

**Eden District Council**  
**Resources Portfolio**  
**21 February 2011**  
**Shared IT Service: Agreement**  
**Report of the Director of Finance**

**1. Purpose of Report**

- 1.1 This reports sets out the agreement between this Council and South Lakeland District Council (SLDC) to share an IT service. This is attached as an Appendix. It is a requirement of the agreed business case that the agreement is formally agreed by the relevant portfolio holders at both councils.

**2. Recommendation**

It is recommended that the appended agreement is agreed.
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**3. Background**

- 3.1 On 25 November 2010, the Council agreed to share an IT service with SLDC (report F70/10). The shared service had already been agreed by SLDC.
- 3.2 The shared service is being implemented on a phased basis. This started on 1 December 2010, with the appointment of a shared IT Manager. The shared service will be fully implemented by April 2012.
- 3.3 In making its decision the Council considered a business case which set out all the main terms of the shared service.

**4. Approval of Agreement**

- 4.1 The shared service requires both parties to make a long-term commitment to sharing the cost of the shared service, agree what the service provides etc. As such it needs to be underpinned by a legally binding agreement.
- 4.2 The final draft of the agreement is appended. The agreement follows all the provisions of the business case, though it does cover a number of minor issues that were too detailed to include in the business case.
- 4.3 The agreement has been agreed by the relevant operational and legal officers at both councils. The business case states that the agreement must be approved by the relevant portfolio holder for each council.

#### 4.4 The main provisions in the agreement are;

- The staff structure is to comprise 13.8 FTE;
- Local services to be provided at existing sites;
- SLDC to be Employing Authority;
- Costs to be split SLDC 60%/Eden 40%;
- The costs, as set out in schedule 3 of the agreement, are the same as those included in the business case;
- Operational management through Operational Board;
- Strategic management - decisions approved by portfolio holders;
- Period of agreement is for an initial seven years.

All the above are as set out in the business case.

### 5. Policy Framework

#### 5.1 The Council has four corporate priorities which are:

- Affordable Housing;
- Quality Environment;
- Economic Vitality;
- Quality Council.

Council, on 7 February 2008, agreed fifteen strategic actions to achieve these priorities.

### 6. Implications

#### 6.1 Legal

- 6.1.1 As noted above, the appended final draft agreement is acceptable to the legal officers at both councils. Once agreed by the portfolio holders, it will be signed on behalf of each council. This will then be a binding legal agreement.

#### 6.2 Financial

- 6.2.1 As part of the 2008-11 corporate planning process, the Council adopted a resource prioritisation process in which every area of Council activity was allocated to one of four resource categories. These categories (which were agreed at Council on 7 February 2008) remain in force until the next corporate plan is adopted.
- 6.2.2 There are no direct financial implications of this report. The financial implications were set out fully in the business case (report F70/10).

#### 6.3 Equality and Diversity

- 6.3.1 The Council has to have regard to the elimination of unlawful discrimination and harassment and the promotion of equality under the Equality Act 2010 and related statutes.
- 6.3.2 There are no equality and diversity implications relating to this.

## 6.4 Environmental

6.4.1 The Council has to have due regard to conserving biodiversity under the Natural Environment and Rural Communities Act.

6.4.2 There are no environmental implications arising from this report.

## 6.5 Crime and Disorder

6.5.1 Under the Crime and Disorder Act 1998, the Council has to have regard to the need to reduce Crime and Disorder in exercising any of its functions.

6.5.2 There are no crime and disorder implications arising from this report.

## 6.6 Children

6.6.1 Under the Children's Act 2004, the Council has to have regard to the need to safeguard and promote the welfare of children in the exercise of any of its functions.

6.6.2 There are no children implications arising from this report.

## 6.7 Risk Management Implications

6.7.1 Signing a binding agreement for a shared service is a key risk management control. The agreement ensures that, unless both parties agree, it will run for seven years at least.

6.7.2 The risks of entering into a long term agreement were dealt with in the business case.

## 7. Conclusion

7.1 The agreement gives a sound under-pinning to the shared service.

D J Rawsthorn  
Director of Finance

## Background Papers:

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## Governance Checks:

Checked by, or on behalf of, the Chief Finance Officer	✓
Checked by, or on behalf of, the Monitoring Officer	✓



Dated

2011

Eden District Council

and

South Lakeland District Council

**Agreement for the Provision of ICT Services**

P G Foote  
Director of Corporate and Legal Services  
Eden District Council, Town Hall, Penrith, CA11 7QF

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- (1) Eden District Council, Town Hall, Penrith, Cumbria, CA11 7QF (“the Arranging Council”)
- (2) South Lakeland District Council, South Lakeland House, Lowther Street, Kendal, Cumbria, LA9 4UF (“the Discharging Council”)

## **1 BACKGROUND**

- (A) The Councils have agreed to develop and establish a shared ICT service on the terms set out in this agreement.
- (B) The shared ICT service is intended to be developed in two phases, the first phase commencing on 1 December 2010 in order to undertake the necessary preliminary tasks and the second phase commencing on 1 April 2012 when it is intended that the shared ICT service will be established.
- (C) The Arranging Council has agreed to exercise its powers in sections 101, 102, 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 of the Local Government Act 1972, to arrange for the Discharging Council to discharge functions relating to Information and Communications Technology (ICT) services at the times and on the terms set out in this Agreement.
- (D) The Discharging Council has agreed to discharge the Specified Functions in the circumstances and develop and establish a shared ICT service on the terms set out in this Agreement.
- (E) The Councils acknowledge that their objectives in entering into this Agreement are to collaborate and co-operate in the spirit of partnership in order to discharge efficiently integrated and high quality functions, achieve economy and effectiveness in the discharge of the Specified Functions and to enhance the capacity of both Councils to perform such functions in the most efficient way possible.
- (F) The Arranging Council has agreed to second its IT Services Manager on the terms set out in an agreement dated 1 December 2010 to the Discharging Council from 1 December, 2010, to 31 March 2012 to enable him to undertake the development and preparatory tasks which are necessary to enable the shared ICT service to take place.

## **2. INTERPRETATION**

### **2.1 In this Agreement:**

- 2.1.1 references to “this Agreement” shall mean this Agreement;
- 2.1.2 “Actual Revenue Costs” shall mean the actual reasonable revenue costs incurred by the Discharging Council in its discharge of the Specified Functions for the Arranging Council;
- 2.1.3 “Agreed Revenue Budget” shall mean the budget which the Councils have agreed for the discharge of the Specified Functions under this Agreement, as set out at Schedule 2;
- 2.1.4 “Budget Change Request” shall mean a request by either Council to the other Council to change the Agreed Revenue Budget in accordance with clause 4.11 of this Agreement;
- 2.1.5 “The Business Case” means the document included at Schedule 5 to this agreement.
- 2.1.6 “Change Request” shall mean a request made pursuant to clause 10.4 of this Agreement by the Arranging Council for changes to required service levels and standards set out in a Service Plan;
- 2.1.7 “Council Offices” shall mean any premises of either Council which are used for the purposes of discharging the Specified Functions;
- 2.1.8 “Employee Structure” shall mean the structure set out at Schedule 4 for the organisation of employees who are involved in the performance of the Specified Functions;
- 2.1.9 “Estimated Revenue Costs” shall mean the estimated reasonable revenue costs incurred by the Discharging Council in the discharge of the Specified Functions for the Arranging Council;
- 2.1.10 “Financial Procedure Rules” shall mean the provisions governing financial matters in the constitution of each Council;
- 2.1.11 “Financial Year” shall mean the period from 1 April to 31 March of the following year;



- 2.1.12 “Head of Service” shall mean for the purposes of this Agreement the person who is or intended to be the shared IT Services Manager;
- 2.1.13 “ICT” shall mean Information and Communications Technology;
- 2.1.14 “Joint Operational Board” shall mean the Board established in accordance with clause 3.4 to have primary responsibility for the Performance Management of this Service Level Agreement;
- 2.1.15 A ‘local cost’ means any cost in relation to ICT which is to be borne solely by one of the Councils and not shared in accordance with the terms of this agreement.
- 2.1.16 “Pension Scheme” shall mean the Local Government Pension Scheme;
- 2.1.17 “the Regulations” shall mean the Transfer of Undertakings (Protection of Employment) Regulations 2006;
- 2.1.18 “Reserved Matters” shall mean those matters listed in Schedule 5 to this Agreement which have been excluded from the arrangement for the Discharging Council to discharge functions relating to ICT services on behalf of the Arranging Council;
- 2.1.19 “The shared ICT Service” shall mean the service delivering the Specified Functions;
- 2.1.20 “the Specified Functions” shall mean the functions set out in Schedule 2 of this Agreement and such other functions as may be agreed between the parties from time to time;
- 2.1.21 “the Service Plan” means the plan approved by the Joint Operational Board which sets out the methods by which the Shared ICT Service is to be provided.
- 2.1.22 “the specified proportions” shall mean the proportions in which costs will be shared as identified in clause 5.1 hereof.

- 2.1.23 References to any statute or statutory provision (including any European Union 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.
- 2.1.24 The headings are inserted for convenience only and shall not affect the construction of this Agreement.
- 2.1.25 Words importing one gender include all other genders and words importing the singular include the plural and vice versa.
- 2.1.26 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.
- 2.1.27 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.
- 2.1.28 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 ejusdem generis shall not apply.
- 2.1.29 The Schedules form part of this Agreement and will have the same force and effect as if expressly set out in the body of this Agreement and references to this Agreement includes the Schedules.
- 2.1.30 References to “the parties” shall be to the parties to this Agreement.

### **3. THE BUSINESS CASE AND PHASING**

3.1 The Council's have agreed a Business Case which sets out the rationale and the process for the development of the Shared ICT Service.

3.2 The Shared ICT Service will be developed in two phases as identified in the Business Case.

The first phase of the development of the Shared ICT Service will commence on 1 December 2010 and will include:

- a) the secondment of the Arranging Council's IT Services Manager to the Discharging Council and that person will act as the ICT Services Manager for both Councils and the Head of Service for the Shared ICT Service which is intended to be established.
- b) the development of a shared and common approach to provision of IT infrastructure and its management.
- c) the development of a shared and common approach in the Councils' web management and development.
- d) the establishment of an ICT link between the Council's premises in Penrith and Kendal.
- e) such other activities as may be necessary or appropriate to establish an integrated and shared ICT service which is intended to be effective and implemented on 1 April 2012.

3.3 The second phase will commence on 1 April 2012 and will include:

- a) the transfer of the staff identified and engaged in the provision of ICT services at the Arranging Council to the employment of the Discharging Council in accordance with the requirements of a Staff Transfer Agreement to be made between the Councils and the Transfer of Undertakings (Protection of Employment) Regulations.
- b) the establishment of the Shared ICT Services, as set out in the business case.

#### **4. ARRANGEMENTS FOR THE DISCHARGE OF FUNCTIONS**

- 4.1 The Arranging Council agrees that the Specified Functions shall be discharged by the Discharging Council in compliance with the terms set out in this Agreement with effect from 1 April 2012.
- 4.2 The Specified Functions shall be discharged in accordance with best practice in ICT services from time to time including compliance with any applicable regulations and codes of practice.
- 4.3 A Joint Operational Board will be established on the commencement date on 1 December 2010 comprising an officer nominated by the Arranging Council, an officer nominated by the Discharging Council and the Head of Service.
- 4.4 The role of the Joint Operational Board is and will be to ensure that the shared ICT service delivers the Specified Functions to any agreed performance standards and cost and undertake the functions set out in Schedule 1 hereto.
- 4.5 The Joint Operational Board shall meet quarterly, with meetings taking place alternately at the offices of the Arranging Council and the Discharging Council.
- 4.6 The host Council's representative will chair the meetings and provide secretarial services.
- 4.7 All decisions of the Joint Operational Board will be made on a consensus basis And in the event that a consensus cannot be reached on any decision, that decision or matter will be referred to the Arranging Council's and the Discharging Council's Chief Executives for consideration and determination.
- 4.8 The extent of the Specified Functions shall be as set out in Schedule 2 to this Agreement. The Councils must not provide to each other any services relating to the Specified Functions outside the scope of this Agreement unless they have received written approval from the Joint Operational Board and are recorded and identified in a Service Plan to be prepared by the Head of Service and agreed by or through the Joint Operational Board.
- 4.9 Each Council will bear as a local cost and undertake the activities which are set out in schedule 5 subject to clause 4.10 hereof.

- 4.10 The Councils intend to increase and develop the shared ICT services which will be incorporated as specified functions wherever this is practical feasible and appropriate for each party and which may be included currently as local cost in schedule 5 and will seek through the Joint Operational Board to identify ICT services which may become part of the specified functions after 1 April 2012.
- 4.11 In the event that it is agreed by the Joint Operational Board that a particular ICT service shall become part of the specified functions to be incorporated within schedule 2 it will specifically identified and dealt with as a variation to this Agreement in accordance with clause 13.8 hereof.
- 4.12 The Councils shall use reasonable endeavours to arrange that the level of staffing set out in the Service Plan shall be maintained at the Council Offices.

## **5. COSTS OF DISCHARGING THE SERVICES AND THE SPECIFIED FUNCTIONS**

- 5.1 The revenue costs of developing the Shared ICT Service from the commencement date and of discharging the Specified Functions shall be shared between Eden District Council and South Lakeland District Council in the proportions 39.8% and 60.2% respectively (the specified proportions).
- 5.2 The Discharging Council will incur and meet all costs arising under this Agreement, except for any costs related to the termination of the employment of any person engaged in the provision of ICT services before 31 March 2012.
- 5.3 Any Costs relating to the termination of the employment of a person engaged in the provision of ICT services will be met and incurred by the council employing that person at the point of the termination of employment subject to clause 5.11.
- 5.4 The Discharging Council will charge any capital costs incurred in developing the shared service or discharging the Specified Functions of the Shared ICT service as an annual revenue amount.
- 5.5 Prior to the start of each financial year and in any event by 31 January the Joint Operational Board will agree a budget for the shared ICT service for the forthcoming year.
- 5.6 Apart from the budgeted costs of staff termination, the Arranging Council will pay the Discharging Council one quarter of the agreed annual budget in arrears by the first day of every quarter commencing on 1 January 2011.

- 5.7 The budgets (excluding any staff termination costs) for 2010-2011, 2011-2012 and 2012-2013, are set out in Schedule 3 hereto. The year 2012-2013 shall be the base year for calculating the budgeted cost of the Shared ICT service in any succeeding years and the budget will be amended to take account of any change in staff salaries for any NJC pay award and increments within pay scales and in respect of any other costs by the percentage increase in the Consumer Price Index (CPI) as at the end of March in each year.
- 5.8 The Joint Operational Board must agree any other changes to the budget other than as identified in clause 5.7.
- 5.9 The draft budget must be agreed by the Joint Operational Board by the end of October prior to the financial year to which it relates.
- 5.10 The final budget must be agreed by the relevant portfolio holder at both the Discharging Council and the Arranging Council by the end of November prior to the financial year to which it relates.
- 5.11 The Council incurring any employment termination costs to which clause 5.3 relates shall invoice the other for that council's specified proportion of the costs following the termination of the employment to which the costs relate.
- 5.12 The costs which are to be borne by each Council as local costs those relating to the matters which are identified in schedule 5 hereto and any which may be subsequently identified will be agreed in writing by the Joint Operational Board.
- 5.13 The local costs for each Council will be managed by the Site Manager at that Council.
- 5.14 For the avoidance of doubt, the Councils acknowledge that the cost of any requirement relating to the Specified Functions which is specific to only one of the Councils shall be the responsibility of the Council which has that requirement and the Council which has that requirement shall be liable for payment of the entire cost.
- 5.15 The Discharging Council will produce quarterly monitoring reports to the Arranging Council in the manner prescribed by the Joint Operational Board. There shall be a half yearly review of the annual Estimated Revenue Costs carried out after 30 September to assess the volume of work undertaken to discharge the Specified Functions and the amount paid by the Arranging Council and the Discharging Council. As a result of the review, the Joint Operational Board shall agree any increase or decrease to payments to be made to account for any increase or decrease in the volume of work actually carried out in the first half of the Financial Year and any variations of forecasting expenditure.

- 5.16 No later than two months after the end of the Financial Year the Discharging Council shall calculate the Actual Revenue Costs and shall notify the Arranging Council of the Actual Revenue Costs.
- 5.17 If the Actual net Revenue Costs (inclusive of any income) fall below the annual net Estimated Revenue Costs (inclusive of any income) for the relevant Financial Year the Discharging Council shall reimburse the Arranging Council the overpayment and if the Actual Revenue Costs exceed the annual Estimated Revenue Costs for the relevant Financial Year, the Arranging Council shall pay the Discharging Council the balance due as a result of the underpayment.
- 5.18 Any overpayment or underpayment due to made by the Discharging Council or the Arranging Council as applicable shall be made in the next quarterly payment.
- 5.19 Either Council may request a change to the Agreed Budget by sending a written request to the Section 151 Officer of the other Council (a "Budget Change Request").
- 5.20 The other Council shall respond to the Council making the Budget Change Request no later than twenty Working Days after receipt of the Budget Change Request and the following provisions shall apply:
- 5.20.1 If the Council receiving the Budget Change Request agrees to the Budget Change Request, the Councils shall send to the Joint Operational Board a written request for approval of the Budget Change Request.
- 5.20.2 If the Joint Operational Board approves the Budget Change Request, a supplementary estimate or virement will be requested from each Council in accordance with the Financial Procedure Rules in each Council.
- 5.20.3 If the Council receiving the Budget Change Request does not agree to the Budget Change Request or the Joint Operational Board does not agree to the Budget Change Request, the Budget Change Request shall be dealt with in accordance with the dispute resolution provisions in clause 16.1 of this Agreement.

## **6. DURATION**

- 6.1 This Agreement shall commence on the Commencement Date and shall continue until 31 March 2019.
- 6.2 Prior to the 31 March 2017, the parties must each decide and notify the other whether, or not, it wishes to enter into further agreement at the end of this agreement.
- 6.3 If the parties wish to enter into a new agreement, such agreement must be in place at least one year before 31 March 2019.
- 6.4 If the parties do not wish to enter into a new agreement, an exit strategy must be agreed by the Joint Operational Board within six months of the decision being made and notified to each other.

## **7. EMPLOYEE STRUCTURE FOR THE SPECIFIED FUNCTIONS**

- 7.1 Those employees who are involved in the performance of the Specified Functions shall be organised in the structure set out at Schedule 4.
- 7.2 The Councils shall ensure that the number of employees involved in the discharge of the Specified Functions does not fall below the level specified in Schedule 4 unless agreed by the Joint Operational Board.
- 7.3 Either Council may seek to vary the Employee Structure by submitting a request in writing to the other Council such consent not to be unreasonably withheld.
- 7.4 The Discharging Council may not make a variation to the Employee Structure for the specified functions unless it has been agreed by both Councils and approved by the Joint Operational Board.

## **8. DISCHARGING COUNCIL'S OBLIGATIONS**

- 8.1 The Discharging Council shall act and discharge the Specified Functions in accordance with the terms of this Agreement and any applicable law and good practice.

## **9. ARRANGING COUNCIL'S OBLIGATIONS**

- 9.1 The Arranging Council shall act in accordance with the terms of this Agreement and applicable law and good practice.
- 9.2 The Arranging Council shall make any payments to the Discharging Council in accordance with clause 5 of this Agreement.



- 9.3 The Arranging Council and the Discharging Council shall each be responsible for providing office accommodation and support services at its premises as shall be necessary in the proper discharge of the Specified Functions.
- 9.4 The cost of office accommodation and support services is a local cost and is not and may not be charged to the shared service budget.

## **10. ASSETS**

- 10.1 Any assets procured for the shared service whilst this Agreement is effective and for the purposes of this Agreement shall be held by the Discharging Council.
- 10.2 Any such assets shall be identified and agreed by the Joint Operational Board and used and maintained in an appropriate manner and their use shall be supervised by the Discharging Council.
- 10.3 The annual revenue cost of any such assets, which agreed and identified in accordance with clause 10.6 shall form part of the shared service budget.
- 10.4 In the event of termination of this Agreement, any assets procured for the shared service in accordance with clause 10 of this Agreement shall be dealt with in accordance with clause 13 of this Agreement.
- 10.5 If either of the Councils makes available any of its assets for the purposes of this Agreement, that Council shall retain ownership of and title to those assets.
- 10.6 All assets held for the purposes of this Agreement shall be used and maintained in an appropriate manner and their use shall be supervised by the Discharging Council.
- 10.7 An inventory of all assets procured and used for the shared service shall be identified on an inventory compiled and maintained by the Head of Service and agreed by the Joint Operational Board not later than 31 March in each year.

## **11. PERFORMANCE MANAGEMENT**

- 11.1 The Discharging Council when discharging the Specified Functions maintain the required service levels and standards which are set out in the Service Plan agreed between the parties.
- 11.2 The initial Service Plan shall be prepared by the Head of Service and agreed by the Joint Operational Board by 31 December 2011.

- 11.3 In the delivery of the Shared ICT Service the Discharging Council shall apply the following workload management arrangements:
- a) Best practice methodologies and tools including, but not limited to:
    - PRINCE2 project management methodology;
    - MSP programme management methodology;
    - ITIL service management methodology;
    - Covalent performance management system for the tracking and performance against agreed performance targets, project, programmes, risks and audit actions;
  - b) Prepare a Strategic Plan for a period of three years subject to an annual review and approval by the Joint Operational Board and the portfolio holders at both Councils;
  - c) Prepare an annual Service Plan, be approved by the Joint Operational Board.
- 11.4 The Joint Operational Board shall monitor the performance of the Discharging Council in meeting its obligations under this Agreement.
- 11.5 The Arranging Council or the Discharging Council may seek to change the required service levels and standards set out in the Service Plan by submitting a request in writing to the Joint Operational Board (a “Change Request”).
- 11.6 The Joint Operational Board shall decide whether to approve the Change Request after considering and determining the following matters:
- 11.6.1 Obtaining details from the Discharging Council and the Arranging Council of any impact the Discharging Council and the Arranging Council expect the Change Request to have on the Estimated Revenue Costs and asking the Council which has made the Change Request if it is willing to accept any changes in the Actual Revenue Costs which result from implementation of the Change Request;
  - 11.6.2 Agreeing with the Councils a timescale for implementation of the Change Request if the Joint Operational Board approves the Change request.

- 11.7 If the Joint Operational Board approves a Change Request, it shall record the approval and inform both Councils and instruct that the Service Plan should be amended accordingly.

## **12. EMPLOYMENT AND APPOINTMENT OF STAFF WITHIN THE SHARED ICT SERVICE**

- 12.1 All staff in the Shared ICT Service will be employed by the Discharging Council from 1 April 2012
- 12.2 All staff transferring from the Arranging Council to the Discharging Council shall transfer on 31 March 2012 on the basis set out in a Staff Transfer agreement.
- 12.3 If any of the Arranging Council's staff are appointed to the Shared ICT Service prior to 31 March 2012 this will be undertaken on the basis of a formal secondment to be set out in a secondment agreement.
- 12.4 The appointment of the Head of Service will be made jointly by the two Councils.
- 12.5 All appointments to posts subject to Clause 18.4 within the shared ICT service will be made by the Discharging Council.

## **13. TERMINATION AND VARIATION**

- 13.1 This agreement may not be terminated other than by the mutual agreement of the parties before 31 March 2019.
- 13.2 The parties to this Agreement may agree that this Agreement shall be varied upon such terms as may be agreed by them.
- 13.3 Upon any termination of this Agreement upon effluxion of time or by the mutual agreement of the parties, each asset acquired by the Discharging Council and held by it for the purposes of this Agreement shall become the property of one of the parties.
- 13.4 The parties shall agree which party shall own which asset. Each council is entitled to the same share of any asset value in the specified proportion and, to the extent that if a council receives assets more than its share it will make a compensating cash payment to the other.

**13.5 In the event of termination of this Agreement:**

- a) Either party shall supply to the other party any information reasonably requested which the other party requires for the continuing discharge of the Specified Functions;
- b) Any Intellectual Property Rights created under this Agreement shall be owned by the parties in equal proportions and each of the Councils shall have the ability to use such rights in any continuing discharge of the Specified Functions;
- c) Any income created under this Agreement which is not owed to the Discharging Council in payment for the costs of discharging the Specified Functions shall be divided between the parties in equal proportions.

**13.6** It shall be the duty of both the parties to try to minimise any losses arising from the termination of this Agreement.

**13.7** A termination of this Agreement shall not affect any rights which the Councils have accrued under a Staff Transfer Agreement.

**13.8** Any staffing issues relating to a termination of this Agreement shall be dealt with in accordance with the terms of any Staff Transfer Agreement.

**13.9** The terms of any variation of this Agreement shall be set out in writing and signed by and on behalf of both parties.

**14. ASSIGNMENT AND SUBLETTING**

**14.1** The Discharging Council shall not assign all or any part of the liability, obligation or benefit under this Agreement or the Specified Functions without the Arranging Council's express prior written consent.

**14.2** Without prejudice to the generality of Clause 14.1 the Discharging Council may employ such locum private sector contracted staff and other temporary staff to meet the requirements of the Service Plan and for which there is budget provision without the prior agreement of the Arranging Council.

**15. INSURANCE**

**15.1** The Discharging Council shall ensure that adequate insurance cover is effected and maintained in respect of: any property held by it for the purposes of this Agreement; and any employers' liability, public liability and any liability for professional negligence, including liability for secondees working from the other Council's premises.

- 15.2 The Discharging Council will forward a copy of any insurance cover to which clause 15.1 relates to the Arranging Council on request.
- 15.3 Any party to this Agreement which allows its premises to be used to allow staff to work on matters relating to this Agreement shall ensure that adequate insurance cover is effected and maintained to cover employee liability (including vicarious liability for the Discharging Council staff), public liability and any other insurance requirements which may accord with good practice.

## **16. DISPUTE RESOLUTION**

- 16.1 The parties to this Agreement undertake and agree and indemnify the other against any costs or liability which it may have relating to the subject of such insurance cover to pursue a positive approach towards dispute resolution which seeks to identify a solution at the lowest operational level that is appropriate to the subject of the dispute and which avoids legal proceedings whenever possible and maintains a strong working relationship between the parties.
- 16.2 In the event that the Joint Operational Board is not able to resolve a dispute arising under this Agreement, it shall be referred to the Chief Executives and Leaders of both Councils.
- 16.3 In the event that reference to the Chief Executives and Leaders of both Councils does not resolve the dispute, the matter shall be referred a Chief Executive at another local authority in Cumbria, as may be agreed by both parties, for a final and binding decision.

## **17. BRANDING**

- 17.1 The arrangements made under this Agreement for the performance of the Specified Functions shall be known as the Eden and South Lakeland District Councils Shared ICT Service.
- 17.2 The Councils shall use this name on any document or reference relating to the performance of the Specified Functions.

## **18. LIABILITIES UNDER THIS AGREEMENT**

- 18.1 Each Council shall (and hereby undertakes with the other Council to) indemnify the other Council 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 the discharge of the Specified Functions or in the course of or as a result of it fulfilling its obligations under this Agreement with the intent that the Council being indemnified and the other Council shall be jointly liable for all such liability to claims costs and/or expenses 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.

AND PROVIDED FURTHER THAT such indemnity on the part of the Councils shall not extend to any liabilities relating to employees, to which the Staff Transfer Agreement applies.

This clause 18.1 shall survive the expiry or any termination of this Agreement.

- 18.2 The Section 151 Officers or other authorised officers of the parties shall have access at all reasonable times and with due notice to the financial records of the Councils and shall be entitled to seek explanations concerning any queries relating thereto.

## **19. NOTICES**

### **19.1 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 pre-paid first class post to, the recipient at the address stated in the heading to 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 any facsimile number stated for the purpose of this Agreement.

## **20. SERVICE**

- 20.1 Any such demand, notice or communication shall be deemed to have been duly served:
- 20.1.1 if delivered by hand, when left at the proper address for service;
  - 20.1.2 if given or made by pre-paid first class post, two Working Days after being posted; or

- 20.1.3 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 pre-paid first class post in the manner provided for in clause 19.1 (Form of Notice)
- 20.1.4 provided in each case that if the time of such deemed service is either after 4.00pm on a Working Day or on a day other than a Working Day, service shall be deemed to occur instead at 10.00am on the next following Working Day.

## **21. INFORMATION AND CONFIDENTIALITY**

- 21.1 The parties shall keep confidential all matters 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 matter relating to the Agreement or Intellectual Property Rights of the parties.
- 21.2 Clause 21.1 shall not apply to:
  - 21.2.1 Any disclosure of information that is reasonably required by persons engaged in the performance of their obligations under this Agreement;
  - 21.2.2 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;
  - 21.2.3 Any disclosure to enable a determination to be made under clause 16.1 (Dispute Resolution);
  - 21.2.4 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;
  - 21.2.5 Any disclosure of information which is already lawfully in the possession of the receiving party prior to its disclosure by the disclosing party;
  - 21.2.6 Any disclosure by a party to a department, office or agency of the Government;
  - 21.2.7 Any disclosure for the purpose of the examination and certification of a party's accounts.
  - 21.2.8 Where disclosure is permitted under clause 20.1, the recipient of the information shall be placed under the same obligation of confidentiality as that contained in this Agreement by the disclosing Council.

## **22. DATA PROTECTION**

- 22.1 The parties shall at all times comply with the Data Protection Act, including maintaining a valid and up to date registration or notification under the Data Protection Act, covering any data processing to be performed in connection with this Agreement and their responsibilities as data processors and/or data controllers.
- 22.2 The parties shall only undertake processing of Personal Data reasonably required in connection with the operation of this Agreement.
- 22.3 The parties shall not transfer any Personal Data to any country or territory outside the European Economic Area.
- 22.4 The parties shall not disclose Personal Data to any third parties other than:
- 22.4.1 in response to a data subject access request;
  - 22.4.2 to employees and contractors to whom such disclosure is necessary in order to comply with their obligations under this Agreement; or
  - 22.4.3 to the extent required to comply with a legal obligation.

## **23. INTELLECTUAL PROPERTY**

- 23.1 Any Intellectual Property Rights created during the provision of the Shared Service shall vest jointly in Eden District Council and South Lakeland District Council 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 they were created.

## **24. FREEDOM OF INFORMATION**

- 24.1 The parties recognise that the Councils are public authorities as defined by Freedom of Information 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 Freedom of Information 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 Specified Functions 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 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 Freedom of Information 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 Freedom of Information 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**

- 25.1 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 13.3 (Termination or Variation of this Agreement) shall apply, as if the parties 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**

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

## **28. RELATIONSHIP OF PARTIES**

- 28.1 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.
- 28.2 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**

- 29.1 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. LAW OF AGREEMENT OR JURISDICTION**

- 30.1 This Agreement shall be governed by the laws of England and Wales and the parties submit to the exclusive jurisdiction of the courts of England.

## **31. PUBLIC PROCUREMENT**

- 31.1 The Councils agree that the procurement of any contract for services, supplies or works for an arrangement under clause 31.2 of this Agreement shall be undertaken by the Discharging Council and the following provisions shall apply:
- 31.1.1 The Discharging Council shall comply with its own procurement regulations and all applicable law.
- 31.2 Before commencing a procurement for any contract for services, supplies or works for an arrangement under clause 30.1 of this Agreement, the Discharging Council shall consult the Arranging Council and reach agreement as to whether the contract should be a joint contract between the Councils.

## **32. CHANGE IN LAW**

- 32.1. If a Change in Law occurs or is expected to occur, then either Council may send the other Council a written notice (“Change in Law Notice”) to express an opinion on:
- 32.1.1 The potential effects on this Agreement and any agreements for individual arrangements made under the provisions of this Agreement;
  - 32.1.2 Any changes which the Council sending the Change in Law Notice believes need to be made to this Agreement and any agreements for individual arrangements made under the provisions of this Agreement.
- 32.2 The Council receiving the Change in Law Notice shall respond to the Council sending the Change in Law Notice no later than twenty Working Days after receipt of the Change in Law Notice to say if it agrees with the proposed changes to this Agreement and any agreements for individual arrangements made under the provisions of this Agreement.
- 32.3 If the Councils cannot reach agreement over any proposed changes in response to a Change in Law the matter shall be dealt with in accordance with the Dispute Resolution procedure.

## **33. INNOVATION AND SAVINGS**

- 33.1 Each Council acknowledges that it will at all times act in good faith to the other in relation to this Agreement.
- 33.2 There will be regular liaison between the Councils through the Head of Service and the Joint Operational Board so that expertise best practice and innovation is shared.
- 33.3 The Councils will co-operate and liaise in relation to the ongoing costs for the operation of the Agreement and delivery of the Shared ICT Service and seek to achieve savings wherever possible.

## **34. ENTIRE AGREEMENT**

- 34.1 This Agreement and all documents referred to in this Agreement constitute the entire Agreement between the parties and supersede any prior Agreement or arrangement in respect of its subject matter.

SIGNED BY the parties on the date stated at the beginning of this Agreement.

SIGNED by )  
duly authorised for and on behalf of )  
Eden District Council )  
in the presence of )

SIGNED by )  
duly authorised for and on behalf of )  
South Lakeland District Council )  
in the presence of )

## **SCHEDULE 1**

### **FUNCTIONS OF THE JOINT OPERATIONAL BOARD**

- A. To agree a draft budget for the Shared ICT Service for submission to the Arranging Council and the Discharging Council portfolio holders.
- B. To agree a draft Strategy for the Shared ICT Service, including a detailed service plan which will set out performance targets. This is to be done by the end of January each year. This is then to be submitted to the Arranging Council and the Discharging Council portfolio holders.
- C. To monitor progress against the agreed service plan.
- D. To consider any items raised by any Board member.
- E. To recommend amendment to the Service Level Agreement to the Arranging Council and the Discharging Council portfolio holders as necessary.
- F. To agree any provision relating to the Specified Functions outside the scope (per Schedule 2) of the Service Level Agreement.
- G. To monitor actual expenditure against the agreed budget.
- H. To ensure Phase 1 is being implemented effectively.
- I. To effectively ensure that developments are being made to enable Phase 2 to be effective from 1 April 2012.
- J. To undertake or recommend to the Councils such actions as may be necessary to ensure the development and implementation of the Shared ICT Service is implemented in the most effective and appropriate manner.

## **SCHEDULE 2**

### **SPECIFIED FUNCTIONS**

1. The services which the Arranging Council requires the Discharging Council to discharge on its behalf as part of the shared service relating to ICT are:

#### **Specified Functions**

- 1.1 The definition and delivery of a single joint ICT strategy;
- 1.2 ICT Services (including applications support, infrastructure development and support);
- 1.3 Website services (including website strategy and support for external Internet website development);
- 1.4 Business analysis of joint or shared ICT projects;
- 1.5 Support and advice relating to Government Connect;
- 1.6 The management of the ICT service;
- 1.7 The management of the budget for the shared ICT service;
- 1.8 Maintenance of ICT equipment, systems and services;
- 1.9 Security of ICT equipment, systems and services;
- 1.10 Provision of Business Continuity and Disaster Recovery of ICT systems and services including the availability security and resilience of any such systems and business analysis to support departments;
- 1.11 Central procurement, maintenance and disposal of all infrastructure, hardware, licences, systems and services for the provision of ICT services;
- 1.12 Liaising with internal training sections for the training of staff working on ICT matters and induction training for staff on ICT matters;
- 1.13 Project and Programme management of ICT activities, including the rationalisation and integration of business systems across both Councils in line with approved business case and any change and implementation initiatives;

- 1.14 Provision of effective service and performance management and reporting to the Joint Operational Board and to service users as appropriate;
- 1.15 Provision of advice and guidance for all ICT related issues to all staff, members and third parties supported;
- 1.16 Provision of business analysis and design services to support service departments in the use of ICT systems;
- 1.17 The definition, development and maintenance of all ICT related policies on behalf of both parties;
- 1.18 The support to both Councils through the ICT aspects of any transformational change process.
2. The services which the Discharging Council will deliver as part of the Shared Service at the offices of the Arranging Council are:
  - 2.1 Printing Services;
  - 2.2 Logon services for staff and members;
  - 2.3 Activities relating to Emergency Planning;
  - 2.4 Any business analysis of any project which is limited to the Arranging Council;
  - 2.5 Telephony and telecommunications support;
  - 2.6 The management of any budget relating to local costs;
  - 2.7 The operation of a Help Desk;
  - 2.8 ICT provision and support for Councillors;
  - 2.9 Intranet development and support;
  - 2.10 Any monitoring of usage of the Internet.
  - 2.11 The management of Eden's GIS Officer and the Web Co-ordinator;
  - 2.12 Support for the software applications other than where this is provided through an internal department.

### SCHEDULE 3

#### AGREED BUDGET FOR THE SPECIFIED FUNCTIONS

<b>2010-2011</b>	<b>£</b>
Staff and related costs (shared IT Services Manager)	<b>17,000</b>
Eden District council share: 39.8%	6,800
South Lakeland District Council share: 60.2%	10,200
<b>2011-2012</b>	<b>£</b>
Staff and related costs (shared IT Services Manager and shared Infrastructure Manager)	92,000
Installation of link	4,000
Staff training (implementation)	6,000
Specialist support	18,000
<b>Total</b>	<b>120,000</b>
Eden District Council share: 39.8%	47,800
South Lakeland District Council share: 60.2%	72,200
<b>2012-2013</b>	<b>£</b>
Staff and related costs (all staff in shared service)	514,000
Infrastructure	107,000
Staff training (implementation)	6,000
<b>Total</b>	<b>627,000</b>
Eden District Council share: 39.8%	249,500
South Lakeland District Council share: 60.2%	377,500



**2013-2014 AND SUBSEQUENT YEARS****Basis**

Staff and related costs (all staff in shared service)

2012-2013 cost plus costs of pay award and increment increases

Infrastructure

2012-2013 cost plus Consumer Price Index increase

Other charges

As agreed by the Joint Operational Board

Total

Sum of above

Eden District Council share

39.8%

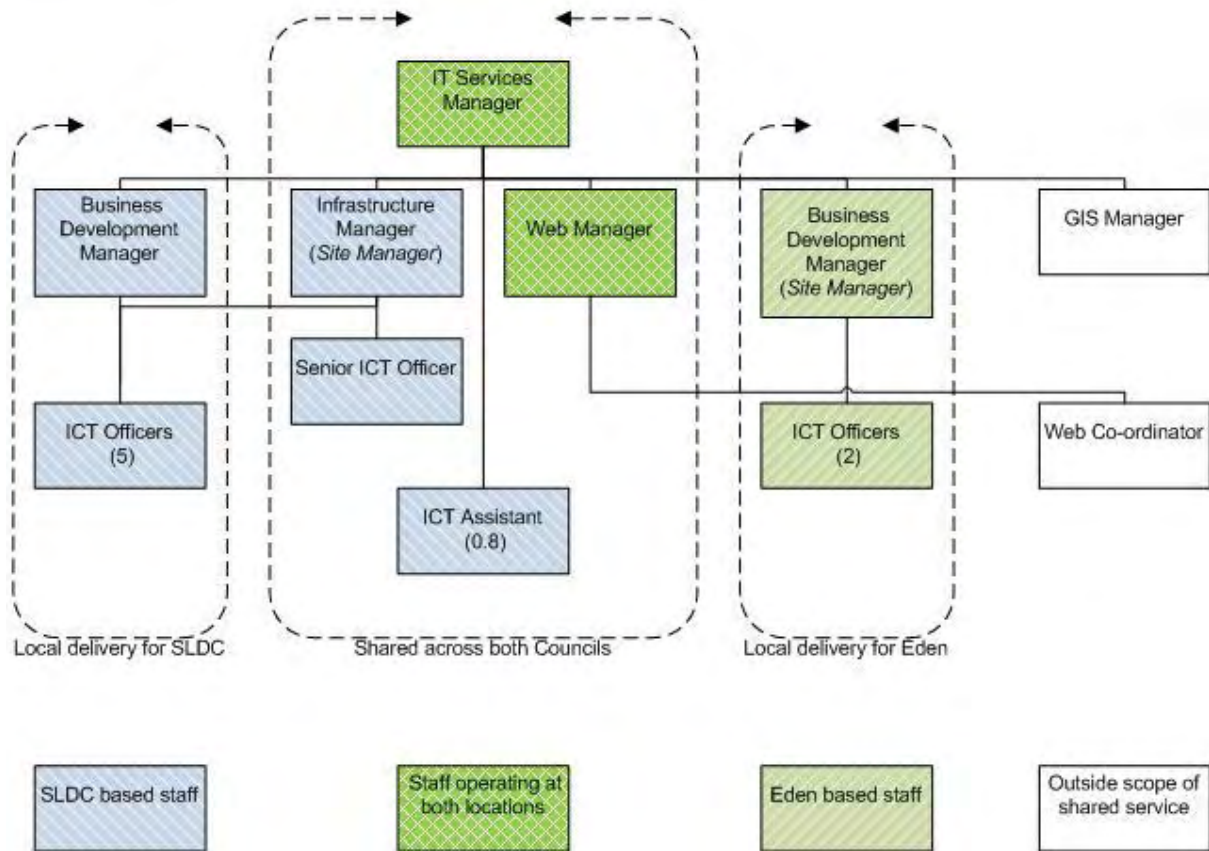
South Lakeland District Council share

60.2%

## SCHEDULE 4

### EMPLOYEE STRUCTURE

#### Shared IT Service



## **SCHEDULE 5**

### **ICT SERVICES NOT PROVIDED BY SHARED SERVICE**

The arrangement for the Discharging Council to discharge functions relating to ICT services on behalf of the Arranging Council do not include the following matters subject to any variation of this Agreement.

1. Provision and management of information content on all Internet and Intranet sites will rest with the appropriate service departments and communications teams within both Councils;
2. The responsibility for Information Management (including Records Management, Freedom of Information and Data Protection) will rest with the appropriate departments within both Councils;
3. The administration of functionality and information within business systems which will rest with the system administration roles within departments.
4. Responsibility for the overall ownership and management of any business change will rest with the business departments;
5. The provision of printers at any site;
6. The provision of personal computers and consumables for use in connection with personal computers.