

**Dated 4 May 2011**

**Last amended following decisions of the City of Lincoln Council and North Kesteven District Council on 1 December 2015 and 17 December 2015 respectively.**

**(1) City of Lincoln Council (“City of Lincoln”)**

**(2) North Kesteven District Council (“North Kesteven”)**

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**Delegation and Joint Committee Agreement**

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**THIS AGREEMENT is made on**

**BETWEEN**

(1) **NORTH KESTEVEN DISTRICT COUNCIL** of The District Council Offices, Kesteven Street, Sleaford, Lincolnshire, NG34 7EF (“**North Kesteven**”)

(2) **CITY OF LINCOLN COUNCIL** of City Hall, Beaumont Fee, LINCOLN, Lincolnshire, LN1 1DB (“**City of Lincoln**”).

**BACKGROUND**

(A) North Kesteven and City of Lincoln are local authorities for the purposes of the Local Government Act 1972 and best value authorities for the purposes of the Local Government Act 1999.

(B) The Councils have agreed to establish and to participate in a joint committee (the “Joint Committee”) to facilitate the joint delivery of Revenues and Benefits functions with a view to their more economical, efficient and effective discharge.

(C) The Joint Committee will oversee the development, planned implementation and continued operation of a shared revenues and benefit service for both Councils. The delegated functions covered are attached as Schedule one to this Agreement.

Functions to remain the responsibility of individual partner authorities (“Reserved functions”) are also attached as Schedule one to this Agreement.

(D) Both Councils have entered into this Agreement in reliance on the exclusive rights given to local authorities to undertake administrative arrangements of this nature in sections 101, 102, sections 112 and 113 of the Local Government Act 1972, and sections 19 and 20 of the Local Government Act 2000 and the regulations made under these Acts; together with the general power within section 2 of the Local Government Act 2000 and the supporting provisions within section 111 Local Government Act 1972.

## **OPERATIVE PROVISIONS**

### **1. DEFINITIONS AND INTERPRETATION**

1.1 In this Agreement the following expressions have the following meanings unless inconsistent with the context:

“Assets”	all and any assets used in delivery of the Shared Services including all items of furniture, information technology (including Software), and all other equipment supplied by the Councils for use in the delivery of the Shared Services
“Asset Register”	a register of all the Assets used by the Councils in the delivery of the Shared Services
"Background IPR"	shall mean all IPR which is proprietary to a Council prior to the Commencement Date
“Commencement Date”	the date of this Agreement
“Commercially Sensitive Information”	any information in respect of which the Councils agree that disclosure would or would be likely to prejudice the commercial interests of any person
“Constitution of the Joint Committee”	the constitution set out at Schedule 2

Appendix 1: 12 June 2018 - Revenues and Benefits Joint Committee – General Data Protection Regulation Update

“Council(s)”	City of Lincoln Council and North Kesteven District Council and any other councils which are appointed as members of the Joint Committee and become parties to this Agreement
“DPA”	Data Protection Act 2018
“Distribution Formula”	the formula and principles by which the percentage contributions of each Council are determined in accordance with clause 11.9 and Schedule 4.
“Exempt Information”	any information or class of information relating to this Agreement which may fall within an exemption to disclosure under FOI Legislation
“FOI Legislation”	the Freedom of Information Act 2000 and subordinate legislation made under this and the Environmental Information Regulations 2004
“Finance Officer to the Joint Committee”	the officer designated as Finance Officer to the Joint Committee by the Councils or such other officer of the Councils as may be agreed by the Joint Committee from time to time
“Force Majeure Event”	the occurrence of (a) war, civil war, armed conflict or terrorism or (b) pressure waves caused by devices travelling at supersonic speeds which directly causes any party (“the Affected Party”) to be unable to comply with all or a material part of its obligations under this

	Agreement or (c) nuclear, chemical or biological contamination unless the source or cause of the contamination is the result of actions of the Affected Party
“GDPR”	the EU General Data Protection Regulation
“Information Request”	a request for information under FOI Legislation
“Intellectual Property Rights”	rights in patents, trade marks, service marks, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright (including rights in software), database rights, knowhow, trade secrets, confidential business information, trade or business names and any similar or analogous rights to any of the above, whether arising or granted under the Laws of England or of any other jurisdiction
“Relevant Posts”	those posts identified in Schedule 3 to this Agreement
“Relevant Staff”	staff employed in Relevant Posts
“Secretary to the Joint Committee”	the officer designated as Secretary to the Joint Committee by the Councils or such other officer of the Councils as may be agreed by the Joint Committee from time to time (also known as "Committee Secretary")

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“Section 151 Officer”	the officer designated by a local authority as the person responsible for the proper administration of its financial affairs, as required by section 151 of the Local Government Act 1972
“Service Plan(s)”	plans prepared in a format to be agreed by the Joint Committee including planned service levels of the Shared Service for a defined period including financial and other related data.
“Shared Services Policies and Procedures”	any policies and procedures which the Councils agree should apply to the Relevant Staff or some of them
“Software”	any and all computer programs in Councils source and object code form, including all modules, routines and subroutines of such programs and all source and other preparatory materials relating to them, including user requirements, functional specifications and programming specifications, ideas, principles, programming languages, algorithms, flow changes, logic, logic diagrams, orthographic representations, file structures, coding sheets, coding and any manuals or other documentation relating to them and computer generated works
“Support Services”	the services within each Council which may be required to assist the Joint Committee in the discharge of the Delegated Functions

including secretariat services to support the administration of the Joint Committee itself

- 1.2 References to any statute or statutory provision (including any EU Instrument) shall, unless the context otherwise requires, be construed as including references to any earlier statute or the corresponding provisions of any earlier statute, whether repealed or not, directly or indirectly amended, consolidated, extended or replaced by such statute or provision, or re-enacted in any such statute or provision, and to any subsequent statute or the corresponding provisions of any subsequent statute directly or indirectly amending, consolidating, extending, replacing or re-enacting the same, and will include any orders, regulations, instruments or other subordinate legislation made under the relevant statute or statutory provision.
- 1.3 The headings are inserted for convenience only and shall not affect the construction of this Agreement.
- 1.4 Words importing one gender include all other genders and words importing the singular include the plural and vice versa.
- 1.5 A reference in this Agreement to any clause, paragraph or Schedule is, except where it is expressly stated to the contrary, a reference to a clause or paragraph of or Schedule to this Agreement.
- 1.6 Any reference to this Agreement or to any other document unless otherwise specified shall include any variation, amendment or supplements to such document expressly permitted by this Agreement or otherwise agreed in writing between the relevant parties.
- 1.7 Words preceding “include”, “includes”, “including” and “included” shall be construed without limitation by the words which follow those words unless inconsistent with the context, and the rule of interpretation known as *eiusdem generis* shall not apply.



## **2 ESTABLISHMENT OF A JOINT COMMITTEE**

2.1 In exercise of their powers under sections 101(5) and 102 of the Local Government Act 1972, sections 19 and 20 of the Local Government Act 2000 and all other enabling powers the Councils hereby agree the Constitution of the Joint Committee set out in Schedule 2 which shall govern the operation of the Joint Committee, established by the Councils, to be known as The Shared Revenues and Benefits Joint Committee (and within this Agreement also referred to as “the Joint Committee”) with effect from the Commencement Date.

## **3. FUNCTIONS OF THE JOINT COMMITTEE**

3.1 The Councils agree that the Joint Committee shall be constituted and shall operate and conduct its business in accordance with the terms of this Agreement including the Constitution of the Joint Committee as set out at Schedule 2.

3.2 City of Lincoln and North Kesteven hereby agree to delegate and empower the Joint Committee to discharge on its behalf the Delegated Functions as set out in this agreement and empower the Joint Committee to arrange for the discharge of the Delegated Functions in the manner set out in this Agreement with effect from the Commencement Date.

## **4. SERVICE PLANS**

4.1 Each Council shall submit to the Finance Officer of the Joint Committee before the end of October each year, their estimate of the funding likely to be available to fund the Shared Service for the following three financial years.

4.2 The Head of Service shall prepare and submit to the Joint Committee no later than November each year an annual written Service Plan for the Shared Services for the next three financial years. This shall take into account any constraints arising from clause 4.1 above and set out inter alia the outputs to be achieved by and the resources required for the relevant Shared Service.

4.3 On receipt of a Service Plan for a Shared Service, the Joint Committee shall by the end of the calendar year, review, make such amendments as it thinks fit and approve the Service Plan together with the relevant service level agreement(s).

4.4 The Joint Committee shall be responsible for reviewing actual performance of the Shared Services against the Service Plans and service level agreement(s).

## **5. OFFICE ACCOMMODATION FOR SHARED SERVICES**

5.1 Each Council shall provide suitable working accommodation for the Relevant Staff as may be determined by the structure from time to time established by the Joint Committee for the performance of the Shared Service.

5.2 Any re-location of staff shall be undertaken in accordance with the employing Council's procedures in that regard.

## **6. SUPPORT SERVICES**

6.1 Support Services shall be provided by either Council as appropriate to support the staff and the service and as may be necessary to support the Joint Committee in the strategic management of the Shared Service.

6.2 If any Council believes that additional Support Services may be required for the effective management or performance of the Shared Service it shall consult the other Council to reach agreement as to the appropriate way of providing the additional Support Services. If the Councils are unable to agree the appropriate way of providing the additional Support Services the matter shall be dealt with in accordance with the dispute resolution procedure set out at clause 16.

## **7. ASSETS**

7.1 The Councils agree that on Commencement they will draw up an inventory of Assets ('The Asset Register') which will be kept and regularly updated by the Secretary to the Joint Committee.

## **8. COSTS AND LIABILITIES IN RESPECT OF THE JOINT COMMITTEE**

- 8.1 All losses, claims, expenses, actions, demands, costs and liabilities incurred by the Joint Committee and in fulfilling obligations under this Agreement shall be shared by the Councils on such terms as may be agreed from time to time between the Councils and in the absence of agreement pursuant to this clause, in accordance with the Distribution Formula.
- 8.2 Each Council shall (and hereby undertakes with the other Councils to) indemnify the other Council(s) against and/or contribute to and pay a share of all or any liabilities claims costs and/or expenses of or incurred by that Council arising out of or in connection with or in the course of or as a result of it being a member of the Joint Committee and fulfilling its obligations under this Agreement with the intent that the Council being indemnified and the other Councils shall be jointly liable for all such liability to claims costs and/or expenses in accordance with the Distribution Formula or as otherwise agreed **PROVIDED THAT** such indemnity on the part of the Councils shall not extend to liabilities or claims arising or costs and/or expenses incurred by reason or in consequence of any of the following on the part of the Council seeking to be indemnified that is to say breach by the Council of its obligations under this Agreement; gross negligence; gross misconduct; persistent breach of law or duty (this is to say persisted in after the same shall have been brought to the attention of the relevant Council); any act or omission known or that should have been known to the relevant Council to be contrary to proper Local Government practice or Local Government law or substantial or persistent failure (after reasonable notice) to redress performance of the duties of the relevant Council which shall not comply with the requirements or the standards of or set by this Agreement.
- 8.3 For the avoidance of doubt, such indemnity shall include matters relating to the employment and transfer of staff, losses, costs, expenses or liabilities arising from contracts with third parties and in relation to assets, by way of illustration.
- 8.4 This clause 8 shall survive the expiry or determination of this Agreement.

## **9. INSURANCE**

9.1 Each Council shall ensure that:

9.1.1 it maintains throughout the duration of this Agreement (or procures the taking out and maintenance of) adequate insurance to the levels set out in clause 9.2 and any other such insurances which may be required by law ;

9.1.2 the insurance obtained is effective no later than the date on which the relevant risk commences;

9.1.3 it is responsible for meeting and promptly pays all costs of all insurance premia for the insurances referred to in clause 9.2; and

9.1.4 upon written request it provides to the other Council making the written request:

9.1.4.1 copies of all insurance policies required under this clause;

9.1.4.2 evidence that all of the premia payable under such insurance policies have been paid in full; and

9.1.4.3 evidence that the insurances remain in full force and effect.

9.2 Each Council shall ensure that at all times an adequate level of insurance is maintained by it in respect of the provision of the Shared Service and in particular that public liability insurance of no less than £10 million is taken out and maintained from the Commencement Date and throughout the duration of this Agreement.

9.3 Where any Council allows its premises to be used to allow Relevant Staff to work on matters relating to this Agreement that Council shall ensure that adequate insurance cover is effected and maintained to cover employee liability (including vicarious liability for Relevant Staff employed by the other Council), public liability and any other insurance requirements which may accord with good practice.

9.4 Each Council warrants to the others that as at the date of this Agreement:

9.4.1 it has provided a copy of this Agreement to its insurer (in this clause 9, the

“Insurer”); and,

9.4.2 upon receipt of a notice from an Insurer to a Council that the terms of the insurances required under this clause 9 have changed or that the Insurer withdraws its insurance that Council shall promptly notify the others and use its best endeavours to forthwith obtain replacement insurance as required under this clause 9.

## **10. STAFFING**

10.1 The Host Authority shall act as the employing authority in relation to all staff employed in connection with the provision of that shared service but the terms of employment of those staff (including all matters relating to remuneration, conditions of service, recruitment and selection, disciplinary and grievance procedures, termination of employment, management and supervision) shall be matters for the Joint Committee and the Host Authority will give effect to the decisions of the Joint Committee PROVIDED that in determining all such terms and conditions of employment of any staff the Joint Committee shall ensure that these remain consistent with those of the Host Authority

10.2 The Host Authority will enter into such contracts, hold such land property and buildings and commence or defend any legal proceedings in relation to that shared service as the Joint Committee may from time to time determine and the Host Authority shall hold the benefit of all such contracts and property acquired for the benefit of the Member Authorities jointly.

10.3 The Head of Service shall be responsible for the day to day management of the Relevant Staff, including but not limited to performance management, allocation of holiday, training, personal development reviews and sickness absence issues in accordance at all times with any applicable terms and conditions of employment. For the avoidance of doubt this will include administering ill-health and disciplinary procedures, in respect of instances of long term sickness absence by a member of Relevant Staff and/or where formal disciplinary action may lead to dismissal of a

member of Relevant Staff.

10.4 Each Council shall ensure that all Relevant Staff are provided with appropriate authorisation to perform the Shared Services.

## **11. FUNDING OF THE JOINT COMMITTEE**

11.1 The Finance Officer to the Joint Committee shall prepare a base budget forecast for the Shared Service in respect of the next three financial years by reference to the resources approved within the Service Plans.

11.2 The Joint Committee shall, as soon as practicable, but in any event no later than the 10th January of each year, submit to each Council its funding requirements for the following financial year.

11.3 If any Council disagrees with the amount of their contribution payable in accordance with this clause 11 then they may pursue the dispute resolution procedure set out in clause 16 or may terminate their involvement in the Joint Committee in accordance with clause 14

11.4 Subject to paragraph 11.3 above:

a) The Councils agree that the annual funding requirement of the Joint Committee and its administration shall be shared between the Councils in accordance with the Distribution Formula set out in 11.9 below, and,

b) The Councils shall contribute funding in such sum as represents the proportion of the funding requirement for each financial year determined by the Distribution Formula

11.5 The Councils will pay such sums as they shall be liable to contribute in accordance with clause 11.4 to the Finance Officer to the Joint Committee by one payment annually.

11.6 An annual account in a form agreed by the Councils detailing the expenditure and income of the Joint Committee shall be supplied by the Finance Officer to the Joint

Committee to the parties by 30 May or as soon thereafter as is reasonably practicable in each year in respect of the previous financial year.

- 11.7 The Councils' section 151 Officers and other authorised officers shall have access at all reasonable times and with due notice to the relevant financial records of the Councils and shall be entitled to seek explanations concerning queries relating thereto.
- 11.8 The Councils' Heads of Audit and Monitoring Officers shall have right of access to all records, assets, personnel and premises, including those of partner organisations and the authority to obtain such information and explanations as they considers necessary to fulfil their responsibilities.
- 11.9 The Distribution Formula shall be as set out in Schedule 4. Such proportion shall reduce or increase proportionately in the event that other Councils become parties to this Agreement, or any of the Councils withdraw.

## **12. DURATION OF AGREEMENT**

- 12.1 This Agreement shall come into force on the Commencement Date and shall continue until terminated in accordance with the provisions of this Agreement.

## **13. VARIATION OF THIS AGREEMENT**

- 13.1 Either Council may request a variation to this Agreement by making such a request in writing to the Secretary to the Joint Committee.
- 13.2 The Secretary to the Joint Committee shall circulate the request to each Council within 10 Business Days of receipt of the request for consideration and approval by the Councils.
- 13.3 If both Councils approve the variation then the Secretary to the Joint Committee shall arrange for the preparation of an appropriate Deed of Variation to this Agreement to be prepared for execution by both Councils and such change shall only take effect upon completion of that Deed and the costs associated with the

preparation of such Deed of Variation shall be shared equally between the Councils.

13.4 If one of the Councils does not approve the change then the change to this Agreement shall not occur.

#### **14. WITHDRAWAL FROM THE JOINT COMMITTEE**

14.1 Either Council may withdraw from the Joint Committee in accordance with the following procedure:

14.1.1 Either Council which wishes to withdraw from the Joint Committee shall give not less than 18 months notice to the other Council and the Secretary to the Joint Committee of its intention to do so to be served on or before 1 September in any year. The Secretary to the Joint Committee shall consult the Council upon which such notice has been served giving due consideration to:

14.1.1.1 any loss of funding which may arise from such withdrawal to include any non-payment, clawback or repayment of such funding;

14.1.1.2 any other loss, liability, damage, claim or expense; which would be incurred by the Council upon which notice has been served by reason of such withdrawal from the Joint Committee.

14.2 Either Council wishing to withdraw from the Joint Committee undertakes as a condition of such withdrawal to make, prior to withdrawal, such reasonable payment or payments which fairly reflect the actual losses caused by or anticipated as a result of the withdrawal as shall be determined by the other Council pursuant to clauses 8, 11 and 14.1 above and no notice under this clause 14 shall take effect unless and until such payment has been made.

14.3 The Joint Committee reserves the right to recover from any party to this Agreement the costs of any claims, costs, expenses, losses or liabilities of any nature or which



have been caused by any act or omission of that party and which are discovered after the party's withdrawal from this Agreement.

14.4 Where one Council withdraws from this Agreement the Agreement shall terminate and the provisions of clause 15 shall apply.

## **15. TERMINATION OF THIS AGREEMENT**

15.1 Without prejudice to Clause 14.1 the Councils agree that this Agreement may be determined upon terms agreed by both Councils subject to the terms of this Agreement.

15.2 In the event of termination of this Agreement:

15.2.1 Any party shall supply to any other party when requested any information which the other party requires for the continuing provision by that other party of any of the Shared Services.

15.2.2 Any Intellectual Property Rights created under this Agreement shall be owned by the then parties in equal proportions; and

15.2.3 Each of the parties shall undertake to pay such reasonable payment or payments which fairly reflect the obligations of that Council pursuant to this Agreement on the basis set out in clauses 8, 11 and 14.

15.3 In the event of termination of this Agreement, all Assets held by any of the Councils for the purposes of this Agreement shall:

15.3.1 Where reasonably practicable be divided between the Councils proportionate to the average cost of the Shared Service over the previous year;

15.3.2 Be sold for the best consideration possible and the proceeds of sale divided between the Councils proportionate to the average cost of the Shared Service over the previous year, or where relevant;

15.3.3 Be retained by any Council for its own use and purposes subject to an

equitable financial settlement to the other Council as agreed between the Councils;

15.3.4 Be dealt with as otherwise agreed between the Councils; or

15.3.5 In the absence of agreement, in accordance with the dispute resolution procedure in clause 16.

15.4 It shall be the duty of all of the parties to try to minimise any losses arising from the determination of this Agreement. Amongst other issues the Councils shall use their best endeavours to offer priority redeployment to any staff then employed in the provision of the Shared Service, by taking a transfer of any of the staff to provide the Shared Service or to be redeployed more generally and/or by helping to seek alternative employment for them.

## **INTERNAL DISPUTE RESOLUTION**

16.1 The Councils (and where the context requires, the Heads of Paid Service of the Councils) undertake and agree to pursue a positive approach towards dispute resolution which seeks (in the context of this joint working arrangement) to identify a solution at the lowest operational level that is appropriate to the subject of the dispute and which avoids legal proceedings and maintains a strong working relationship between the parties.

16.2 Any dispute or difference shall in the first instance be referred to the Head of Service to resolve in liaison with the other Councils. In the event that such matters cannot be resolved within 10 Business days it shall be referred to the Operational Board and in default of agreement within a further 10 Business Days the matter shall be referred to the Heads of Paid Service. If the Heads of Paid Service are unable to resolve the matter then it shall be referred to the Joint Committee for determination.

16.3 In the event of any dispute or difference between the Councils relating to this Agreement which it has not been possible to resolve through the decision making processes of the Joint Committee (whether this may be a matter of interpretation or otherwise) the matter shall be referred to arbitration in accordance with clause 17.

## **17. ARBITRATION**

If at any time any dispute or difference shall arise between the Councils or any of them which they are not able to resolve in accordance with this Agreement the same shall be referred to and settled by a single arbitrator to be appointed by agreement by the Councils; or in default of agreement, nominated on the application of any of the Councils by the Secretary of State where the dispute or difference relates to costs and expenses arising under this Agreement, or by the President of the Law Society of England and Wales in respect of any other matter.

## **18. NOTICES**

### **18.1 Form of notice**

Any demand, notice or other communication given in connection with or required by this Agreement shall be made in writing and shall be delivered to, or sent by prepaid first class post to, the recipient at the address stated in this agreement (or such other address as may be notified in writing from time to time) or sent by facsimile transmission to the recipient to the facsimile number stated in or sent by electronic mail to the electronic mail address of the recipient stated in this agreement (or such other address as may be notified in writing from time to time).

### **18.2 Service.**

Any such demand, notice or communication shall be deemed to have been duly served:

- 18.2.1 if delivered by hand, when left at the proper address for service;
- 18.2.2 if given or made by prepaid first class post, two Business Days after being posted; or
- 18.2.3 if sent by facsimile, at the time of transmission provided that a confirmatory copy is on the same day that the facsimile is transmitted, sent by prepaid first class post in the manner provided for in clause 18.1

(Form of Notice)

18.2.4 If sent by electronic mail at the time of transmission provided in each case that if the time of such deemed service is either after 4.00 pm on a Business Day or on a day other than a Business Day, service shall be deemed to occur instead at 10.00 am on the next following Business Day.

## **19. INFORMATION AND CONFIDENTIALITY**

19.1 The Councils shall keep confidential any Commercially Sensitive Information relating to this Agreement or the Intellectual Property Rights of the parties and shall use all reasonable endeavours to prevent their employees and agents from making any disclosure to any person of any Commercially Sensitive Information relating to the Agreement or Intellectual Property Rights of the parties.

19.2 Clause 19.1 shall not apply to:

19.2.1 Any disclosure of information that is reasonably required by persons engaged in the performance of their obligations under this Agreement;

19.2.2 Any matter which a party can demonstrate is already generally available and in the public domain otherwise than as a result of a breach of this clause;

19.2.3 Any disclosure to enable a determination to be made under clause 17 (Arbitration);

19.2.4 Any disclosure which is required by any law (including any order of a court of competent jurisdiction), any Parliamentary obligation or the rules of any stock exchange or governmental or regulatory authority having the force of law;

19.2.5 Any disclosure of information which is already lawfully in the possession of the receiving party prior to its disclosure by the disclosing party;

19.2.6 Any disclosure by a party to a department, office or agency of the

Government;

- 19.2.7 Any disclosure for the purpose of the examination and certification of a party's accounts.
- 19.3 Where disclosure is permitted under clause 19.2, the recipient of the information shall be placed under the same obligation of confidentiality as that contained in this Agreement by the disclosing Council.

## **20. DATA PROTECTION**

- 20.1 The Councils shall at all times maintain a valid and up to date registration or notification under the DPA, covering any data processing to be performed in connection with this Agreement and their responsibilities as data processors and/or data controllers.
- 20.2 The Councils shall comply with the terms attached at Appendix A

## **21. SCRUTINY AND AUDIT**

- 21.1 The Councils agree that scrutiny relating to this Agreement and the Agreed Functions shall be the responsibility of each Council, the details of this are as outlined in the attached Constitution.
- 21.2 The relevant committees of each Council responsible for scrutiny and audit shall have the right to inspect any documents relating to this Agreement and to require the Joint Committee to answer any questions raised by them.
- 21.3 The accounts relating to the Shared Service and this Agreement shall be the subject of audit by any external auditor appointed by any of the Councils and shall be open to inspection by any external auditor appointed by the Audit Commission.
- 21.4 Any increased cost in undertaking any audit relating to the Shared Service and this Agreement shall be shared pro rata between the Councils on such terms as may be agreed by the Councils.

## **22. VAT**

- 22.1 The Councils agree that so far as permitted by law they shall not charge VAT on any amounts payable under the terms of this Agreement as a non-business supply arising out of an administrative event.

## **23. INTELLECTUAL PROPERTY**

- 23.1 All Intellectual Property Rights in material created by or on behalf the Councils during the provision of the Shared Services arising directly from the performance of this agreement and excluding Background IPR shall vest jointly in the Councils which will hold the Intellectual Property Rights and they shall be held on behalf of all of the parties to this agreement at the time the rights were created.

## **24. FREEDOM OF INFORMATION**

- 24.1 The parties recognise that the Councils are public authorities as defined by FOI Legislation and therefore recognise that information relating to this Agreement may be the subject of an Information Request.
- 24.2 The parties shall assist each other in complying with their obligations under FOI Legislation, including but not limited to assistance without charge, in gathering information to respond to an Information Request.
- 24.3 Any Council shall be entitled to disclose any information relating to this Agreement and the Shared Services in response to an Information Request, save that in respect of any Information Request which is in whole or part a request for Exempt Information:
- 24.3.1 the Council which receives the Information Request shall circulate the Information Request and shall discuss it with the other Council.
  - 24.3.2 the Council which receives the Information Request shall in good faith consider any representations raised by the other Council when deciding whether to disclose Exempt Information; and

24.3.3 the Council which receives the Information Request shall not disclose any Exempt Information beyond the disclosure required by FOI Legislation without the consent of the Council to which it relates.

24.4 The parties to this Agreement acknowledge and agree that any decision made by a Council which receives an Information Request as to whether to disclose information relating to this Agreement pursuant to FOI legislation is solely the decision of that Council. A Council will not be liable to any party to this Agreement for any loss, damage, harm or detrimental effect arising from or in connection with the disclosure of information in response to an Information Request.

## **25. FORCE MAJEURE**

All parties shall be released from their respective obligations in the event that a Force Majeure Event renders the performance of this Agreement not reasonably practicable whereupon all money due to any party under this Agreement shall be paid immediately and clause 13 (Variation of this Agreement) shall apply, as if both Councils in membership of the Joint Committee had agreed to determine this Agreement.

## **26. SEVERABILITY**

26.1 If at any time any clause or part of a clause or schedule or appendix or part of a schedule or appendix to this Agreement is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid or unenforceable in any respect:

26.1.1 that shall not affect or impair the legality, validity or enforceability of any other provision of this Agreement;

26.1.2 the parties shall in good faith amend this Agreement to reflect as nearly as possible the spirit and intention behind that illegal, invalid or unenforceable provision to the extent that such spirit and intention is consistent with the laws of that jurisdiction and so that the amended Agreement complies with the laws of that jurisdiction.

**27. SUCCESSORS**

This Agreement shall be binding upon and shall ensure to the benefit of each party's successors and permitted assigns.

**28. RELATIONSHIP OF PARTIES**

Each of the parties is an independent local authority and nothing contained in this Agreement shall be construed to imply that there is any relationship between the parties of partnership or principal/agent or of employer/employee. No party shall have any right or authority to act on behalf of another party nor to bind another party by contract or otherwise except to the extent expressly permitted by the terms of this Agreement.

**29. THIRD PARTY RIGHTS**

The parties agree that they do not intend that any third party which may benefit from this Agreement shall have any rights of enforcement under the terms of the Contracts (Rights of Third Parties) Act 1999.

**30. ENTIRE AGREEMENT**

This Agreement and all documents referred to in this Agreement set forth the entire agreement between the parties with respect to the subject matter covered by them and supersede and replace all prior communications, representations (other than fraudulent representations), warranties, stipulations, undertakings and agreements whether oral or written between the parties. Each party acknowledges that it does not enter into this Agreement in reliance on any warranty, representation or undertaking other than those contained in this Agreement and that its only remedies are for breach of this Agreement, provided that this shall not exclude any liability which any party would otherwise have to the other in respect of any statements made fraudulently by or on behalf of it prior to the date of this Agreement.



**31. LAW OF AGREEMENT OR JURISDICTION**

This Agreement shall be governed by the laws of England and Wales and subject to clauses 16 and 17 (Internal Dispute Resolution and Arbitration) the parties submit to the exclusive jurisdiction of the courts of England and Wales.

**IN WITNESS whereof** the parties have caused their respective Common Seals to be hereunto affixed to this deed the day and year first before written

Signed for and on behalf of )  
City of Lincoln Council )  
in the presence of: )

Signed for and on behalf of )  
North Kesteven District Council )  
in the presence of: )

## **SCHEDULE 1 – Functions to be delegated**

The following functions are delegated to the Head of Shared Revenues and Benefits by Lincoln and North Kesteven to be carried out on behalf of those Member Authorities the delegations of these services are as set out in the Constitution of each Council.

- 1.1 To take all decisions relating to the entitlement of any claimant to Council Tax Benefit/Support/Reduction, Housing Benefit or Discretionary Housing Payment, including:
  - The award of any benefit
  - Calculation of the amount of any benefit awarded
  - Suspension of benefit where a doubt arises to entitlement
  - Withdrawal of benefit on cessation of a claimant's entitlement
  - Determination of any request for the first review of any decision taken in relation to any claim for or withdrawal of benefit
  - Recovery of any benefit overpaid and Administrative Penalties
  - Sanctions in relation to benefit fraud
  - Taking action where necessary in relation to any offence or suspected offence under the Social Security Act 1997 in accordance with the Council's adopted policy.
  
- 1.2 To act on behalf of either Council on matter relating to National Non Domestic Rates/Council Tax as follows:
  - a) Making proposals for alterations to the rating/banding list
  - b) Objections to proposals to amend the rating/banding list
  - c) Agreeing to alterations to the rating/banding list
  - d) Ensuring there is appropriate representation at a Valuation Tribunal on behalf of either Council in respect of appeals against National Non Domestic Rate/Council Tax
  
- 1.3 To agree the apportionment of rateable values as determined by the Valuation Office Agency on application, in accordance with Section 44a of the Local Government Finance Act 1988.

- 1.4 To ensure appropriate representation on behalf of either Council at a Benefit Appeal Tribunal
- 1.5 To impose penalties in accordance with Section 14(2) and Schedule 3 of the Local Government Finance Act 1992 on persons failing to supply information on request.
- 1.6 To determine applications for the remittance or reduction of Council Tax payable in accordance with Section 13A of the Local Government Act 1992 and that the applicant shall have the right to have the matter referred to the Joint Committee.
- 1.7 In accordance with the provisions of Section 101 and 223 of the Local Government Finance Act 1972 to prosecute and defend on behalf of either Council, or to appear on the Councils' behalf in proceedings before a Magistrates' Court or County Court relating to all and/or any of the matters referred to in the sub-paragraphs below:
  - a) Proceedings relating to the obtaining of Liability Orders in respect of unpaid Council Taxes and National Non Domestic rates;
  - b) Proceedings relating to the collection and recovery of penalties;
  - c) Committal proceedings relating to unpaid Council Taxes and National Non Domestic rates;
  - d) Proceedings relating to the recovery of monies due to either Council either directly or under agency arrangements;
  - e) Proceedings relating to benefit fraud.
- 1.8 To determine applications for National Non Domestic rate mandatory relief in accordance with Section 43 and Section 45 of the Local Government Finance Act 1988.
- 1.9 Responding to all requests for information in accordance with the Freedom of

Information Act 2000 in respect of the functions delegated to the Joint Committee or the Head of Shared Revenues and Benefits (whether such requests are addressed to the Joint Committee or any Member Authority)

- 1.10 Responding to all requests for information in accordance with the Data Protection Act 1998 in respect of the functions delegated to the Joint Committee or the Head of Shared Revenues and Benefits (whether such requests are addressed to the Joint Committee or any Member Authority)
- 1.11 To provide data as required to other agencies – including statutory information as required by the Department for Work and Pensions.
- 1.12 Any other matter delegated to the Head of Shared Revenues and Benefits in accordance with the Constitution of each Council.
- 1.13 Administrative and other support services required to ensure that functions set out in **paragraphs 1.1 to 1.12** are carried out

The following functions are delegated to the Joint Committee by City of Lincoln and North Kesteven to be carried out on behalf of those Member Authorities the delegations of these services are as set out in the Constitution of each Council.

- 1.14 Determining management structures and any associated redundancies in relation to those employees of the Host Authority who wholly or mainly carrying out the functions set out in **paragraphs 1.1 to 1.12** above.
- 1.15 The appointment of a Head of Shared Revenues and Benefits with responsibility to report to the Joint Committee (such officer to be employed by the Host Authority) who shall be authorised to engage such employee (to be employed by the Host Authority) as may be required in connection with the functions delegated in **paragraphs 1.1 to 1.12** above and in respect of which budget provision has been made by the Joint Committee/Member Authorities

- 1.16 Awarding contracts for ICT and other supplies required by the service to carry out the functions delegated in **paragraphs 1.1 to 1.12**
  - 1.17 Any other matter delegated to the Joint Committee in accordance with Constitution of each Council
- 2 The functions delegated to the Joint Committee shall be exercised subject to any proposed expenditure being contained in the annual Revenues and Benefits budget approved by the Member Authorities and any proposed activities being within the Business Plan approved by the Member Authorities provided that:
- 2.1 the Finance Officer to the Joint Committee may agree virement in between budget heads up to a maximum of £50,000 in any year provided that the overall approved budget is not exceeded and the expenditure does not occur in future years
  - 2.2 Any virement above £50,000 will be dealt with by the Joint Committee provided that the overall approved budget is not exceeded.
- 3 The following functions and matters shall be reserved to and decided by each Member Authority from time to time; all decisions and policies on such matters shall be notified to the Joint Committee as necessary as soon as reasonably practicable after any such decision is made and the Joint Committee shall give effect to all such policies and decisions of the Member Authorities in the exercise of the functions delegated to it:
- Collection of payments of Council Tax and national non-domestic rates ('NNDR')
  - Calculation of Council tax base
  - Council tax setting
  - Collection fund accounting
  - Submission of benefit subsidy claims
  - Submission of statutory information/data – for example, as required by the Department for Work and Pensions
  - Determination of the policy for discretionary Council tax reductions and housing

payments.

- Determination of applications for discretionary NNDR relief
- Determination of applications for NNDR hardship relief
- Determination of policy for second homes
- Determination of policy for local war pension and associated schemes
- Determination of the policy for and authorisation of write off/ unrecoverability of debts.

## **SCHEDULE 2 - Constitution of the Joint Committee**

- 1 Each Council shall appoint two Members (being elected members of that Council) as its nominated Members of the Joint Committee. The Members appointed shall have full voting rights and shall be appointed in accordance with each Council's Constitution.
- 2 Each Council may nominate one or more named substitute Members to attend any meeting in place of an appointed Member from that Council, subject to notification being given to the Secretary to the Joint Committee before the start of the meeting. The Member appointed as a substitute shall have full voting rights where the member for whom they are substituting does not attend. If a Council's nominated Members attend a meeting of the Joint Committee, any named substitute may also attend as an observer but shall not be entitled to vote.
- 3 Each Member of the Joint Committee shall comply with the Code of Conduct of their Council when acting as a Member of the Joint Committee.
- 4 Each Council may remove any of its nominated Members or substitute Members of the Joint Committee and appoint a different Member or substitute to the Joint Committee by giving written notice to the Secretary to the Joint Committee.
- 5 Each Member of the Joint Committee shall serve upon the Joint Committee for as long as he or she is appointed to the Joint Committee by the relevant Council but a Member shall cease to be a member of the Joint Committee if he or she ceases to be a Member of the Council appointing him or her or if the relevant Council removes him or her as a Member of the Joint Committee.
- 6 Any casual vacancies howsoever arising shall be filled by the Council from which the vacancy arises by notice in writing sent to the Secretary to the Joint Committee.
- 7 Meetings of the Joint Committee shall be held at the venue or venues as agreed by both Councils.

- 8 The Council hosting the first meeting shall appoint one of its nominated members as Chairman and that member shall remain Chairman until the first meeting taking place after the elapse of one year from the time of his or her appointment unless he or she ceases to be a Member of the Joint Committee. On the expiry of the first Chairman's term of office as Chairman, the Council which did not appoint the first Chairman shall appoint one of its nominated members as Chairman for a period of one year from the time of his or her appointment. The same procedure shall be followed for the appointment of Chairman in subsequent years.
- 9 The Council which has not appointed the Chairman of the Joint Committee in any year shall appoint one of its nominated members as Vice Chairman.
- 10 The Joint Committee shall meet at least once every two months unless otherwise determined by the Joint Committee.
- 11 The Secretary to the Joint Committee may call additional meetings by providing at least five clear days' notice to Members of the Joint Committee, for the purposes of resolving urgent matters arising between the bimonthly meetings of the Joint Committee. The Secretary to the Joint Committee must call a meeting of the Joint Committee if at least one Member of the Joint Committee from each Council requests it or the Head of Paid Service of both Councils requests it.
12. Meetings shall be notified to Members of the Joint Committee by the Secretary to the Joint Committee.
13. The Secretary to the Joint Committee shall send electronically to all members and relevant officers of each Council the agenda for each meeting of the Joint Committee no later than five clear working days before the date of the relevant meeting. The Secretary to the Joint Committee shall send to all Members of the Joint Committee, to the Political Group Leaders of each Council and relevant officers of each Council printed copies of the agenda for each meeting of the Joint Committee no later than five clear working days before the date of the relevant



meeting.

14. The Secretary to the Joint Committee shall arrange for written minutes to be taken of each meeting of the Joint Committee and shall present them to the Joint Committee at its next meeting for approval as a correct record. If the Joint Committee confirms that the minutes contain an accurate record of the previous meeting, those minutes shall be signed by the Chairman or Vice-Chairman.
15. Meetings of the Joint Committee will commence at a time to be agreed by the Joint Committee.
16. A meeting of the Joint Committee shall require a quorum of one Member of each Council who are entitled to attend and vote. If there is a quorum of members present but neither the Chairman nor the Vice Chairman is present, the Members present shall designate one Member to preside as Chairman for that meeting.
17. Subject to the provisions of any enactment, all questions coming or arising before the Joint Committee shall be decided by a majority of the Council Members of the Joint Committee immediately present and voting thereon. Subject to the provisions of any enactment, in the case of an equality of votes the Chairman shall have a second or casting vote but before exercising this, the Chairman shall consider whether it is appropriate to defer the matter to the next meeting of the Joint Committee.
18. Any Member of the Joint Committee may request the Joint Committee to record the votes of individual Members of the Joint Committee on a matter for decision.
19. Any member of either Council who is not a Member of the Joint Committee is entitled to attend the Joint Committee but he/she shall not be entitled to vote, shall not take part in the consideration or discussion of any business, save by leave of the Chairman and comments will be recorded only on the direction of the Chairman.

20. Meetings of the Joint Committee will be open to the public except to the extent that they are excluded under paragraph 21.
21. The public may be excluded from a meeting of the Joint Committee during an item of business whenever it is likely, in view of the nature of the business to be transacted or the nature of the proceedings, that, if members of the public were present during that item, confidential information as defined in section 100A(3) of the Local Government Act 1972 or exempt information as defined in section 100I of the Local Government Act 1972 would be disclosed to them.
22. Any key decisions relevant to the Joint Committee shall be recorded in each Council's Forward Plan. Each Council may call in any decision of the Joint Committee in accordance with the scrutiny arrangements of that Council's Constitution. Should a decision of the Joint Committee be called in appropriate members of the other Council will be invited to attend the scrutiny meeting. If any decision of the Joint Committee is subject to call in by a Council, the Joint Committee shall take no action to implement that decision until call in procedure is completed.
23. The Joint Committee may delegate a function to an officer.
24. Any contractual arrangements that relate to the Shared Service will be undertaken by the host Council and that Council will apply its own financial regulations and contract procedure rules.
25. The Secretary to the Joint Committee shall provide governance and secretarial support services to the Joint Committee. The host Council shall make available committee officers to provide administrative services at the meetings of the Joint Committee.
26. The host Council shall provide legal advice and support services to the Joint Committee on such terms as may be agreed from time to time between the Councils.

27. The Finance Officer to the Joint Committee shall provide financial support services to the Joint Committee on such terms as may be agreed from time to time between the Councils.
28. The Joint Committee shall establish a working group of senior officers representing each partner authority and Shared Revenues and Benefits Service to be known as the Operational Board.
29. The members of the Operational Board shall comprise the following officers:
  - Director of Resources, City of Lincoln Council;
  - Deputy Chief Executive, North Kesteven District Council;
  - Head of Shared Revenues and Benefits Service; and,
  - such other officers of as the Joint Committee or Operational Board may decide are required.
30. The responsibilities of the Operational Board shall be to:
  - Manage the performance of the shared revenues and benefits services to be in relation to the Joint Committee Functions so as to ensure, so far as is possible and practicable, ensure the delivery of such services in accordance with the delivery plan approved by the Joint Committee and the progress and performance targets set by the Joint Committee.
  - To report to the Joint Committee meetings on the progress and performance of the services provided in connection with the performance of functions delegated to the Shared Service against the delivery plan and targets set by the Joint Committee.
  - Strive to ensure that the services provided are delivered equitably between both Councils, so far as may be practicable.
  - Prepare and submit to the Joint Committee for its approval on or before 30<sup>th</sup> November in each year an annual business plan, annual budget and annual delivery plan for the next Financial Year.
  - To report to the Joint Committee on the income and expenditure of the shared service against the approved budget.
  - To seek to ensure so far as is practicable that the functions delegated to the shared service are performed within the budget approved by the Joint Committee and to notify the Joint Committee of any material divergence from the annual budget and the reasons therefore.

Appendix 1: 12 June 2018 - Revenues and Benefits Joint Committee – General Data Protection Regulation Update

- To recommend to the Joint Committee the resources required to perform the functions delegated to the shared service to the requisite performance standards and any changes required in such resources to maintain such performance standards.
- To make appropriate recommendations to the Joint Committee on any matter of relevance to the business of the Joint Committee and of the shared service

## **SHARED REVENUES AND BENEFITS (NORTH KESTEVEN DISTRICT COUNCIL AND CITY OF LINCOLN COUNCIL)**

### **JOINT COMMITTEE TERMS OF REFERENCE**

1. To approve and monitor the Shared Revenues and Benefits Service Delivery Plan for each Financial Year.
2. To approve the annual budget for the Joint Committee and the Shared Revenues and Benefits.
3. To approve the annual report of the Joint Committee and the Shared Revenues and Benefits.
4. To monitor expenditure and income of the Joint Committee and Shared Revenues and Benefits Service against the agreed annual budget.
5. To set progress and performance targets for the functions delegated to the shared service, approve the delivery plan for the performance of such functions and monitor and review the performance of such functions against such targets and delivery plan.
6. To approve changes to staffing structures and any associated management of change procedures including redundancies.
7. To recommend to the two Councils any amendment of the terms of reference of the Committee or Constitution.
8. To appoint one or more sub-committees of the Committee (in accordance with Regulation 11(4) of the 2000 Regulations\*) as it may consider to be required and to delegate specific functions to such sub-committees. Any sub-committee shall comprise a majority of Joint Committee Members (one of whom shall chair the subcommittee) but may include non-Joint Committee Members or officers of the Committee or of the Shared Revenues and Benefits Service and the Committee shall determine terms of reference of each sub-committee, the term of office of each sub-committee member and the quorum for meetings of each sub-committee and the financial limits within which it shall operate.
9. To delegate specific functions to officers of the Committee or of the Shared Revenues and Benefits Service in accordance with the provisions of section 101 of the Local Government Act 1972 and Regulation 11(4) of the 2000 Regulations\*.

\* “The 2000 Regulations” means the Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2000 as amended by the Local Authorities (Arrangements for the Discharge of Functions) (England) (Amendment) Regulations 2001

### **SCHEDULE 3 - Relevant Posts**

#### **North Kesteven.**

#### **City of Lincoln**

Revenues Assistant	Benefits Manager
Customer Services Advisor	Benefits Team Leader
Customer Services Advisor	Benefits Team Leader
Customer Services Advisor	Benefits Subsidy & Systems Officer
Customer Services Advisor	Benefits Appeals & Overpayments Officer
Customer Services Advisor	Benefits Recovery & Appeals Officer
Customer Services Advisor	Senior Benefits Investigations Officer
Customer Services Advisor	Benefits Investigation Officer
Customer Services Advisor	Benefits Training Officer
Revenues Manager	Benefits Officer
Snr Benefit Officer Assessment	Benefits Officer
Revenues Assistant	Benefits Officer
Revenues Assistant	Benefits Officer
Revenues Assistant	Benefits Officer
Revenues Assistant	Benefits Officer
Benefits Officer	Benefits Officer
Benefits Officer	Benefits Officer
Revenues Assistant	Benefits Officer
Benefits Officer	Benefits Officer
Benefits Officer	Benefits Officer
Benefits Officer	Benefits Officer
Welfare Advisor	Benefits Officer
Revenues Assistant	Benefits Officer
Revenues Officer	Benefits Officer
Senior Benefit Officer Support	Benefits Officer
Benefits Officer	Benefits Officer
Principal Housing Benefits Officer	Benefits Officer
Revenues Officer	Benefits Officer
Benefits Team Leader	Benefits Officer
Benefits Officer	Benefits Clerical Assistant
Welfare Advisor	Benefits Clerical Assistant
Welfare Advisor	Benefits Advice Assistant
Revenues Assistant	Benefits Advice Assistant
Benefits Team Leader	Benefits Advice Assistant
Revenues Assistant	Benefits Advice Assistant
Senior Revenues Officer	Benefits Advice Assistant
Benefits Officer	Benefits Advice Officer-Surestart -
Revenues Assistant	Benefits Assessor
Senior Revenues Officer	Benefits Support Team Leader
Revenues Assistant	Benefits Visiting Officer
Senior Fraud Investigation Officer	Revenues Manager
Investigation Assistant	Council Tax Team Leader
Fraud Investigation Officer	Rating and Income Team Leader
Welfare Advisor	Revenues Officer
Benefits Officer	Revenues Officer
Assistant Revenues Manager	Revenues Assistant (Council Tax)
Revenues Officer	Revenues Assistant (Council Tax)

Appendix 1: 12 June 2018 - Revenues and Benefits Joint Committee – General Data  
Protection Regulation Update

Revenues Assistant	Revenues Assistant (Council Tax)
Revenues Officer	Revenues Assistant (Council Tax)
Benefits Officer	Revenues Assistant (Council Tax)
Benefits Officer	Revenues Assistant (Council Tax)
Welfare Advisor	Revenues Assistant (Council Tax)
	Revenues Assistant (Council Tax)
	Revenues Assistant (Rating and Income)
	Revenues Assistant (Rating and Income)
	Revenues Assistant (Rating and Income)
	Revenues Visiting Officer

**SCHEDULE 4 - Distribution Formula**

Agreed and set out in financial monitoring reports to the Shared Revenues and Benefits Joint Committee.