SERVICE LEVEL AGREEMENT

THIS SERVICE LEVEL AGREEMENT dated the day of 2009
is made by and between:

(1) Blackburn with Darwen Borough Council of Town Hall, King William Street, Blackburn, Lancashire BB1 7DY ('Blackburn with Darwen'); and

(2) Burnley Borough Council of Town Hall, Manchester Road, Burnley, BB11 1JA ('Burnley').

RECITALS

(A) The Parties wish to work together to provide a single shared service for the delivery of the Building Control Service in the Joint Area.

(B) A Pennine Lancashire Building Control Joint Committee has been formed for the purposes of sections 101 and 102 of the Local Government Act 1972 and all other enabling powers.

(C) The purpose of the Service Level Agreement is to set out the arrangements for the Building Control Service.

(D) The Service Level Agreement must be read in conjunction with and subject to the Constitution and the Agreement.

NOW IT IS AGREED as follows:

1 Definitions

In the Service Level Agreement, unless the context otherwise requires, the following terms shall have the meanings given to them below:

“Agreement” means the Agreement dated 2009 and made between Blackburn with Darwen and Burnley for the provision of a
“Aims and Objectives” means the agreed aims and objectives of the Joint Committee as set out in the Constitution and the Agreement and which may be amended from time to time.

“Building Control Authority” means Blackburn with Darwen and/or Burnley.

“Building Control Functions” means all those building control functions that are the responsibility of Blackburn with Darwen’s Executive and/or Burnley’s Executive.

“Building Control Service” means all the building control services provided by the Joint Committee pursuant to the provisions of the Constitution, the Agreement and the Service Level Agreement.

“Building Regulations” has the meaning in Section 122 of the Building Act 1984.

“Buildings Open to Access Policy Document” means the document setting out the policy on buildings open to access, as agreed by the Parties.

“Business Plan” means a business plan prepared from time to time by the Joint Committee in accordance with paragraph 9 of the Constitution and the Agreement outlining the priorities of Blackburn with Darwen and Burnley in order to achieve the Aims and Objectives and which has been approved and adopted by the Joint Committee in accordance with the Constitution and the Agreement.

“Clear Day” means for the purposes of the Service Level Agreement a complete day and it shall not include the date upon which notification is made or received under the Service Level Agreement or any intervening Sunday, Bank or Public Holiday.

“Commencement Date” means 3rd September 2009.

“Confidential Information” means (1) information provided in documentary form or electronically and which at the time of provision
is marked to show that it is imparted in confidence,

(2) information imparted orally and which at the time of provision was said to be imparted in confidence.

“Constitution” means the Constitution for the provision of a single shared service for the delivery of the Building Control Service in the Joint Area.

“Dangerous Buildings Policy Document” means the document setting out the policy on dangerous buildings, as agreed by the Parties.

“Enforcement Policy Document” means the document setting out the policy on enforcement, as agreed by the Parties.


“Facilities” means working space, computer equipment, access to and use of the internet and computer network, telecommunications systems, etc.

“Financial Arrangements” means the operational and financial details including any amendment from time to time agreed in writing between the Parties concerning the provision of the Building Control Service by the Joint Committee in the Joint Area, as set out in Schedule 2 to the Service Level Agreement.

“Host Authority” means Blackburn with Darwen.

“Information” means information whether of a technical, commercial or other nature whatsoever provided directly or indirectly by the Parties in documentary form, electronically or orally.

“Joint Area” means all of the administrative areas of Blackburn with Darwen and Burnley as one whole.

“Joint Arrangements” means the Pennine Lancashire Building Control Joint Committee.
“Joint Committee” means the Pennine Lancashire Building Control Joint Committee.

“Parties” Blackburn with Darwen and Burnley, and 'Party' shall mean either one of them.

“Service Level Agreement” means this Service Level Agreement.

2 Building Control Service

2.1 Blackburn with Darwen agrees from the Commencement Date to act as Host Authority for the provision of the Building Control Service and the exercise of the Building Control Functions.

2.2 Blackburn with Darwen and Burnley agree to make payments in accordance with the Financial Arrangements, subject to the Constitution, the Agreement and the Service Level Agreement.

2.3 The Building Control Service shall be delivered efficiently at all times to achieve Value for Money and to secure continuous improvement in the provision of the Building Control Service in the exercise of the Building Control Functions.

3 Variation of the Building Control Service

3.1 The Building Control Service may be varied as agreed by the Parties from time to time in writing, and the Financial Arrangements shall be correspondingly amended to reflect the variation.

4 ICT Assistance and Support

4.1 Each Party shall provide Facilities in the provision of the Building Control Service, including all technical and software assistance and support to the other Party as may be necessary for the proper performance of the Building Control Service and the exercise of the Building Control Functions.

4.2 A Party responding to a request for assistance and support shall do so within a reasonable time.

5 Auditing and Accounting Policies

5.1 The auditors of Blackburn with Darwen shall be appointed on behalf of the Joint Committee to regulate and inspect the financial arrangements in respect of the Joint Arrangements.

5.2 Blackburn with Darwen shall operate open book accounting policies and procedures and shall comply with document retention policies on behalf of the Joint Committee and shall on request and within a reasonable time afford
Burnley or their respective auditors and/or professional advisers such access to those records as may be required by them in connection with the Joint Arrangements.

5.3 The Parties’ Members and officers shall co-operate fully with any request made by the auditors and/or their professional advisers.

6 Financial Arrangements

6.1 The Financial Arrangements shall be as set out in Schedule 2.

6.2 All invoices shall be paid within 30 days of the date of an invoice in respect of the Building Control Service.

6.3 Contributions, fees and all other monies shall be calculated as specified in Schedule 2 and shall only be varied with the prior written agreement of the Parties.

6.4 No other monies shall be payable for the provision of the Building Control Service except as otherwise agreed in writing by the Parties.

6.5 All fees shall be exclusive of VAT and any other applicable taxes, which shall be charged at the appropriate rate.

6.6 The Financial Arrangements shall be at all times fair and equitable between the Parties.

6.7 In the event of one or more local authorities joining the Joint Committee, the Financial Arrangements shall be adjusted in a fair and equitable manner.

7. The Parties’ Obligations

7.1 The Parties shall at all times act in good faith and shall:

7.1.1 co-operate with each other;

7.1.2 provide each other upon reasonable notice with such information and documentation as is reasonably required.

8 Record Keeping

8.1 The Parties shall keep records of all activities in connection with the provision of the Building Control Service.

8.2 Each Party shall provide upon reasonable notice access to Information, including computer systems or other methods of recording Information and/or
copies of Information, as is reasonably required.

9 Confidentiality

9.1 Each Party shall treat all Confidential Information belonging to the other Party as confidential and safeguard it accordingly; and shall not disclose any Confidential Information belonging to the other Party to any other person without the prior written consent of the other Party, except to such persons and to such extent as may be necessary for the performance of the Constitution, the Agreement and the Service Level Agreement or except where disclosure is otherwise expressly permitted by the Constitution, the Agreement and the Service Level Agreement.

9.2 Each Party shall take all necessary precautions to ensure that all Confidential Information obtained from the other Party in connection with the Building Control Service:

9.2.1 Is given only to such staff, auditors, professional advisers or consultants engaged to advise it in connection with the Constitution, the Agreement and the Service Level Agreement,

9.2.2 is treated as confidential and not disclosed (without prior approval) or used by staff, auditors, professional advisers or consultants otherwise than for the purposes of the Agreement, the Constitution and the Service Level Agreement.

9.3 The provisions of clauses 9.1 to 9.2 shall not apply to any Confidential Information received by one Party from the other which:

9.3.1 is or becomes public knowledge (otherwise than by breach of this Clause), or

9.3.2 was in the possession of the receiving Party without restriction as to its disclosure before receiving it from the disclosing Party, or

9.3.3 is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure, or

9.3.4 is independently available without access to the Confidential Information, or

9.3.5 must be disclosed pursuant to a statutory or legal obligation placed upon the disclosing Party, including any requirements for disclosure under the Freedom of Information Act 2000.

9.4 Nothing in this Clause shall prevent either Party from:

9.4.1 disclosing any Confidential Information for the purpose of the examination and certification of their accounts, or
9.4.2 disclosing any Confidential Information obtained from the other Party to any government department or agency.

10 Warranties and Indemnities

10.1 Each Party warrants and represents to the other Party that it:

10.1.1 shall discharge its obligations with all due skill, care and diligence, and

10.1.2 has the full capacity and authority and all necessary consents to enter into and perform the Service Level Agreement and that the Service Level Agreement shall be duly executed.

10.2 Each Party indemnifies the other Party for a failure to discharge its obligations with all due skill, care and diligence.

11 Termination

11.1 Without affecting its other rights under the Service Level Agreement either Party may terminate the Service Level Agreement forthwith by written notice to the other Party if a fundamental breach or breach of a fundamental term is committed which is incapable of being reasonably remedied.

11.2 Either Party shall be entitled, without prejudice to any other rights and remedies it may have, to terminate the Service Level Agreement if the other Party commits a breach of any of the terms and conditions of the Service Level Agreement which is capable of being remedied, but fails to remedy the breach within thirty days of receipt of a written notice giving particulars of the breach and requiring it to be remedied.

11.3 The termination of the Service Level Agreement shall not affect accrued rights and remedies and each Party shall be and remain liable to perform all outstanding liabilities.

11.5 Upon termination of the Service Level Agreement each Party shall furnish to the other Party all Confidential Information that it may have obtained or prepared prior to termination.

12 General

12.1 Force majeure

Neither Party shall have any liability under or be deemed to be in breach of the Service Level Agreement for any delays or failures in performance of the Service Level Agreement which result from circumstances beyond the
reasonable control of that Party. The Party affected by such circumstances shall promptly notify the other Party in writing when such circumstances cause a delay or failure in performance and when they cease to do so. If such circumstances continue for a continuous period of more than six months, either Party may terminate the Service Level Agreement forthwith by written notice to the other Party.

12.2 Variations

12.2.1 Either Party may request at any time a variation to the terms of the Service Level Agreement and shall provide written proposals for consideration by the other Party. The Parties shall negotiate on any such proposals in good faith and with a view to accommodating all reasonable requirements. No variation to the Service Level Agreement shall take effect unless it is in writing and signed by the duly authorised representatives of each of the Parties.

12.3 Assignment

Neither Party shall assign any or all of its rights and obligations under the Service Level Agreement without the prior written consent of the other Party.

12.4 Representations

12.4.1 The Parties confirm that they have not entered into the Service Level Agreement on the basis of any representation that is not expressly incorporated into the Constitution, the Agreement or the Service Level Agreement.

12.4.2 Nothing in the Service Level Agreement excludes liability for fraud or other criminal activity.

12.5 Waiver

12.5.1 No failure or delay by either Party in exercising any right, power or privilege under the Service Level Agreement shall impair the same, nor operate as a waiver of the same, nor shall any single or partial exercise of any right, power or privilege preclude any further exercise of the same or the exercise of any other right, power or privilege.

12.5.2 The rights and remedies provided in the Service Level Agreement are cumulative and not exclusive of any rights and remedies provided by law.

12.6 Agency, etc.

12.6.1 The Service Level Agreement shall not constitute or imply any agency, partnership, joint venture or other relationship between the Parties other than the contractual relationship expressly provided for in the Service Level
Agreement.

12.6.2 Neither Party shall have, nor represent that it has, any authority to make any commitments on the other Party's behalf.

12.7 Severance

If any provision of the Service Level Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from the Service Level Agreement and rendered ineffective as far as possible without modifying the remaining provisions of the Service Level Agreement and shall not in any way affect any other circumstances of or the validity or enforcement of the Service Level Agreement.

12.8 Interpretation

In the Service Level Agreement except where the context otherwise requires:

12.8.1 words importing any gender include every gender;

12.8.2 words importing the singular number include the plural number and vice versa;

12.8.3 words importing persons include firms, companies and corporations and vice versa;

12.8.4 any obligation on any Party not to do or omit to do anything is to include an obligation not to allow that thing to be done or omitted to be done;

12.8.5 headings are for convenience of reference only;

12.8.6 any reference to any enactment, order, regulation or other similar instrument shall be construed as a reference to the enactment, order, regulation or other similar instrument (including any European Union instrument) as amended, replaced, constituted or re-enacted;

12.8.7 any reference to the Service Level Agreement shall include any approved amendment;

12.8.8 where the word 'including' is used in the Service Level Agreement, it shall be understood as meaning 'including without limitation';

12.8.9 where there is a contradiction between the Service Level Agreement, and the Constitution and/or the Agreement, the Constitution and/or the Agreement shall apply.

12.9 Notices
12.9.1 All notices and/or communications in connection with the Service Level Agreement shall be in writing addressed to the other Party at the address shown at the beginning of the Service Level Agreement and shall be delivered by hand, posted first class post or special delivery post.

12.9.2 The notice shall be deemed to have been duly communicated if delivered by hand when left at the postal address for service or if sent pre-paid first class post or special delivery post, 48 hours after being posted.

12.10 Third parties

The Service Level Agreement is not intended to create any rights under the Contracts (Rights of Third Parties) Act 1999 which are enforceable by any person who is not a party to the Service Level Agreement (other than their permitted successors) and the rights of any third party under the said Act are hereby expressly excluded.

12.11 Governing Law

12.11.1 The Service Level Agreement shall be governed by English law in every particular including formation and interpretation and shall be deemed to be made in England.

12.11.2 Any proceedings arising out of or in connection with the Service Level Agreement may be brought in any Court of competent jurisdiction in England and Wales.

12.12 Corruption

The Parties shall comply with the Prevention of Corruption Acts 1889 to 1916 and all relevant legislation.

12.13 Discrimination

The Parties shall not unlawfully discriminate either directly or indirectly on such grounds as race, colour, ethnic or national origin, disability, sex or sexual orientation, religion or belief, or age and without prejudice to the generality of the foregoing the Parties shall not unlawfully discriminate within the meaning or scope of the Sex Discrimination Act 1975, the Race Relations Act 1976, the Equal Pay Acts 1970 and 1983, the Disability Discrimination Act 1995, the Employment Equality (Sexual Orientation) Regulations 2003, the Employment Equality (Religion or Belief) Regulations 2003, the Employment Equality (Age) Regulations 2006, the Human Rights Act 1998 and all other relevant legislation.

12.14 Dispute Resolution
12.14.1 Any dispute under the Service Level Agreement shall in the first instance be referred to the Chief Executives of the Parties who shall meet to consider the dispute and use all reasonable endeavours to resolve matters as soon as reasonably practicable.

12.14.2 The Parties shall use all reasonable endeavours to reach a negotiated resolution through the above dispute resolution procedure. The specific format for such resolution shall be left to the reasonable discretion of the Parties but may include preparation and submission of statements of fact or of position.

12.14.3 If the dispute is not resolved at this meeting and only if each Party agrees at such a meeting or within fifteen Clear Days of its conclusion the Parties may request that the dispute be referred to a mediator to be agreed between them.
SCHEDULE 1
Building Control Service

The Parties are Building Control Authorities with responsibilities and powers in relation to the Building Control Service under Section 91 of the Building Act 1984 and all other related legislation, including the enforcement of Building Regulations in the Joint Area, in relation to the exercise of Building Control Functions.

1. **BUILDING ACT 1984**

1.1 Pre-submission advice shall be freely given, including attendance at Development Team Meetings as requested.

1.2 As a minimum, applications submitted shall be processed within the prescribed legal timescales, but the aim shall be to improve on those timescales in line with the Business Plan.

1.3 A same day inspection service shall be provided where the request is made before 10.00 a.m. on the day.

1.4 Formal enforcement action, including court action, to ensure compliance with Building Regulations shall be taken in accordance with the Enforcement Policy Document.

2. **DANGEROUS BUILDINGS – SECTIONS 77 AND 78 OF THE BUILDING ACT 1984**

2.1 Reports of dangerous structures shall be responded to as a matter of urgency, and action, including enforcement action, shall be taken to deal with any danger found in accordance with the Dangerous Buildings Policy Document.

3. **DEMOLITION – SECTIONS 80 AND 81 OF THE BUILDING ACT 1984**

3.1 Notifications of demolition work received under Section 80 of the Building Act 1984 shall be dealt within prescribed timescales, but the aim shall be to improve on those timescales in line with the Business Plan.

3.2 Notices under Section 81 of the Building Act shall be served when required.

3.3 Enforcement action shall be taken in accordance with the Enforcement Policy Document.

4. **NON-DOMESTIC BUILDINGS OPEN TO ACCESS – SECTION 29 OF THE LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982**
4.1 Reports of non-domestic buildings which are open to access shall be responded to urgently, and timely action shall be taken to deal with such situations in accordance with the Buildings Open to Access Policy Document.

5. MISCELLANEOUS

5.1 The officers of the Building Control Service shall contribute as required to corporate initiatives undertaken to improve the Building Control Service to their customers.

5.2 Liaison shall be maintained with all other parts of the Building Control Authority, for example, Development Management / Development Control, Planning, Policy, Environment, Housing, Property Services and Streetscene, in the interests of maintaining quality Services to customers.

5.3 The officers of the Building Control Service shall continue to maintain records to support the provision of search information.
SCHEDULE 2
Financial Arrangements

Contributions

1.1 The contributions to be made by each party in the financial year 2009/10, towards the net running cost of Pennine Lancashire Building Control, is in accordance with the approved cost model and initially estimated at £130,324 for Blackburn with Darwen and £71,729 for Burnley, subject to the Commencement Date and actual out-turn.

1.2 From the financial year 2010/11 onwards the contributions to be made by each party, towards the net running cost of Pennine Lancashire Building Control, is in accordance with the approved cost model and initially set at 64.5% for Blackburn with Darwen and 35.5% for Burnley. Variations for budget reductions or increases are subject always to approval by the Joint Committee in each financial year.

1.3 Inflation will be applied to the full year costs each financial year. Each party must provide to Blackburn with Darwen, no later than the 30th November, their following year budget requirement for the provision of Support Costs and Shared services to Pennine Lancashire Building Control, as outlined in the approved cost model. Draft budgets for the following financial year will be prepared by Blackburn with Darwen, in accordance with the service delivery and budgetary requirements of Pennine Lancashire Building Control, and each party will be notified of their estimated annual contribution by no later than the 31st December, in order to allow for inclusion in their own budget setting process.

1.4 Final approved budgets and contributions towards the following financial years net running cost of Pennine Lancashire Building Control, will be disclosed to each party in accordance with the budget timetable of Blackburn with Darwen, and in no event later than 7 days following approval by Full Council.

1.5 Each party will be permitted to request further clarification of figures and assumptions used in both the Draft and approved budgets of Pennine Lancashire Building Control, provided the requests are made in writing and deemed to be reasonable.

1.6 From 2010/11 onwards each Party shall pay to Blackburn with Darwen, on the 1st April, 1st July, 1st September and 1st January of each financial year, a sum equal to one quarter of its approved annual contribution to Pennine Lancashire Building Control.

1.7 Each party that receives income on behalf of Pennine Lancashire Building Control
shall hand those sums over to Blackburn with Darwen no later than the 15th day of the month following receipt, and each remittance must be supported by a fully detailed financial breakdown, from the source collection system. Income returns showing income collected by each Party should be submitted weekly on the Monday following each week-end to advise of sums that will be paid to Blackburn with Darwen in the following month.

1.8 VAT is not chargeable and will not be payable on any payments made between the Parties.

1.9 The Parties are not permitted to make or levy any charges in relation to participation in, or administration of the Service Level Agreement, unless otherwise agreed as part of the approved cost model.

1.10 Blackburn with Darwen shall be the main provider to Pennine Lancashire Building Control for all its Central Support and Shared services, as outlined in the approved cost model, for which they will be fully reimbursed for all approved budgets and costs, provided they are deemed reasonable.

1.11 Burnley shall provide Pennine Lancashire Building Control with Central Support services, as outlined in the approved cost model, for which they will be fully reimbursed for all approved budgets and costs, provided they are deemed reasonable.

Monitoring

2.1 Blackburn with Darwen shall issue to the Parties a schedule of dates for monitoring reports to be issued throughout the year. The monitoring report will be issued every calendar month in accordance with this schedule.

2.2 Budget monitoring reports will show the combined income position for Pennine Lancashire Building Control, provided income is remitted to Blackburn with Darwen in accordance with the agreed timetable set out in paragraph 1.7.

2.3 Monitoring statements will show summary expenditure in relation to approved budgets and actual income recovered, and provide projected outturn position based on projected costs for the financial year and contributions to be received. A sample monitoring report has been provided.

2.4 Each party may request further information to enable it to verify expenditure and income recorded in the monitoring reports of Pennine Lancashire Building Control, provided the requests are made in writing and deemed to be reasonable.

2.5 Based on regular monitoring reports, the Joint Committee will consider the financial operation of Pennine Lancashire Building Control regularly with a view to addressing any problems that the Parties identify may exist or could potentially
arise, including predicted surpluses or deficits.

2.6 At each financial year end, any overall deficit on the accounts for the provision of the Services may require additional contributions to be made by the Parties, subject to availability of retained reserves generated in previous years and subject to the approval of the Joint Committee.

Financial Year End

3.1 Blackburn with Darwen shall issue to the Parties a timetable of dates for the Closure of Accounts process on or before 31st March each year.

3.2 Blackburn with Darwen will calculate the overall financial position for the financial year and it agrees to report the draft position to the Parties within five weeks following each financial year end, with confirmation after final accounts are closed, in accordance with the pre-disclosed timetable.

3.3 Final calculations of any surplus or deficit arising will be provided by Blackburn with Darwen after final accounts are closed, in accordance with the pre-disclosed timetable.

3.4 Where there is an overall deficit at any financial year end, which cannot be met from accumulated surpluses in previous years, each Party will contribute towards a share of that deficit on the basis of the agreed contributions set out in paragraph 1.2.

3.5 The revenue account will be operated as a ring fenced account. Where there is an overall surplus at any financial year, this shall be carried forward to be utilised towards future deficits or liabilities or to be distributed to each Party pro rata, or used to fund additional expenditure that may be required for the provision of the Building Control Service subject to the approval of the Joint Committee.

3.6 Each party must disclose to Blackburn with Darwen, within the framework set out in their Closure of Accounts timetable, the actual sums due from Pennine Lancashire Building Control for the provision of Central Support and Shared services, as outlined in the approved cost model.

3.7 Each party may request further information to enable it to verify expenditure and income recorded in the final accounts of Pennine Lancashire Building Control, provided the requests are made in writing and deemed to be reasonable.

Income

4.1 The Joint Committee will set Fees and Charges on behalf of each party, having had due regard to the service delivery and budgetary constraints of Pennine Lancashire Building Control, economic factors and external competition etc.

4.2 Each party will be notified of the following years Fees and Charges tariffs by no later
than the 31st. December, so that they may be incorporated within their own budget setting process.

4.3 The cost of Bad Debts written off will be incorporated within the revenue accounts of Pennine Lancashire Building Control, and not be applied against the party within whose boundaries the debt was originally incurred.

Assets

5.1 Each party shall maintain an inventory of all Assets being transferred into Pennine Lancashire Building Control, herein called the Asset Register.

5.2 Any changes to the Asset Register shall be recorded and monitored by the Joint Committee, in conjunction with the financial procedures adopted by each party.
IN WITNESS whereof the Parties have caused this Service Level Agreement to be executed as a Deed the day and year first before written.

THE COMMON SEAL OF
BLACKBURN WITH
DARWEN BOROUGH
COUNCIL was hereunto
affixed in the presence of :

Name :

Authorised Officer :

THE COMMON SEAL OF
BURNLEY BOROUGH
COUNCIL was hereunto
affixed in the presence of :

Authorised Signatory

Authorised Signatory