political environment

4.5 The Councils shall each use their best endeavours to ensure that their contractors and other partners operate and provide their services and service-related information and data to the relevant Council in such a manner as to support the aims of this Agreement generally and in a manner which observes and supports the obligations set out in sub-clause 4.4 above

## 5. The Joint Committees and Joint Strategy Board

5.1 The Councils have established the Joint Committees/Panels:

- Joint Chief Officer Employment Panel
- Joint Appointments Appeals Committee

5.2 The Joint Committees/Panels shall have the terms of reference set out in Schedules one to three of this Agreement or such other amended terms of reference as they may recommend to the Councils and as the Councils shall approve.

5.3 The Councils have established a Joint Strategy Board which shall not be a formal shared committee within the meaning of the Local Government Acts unless and until resolved otherwise. It shall meet, operate, and be serviced in accordance with its terms of reference at Schedule 3. In practical terms this means that in the first instance the Board will be advisory in nature and that any decisions affecting any of the councils will be made by their respective Executives or Full Council, as appropriate.

5.4 The Joint Chief Officers Employment Panel and the Joint Appointment Appeals Committee shall be joint committees within the meaning of section 101 (5) of the Local Government Act 1972 and shall be politically balanced for each Council in accordance with Part I of the Local Government & Housing Act 1989.

5.5 The Joint Chief Officers Employment Panel and the Joint Appointment Appeals Committee shall be serviced by staff from the Councils unless otherwise agreed in writing between the Councils and where there is any conflict with the terms of this Agreement then this Agreement shall prevail.

5.6 Notwithstanding Clause 7 (Finance) below each Council shall meet any cost that they incur arising from meetings of the Joint Committees and/or the Joint Strategy Board.

5.7 The Joint Committees shall take into account advice from officers of the Councils.

5.8 The Joint Chief Officers Employment Panel and the Joint Appointment Appeals Committee shall meet as and when necessary having regard to their terms of reference.

5.9 Where decisions are taken by the Joint Committees, the following principles and

### Commented [SM4]:

In addition to the Joint Strategy Board, a 'Stakeholder Group' to be added comprising each Leader, one Deputy Leader from each Council, and each of the statutory officers. The role of the Stakeholder Group will be to have a strategic view and monitoring role. The Business Plan currently makes reference to this as an Executive Board. It doesn't necessarily need to be captured in the MoA but may be useful to include.

conditions shall apply:

- (a) the Joint Committees shall have proper regard to any relevant resolution of one Council provided that such resolution is not to the detriment of the other Council;
- (b) the Joint Committees shall satisfy themselves that any inter Council consultation has been carried out;
- (c) the taking of decisions shall be subject to there being appropriate and adequate budgetary provision by the Councils;
- (d) any decision which could have legal implications shall be taken in consultation with the Monitoring Officer and Legal Adviser;
- (e) any decision which could have financial implications shall be taken in consultation with the Section 151 Officer;

5.10 The Joint Committees shall not be bodies corporate nor shall they have the functions of acquiring or holding assets employing staff or entering into contracts.

5.11 The Councils will observe the key principles of joint working when participating in decisions of the Joint Committees through mutual cooperation in order to support the development of the partnership.

## 6. The Shared Workforce Structure

6.1 The Councils agreed at their respective meetings on XXXXXX to enter into the South East Lincolnshire Councils Partnership supported by the Shared Management Team together with such other officers as the Councils may agree in writing from time to time will form part of the Shared Workforce Structure.

6.2 The development of the South East Lincolnshire Councils Partnership and the Shared Workforce Structure is to be overseen and implemented by the Joint Chief Executive/Head of Paid Service.

6.3 The expectation is that the balance of staff employed by each Council within the Shared Workforce will remain proportionate and reflect that at the creation of the partnership and that where an officer leaves a post that is part of the Shared Workforce Structure, the Council that was his or her employer shall employ that officer's replacement.

6.4 Staff within the Shared Workforce Structure may be employed by any one of the Councils and having been so employed shall forthwith be placed at the disposal of the Councils who are not their employer

6.5 For superannuation purposes, service rendered by an officer of one of the Councils whose services are placed at the disposal of the other in pursuance of section 113 of the Local Government Act 1972 and hence in pursuance of this

**Commented [SM5]:** Some specific advice is needed on the implications (if any) of the previous strategic alliance between ELDC and BBC on the new strategic alliance

In particular, ELDC and BBC already have a shared workforce in some areas. This will likely need capturing in this Agreement.

Agreement is service rendered to the Council by whom he/she is employed

- 6.6 Any officer falling within the definition at 6.4 above shall be treated for the purposes of any enactment relating to the discharge of functions of a local authority as an officer of the other Councils and members of the Shared Workforce Structure may act and shall have powers to act under the constitutions of the Councils.
- 6.7 The members of the Shared Workforce Structure shall divide their time fairly and reasonably between the Councils and shall not show bias towards one Council vis-à-vis the other. This is important in order to ensure the precepts on each Council's taxpayers do not cause gain or loss for the other Councils' taxpayers.
- 6.8 The Chief Executive shall be the shared Head of Paid Service in respect of the workforce of the Councils. The Chief Executive shall lead the Shared Management Team. Attendance at and frequency of meetings, terms of reference and other matters relating to the Shared Management Team shall be at the discretion of the Chief Executive.
- 6.9 The Councils shall agree in writing financial arrangements as to the allocation of pension contributions including those relating to payments due in respect of the pension deficits of the Councils upon the transfer appointment to or employment of staff within the Shared Workforce Structure

## 7. Finance

- 7.1 The costs arising from the creation of the Shared Workforce Structure shall be apportioned as follows:
  - 7.1.1 East Lindsey District Council shall meet 46% per cent and Boston Borough Council 23% per cent and South Holland District Council 31% percent of any redundancy and associated pension strain costs and subsequent redundancy, Employment Tribunal or other dismissal claim costs arising from the creation or ongoing operation of the Shared Workforce Team after the commencement of this Agreement;
  - 7.1.2 East Lindsey District Council shall meet 46% per cent and Boston Borough Council 23% per cent and South Holland District Council 31% percent of the ongoing salary and on-costs superannuation national insurance training travel and incidental costs of the Shared Workforce Structure;
  - 7.1.3 any proposal to apportion new on-going costs other than in the proportions that East Lindsey District Council shall meet 46% per cent and Boston Borough Council 23% per cent and South Holland District Council shall meet 31% percent of the same shall only be made following a resolution of each Council's Cabinet/Executive on the recommendation of the S151 Officer and in the case of an apportionment that is a departure from the budget framework of each Council by its full Council.

### Commented [SM6]:

Two key points on Finance:

1. The basis of sharing savings will be referenced here – we are seeking external legal advice at this stage
2. Changes will be made to the drafting to reflect the fact that the percentage split of costs (which is based on population figures) will be revised when new ONS data is released.

7.2 Costs incurred upon termination shall be apportioned in accordance with clause 8 below.

## 8. Termination and Review

8.1 This Agreement shall continue unless terminated in accordance with this Clause 8 PROVIDED ALWAYS THAT the provisions of this Clause 8 shall be subject to any other provision of this Agreement extending financial liability beyond termination.

8.2 Where one of the Councils proposes to withdraw from the Agreement for whatever reason (including any allegation of fundamental breach) that Council shall prepare a report to the Joint Strategy Board, setting out its reasons. If the Joint Strategy Board acting reasonably cannot remedy the problem (and such remedy shall include invoking Clause 11 Dispute Resolution unless both Councils agree otherwise in writing) within a reasonable time and to the reasonable satisfaction of the Councils then the Council proposing to withdraw shall be at liberty to withdraw from this Agreement and to bring the arrangements for a Shared Workforce Structure to an end.

8.3 Where all the Councils jointly agree to terminate or withdraw from this Agreement they shall do so by each giving the other not less than 12 months' prior written notice and such a decision to terminate or withdraw may only be made by all the Councils acting by their full Council. If any of the Councils unilaterally terminates or withdraws from this Agreement they shall do so by giving to the other Councils not less than twelve months' prior written notice and such a decision to terminate or withdraw may only be made by that Council acting by its full Council.

8.4 In the event of a termination for any reason the Councils shall:

- (a) co-operate in terminating modifying restructuring assigning or novating contractual arrangements entered into to mutual advantage and properly and timeously execute any documents necessary;
- (b) use best endeavours to secure an amicable and equitable financial settlement;
- (c) as soon as possible and in any event within three months transfer or return any property including data belonging to the other Councils;
- (d) to the extent that any of the Councils has a materially disproportionate number of shared officers compared to the proportions at Commencement Date, ensure that each Council is allocated a fair and reasonable proportion of the members of the Shared Workforce Team subject to any necessary actions being taken as required by employment law or by the policies of the transferring council so that (1) each Council can maintain continuity in the provision of its services at a reasonable level of effectiveness and efficiency and (2) they become employed by the Council to which they are transferred.

**Commented [SM7]:** Some specific advice is needed on drafting (i) to ensure that arbitration is not required if there is a no-fault decision by one council to withdraw; and (ii) to enable two councils to continue under the Agreement if the third chooses to withdraw.

8.5 In the event of any dispute which cannot be resolved in respect of any matter referred to under Clause 8.4, Clause 11 shall apply.

8.6 In the event of a termination however and whenever occurring the costs consequential upon such termination including costs of recruitment selection administration but not salary costs, after the date of termination shall subject always to clause 7.1.3 be apportioned between the Councils and each Council shall indemnify and keep indemnified the other Councils in respect of that Council's share from and against any actions and causes of action, claims, demands, proceedings, damages, losses, costs, charges and expenses whatsoever arising from or in connection with such termination or withdrawal and such indemnity shall continue after the termination of this Agreement.

8.7 The Councils will through a scrutiny process undertake an annual review of the Partnership to understand its effectiveness and opportunities for further development and will include a review of the Key Principles in 4.4.

8.8 No deletion, addition, or modification to this Agreement shall be valid unless agreed in writing and sealed by the Councils.

**9. Head of Paid Service: Application of section 4 of the Local Government and Housing Act 1989**

9.1 The Chief Executive has been appointed Head of Paid Service by the Councils.

9.2 The Councils shall provide that officer with such staff accommodation and other resources as are in his/her opinion sufficient to allow his/her duties to be performed.

9.3 It shall be the duty of the Head of Paid Service where he/she considers it appropriate to do so in respect of any proposals of his/hers with respect to any of the matters specified below to prepare a report to either one or each of the Councils setting out his/her proposals. The matters are:

9.3.1 the manner in which the discharge by the Councils of their different functions is coordinated;

9.3.2 the number and grades of staff required by the Councils for the discharge of their functions;

9.3.3 the organisation of the staff of the Councils; and

9.3.4 the appointment and proper management of the staff of the Councils.

9.4 It shall be the duty of the Head of Paid Service, as soon as practicable after he/she has prepared such a report, to arrange for a copy of it to be sent to each member of the three Councils as the case may be.

9.5 It shall be the duty of each of the Councils separately to consider any such report by the Head of Paid Service at a meeting held not more than three months after copies of the report are first sent to councillors at each Council.

## **10. Head of Paid Service: Supplementary**

10.1 Without prejudice to Clause 9 above it shall be the duty of the Head of Paid Service to ensure that all Councillors have such access to and support from all officers of their Council and in particular to the Head of Paid Service and Shared Workforce Team as they may reasonably expect.

10.2 Without prejudice to Clause 9 above the duties of the Head of Paid Service shall include advising the Joint Committees and advising the Cabinet of each Council in respect of executive functions within the meaning of the Local Authorities (Functions and Responsibilities) Regulations 2000 (as amended) and the Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2012 or the full Council or relevant committee of each Council in respect of non-executive functions within the meaning of the said regulations and the duty of the Head of Paid Service to advise the Councils shall include but not be limited to providing advice on:

- (a) The structure of the Shared Workforce Structure of the Councils;
- (b) The host employer for each post; and
- (c) Performance management of the Shared Workforce Structure.

## **11. Dispute Resolution**

11.1 In the event of a dispute concerning the construction or effect of this Agreement it should first be discussed for resolution by the Joint Strategy Board. The Joint Strategy Board shall take all reasonable steps to conciliate and resolve such dispute or difference whether by negotiation, mediation or any other form of dispute resolution procedures (with a view to resolution by discussion and negotiation).

11.2 In the event that a matter in dispute cannot be resolved under Clause 11.1 above the matter shall (unless the Councils agree otherwise in writing) be referred to an arbitrator under Clause 11.3 below.

11.3 The arbitrator shall be appointed with the agreement of the Councils or in the event that agreement cannot be reached, by the President or other chief officer of the Chartered Institute of Arbitrators or such other professional body appropriate to the matter in dispute (such body to be determined by the Chief Executive). The costs of arbitration shall be borne by the Councils in the following proportions: East Lindsey District Council shall meet 46% per cent and Boston Borough Council 23% per cent and South Holland District Council 31%.

11.4 The resolution of unresolved disputes in respect of the expenses of any Joint

Committee to which section 103(b) the Local Government Act 1972 applies shall be determined in accordance with that section by a single arbitrator agreed on by the Councils or in default of agreement appointed by the Chief Executive of the Local Government Association.

11.5 For the avoidance of doubt this Clause shall remain in effect after the termination or expiry of this Agreement to confer powers on the Councils to resolve matters remaining in dispute.

## **12. No Fetter of Discretion**

12.1 Nothing in this Agreement shall fetter the discretion of the Councils.

## **13. Liabilities**

13.1 The Councils shall be jointly and severally liable to any third parties in respect of all actions and causes of action claims demands proceedings damages losses costs charges and expenses directly arising from this Agreement. Each council shall indemnify and keep indemnified the other Council from and against the extent of the indemnifying Council's liability for any actions and causes of action claims demands proceedings damages losses costs charges and expenses directly arising from or in connection with this Agreement and such liability and indemnity shall continue after the termination of this Agreement.

13.2 Each Council shall ensure that it has all appropriate insurances relating to public liability, employee liability, professional indemnity and Member indemnity to cover any liabilities arising under this Agreement.

## **14. Intellectual Property Rights**

14.1 Each Council shall retain the ownership of all Intellectual Property Rights it owns as at XXXXXX in any materials which it has created or the creation of which was undertaken by a third party which it commissioned to create those materials.

14.2 Any new material created jointly by the Councils in the course of provision of the Shared Workforce Team shall belong to the Councils jointly unless otherwise agreed in writing.

14.3 Each Council hereby grants a license to the other to use its Intellectual Property Rights incorporated in or appearing from the materials referred to in clauses 14.1 and 14.2 for the purposes of the performance of this Agreement and the delivery of all services by the Councils.

## **15. Notice**

15.1 Any notice to be served under this Agreement shall be valid and effective if it is addressed to the Chief Executive and delivered by email, prepaid recorded delivery post, or delivered by hand to the other Councils' principal office.

## **16. Rights and Duties Reserved**

16.1 Nothing in this Agreement shall prejudice or fetter the proper exercise of any function by the Councils or their officers.

## **17. Legal and other Fees**

17.1 Each Council shall bear its own legal and other fees in relation to the preparation and completion of this Agreement.

## **18. Provision of Statistical Information Accounts and other Documents etc.**

18.1 Each Council shall make available to the other such statistical information which each Council may from time to time reasonably require.

18.2 Without prejudice to any provision in this Agreement requiring the keeping of records the supply of statistics or the provision of information the Councils shall keep such other records and details of or concerning the Shared Workforce Team or their performance as the Councils may require and shall produce or provide to the other copies whether kept electronically or in paper format of such accounts invoices orders contracts receipts statistics and other information or documents touching or concerning or arising from this Agreement or their performance of this Agreement as and when and in such form as each Council may reasonably require.

18.3 Without prejudice to any provision in this Agreement the Councils shall keep and maintain all necessary information and shall provide all necessary assistance to enable each Council to complete all necessary official returns or statistics related to this Agreement.

18.4 The Councils shall supply each other with such assistance and information as each Council may require to enable it to allocate such expenditure as each Council may incur under this Agreement.

## **19. Audit**

- 19.1 Each Council's external and internal auditors shall have the like powers set out in the Local Audit and Accountability Act 2014 and any subsequent amending repealing and superseding legislation. Each Council shall at all reasonable times (including following the termination for whatever reason of this Agreement) allow or procure for any auditor for the purposes of an external or internal audit immediate access to and permission to copy and remove any copies of and permission to remove the originals of any books records and information in the possession or control of the Councils which in any way relates to or are or were used in connection with this Agreement including (but without limitation) any of each Council's data and any such information stored on a computer system operated by a contractor servant or agent of the other Council.
- 19.2 Each Council will provide all practicable co-operation and afford all appropriate access to personnel and records in order to assist the requesting Council in carrying out any investigations which are already under way at the Commencement Date and any investigations which are carried out after the termination or expiry of this Agreement but which relate to any period during which the Shared Workforce Structure was in effect.

## **20. No Partnership**

- 20.1 Nothing in this Agreement shall be construed as establishing or implying any legal partnership or joint venture between the Councils although the parties may decide to form partnerships and joint ventures as they develop closer collaborative working arrangements. Any such partnership or joint venture shall only be effective if approved by the Council meeting of each authority and set out in a deed sealed by each authority.

## **21. Anti-Corruption**

- 21.1 Any of the Councils may cancel this Agreement at any time and recover from such other Council(s) as may be at fault the amount of any loss resulting from such cancellation if any of the following apply:
- (a) One or both of the other Councils has offered or given or agreed to give to any person any gift or consideration as an inducement or reward (1) for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of the Agreement or any other contract with the Council (2) for showing or forbearing to show favour or disfavour to any person in relation to the Agreement or any other contract with the Council;
  - (b) any person employed by or acting on behalf of one of the other Councils (whether with or without the other Councils' knowledge or consent) acts in similar manner to that set out in sub Clause (a) above;

- (c) in relation to any contract or potential contract with the Council one or both of the other Councils or any person employed by or acting on behalf of one or both of the other Councils shall have committed any offence under the Prevention of Corruption Acts 1889 to 1916 or any amendment or replacement of them or shall have given any fee or reward the receipt of which is an offence under Sub Section (2) of Section 117 of the Local Government Act 1972.

## **22. Discrimination**

- 22.1 The Councils shall not unlawfully discriminate within the meaning and scope of the provisions of the Equality Act 2010 and any other legislation prohibiting discrimination on any grounds whatsoever. The Councils shall take all reasonable steps to secure the observance of these provisions and any statutory provisions amending or replacing the same by its employees in the performance of the Agreement.

## **23. Human Rights**

- 23.1 The Councils in the performance of this Agreement shall comply with the provisions of the Human Rights Act 1998 in all respects as if the Joint Committees were public bodies within the meaning of the Act. The Councils shall indemnify and keep indemnified one another against all actions and causes of action claims, demands, proceedings, damages, losses, costs, charges, and expenses whatsoever in respect of any breach of this Clause and such indemnity shall continue after the termination of this Agreement.

## **24. Freedom of Information**

- 24.1 It is agreed that the Councils are subject to the provisions of the Freedom of Information Act 2000. Any release of or exemption applicable to this Agreement shall be considered under that Act.

## **25. Survival of this Agreement**

- 25.1 In so far as any of the rights and powers of the Councils provided for in this Agreement shall or may be exercised or exercisable after the termination or expiry of this Agreement the provisions of this Agreement conferring such rights and powers shall survive and remain in full force and effect notwithstanding such termination or expiry.
- 25.2 In so far as any of the obligations of the Councils provided for in this Agreement remain to be discharged after the termination or expiry of this Agreement the provisions of this Agreement imposing such obligations shall survive and remain in full force and effect notwithstanding such termination or expiry.

## **26. Whole Agreement**

- 26.1 This Agreement constitutes the whole agreement and understanding of the Councils as to its subject matter.

26.2 This agreement expressly acknowledges any prior agreements each Council has with any one or more other Council in respect of any matters that shall continue under those prior agreements. This agreement is not intended to supersede those prior agreements or amend or replace any matters existing or agreed within them.

## **27. Waiver**

27.1 Failure by any of the Councils at any time to enforce any provision of this Agreement or to require performance by the other or others of any of the provisions of this Agreement shall not be construed as a waiver of any such provisions and shall not affect the validity of this Agreement or any part or the right of that party to enforce any terms and provision of this Agreement.

## **28. Severance**

28.1 If any term or provision of this Agreement shall in whole or in part become or shall be declared by any court of competent jurisdiction to be invalid or unenforceable in any way such invalidity or unenforceability shall in no way impair or affect any other term or provision all of which shall remain in full force and effect.

## **29. Headings**

29.1 Headings contained in this Agreement are for reference purposes only and shall not affect the validity or construction of this Agreement.

## **30. Governing Law**

30.1 This Agreement shall be governed by and interpreted in accordance with English law and the Councils submit to the exclusive jurisdiction of the English courts.

## **31. Contracts (Rights of Third Parties) Act 1999**

31.1 The Councils do not intend that any term of this Agreement should be enforceable by any third party as provided by the Contracts (Rights of Third Parties) Act 1999.

## **32. Non-assignment**

32.1 None of the Councils shall be entitled to assign this Agreement or any of its rights and obligations under it without the written consent of the others (which consent the other Councils may in their absolute discretion withhold).

## **33. Disruption**

33.1 The Councils shall take reasonable care to ensure that in the execution of this Agreement it does not disrupt the operations of the other Councils, their

employees or any other third party.

#### **34. Health and Safety**

- 34.1 Each Council shall promptly notify the others of any health and safety hazards which may arise in connection with the performance of this Agreement and shall promptly notify each of the others of any health and safety hazards which may exist or arise at a Council's premises and which may affect the performance of this Agreement.
- 34.2 While on Councils premises, the Shared Workforce Team shall comply with any health and safety measures implemented by the Council in respect of employees and other persons working on those premises.
- 34.3 Each Council shall notify the others immediately in the event of any incident occurring in the performance of this Agreement on the Council's premises where that incident causes any personal injury or damage to property which could give rise to personal injury.
- 34.4 The Councils shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations, and codes of practice relating to health and safety, which may apply to employees and other persons working on Council premises in the performance of this Agreement.
- 34.5 The Councils shall ensure that their health and safety policy statements (as required by the Health and Safety at Work etc. Act 1974) are made available to each other on request.

**IN WITNESS** of which this Agreement has been executed as a Deed on the first day before written

**The Common Seal of East Lindsey District Council was fixed here in the presence of:**

**Authorised Officer**

**The Common Seal of Boston Borough Council was fixed here in the presence of:**

**Authorised Officer**

**The Common Seal of South Holland District Council was fixed here in the presence of:**

**Authorised Officer**

## SCHEDULE 1

### JOINT CHIEF OFFICER EMPLOYMENT PANEL

**Quorum** 6

**Composition**

- 2 members appointed by East Lindsey District Council and
- 2 members appointed by Boston Borough Council and
- 2 members appointed by South Holland District Council;
- Appointments shall be made in accordance with the Local Government (Committees and Political Groups) Regulations 1989;
- At least one member of the Committee shall be a member of East Lindsey District Council's Executive Board and at least one member shall be a member of Boston Borough Council's Cabinet and at least one member shall be a member of South Holland District Council's Cabinet.

**Note:** A quorum of 6 must comprise two members (including at least one Cabinet member) from each Council

No member of this Joint Committee shall be appointed to the Joint Appointment Appeals Committee

**Substitutions:** The Councils shall appoint named members who may act as substitutes

**Terms of Reference:**

**After the appointment of the Joint Chief Executive, and with the exception of the Statutory Officer appointments, which are a matter reserved for Council, the Chief Executive will have delegation to make the first appointments to the shared management structure.**

**The Committee's terms of reference will be as follows:**

- (a) The making of recommendations to the full Councils on the appointment and dismissal of the Head of the Paid Service/Chief Executive, or the taking of disciplinary action against him/her;
- (b) The appointment of any Chief Officer or Deputy Chief Officer and the dismissal of, or the taking of any disciplinary action against any Chief Officer or Deputy Chief Officer except the Section 151 Officer and Monitoring Officer;
- (c) The making of recommendations to the full Councils on the appointment and dismissal of the Monitoring Officer or Section 151 Officer, or on the taking of disciplinary action against him/her;

**Commented [SM8]:** External advice to be obtained on terms of reference/policies/procedures (and constitutional provisions) in respect of the mechanics and operation of joint committees when dealing with shared officers in a three-council partnership and whether any additional powers are needed (e.g. of suspension).

Note: In the exercise of these functions the Committee must act in accordance with the Local Authority (Standing Orders) (England) Regulations 2001 including:

No disciplinary action (other than to suspend) may be taken against the Head of the Paid Service/Chief Executive, Monitoring Officer or Section 151 Officer other than in accordance with recommendations given by a designated independent person (agreed between the authorities and the officer or alternatively nominated by the Secretary of State) in accordance with the requirements of Schedule 3 of the Local Authorities (Standing Orders)(England) Regulations 2015, the requirements of the Standing Orders of each Council in respect of the appointment and removal of senior officers, and the JNC Conditions of Service.

No offer of appointment nor notice of dismissal may be issued until notice of the proposed appointment or dismissal (as the case may be) has been given by the proper officer to each Council's executive members and no well-founded objections have been submitted within the period allowed for response.

**Place of Meeting:**

Meetings of the Joint Chief Officer Employment Panel may be held wherever it is considered to be most appropriate depending on the agenda for the particular meeting. The Chairman of the Joint Committee may give directions.

**Training:**

Members of the Joint Committee shall undertake appropriate training in selection and interviewing skills and the taking of disciplinary action.

**Chairing Joint Chief Officers Employment Panel:**

Chairmanship of the Joint Committee alternates between the three Councils for each meeting

**Servicing the Joint Committee:**

The Joint Committee may be serviced by staff from any of the Councils

**Legislation:**

This Joint Committee has been established in accordance with Section 102 of the Local Government Act 1972 (appointment of Committees)

NOTE: In exercising these functions the Joint Committee must have regard to the Local Authorities (Standing Orders) (England) Regulations 2001 as amended by the Local Authorities (Standing Orders) (England) Regulations 2015

## SCHEDULE 2

### JOINT APPOINTMENT APPEALS COMMITTEE

**Quorum** 6

**Composition**

- 4 members appointed by East Lindsey District Council and 4 members appointed by Boston Borough Council and 4 members from South Holland District Council;
- Appointments shall be made in accordance with the Local Government (Committees and Political Groups) Regulations 1989;
- At least one member of the Committee shall be a member of East Lindsey District Council's Executive Board, at least one member shall be a member of Boston Borough Council's Cabinet and at least one member shall be a member of South Holland District Council's Cabinet.

**Note:** No member shall be appointed to the Joint Appointment Appeals Committee who is a member of the Joint Chief Officer Employment Panel.

A quorum of 6 must comprise two members (including at least one Cabinet member) from each of the Councils.

**Substitutions:** The Councils shall appoint named members who may act as substitutes.

**Terms of Reference:**

- (a) Determining appeals from relevant persons in respect of decisions of the Joint Chief Officer Employment Panel relating to the appointment of Deputy Chief Executives.

**Note:** In the exercise of these functions the Committee must act in accordance with the Local Authority (Standing Orders) (England) Regulations 2001 as amended by the Local Authorities (Standing Orders) (England) Regulations 2015.

**Place of Meeting:**

Meetings of the Joint Appointment Appeals Committee may be held wherever it is considered to be most appropriate depending on the agenda for the particular meeting. The Chairman of the Joint Committee may give directions.

**Training:**

Members of the Joint Committee shall undertake appropriate training in disciplinary action.

**Chairing Joint Appointment Appeals Committees:**

Chairmanship of the Joint Committee alternates between the two Councils at each meeting

**Servicing the Joint Committee:**

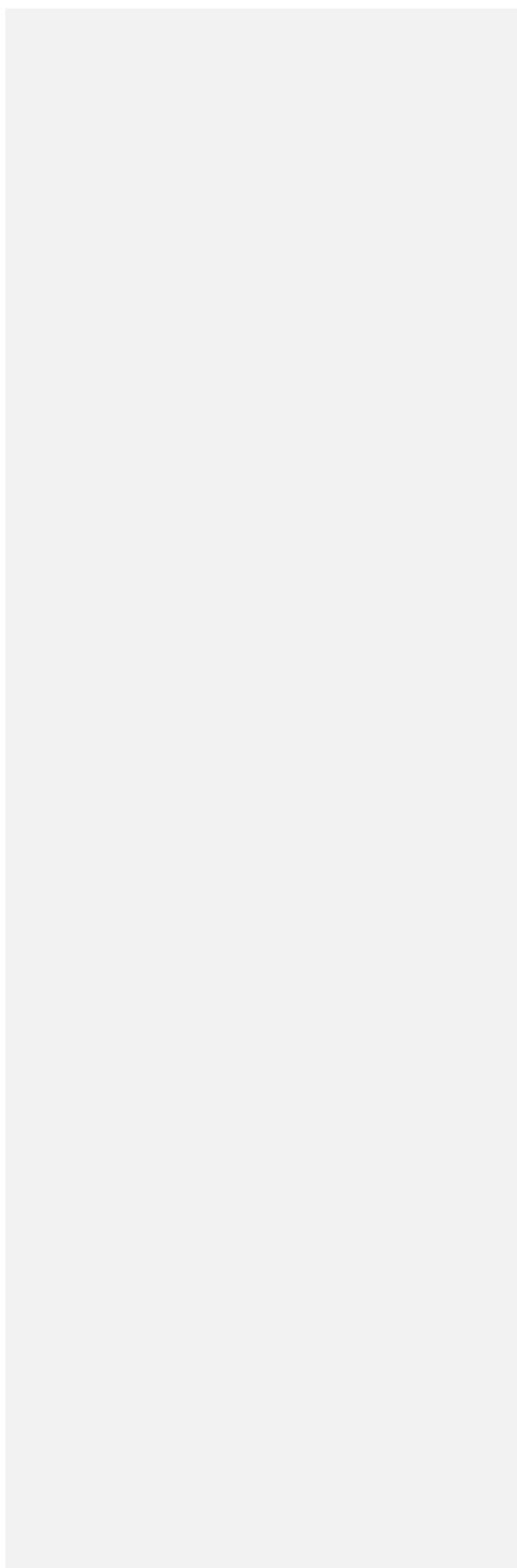
The Joint Committee may be serviced by staff from any of the Councils

**Legislation:**

This Joint Committee has been established in accordance with Section 102 of the Local Government Act 1972 (appointment of Committees)

Note: In exercising these functions the Joint Committee must have regard to the Local Authorities (Standing Orders) (England) Regulations 2001

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### SCHEDULE 3

#### East Lindsey District Council and Boston Borough Council and South Holland District Council Joint Strategy Board

##### Terms of Reference

##### Background

East Lindsey District Council and Boston Borough Council and South Holland District Council entered into a shared workforce arrangement from XXXXX. The Agreement remains in force until terminated by any of the three Councils. To support the shared workforce structure and joint working of the councils, it has been agreed that meetings of the Joint Strategy Board will be held to consider matters of interest, opportunities for joint working and any potential further joint working of the two councils.

##### Role and function

The Shared Strategy Board is an informal non-decision-making group.

The Shared Strategy Board will have the following roles and functions:

1. Monitoring the shared workforce arrangements
2. Considering proposals to withdraw from the arrangements (clause 8) and disputes (clause 11) referred to by any of the Councils
3. To identify, develop and oversee the implementation of, opportunities for the joint and mutually advantageous promotion of, and investment in, each of the authorities' areas by central and local government, other bodies and agencies (including, but not limited to the Environment Agency, the Lincolnshire Enterprise Partnership, Historic England, Highways England, The Arts Council, Sports England and Homes England), Lincolnshire County Council)
4. To consider and develop (if so minded) proposals for the expansion of the South East Lincolnshire Councils Partnership insofar as that would be consistent with the purposes of this Agreement
5. To identify those issues which arise and are likely to affect the future prosperity and democratic arrangements in both areas and project a joint voice in respect of such matters with the object of ensuring any change benefits to the greatest extent the Councils and their inhabitants
6. Advising on proposals brought forward on shared workforce arrangements and other joint working between the councils
7. To explore areas of Corporate Planning that are of mutual interest
8. To consider areas of innovation and budget efficiencies across both Councils
9. To submit proposals arising from 2 to 7 above through formal decision-making process at each council.

### **Membership/Attendance**

The Joint Strategy Board will comprise:

- All Cabinet members of each Council
- The Chief Executive

No substitutions to be allowed

Other officers and/or members may be invited to attend meetings of the Joint Strategy Board by the Chief Executive or by the Leaders of the three Councils (who must agree any such an invitation in advance of the meeting)

### **Meetings**

The Joint Strategy Board will meet on at least two occasions in each year normally in March, and September.

The meetings will be chaired alternately by the Leader of each Council.

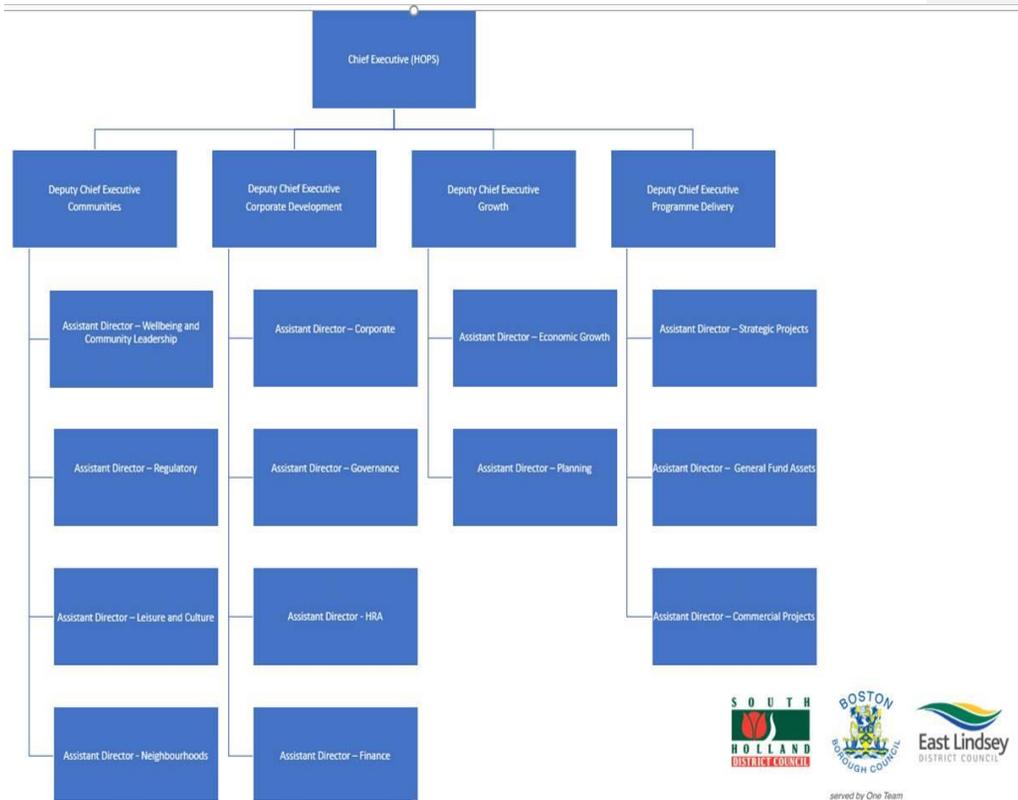
Administration for the meeting will be undertaken by the Democratic Services Team at each Council

Minutes of each meeting will be prepared by the Chief Executive within fourteen days of the meeting and will be circulated to all members of the Joint Strategy Board. Action points will be prepared by the Chief Executive and will be circulated to all shared managers.

Shared staff shall undertake all actions allocated to them or shall allocate and disseminate those actions to staff for whom they are responsible. Shared staff shall report back to the Joint Strategy Board as required by the Board.

## Schedule 4

### Proposed Shared Management Team Structure



It is the intention of the Councils that each Council has a Deputy Chief Executive lead following appointment to posts being confirmed