

**Dated**

**2010**

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## **Partnering Agreement**

relating to

arrangements to implement a sub-regional choice based letting scheme in Cumbria

between

**South Lakeland District Council**

**Carlisle City Council**

**Copeland Borough Council**

**Eden District Council**

**Allerdale Borough Council**

**Barrow Borough Council**

**Home North West**

**Two Castles**

**Eden Housing**

**South Lakes ALMO**

**Riverside**

**Impact Housing**

**Derwent & Solway**

**and Accent Housing**

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Reference: op/4sd93/1



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**This partnering agreement** is dated

**2010**

## **Parties**

- (1) South Lakeland District Council (**SLDC**)
- (2) Carlisle City Council
- (3) Eden District Council
- (4) Allerdale Borough Council
- (5) Barrow Borough Council
- (6) Home North West a [*type of legal entity*] with registered number [*number*] and its registered address at [*address*]<sup>1</sup>
- (7) Two Castles a [ ] with registered number [ ] and its registered address at [ ]
- (8) Eden Housing a [ ] with registered number [ ] and its registered address at [ ]
- (9) South Lakes ALMO a [ ] with registered number [ ] and its registered address at [ ]
- (10) Riverside a [ ] with registered number [ ] and its registered address at [ ]
- (11) Impact Housing a [ ] with registered number [ ] and its registered address at [ ]
- (12) Derwent & Solway a [ ] with registered number [ ] and its registered address at [ ]
- (13) Accent Housing a [ ] with registered number [ ] and its registered address at [ ]

## **Background**

- (A) Being mindful of their duties and responsibilities to secure best value within the meaning of Section 3(1) of the Local Government Act 1999 the Parties have identified a need in their respective administrative areas for a strategic project to implement and manage a sub-regional choice based letting scheme in accordance with the Government's strategy for social housing, which includes procuring a web-based information system.

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<sup>1</sup> We need to insert the details of each body - full title, type of legal entity, address and registered number where relevant

- (B) In order to progress the development of the Project a Project Board [shall be/has been] established by the Parties. [In addition to the DCLG Funding that has already been received, the Parties have also agreed to resource the development of the Project in accordance with Appendix 4.]
- (C) An outline of the objectives and requirements of the Project is set out at Schedule 1.
- (D) The Parties have agreed to enter into this Partnering Agreement (this “Agreement”) to confirm the scope and operation, and their respective contributions towards the delivery of the Project and their intention to progress the Project in accordance with this Agreement.
- (E) The Parties enter into this Agreement pursuant to their respective powers conferred by Section 111 Local Government Act 1972, the Local Authorities (Goods and Services Act) 1970 and Section 2 of the Local Government Act 2000, the Housing Act 1996, the Homelessness Act 2002 and all other enabling powers now vested in them.

## Agreed terms

### 1 Interpretation

- 1.1 The definitions and rules of interpretation in this clause apply in this Agreement.

**"Allocation Scheme"** means the criteria against which applicants are assessed when bidding for social housing via the choice based letting scheme;

**"Approved Action"** means an action or activity undertaken after the date of this Agreement by a Party in connection with and for the purposes of the Project in accordance with the Project Objectives which is approved for the purpose of this Agreement by the [unanimous/majority] decision of the Project Board and/or each of the Parties (as the case may be) or otherwise authorised by the terms of this Agreement;

**"Approved Contract"** means a contract entered into after the date of this Agreement by a Party in connection with and for the purposes of the Project in accordance with the Project Objectives which is approved for the purpose of this Agreement by a [unanimous/majority] decision of the Project Board and/or each of the Parties (as the case may be);

**"Business Day"** means any day excluding Saturdays, Sundays and public and statutory holidays in England;

**"Commencement Date"** means the date of this Agreement;

**"Contractor"** means the contractor engaged by the Parties with a [unanimous/majority] approval of the Project Board to provide and manage the web-based system for use with a sub-regional choice based letting scheme to be implemented and developed in accordance with this Agreement;

**"DCLG"** means the Department for Communities and Local Government or any successor department;

**"DCLG Funding"** means the financial assistance towards the Project provided to the Lead Authority on behalf of the Parties by the Department for Communities and Local Government;

**"Designated Officer"** [more detail required]; <sup>2</sup>

**"Excepted Item"** means an action, activity, responsibility, contract or any other matter whatsoever to be undertaken or entered into by a Party in respect of which it is agreed between the Parties that the costs and/or expenses shall not be subject to any contribution from any of the other Parties as identified for this purpose in the Project Plan for the time being applicable;

**"Funds"** means the funding set out in Schedule 2;

**"Lead Authority"** means SLDC or such other Party as shall be appointed from time to time as the Lead Authority for the purposes of this Agreement;

**"Project Board"** means the representative board established by the Parties and whose role at the Commencement Date is set out in Part 1 of Appendix 5;

**"Parties"** means all of the parties to this Agreement and "Party" means any one of them;

**"Party Representative"** means the individual(s) appointed by each Party to represent it on the Project Board;

**"Partnering Principles"** means the matters set out in Part 1 of Schedule 1;

**"Project"** means the project to procure and manage a web-based system for use with a sub-regional choice based letting scheme to be implemented and developed in accordance with this Agreement including without limitation the Project Plan, the Respective Inputs and the Project Objectives;

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<sup>2</sup> this role was mentioned in your response but needs "fleshing out". How are they appointed and by whom, what is their function, etc.

**“Project Manager”** means such person for the time being appointed in accordance with this Agreement and whose role at the Commencement Date is set out in Part 2 of Appendix 5;

**“Project Objectives”** means the objectives and aims set out in Part 2 of Schedule 1;

**“Project Plan”** means the plan as amended from time to time in accordance with this Agreement which identifies the relevant activities (including a programme for identifying the time for performance and/or completion which cross-refers to the respective obligations of each of the Parties in relation thereto), key stages and the processes required for delivery of the Project and to achieve the Project Objectives including any Respective Inputs from any of the Parties. The initial Project Plan is identified in Appendix 1 and shall be updated as amendments are made in accordance with this Agreement;

**“Project Targets”** means any specified targets for delivery of the Project set out in the Project Plan from time to time;

**“Respective Inputs”** means the support, assistance, funding, actions or other input required to be given from time to time by any of the Parties to implement and/or deliver the Project as are identified in the Project Plan and as may be otherwise agreed by the Parties pursuant to this Agreement and (without limitation) in accordance with the Project Objectives[. Respective Inputs already identified and approved at the Commencement Date are those set out in clause 7];

**The “Respective Share”** means the percentage share applying to a Party as set out in column 3 of Schedule 2 for the time being and if another person or body shall become a Party for the purpose of this Agreement it is the intention that the Respective Shares of each Party at the time shall be reduced pro rata the share agreed to apply to that person or body on its becoming a Party;

**"Services"** means the development and implementation of the System and the on going maintenance and management services to be provided to the Parties by the Contractor;

**"System"** means the web based system for a regional and sub-regional choice based letting scheme to meet the requirements of the DCLG Funding.

## 1.2 In this Agreement

1.2.1 any references to a specific statute include any statutory extension or modification amendment or re-enactment of such statute and any regulations or orders made under such statute or statutes.

- 1.2.2 references to any clause sub-clause schedule or paragraph without further designation shall be construed as a reference to the clause sub-clause schedule or paragraph to this Agreement so numbered.
- 1.2.3 the clause, paragraph and schedule headings do not form part of this Agreement and shall not be taken into account in its construction or interpretation.
- 1.2.4 Any reference to an Appendix is to be construed as the most up to date Appendix bearing that prefix which has for the time being been agreed by the Project Board and/or each of the Parties (as the case may be) as demonstrated by having been initialled by or on behalf of that Party by an authorised signatory for that Party of each Party and dated. It is the intention of each of the Parties that as the Project is developed each of the Appendices may be amended (to reflect agreed changes, additions, deletions and other modifications to any one or more of the Parties' responsibilities thereunder) but so that no such amendment shall have effect until such changes are agreed in accordance with this Agreement and the Appendix altered, dated and initialled.

## **2 Project Objectives and Purpose of this Agreement**

- 2.1 Each Party:
- 2.1.1 confirms and agrees the Project Objectives;
- 2.1.2 confirms and agrees to collaborate and work together with the intention of successfully delivering the Project to achieve the Project Objectives for the benefit of them all and (without limitation to the generality thereof) to comply with the Partnering Principles in connection with the Project;
- 2.1.3 enters into this Agreement in order to further develop the methodology for regulating and managing its relationship with the other Parties in respect of the Project; and
- 2.1.4 undertakes to the other Parties to provide its Respective Inputs.

## **3 Governance: Reporting and Decision Making Structures**

- 3.1 The Parties confirm their intention to comply with the requirements concerning reporting and monitoring of progress in relation to the Project set out in Appendix 3 as may be limited, supplemented or otherwise amended from time to time by [unanimous/majority] decision of the Project Board from time to time.

- 3.2 Each Party shall ensure that its Party Representative complies with the Partnering Principles in respect of the Project and with the aim of achieving the Project Objectives.

#### **4 Lead Authority**

- 4.1 The Parties accept that there is a requirement for one of them to take a lead role. The Lead Authority shall coordinate the Project on behalf of the other Parties.
- 4.2 The Parties acknowledge that the actions taken by the Lead Authority in respect of progressing the development of the Project (including applications for Funds and appointment of consultants) prior to the date of this Agreement have been undertaken with the intention of promoting the Project on behalf of them all.
- 4.3 The Lead Authority's role will comprise such matters as may be agreed from time to time by the Project Board. Initially the Lead Authority's responsibilities in relation to the Project shall include:
- 4.3.1 acting on behalf of and under the direction and oversight of the Project Board in the management and day to day supervision of the overall Project;
  - 4.3.2 using staff to manage the joint delivery of the Project;
  - 4.3.3 [with the approval of the Project Board providing such administrative resources and office facilities as should be reasonably necessary to enable the Lead Authority to manage the Project; ]
  - 4.3.4 [on behalf of and under the direction and oversight of the Project Board taking responsibility for ensuring the quality assurance and risk management of the Project including monitoring and evaluation of the development of the Project;]
  - 4.3.5 fulfilling such other roles and functions as reasonably required and notified by the Project Board;
  - 4.3.6 alerting the Parties as soon as practicable to any notices or information received that may impact on procurement decisions or on the development and/or delivery of the Project obtained in the Lead Authority role;
  - 4.3.7 receiving holding and administering the DCLG Funding and the Parties' financial contributions to the Project.
- 4.4 The Parties authorise the Lead Authority to enter into a framework contract with the Contractor once selected as agent for all of them. Each Party (to the extent of its Respective



Share only) shall indemnify the Lead Authority against its liabilities under such contract and agreement.

- 4.5 The Project budget will be the responsibility of the Lead Authority but will be administered by an officer from one of the social housing landlords.<sup>3</sup> The budget will be reported to the Project Board and Party Representatives are responsible for reporting this back to each individual Party.

## **5 The Project Board**

- 5.1 The Parties confirm their commitment to and reliance upon the Project Board to be responsible for initiating, monitoring and managing the process of developing the Project and the Project Plan and co-ordinating the respective contributions from each Party to that process.
- 5.2 The Project Board shall have the functions and responsibilities set out in this clause 5 and as may be amended (whether by expansion or limitation) from time to time in accordance with this Agreement.
- 5.3 The Project Board shall (acting in good faith), take such action as is authorised by this Agreement or the Project Plan.
- 5.4 Each Party will procure that its Party Representative on the Project Board will provide all reasonable advice and assistance necessary in order to facilitate the successful working of the Project Board. Parties shall delegate authority to their Party Representatives to transact business at the Project Board properly, and shall ensure that a sufficiently senior Party Representative is appointed so as to enable decisions to be made on behalf of the Party.
- 5.5 The role of the Project Board will include (and each Party hereby delegates authority to its Party Representative to deal with and decide on) the following:
- 5.5.1 having overall responsibility for the control of the Project;
  - 5.5.2 overseeing the administration of the Project and making decisions on day to day operational issues, including approval of relevant expenditure;

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<sup>3</sup> This is taken from your response - more detail is needed as to how this actually works.

- 5.5.3 [authorising the Designated Officer to agree any variations to the Approved Contract;]<sup>4</sup>
- 5.5.4 [deciding whether or not to use NHC's framework for the procurement;]<sup>5</sup>
- 5.5.5 [determining the terms of a model Allocation Acheme ("Model Scheme") for housing in accordance with applicable legislation and guidance which it is intended that each Party will have approved to be used by them for the purpose of such legislation. If a Party adopts and/or operates an Allocation Scheme which differs to any material extent from the Model Scheme without the [unanimous/majority] approval of the Project Board, it shall be treated as a material breach for the purposes of clause 9.5.1 unless the Project Board agrees (*on a [majority] vote*) that the differences in the Allocation Scheme for that Party from the Model Scheme do not materially prejudice the operation of the Project in accordance with the Project Objectives;]
- 5.5.6 [making the final decision relating to the selection of a System and the Contractor;]
- 5.5.7 [ensuring that the collective objectives of the Parties represented by the Project Objectives are realised and implemented as agreed between them from time to time;]
- 5.5.8 [providing leadership and encourage adherence to the Partnering Principles set out in this Agreement;]
- 5.5.9 [providing an initial forum for the resolution of any disputes between the Parties in connection with this Agreement;]
- 5.5.10 [exploring how the Partnering Principles set out in this Agreement can be implemented and extended to secure the best value for money in connection with the Project;]
- 5.5.11 [considering how, and the mechanism by which, the Parties may work together for the benefit of their collective and individual interests;]
- 5.5.12 [appointing as may be appropriate any advisors required to progress the Project;]

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<sup>4</sup> This is taken from your response, but bear in mind if you use NHC you will be bound to an extent by whatever that framework's terms say about variations.

<sup>5</sup> Is this a Project Board-level decision?

- 5.5.13 [overseeing the implementation of the Project including approving the Party that is to undertake any procurement on behalf of the Parties (or any of them) and the procurement methodology for the Project; ]
- 5.5.14 [considering the need for, and the benefit of, introducing additional parties to this Agreement and of involving other parties in the Project; ]
- 5.5.15 [agreeing any changes to the scope of the Project;]
- 5.5.16 [determining any limits on the minimum and maximum number of any Parties; and]
- 5.5.17 [developing performance targets and/or acceptance criteria in conjunction with the Parties' specialist advisors.]
- 5.6 [If the Project Board decides to procure the Project through the NHC's pre-existing framework, which provides for the restricted procedure to be used, the Parties hereby acknowledge and the Lead Authority's role in agreeing the Approved Contract, and agree to be bound by it.]<sup>6</sup>
- 5.7 For the avoidance of doubt the Project Board shall not have delegated authority to make decisions as to any of the following matters:
- 5.7.1 homelessness;
- 5.7.2 approval of the draft Approved Contract, which must be specifically approved by each Party individually;<sup>7</sup>
- 5.7.3 *[any other issues?]*
- and all such decisions shall be referred to each Party's senior management.<sup>8</sup>
- 5.8 After implementation of the Project, the Project Board's name shall change to the "Partnership Board" but all other provisions of this Agreement shall continue to apply to it and it shall be constituted in the same way as set out herein.
- 5.9 The ICT Working Group shall consist of [ ] individuals appointed by [each] Party, such individuals having relevant experience of procurement.<sup>9</sup>

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<sup>6</sup> This is taken from your response which seemed slightly conflicting on this issue - is this your intention?

<sup>7</sup> This is taken from your response - is it definitely the intention? Given that you are going to be dealing on NHC's standard terms (fixed under the framework they've procured) it may be a bit OTT

<sup>8</sup> Do you have a list of the decisions that ought to be referred upwards, or is this "default" sufficient? If we do it this way it will be important to have a proper list of what the SB can decide on, to prevent decisions having to go upstairs too frequently.

5.10 The Project Board shall delegate authority to the ICT Working Group to deal with the following matters:

5.10.1 to evaluate tenders from bidders in conjunction with the Project Manager;

5.10.2 *[others?]*

## **6 Project Manager**

6.1 The initial Project Manager will be: [ ]<sup>10</sup>

6.2 Whenever the Project Manager identifies a problem, or is advised of a problem affecting the development and/or the delivery of the Project, he will refer the matter to the Chair of the Project Board. The Project Manager should describe the problem, its underlying causes, potential impact and proposed corrective action.

6.3 The Parties hereby authorise the Project Manager to carry out the following tasks and functions:

6.3.1 to do all things reasonably necessary to implement the Project provided that such tasks are carried out in accordance with the requirement of this Agreement and within budgets agreed by the Project Board;

6.3.2 *[others?]*

## **7 Inputs and Responsibilities**

7.1 Each Party agrees that it will use its reasonable endeavours to provide its Respective Inputs (as may be added to or otherwise amended from time to time by [unanimous/majority] agreement of each of the Parties or the Project Board) and to comply with the terms of this Agreement and without prejudice to the generality of the foregoing will make such financial or equivalent provision as may be provided under the terms of this Agreement.

7.2 Each Party:

7.2.1 will co-operate with and give reasonable assistance to each other and the Project Board to ensure that the Project Plan is developed in accordance with the Partnering Principles and that the Respective Inputs are properly co-ordinated and delivered

<sup>9</sup> Insert details as to membership.

<sup>10</sup> Insert name - and contact details if desired

efficiently and economically with the intention of successfully achieving the Project Objectives;

- 7.2.2 shall deliver such information to the Project Manager and/or the Project Board as is reasonably required from time to time in order to enable them to fulfil their roles and responsibilities under this Agreement;
- 7.2.3 shall keep records of actions taken, time spent, performance and such other information relevant to its Respective Inputs and shall make such records available to the Project Manager in sufficient time to enable the Project Manager to provide regular reports to the Project Board on progress of the Project (including spend against budget) and in any event as soon as reasonably practicable following a request from the Project Manager to do so; and
- 7.2.4 shall provide to the Project Manager or any auditor appointed by the Parties such information as may be required in respect of any audit or inspection carried out in respect of the Project.

7.3 The Project Manager shall have the right at all times to require any Party to deliver up information and documentation relevant to the Respective Input of that Party for the purpose of monitoring the progress of the Project against the Project Plan and the delivery of the Project Objectives.

7.4 Each Party hereby acknowledges that the other Parties to this Agreement are subject to the requirements of the Freedom of Information Act 2000 (“FOIA”) and shall give the appropriate assistance as is necessary to enable other Parties to meet such requirements.

## **8 Duration**

8.1 This Agreement shall come into effect on the Commencement Date and shall continue in full force and effect (subject to the withdrawal or expulsion of any Party in accordance with clause 9) so long as at least two Partner Organisations or Participating Housing Bodies remain a party to it.

## **9 Withdrawal and Termination**

9.1 Between the Commencement Date and completion of the Approved Contract, a Party may withdraw from this Agreement by giving one month's notice to the Project Manager. If the withdrawing Party has not yet paid the entirety of its agreed contribution as set out in Schedule 2 column 5 then it shall pay the other Parties such shortfall immediately.

- 9.2 After completion of the Approved Contract but before [the go live date of the Approved Contract]<sup>11</sup>, a Party may withdraw from this Agreement by giving one month's notice to the Project Manager. The withdrawing Party shall reimburse the other Parties for its Respective Share of capital and revenue costs incurred (as set out in Schedule 2) up to the date of expiry of the notice given pursuant to this clause 9.1, together with all and any costs incurred as a result of its withdrawal.
- 9.3 After [the go live date of the Approved Contract] a Party may withdraw from this Agreement by giving six months' notice to the Project Manager. The withdrawing Party shall pay to the other Parties its Respective Share of that financial year's revenue costs as set out in column four of Schedule 2, together with all and any costs incurred as a result of its withdrawal.
- 9.4 Once 5 years have elapsed after the Commencement Date, a Party may terminate on one month's notice to [the Project Manager] without obligation to make further payment (without prejudice to its liability for any costs that may have already arisen before such notice was served).
- 9.5 The Parties may by majority agreement serve 14 days' notice a Party requiring it to withdraw from this Agreement (such requirement being set out in a written notice sent by the Project Manager or the Lead Authority to that Party following such majority agreement being relayed by the other Parties to the Project Manager or Lead Authority as the case may be) in the event that:
- 9.5.1 a Party commits a material breach of any of the terms of this Agreement and (if such a breach is remediable) fails to remedy that breach within 30 Business Days, (or such other reasonable time as the Project Board may agree in writing) after being requested by all the other Parties to do so. For the purposes of this clause 9.5.1, a breach is a material breach if at least 80% of the Project Board (excluding the vote of the Party Representative of the Party committing the breach) acting reasonably, agree that it is a material breach; or
- 9.5.2 a Party is subject to a reorganisation and/or its constitution alters to such an extent that a majority of the other Parties determine that that Party's continued involvement in the Project is impracticable or undesirable; or
- 9.5.3 a Party ceases to exist or steps are taken to wind it up;

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<sup>11</sup> It would be helpful to see the NHC terms that you will be using so that this definition can be clearer/more specific

9.5.4 a Party has any director or senior manager involved in the Project convicted of dishonesty;

whereupon that Party shall be deemed to have withdrawn from the Project.

## **10 Consequences of withdrawal or termination**

- 10.1 On the withdrawal or termination of any Party the Respective Shares set out in Schedule 2 shall be recalculated and such recalculations shall come into effect on the date of the expiry of the notice given to withdraw or retire.
- 10.2 The Party who withdraws or is removed from this Agreement will be released from its obligations to make any further financial contributions to the Project arising after the date of withdrawal or removal but must pay all contributions already identified and notified to the partner by the Project Board (as at the date notice was given by either the withdrawing Party or the Project Board) which are due on any date up to the date of withdrawal or removal.
- 10.3 If any Party gives notice of withdrawal or is expelled, then this Agreement shall continue in full force as between the Parties excluding the Party withdrawing or being expelled. Every Party except the Party withdrawing or being expelled will immediately consult with each other and use their reasonable endeavours to agree the most appropriate alternative arrangements for implementing any changes which may be appropriate as a result of the withdrawal or expulsion of that Party to enable the project to continue on a fair and equitable basis as between the remaining Parties. For the avoidance of doubt, a Party withdrawing from this Agreement shall not be prevented from negotiating and entering into a separate agreement with the Contractor.
- 10.4 A Party withdrawing from the Project pursuant to clause 9.5 (other than clause 9.5.2) shall, (subject as otherwise provided in clause 10.4 from the effective date of its withdrawal) be released from its obligation to make contributions or financial provision to the Project arising after the date of its withdrawal, other than as set out (if relevant) in clauses 9.1, 9.2 and 9.3. Should any of the Parties withdraw from the arrangements under this Agreement pursuant to the provisions of clause 9.5.2 then such Party shall not be released from the obligation to make contributions or financial provision or to carry out its Respective Inputs (as identified prior to such withdrawal) which obligations shall continue in full force and effect as if such withdrawal had not taken place.
- 10.5 A Party withdrawing from the arrangements under this Agreement shall not be released by clause 10.4 from any such obligation which arises out of the performance of this Agreement prior to the effective date of such notice of withdrawal and such Party shall remain liable to contribute in accordance with the other provisions of this Agreement as if the withdrawal did

not take place (including without limitation the obligation to contribute towards any financial liability arising before or after the date of such withdrawal in respect of any Approved Contracts entered into or Approved Actions taken prior to effective date of such notice of withdrawal).

- 10.6 If the Lead Authority cease to be a Party, the other Parties shall agree between themselves as to which Party shall become the Lead Authority.

## **11 Liabilities**

- 11.1 Each of the Parties will contribute towards any capital costs or losses incurred in connection with or pursuant to any Approved Contract or Approved Action (to the extent not recoverable from the Funds) in the proportions agreed between the Parties and set out in (or in the absence of agreement in the Respective Shares) unless such Approved Contract and/or Approved Action is an Excepted Item.

- 11.2 Each of the Parties will in respect of any Approved Contract or Approved Action, indemnify each other to the extent necessary so that each Party shall be liable to contribute to any costs losses and liabilities incurred in respect of such Approved Contract or Approved Action in the proportion agreed beforehand between the Parties (or in the absence of any agreement in proportion to its Respective Share) PROVIDED THAT such indemnity shall not extend to costs, expenses, or claims incurred by reason or in consequence of any fraudulent or wilful act or omission of any other Party.

- 11.3 Each of the Parties will contribute towards any costs expenses losses or damages incurred by the Lead Authority (to the extent not recoverable from the Funds) in connection with the performance of its role provided it acts in good faith (such costs including those identified as or calculated in accordance with Approved Contract entered into by the Lead Authority on behalf of the other Parties or Approved Action taken by the Lead Authority together with any liabilities which the Lead Authority may incur in respect of the performance of its role) in proportion to the Respective Shares. For the avoidance of doubt, Project Board approval is required for any expenditure not budgeted for within the Funds.

- 11.4 If any of the Parties fail to pay the amount due pursuant to their Relevant Inputs or this clause 11 by the due date the same shall become a debt from such Party or Parties and may bear interest until payment at the rate of 1% per annum above the base rate of the Bank of England during the period in respect of which the payment of the said amount is in arrears.

- 11.5 The due date for any payment or contribution under this Agreement shall be as follows:



- 11.5.1 in respect of a contribution pursuant to clause 11.1, within 28 days of a proper invoice from the relevant Party provided the cost, expenditure or loss to which the contribution is required has actually been incurred (and, where relevant, paid) and the Parties have agreed or it has otherwise been determined that they would not be recoverable from the Funds;
- 11.5.2 in respect of a contribution pursuant to clause 11.3 within 28 days of a proper invoice from the Lead Authority relating to the costs and expenses of the Lead Authority in providing administrative support for the preceding month or greater period;
- 11.5.3 in respect of any other contribution required pursuant to this Agreement within 28 days of a proper invoice issued by the relevant Party following agreement of the level of contribution required by each of the other Parties (or as otherwise determined) in accordance with this Agreement.
- 11.6 Each Party acknowledges and agrees that the Lead Authority shall not (subject to clause 11.7) be liable to it (and it shall be deemed to have waived any right or entitlement against the Lead Authority in respect of any costs losses expenses or damages which it suffers or incurs including but not limited to any contribution required to be made pursuant to clause 11) as a result of any action taken by the Lead Authority in good faith in exercising its role in accordance with this Agreement. Each Party for the purpose of perfecting the intention of this clause 11.6 and not further hereby covenants to indemnify the Lead Authority against any such costs losses expenses or damages which it would but for the provisions of this clause 11.6 have been able to recover from the Lead Authority.
- 11.7 Nothing set out in this Agreement shall exclude any liability which a Party would otherwise have to any other Party in respect of any fraudulent misrepresentation or in respect of any death or personal injury caused by that Authority's negligence.

## **12 Warranties**

- 12.1 Each Party warrants to each of the others that:
- 12.1.1 it has full power and authority to enter into this Agreement and has and will continue to have full power and authority to perform its obligations under this Agreement, and that its entry into and performance of this Agreement does not and will not infringe the rights of any third party or cause it to be in breach of any obligations to any third party; and
- 12.1.2 all information, data and materials provided by it to the other Parties will be, to the best of its knowledge, accurate and complete in all material respects, and it is entitled

to provide the same to the other Parties without the approval or consent to any third party.

### **13 Respective Inputs**

13.1 The Parties agree:

13.1.1 to provide such non-monetary resources and assistance (including staff time) to the Project as shall be reasonably determined as being required by the Project Board by [unanimous/majority] decision from time to time to ensure the successful implementation and future running of the Project;

13.1.2 to fulfil their obligations under this Agreement; and

13.1.3 to co-operate and use their reasonable endeavours to ensure that high and effective standards of quality assurance on all aspects of the Project are established, generally understood and consistently maintained and observed.

### **14 Additional parties**

14.1 The Project Board will be responsible for assessing the need or desirability for additional parties.

14.2 Each Party Representative will seek the written approval of the Party which has appointed him/her should the Project Board [unanimously/by majority] recommend that any third party should become a Party to this Agreement.

14.3 A third party will only become a Party to this Agreement if the agreement of each Party with the recommendation of the Project Board pursuant to clause 14.2 is evidenced by written confirmation from each Party to the Project Board and provided that the third party executes all documents required by the Project Board to secure the relevant obligations and responsibilities of such person or body in similar terms to the other Parties by virtue of this Agreement.<sup>12</sup>

14.4 In the event that a Party identifies the need for an additional party, or a Party is approached by anyone interested in becoming a Party, that Party will refer the matter to the Project Board for assessment and consideration.

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<sup>12</sup> This makes it quite a "high bar" for new parties to be admitted. Should it be easier?

## **15 Notices**

- 15.1 Any communication required to be in writing under the terms of this Agreement shall be sent to each Party at the addresses and marked for the attention of the relevant person identified in Schedule 3.

## **16 Disputes**

- 16.1 In the event of any dispute or difference arising between the Parties as to the construction or application of this Agreement or as to any issue arising thereunder the Parties shall initially seek to resolve such issue at the Project Board.
- 16.2 If the above meeting does not solve the dispute, the Parties shall convene a special meeting at which each party will be represented by a Senior Officer who does not already attend meetings of the Project Board.
- 16.3 If the above meeting does not solve the dispute, the Parties shall refer the matter to the Cumbria Housing Officers Group, and the Parties agree to be bound by its decision.<sup>13</sup>
- 16.4 The Parties shall only have recourse to legal proceedings in the event of the failure of such bona fide endeavours to resolve the dispute or difference in question by alternative methods of dispute resolution.

## **17 Third Parties Rights**

- 17.1 To the extent that any provision of this Agreement is capable of being legally enforced the Parties to this Agreement confirm and agree that they do not intend any provision of it to be enforceable by any other person pursuant to the Contract (Rights of Third Parties) Act 1999.

## **18 No Partnership or Agency**

- 18.1 No provision of this Agreement shall be construed as a delegation by any of the Parties of any of their respective functions or authority to the Project Board or to any other Party unless the contrary is stated herein.
- 18.2 Except as specifically set out herein, no Party shall:

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<sup>13</sup> There could be issues with this, and it is difficult in any case for CHOG to make its judgement call without supporting guidance. Perhaps for discussion.

18.2.1 have any right, authority or power to act on behalf of any other Party nor to bind any other Party by contract or otherwise nor to undertake any liability or obligation on behalf of or to pledge the credit of any other Party;

18.2.2 hold itself out as having authority or power to bind any other Party in any way by virtue of this Agreement.

except to the extent expressly permitted in respect of a Relevant Input (pursuant to Appendix 4).

18.3 Each Party is independent from the others and nothing contained in this Agreement shall be construed as implying that there is any relationship between the Parties of partnership or of principal/agent or of employer/employee.

## **19 Statutory Powers**

19.1 Nothing herein contained or implied shall prejudice or affect the rights powers duties and obligation of each of the Parties in the exercise of their respective functions as may be amended supplemented or increased from time to time and the rights powers duties and obligations of each of the Parties pursuant to their respective functions may be as fully and effectually exercised as if this Agreement had not been made.

## **20 Provision to Survive**

All provisions of this Agreement which are expressly or by implication intended to survive and apply following expiry or termination of this Agreement including clauses 9, 11 [*and others to be listed*] shall survive and shall continue in full force and effect notwithstanding such expiry or termination.

## **21 Governing law**

21.1 This Agreement is made and shall be governed by and construed in accordance with English Law and the parties irrevocably submit to the jurisdiction of the English Courts.

21.2 If any conflict shall arise between the provisions of this Agreement and the law relating to local government in England the latter shall prevail.

This agreement has been entered into on the date stated at the beginning of it.

## **Schedule 1 Aims and Objectives**

### **Part 1 Partnering Principles**

- 1 That each partner organisation agrees to collaborate and work together with the intention of successfully delivering and operating the Cumbria Sub Regional Choice Based Lettings (CBL) Scheme.
- 2 That each partner organisation will co-operate with and give reasonable assistance to each other to provide information and inputs efficiently and economically into the scheme as is required to successfully develop and operate the scheme.
- 3 That each partner organisation will ensure that its partner representative complies with the principles of the Project in order to achieve the Projects objectives.
- 4 That each partner organisation will provide to the Project Board or any auditor appointed by the Project Board any information that is required in respect of any audit or inspection carried out in relation to the CBL Scheme.
- 5 That each partner organisation will provide information and documentation relevant to their operation of the scheme for the purposes of monitoring the progress and operation of the CBL scheme against agreed objectives.

### **Part 2 Project Objectives**

The agreed key objectives of the Project are to:

- 1 Provide an integrated Allocations Scheme which promotes and enables persons applying for housing to make an informed choice as to the location, tenure and type of housing they want.
- 2 Meet the legal requirements for the allocation of social housing as set out in the Housing Act (1996) and Homelessness Act (2002).
- 3 Provide an Allocations Scheme that is easily understood and accessible to all residents irrespective of tenure.
- 4 Provide an Allocation Scheme that does not discriminate against any customer, either directly or indirectly.
- 5 Consult with all relevant groups throughout the development of the scheme.
- 6 Develop a scheme that improves access to and support for vulnerable customers.

- 7 Facilitate sub-regional mobility regardless of tenure
- 8 Ensure a more effective use of housing stock across the sub-region
- 9 Provide accurate information on housing supply and demand to help inform future housing strategies and investment decisions
- 10 Generate efficiencies within the allocation process.
- 11 Develop effective partnerships within all sectors and agencies of the sub-region
- 12 Facilitate the creation of more sustainable tenancies and more settled communities.
- 13 To work together as a partnership to improve and develop the choice based lettings service for the benefit of local communities.

### **Part 3 Aims of the Project**

In developing the Project, the Parties have agreed the following aims:

- 1 To reduce the use of temporary accommodation for homeless applicants and to assist with prevention by making customers aware of their potential housing choices and the alternative options available to them eg. private sector, low cost home ownership.
- 2 To increase the availability of move-on accommodation to prevent ‘blockages’ in supported housing schemes.
- 3 To ensure a lettings service that embraces equality and diversity by being open and fully accessible to all individuals and to provide support to more vulnerable customers where required.
- 4 To improve the means by which local people in Cumbria gain access to social rented housing by providing a modern and easy to understand Allocation Scheme which allows choice and is fair, transparent and accountable.
- 5 To make the best use of the housing stock within the scheme.
- 6 To increase mobility by making available 10% of all properties for applicants within the sub region who have no local connection to a particular local authority area..
- 7 To attract new customers to areas of low demand and reduce void times on ‘hard to let’ properties.

## Part 4 Procurement Objectives

The procurement objectives are to implement and deliver the Project within the administrative areas of the Parties and to:

- 1 develop and implement a strategy for the procurement, award and management of a contract for the provision of the Services, including but not limited to approving applicable specifications, terms to be included in tender documentation, approving evaluation criteria and giving final approval.
- 2 carry out such procurement in timescales which fully reflect and take account of all relevant government policy and targets and any other legislative and practical imperatives.
- 3 carry out such procurement in a way which maximises value for money and efficiency and generates credible competitive bids capable of delivering the Project Objectives.
- 4 seek to adopt arrangements, structures and procedures in respect of the procurement process and procurement decisions which:
  - (a) minimise the cost of the Services to each Party;
  - (b) shares risk and reward between the Parties in an equitable and fair way;
  - (c) are transparent, auditable and based on recognised accountability;
  - (d) are efficient and capable of being understood and recognised by contractors and third parties;
  - (e) recognise and respect limits on availability of resources and the legal, managerial, financial and political constraints affecting each Party.
- 5 seek a solution through the procurement process which best delivers the Prime Objectives and so far as is practicable is in the best interests of each of the Parties.
- 6 ensure that at all times each Party has appropriate information and advice to make fully informed decisions.

## Schedule 2 Costs and Funding

- 1 The funding for the procurement and in relation to the negotiation, preparation and implementation of the Project shall consist of The DCLG Funding of [ ] (£[ ]) plus any agreed contributions from the Parties as agreed between them as set out in the fifth column below. Responsibilities for ongoing costs is also as listed below:

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>	<b>Column 4</b>	<b>Column 5</b>
<b>Party</b>	<b>Population/ Properties</b>	<b>Share of capital costs</b>	<b>Share of revenue costs</b>	<b>Initial agreed contribution</b>
Carlisle City Council	103,300	8.35%	0	£
Copeland BC	70,600	5.70%	0	£
South Lakes DC	102,400	8.27%	0	£
Eden DC	52,000	4.20%	0	£
Allerdale Borough Council	95,000	7.68%	0	£
Barrow Borough Council	71,800	5.80%	0	£
<b>Local Authority SUBTOTAL</b>	<b>494,800</b>	<b>40%</b>	<b>0</b>	<b>£</b>
Home North West	9884	19.53%	32.54%	£
Two Castles	1340	2.65%	4.41%	£
Eden Housing	1500	2.96%	4.94%	£
South Lakes ALMO	3226	6.37%	10.62%	£
Riverside	6200	12.25%	20.41%	£
Impact Housing	1942	3.84%	6.39%	£



Derwent & Solway	3070	6.06%	10.11%	£
Barrow Borough Council	2711	5.35%	8.93%	£
Accent Housing	500	0.99%	1.65%	£
<b>HA SUBTOTAL</b>	<b>30,373</b>	<b>60%</b>	<b>100%</b>	<b>£</b>
<b>TOTAL</b>		<b>100%</b>	<b>100%</b>	<b>£</b>

- 2 In the event for whatever reason the DCLG Funding is reclaimed by or required to be repaid to DCLG, each Party will contribute to any shortfall of funding which is necessary to meet any other obligations or liabilities which have been incurred prior to such reclaim or repayment accordance with the fourth column above. The Lead Authority shall on behalf of the Project Board be entitled to recover such contributions from the other Parties as a debt.
- 3 For the duration of this Agreement and the Project, the Parties agree to the apportionment of any ongoing costs which [the Project Board]<sup>14</sup> considers necessary from time to time in the proportions set out above. In the event that a Party or Parties refuse to provide such additional financial support the Project Board shall either determine that the Party or Parties shall be deemed to have withdrawn from this Agreement or that this Agreement should be terminated.
- 4 The Parties will each pay their own costs and expenses incurred in relation to the on-going licensing, maintenance and management of the Services once the System has been implemented.
- 5 Every three years with effect from the anniversary of the Commencement Date the amount of properties held by each Party shall be recalculated and the Parties' responsibility for ongoing costs (as set out in the third column above) shall be amended accordingly.

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<sup>14</sup> Should the Project Board take this decision or some other body? Should the Las be voting on the costs to be incurred by the HAs?

**Schedule 3 Communications and Notices****South Lakeland District Council**

Name: [ ]

E-mail: [ ]

Phone: [ ]

**Carlisle City Council**

Name: [ ]

E-mail: [ ]

Phone: [ ]

**Eden District Council**

Name: [ ]

E-mail: [ ]

Phone: [ ]

**Allerdale Borough Council**

Name: [ ]

E-mail: [ ]

Phone: [ ]

**Barrow Borough Council**

Name: [ ]

E-mail: [ ]

Phone: [ ]

**Home North West**

Name: [ ]

E-mail: [ ]

Phone: [ ]

**Two Castles**

Name: [ ]

E-mail: [ ]

Phone: [ ]

**Eden Housing**

Name: [ ]

E-mail: [ ]

Phone: [ ]

**South Lakes ALMO**

Name: [ ]

E-mail: [ ]

Phone: [ ]

**Riverside**

Name: [ ]

E-mail: [ ]

Phone: [ ]

**Impact Housing**

Name: [ ]

E-mail: [ ]

Phone: [ ]

**Derwent & Solway**

Name: [ ]

E-mail: [ ]

Phone: [ ]

**Accent Housing**

Name: [ ]

E-mail: [ ]

Phone: [ ]

IN WITNESS whereof the Parties have signed this deed the day and year set out above

The Common Seal of )  
**SOUTH LAKELAND DISTRICT COUNCIL** )  
was hereunto affixed to this Deed in the )  
presence of: )

The Common Seal of )  
**CARLISLE CITY COUNCIL** )  
was hereunto affixed to this Deed in the )  
presence of: )

The Common Seal of )  
**COPELAND BOROUGH COUNCIL** )  
was hereunto affixed to this Deed in the )  
presence of: )

The Common Seal of )  
**EDEN DISTRICT COUNCIL** )  
was hereunto affixed to this Deed in the )  
presence of: )

The Common Seal of )  
**ALLERDALE BOROUGH COUNCIL** )  
was hereunto affixed to this Deed in the )  
presence of: )

The Common Seal of )  
**BARROW BOROUGH COUNCIL** )  
was hereunto affixed to this Deed in the )  
presence of: )

*[Insert signature blocks for HAs once their legal status is known]*

**Appendix A Project Plan**

The initial project plan is as follows:

[*All dates to be reviewed*]

	<b>Start</b>	<b>Finish</b>
Specify IT requirements		
Finalise contract documentation		

## **Appendix B Procedures Of The Project Board**

### **Method of working**

1. The Project Board will establish for itself its method of operation, including internal management structures, processes and procedures but will recognise the need to operate with diligence and skill and the need for structured dialogue between the Party Representatives.

### **Membership and voting**

2. Each of the Parties may appoint and from time to time remove and replace a Party Representative to represent it on the Project Board. In addition a tenant representative<sup>15</sup> shall be entitled to attend meetings of the Project Board [and/but not to] vote at such meetings.
3. A maximum of one additional individual from each Party may attend Project Board meetings for the purposes of continuity during absences, but such additional representatives shall not have a vote.
4. Unless otherwise agreed, each Party Representative [and the tenants representative] will have one vote in respect of matters to be determined by the Project Board.
5. A Party shall immediately lose its voting rights if it withdraws from this Agreement or is expelled under clause 9.
6. Matters that affect policy changes and changes to the agreed yearly budget must be agreed by the unanimous consent of the Party Representatives.

### **Meetings**

7. The Project Board will meet monthly during the implementation phase, and shall meet at such other intervals as may be agreed by the Project Board from time to time.
8. Meetings of the Project Board will be held at any one of the Parties' premises or elsewhere as agreed from time to time by the Project Board.
9. Meetings shall be administered by a Designated Officer from one of the Parties.

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<sup>15</sup> Appointed how, and by whom?

10. If decisions are required prior to the next scheduled meeting of the Project Board, the Project Manager will forward the necessary information to members of the Project Board individually, and will collate their responses.
11. An agenda for each meeting of the Project Board will be circulated by the Project Manager to each Party Representative at least five Business Days before each meeting.
12. The Party Representatives on the Project Board will endeavour to agree any report or recommendations to be made to the Parties in connection with the Project Plan and/or the achievement of the Project Objectives and/or Project Targets. Such recommendations may include any recommendation for the setting up of other advisory or consultative groups to consider, advise and report upon any matter pertinent to the Project.
13. The Project Board shall regularly consider and identify the following issues:
  - progress in connection with the Project Targets, Project Objectives and the development of the Project Plan;
  - any action or decision to be taken by any of the Parties to enable the Project Plan to be developed so as to achieve the Project Targets and the Project Objectives;
  - proposed actions to be taken to rectify any prospective shortfall in meeting the Project Targets or any failure to meet the Project Objectives;
  - delivery of the Respective Inputs; and
  - Regular review of budgets and financing.

### **Convening of Meetings**

14. The meetings of the Project Board shall where practicable be convened on the date agreed by those present at the last meeting (and identified in the minutes circulated in accordance with paragraph 10) but otherwise shall be convened by the Lead Authority by delivering notice in writing to each Party at least seven clear Business Days before the day of the meeting.
15. A meeting of the Project Board shall be rescheduled if three or more Parties request it AND a strategic decision is to be made which relates to a major change in policy or strategy. The Scheme Administrator<sup>16</sup> shall arrange for the meeting to be rescheduled within 10 clear

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<sup>16</sup>This is taken from your response - who is the scheme administrator. Is it the same as the Project Manager?

Business Days of the original meeting and shall deliver a revised notice to each Party at least seven clear Business Days before the rescheduled meeting.

16. A meeting of the Project Board may also consist of a conference between the Party Representatives who are not all in one place but each of which is able to speak to each other directly or by telephone and to be heard by each other simultaneously. A Party Representative taking part in such a conference shall be deemed to be present in person at the meeting and shall be entitled to vote and be included in the quorum.

### **Quorum of Meetings**

17. Each meeting of the Project Board will need a quorum before any business can be undertaken and before any decision is made. Unless otherwise agreed in writing by each Party, a Party Representative from any 8 Parties (of which at least 4 must be from Housing Associations) will constitute a quorum.<sup>17</sup>
18. In the event of an inquorate meeting, the Project Board secretary will email each of the Party Representatives or substitute within five Business Days of the date of the meeting with details of the matters that were intended to be discussed. Each Project Board representative will respond to the Project Board secretary by email with its decision(s) within 10 Business Days of the date that the email was sent. If a Party Representative fails to reply within such time, that Party Representative's vote will be discounted for the purposes of such decisions unless the matter requires the [unanimous/majority]approval of the Project Board.

### **Attendance by others**

19. Provided each of the Parties agrees, a person invited by any Party may attend any meeting of the Project Board to speak at that meeting or otherwise advise or provide information (as appropriate) in relation to the Project, but such person's attendance and participation shall be limited to that which is agreed by each of the Parties in respect of the meeting to which that person has been invited to attend.

### **Minutes of Meetings**

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<sup>17</sup> A balance needs to be struck here - the project should not be held up because one party is absent or is dragging its heels. But the authorities may be reluctant to agree to a small quorum allowing binding decisions to be made without them. In practice, given that the Project Board meets only monthly, and given that parties may participate by phone, and sufficient notice is given to enable all parties to plan ahead, we would suggest that a low quorum be inserted, so as not to allow an unmotivated authority/authorities to stall the project through non-attendance.



20. An appropriate record of each meeting of the Project Board will be produced and circulated by the secretary to each member of the Project Board within five Business Days after that meeting and the approval of that record will be an item on the agenda at the next Project Board meeting;

**Decision Making**

21. Except where expressly stated otherwise in this Agreement, decisions shall be made by a majority of the Party Representatives attending and voting. In the event of deadlock, the chairman will not have a casting vote. The views of all Parties on all matters shall however be recorded in the notes of the meeting and reported back to each of the Parties for consideration and if appropriate, decision and action (pursuant to each Party's respective lawful powers).
22. Where a decision is required to be taken by [unanimous/majority]decision of the Project Board that shall mean a decision by [each/a majority of the] Party Representative[s].