

Dated

2016

NORTH DEVON DISTRICT COUNCIL

and

MID DEVON DISTRICT COUNCIL

JOINT COMMITTEE AGREEMENT FOR SHARED SERVICES

Legal Services
North Devon District Council
Lynton House
Commercial Road
Barnstaple
EX31 1DG
LS/SF/13488

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THIS DEED is dated

Between

The parties to this Agreement are:

- (1) NORTH DEVON DISTRICT COUNCIL of Lynton House, Commercial Road, Barnstaple, Devon EX31 1DG (**NDDC**); and
- (2) MID DEVON DISTRICT COUNCIL of Phoenix House, Phoenix Lane, Tiverton, Devon, EX16 6PP (**MDDC**).

Background

- (A) NDDC and MDDC (referred to collectively in this Agreement as the **Partner Authorities**) are local authorities constituted by the Local Government Act 1972 (**1972 Act**).
- (B) The Partner Authorities have agreed to establish and to participate in a joint committee (**Joint Committee**) to facilitate a partnership to jointly deliver certain of their functions with a view to their more economical, efficient and effective discharge (**Partnership**).
- (C) The Partner Authorities have entered into this Agreement in reliance on the exclusive rights given to local authorities to undertake administrative arrangements of this nature in section 101, 102, 112 and 113 of the 1972 Act and the regulations made under the 1972 Act; together with the general power within section 1 of the Localism Act 2011.

Agreed terms

1. Definitions

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

Agreed Functions: those functions set out at Schedule 2 which have been delegated to the Joint Committee in the manner described in Schedule 1.

Asset Register: a register of all the Assets used by the Partner Authorities in the delivery of the Shared Services.

Assets: all and any assets used in the delivery of the Shared Services including all items of furniture, information technology (including Software) and all other equipment supplied by the Partner Authorities for use in the delivery of the Shared Services.

Commencement Date: the date of this Agreement.

Constitution of the Joint Committee: the constitution set out at Schedule 1.

Distribution Formula: the formula representing percentage contributions of each of the Partner Authorities as set out in clause 10.9.

EIR: Environmental Information Regulations 2004.

FOIA: Freedom of Information Act 2000.

Force Majeure Event: any cause affecting the performance by a party of its obligations under this agreement arising from acts, events, omissions or non-events beyond its reasonable control, including acts of God, riots, war, acts of terrorism, fire, flood, storm or earthquake and any disaster, but excluding any industrial dispute relating to either party, either party's personnel or any other failure in either party's supply chain.

Head of Paid Service: an officer designated by a Partner Authority as the Partner Authority's Head of Paid Service in accordance with section 4 of the Local Government Act 1989.

Information: has the meaning given under section 84 of FOIA.

Intellectual Property Rights: any and all intellectual property rights of any nature anywhere in the world whether registered, registerable or otherwise, including patents, utility models, trade marks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, moral rights, know-how and any other intellectual property rights which subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures and particulars of customers, marketing methods and procedures and advertising literature, including the "look and feel" of any websites.

Lead Authority: where applicable, the Partner Authority named as such for:

- (a) a Shared Service in Schedule 2; or
- (b) a Support Service in Schedule 3.

Partnership Leader: the officer(s) with responsibility for managing the Shared Services on behalf of the Partner Authorities.

Personal Data: shall have the same meaning as set out in the Data Protection Act 1998.

Political Group Leader: a person designated as the leader of a political group in accordance with the Local Government (Committees and Political Groups) Regulations 1990.

Relevant Posts: those posts identified in Schedule 5.

Relevant Staff: staff employed by each of the Partner Authorities in the Relevant Posts.

Request for Information: a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the EIR.

Reserved Decision: any decision or aspect of an Agreed Function which has been reserved to either of the Partner Authorities and therefore does not comprise part of the Shared Services.

Section 151 Officer: the officer designated by a local authority as the person responsible for the proper administration of its financial affairs, as required by section 151 of the Local Government Act 1972.

Service Level Agreement: a formal agreement entered into by the Partner Authorities that describes the services to be provided/delivered and defines and governs service delivery standards and the respective responsibilities of those Partner Authorities and any annual review.

Shared Services: those services which are detailed in Schedule 2, insofar as these are Agreed Functions which have been delegated to the Joint Committee; to include such additional services as are agreed to by the Partner Authorities and delegated to the Joint Committee.

Software: any and all computer programs in both source and object code form, including all modules, routines and sub-routines of such programs and all source and other preparatory materials relating to them, including user requirements, functional specifications and programming specifications, ideas, principles, programming languages, algorithms, flow changes, logic, logic diagrams, orthographic representations, file structures, coding sheets, coding and any manuals or other documentation relating to them and computer generated works.

Support Services: those services, detailed in Schedule 3, or any additional support services added in accordance with clause 5.2, which are required to assist the Joint Committee in the discharge of the Agreed Functions.

Working Day: Monday to Friday, excluding any public holidays in England and Wales.

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 The schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement and any reference to this agreement includes the schedules.
- 1.4 Words in the singular shall include the plural and vice versa.
- 1.5 A reference to one gender shall include a reference to the other genders.
- 1.6 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.7 A reference to writing or written includes faxes and e-mail.
- 1.8 Any obligation in this agreement not to do something includes an obligation not to agree or allow that thing to be done.
- 1.9 A reference to a document is a reference to that document as varied or novated (in each case, other than in breach of the provisions of this agreement) at any time.
- 1.10 References to clauses and schedules are to the clauses and schedules of this agreement; references to paragraphs are to paragraphs of the relevant schedule.

2. The Partnership

- 2.1 In exercise of their powers under sections 101(5) and 102 of the 1972 Act, sections 19 and 20 of the Local Government Act 2000, and all other enabling powers, the Partner Authorities agree to establish and participate in the Shared Services to be delivered through a Joint Committee which shall be constituted and conduct its business in accordance with this Agreement, including the constitution set out in Schedule 1 with effect from the Commencement Date.
- 2.2 The Partner Authorities shall each delegate and empower the Joint Committee to discharge on its behalf the Agreed Functions as set out in Schedule 2 and empowers the Joint Committee to arrange for the discharge of the Agreed Functions or any part or parts of them by any sub-committee or by any officer of the Partner Authorities so appointed and section 101(2) of the 1972 Act shall apply in relation to the Agreed Functions of the Partnership as it applies in relation to the functions of the Partner Authorities.

3. Service plans

- 3.1 Each Partner Authority shall submit, to the Lead Authority for financial Support Services, before the end of October each year, their estimate of the funding likely to be available to the Shared Services for the next three financial years.
- 3.2 Each Partnership Leader shall prepare and submit to the Joint Committee no later than November each year an annual written service plan for the next three years for the Shared Service for which he or she is responsible. This shall take into account any constraints arising from clause 3.1 above and set out inter alia the outputs to be achieved by and the resources required for the relevant Shared Service.
- 3.3 On receipt of a service plan for a Shared Service, the Joint Committee shall, by the end of the calendar year, review, make such amendments as it thinks fit and approve the service plan together with any relevant Service Level Agreement.
- 3.4 The Joint Committee shall be responsible for reviewing actual performance against the service plans.

4. Offices for Shared Services

Each Partner Authority shall provide suitable working accommodation for each of the Relevant Staff as may be determined by the structure established by the Joint Committee for the performance of each of the Shared Services from time to time.

5. Support Services

- 5.1 Support Services shall be provided by the Partner Authorities as may be necessary to support the Joint Committee in the discharge of the Shared Services.
- 5.2 If either Partner Authority believes that additional Support Services may be required for the effective discharge of the Agreed Functions it shall consult the other Partner Authority to reach agreement as to the appropriate way of

providing the additional Support Services. If the Partner Authorities are unable to agree the appropriate way of providing the additional Support Services the matter shall be dealt with in accordance with the dispute resolution procedure set out at clause 15.

6. Assets

The Partner Authorities agree that within 14 days of the Commencement Date they will draw up an inventory of Assets (**Asset Register**) which will be kept and regularly updated by the Lead Authority responsible for the governance and secretarial Support Services.

7. Costs and liabilities in respect of the Joint Committee

7.1 All losses, claims, expenses, actions, demands, costs and liabilities incurred by the Joint Committee and in fulfilling obligations under this Agreement shall be shared by the Partner Authorities on such terms as may be agreed from time to time between the Partner Authorities and, in the absence of agreement pursuant to this clause, in accordance with the Distribution Formula.

7.2 Each Partner Authority shall (and hereby undertakes with the other Partner Authority to) indemnify the other Partner Authority against, and/or contribute to and pay a share of, all or any liabilities, claims, costs and/or expenses of or incurred by that Partner Authority arising out of, or in connection with, or in the course of, or as a result of, it being a member of the Joint Committee and fulfilling its obligations under this Agreement with the intent that the Partner Authority being indemnified and the other Partner Authority shall be jointly liable for all such liability to claims, costs and/or expenses in accordance with the Distribution Formula or as otherwise agreed.

7.3 This clause 7 shall be subject to such indemnity, on the part of the Partner Authorities, not extending 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 Partner Authority seeking to be indemnified:

7.3.1 breach by the Partner Authority of its obligations under this Agreement;

7.3.2 gross negligence;

7.3.3 gross misconduct;

7.3.4 persistent breach of law or duty (that is to say the Partner Authority persisted in the breach of law or duty after the same was drawn to its attention);

7.3.5 any act or omission known or that should have been known to the relevant Partner Authority to be contrary to proper practice as a local authority or local government law; or

7.3.6 substantial or persistent failure (after reasonable notice) to redress performance of the duties of the relevant Partner Authority to comply with the requirements or the standards of, or set out in, this Agreement.

7.4 For the avoidance of doubt such indemnity as is referred to in this clause 7 shall include, but not be limited to, matters relating to the employment and transfer of staff, losses, costs, expenses or liabilities arising from contracts with third parties and in relation to assets.

7.5 This clause 7 shall survive the expiry or determination of this Agreement.

8. Insurance

8.1 Each Partner Authority shall ensure that:

8.1.1 it maintains throughout the duration of this Agreement (or procures the taking out and maintenance of) adequate insurance to the levels set out in clause 8.2 and such other insurances which may be required by legislation;

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

8.1.3 it is responsible for meeting, and promptly pays all costs of, all insurance premiums for the insurances referred to in clause 8.2; and

8.1.4 upon written request it provides to the other Partner Authority making the written request:

8.1.4.1 copies of all insurance policies required under this clause 8;

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

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

8.2 Each Partner Authority shall ensure that at all times an adequate level of insurance is maintained by it from the Commencement Date and throughout the duration of this Agreement in respect of the provision of the Shared Services and, in particular, as a minimum the following levels of cover:

8.2.1 public liability insurance with a limit of indemnity of not less than £20,000,000.00 in relation to any one claim or series of claims;

8.2.2 employer's liability insurance with a limit of indemnity of not less than £45,000,000.00 in relation to any one claim or series of claims; and

8.2.3 official's indemnity insurance with a limit of indemnity of not less than £5,000,000.00 in relation to any one claim or series of claims.

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

8.4 Each Partner Authority warrants to the other that, as at the date of this Agreement:

8.4.1 it has provided a copy of this Agreement to its insurer; and

8.4.2 upon receipt of a notice from an insurer to a Partner Authority that the terms of the insurances required under this clause 8 have changed or that the insurer withdraws its insurance that Partner Authority shall promptly notify the other and use its best endeavours to forthwith obtain replacement insurance at the levels as required under this clause 8.

9. Staffing

9.1 As from the Commencement Date the Relevant Staff shall be:

9.1.1 appointed to posts in the structure approved by the Joint Committee;

9.1.2 retained in the employment of their current employer;

9.1.3 may be seconded to the other Partner Authority to carry out the Shared Services; and

9.1.4 employed on terms and conditions set by their employing Partner Authority.

9.2 Where a Relevant Staff member leaves any post, or a new post is created, that post shall be filled by the Partnership Leader of the relevant Shared Service and any newly appointed member of staff shall be employed by the Partner Authority which employed the original member of Relevant Staff unless otherwise agreed by the Joint Committee in consultation with the relevant Partnership Leader.

9.3 The Partnership Leader for each Shared Service shall be responsible for the day to day management of the Relevant Staff allocated to their Shared Service, including, but not limited to, performance management, allocation of holiday, training, personal development reviews and sickness absence issues all of which shall be in accordance, at all times, with all of the relevant employing Partner Authority's applicable policies, procedures and local agreements.

9.4 In respect of instances of long term sickness absence by a member of Relevant Staff and/or where formal disciplinary action may lead to a dismissal of a member of Relevant Staff, then that action shall be administered by the Partner Authority which is his/her employer.

9.5 Each Partner Authority shall ensure that all Relevant Staff are provided with appropriate authorisation to undertake work within the administrative areas of all of the Partner Authorities.

10. Funding of the Joint Committee

10.1 The Lead Authority for financial Support Services shall prepare a base budget forecast for the Joint Committee in respect of the next three financial years by reference to the resources approved within the Shared Services service plans.

10.2 The Joint Committee shall, as soon as practicable, but in any event no later than the 10 January each year, submit to each Partner Authority its funding requirements.

- 10.3 If any Partner Authority disagrees with the amount of their contribution payable in accordance with this clause 10 then they may pursue the dispute resolution procedure set out in clause 15 or may terminate their involvement in the Joint Committee in accordance with clause 14.
- 10.4 Subject to clause 10.3:
- 10.4.1 The Partner Authorities agree that the annual costs of the Joint Committee and the administration of it shall be shared between them in accordance with the Distribution Formula; and
- 10.4.2 The Partner Authorities shall contribute funding in such sums as represents the proportion of the budget for each financial year determined by the Distribution Formula.
- 10.5 In accordance with clause 10.4, the Partner Authorities will pay such sums, as they shall be liable to contribute, to the budget(s) set up by the Lead Authority for financial Support Services to the Joint Committee at the relevant Lead Authority for each relevant Shared Service by one payment (or a single set of payments) annually.
- 10.6 An annual account detailing the expenditure and income of the Joint Committee, in respect of each Shared Service budget it is responsible for, shall be supplied by the Lead Authority for financial Support Services to the Partner Authorities by 30 May or as soon thereafter as is reasonably practicable in each year in respect of the previous financial year.
- 10.7 The section 151 officer of each Partner Authority, and other officers authorised by the section 151 officer, shall have access at all reasonable times, and with due notice, to the relevant financial records of the Partner Authorities and shall be entitled to seek explanations concerning queries relating thereto.
- 10.8 In addition to clause 10.7, for the purposes of carrying out an audit appropriately authorised staff of a Partner Authority, or third party organisations appointed by a Partner Authority for this purpose, may access all records, assets, personnel and premises, including those of partner organisations and shall have the authority to obtain such information and explanations as they consider necessary to fulfil their auditing responsibilities.
- 10.9 The Distribution Formula shall be as set out in Schedule 4. Such proportion shall reduce or increase proportionately in the event that other partner authorities join into the provisions of this Agreement as parties, any of the Partner Authorities withdraw or where additional Shared Services are added.

11. Duration of the Agreement

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

12. Variations to this Agreement

- 12.1 Any of the Partner Authorities may request a variation to this Agreement by making a request in writing to the Lead Authority for governance and secretarial Support Services.
- 12.2 The Lead Authority for governance and secretarial Support Services shall circulate the request to each of the Partner Authorities within 10 Working Days of receipt of the request for consideration and approval by the Partner Authorities.
- 12.3 If all of the Partner Authorities approve the variation then the Lead Authority for governance and secretarial Support Services shall arrange for the preparation of an appropriate Deed of Variation to this Agreement to be prepared for execution by all of the Partner Authorities and such change shall only take effect upon completion of that Deed of Variation and the costs associated with the preparation of such a Deed of Variation shall be shared equally between the Partner Authorities.
- 12.4 If one of the Partner Authorities does not approve the change then the change to this Agreement shall not occur.

13. Withdrawal from the Joint Committee

- 13.1 Any Partner Authority which wishes to withdraw from the Joint Committee shall give not less than 6 months' notice to the other Partner Authorities, including the Lead Authority for governance and secretarial Support Services, of its intention to do so, to be served on or before 1 September in any year. The relevant Lead Authority for governance and secretarial Support Services shall consult each Partner Authority they are serving notice on to give due consideration to:
- 13.1.1 any loss of funding which may arise from such withdrawal to include any non-payment, clawback or repayment of such funding; and
- 13.1.2 any other loss, liability, damage, claim or expense
- which would be incurred by the Partner Authority upon which notice has been served by reason of such withdrawal from the Joint Committee.
- 13.2 Any Partner Authority wishing to withdraw from the Joint Committee undertakes, as a condition of such withdrawal, to make, prior to withdrawal, such reasonable payment or payments which fairly reflect the actual losses caused by or anticipated as a result of the withdrawal as shall be determined by the other Partner Authorities pursuant to clauses 7, 10 and 13.1 above and no notice under this clause 13 shall take effect unless and until such payment has been made.
- 13.3 The Joint Committee reserves the right to recover from any party to this Agreement the costs of any claims, costs, expenses, losses or liabilities of any nature or which have been caused by any act or omission of that party and which are discovered after that party's withdrawal from this Agreement.
- 13.4 Where a party's withdrawal brings about a decision to terminate this Agreement, the provisions of clause 14 shall apply.

14. Termination of this Agreement

- 14.1 The Partner Authorities agree that this Agreement may be determined upon terms agreed by all Partner Authorities.
- 14.2 In the event of termination of this Agreement:
- 14.2.1 any Partner Authority shall supply to any other Partner Authority, when requested, any information which the other Partner Authority requires for the continued provision by that other party of any of the Shared Services;
 - 14.2.2 any Intellectual Property Rights created under this Agreement shall be owned by all of the Partner Authorities in equal proportions; and
 - 14.2.3 each of the Partner Authorities shall undertake to pay such reasonable payment or payments which fairly reflect the obligations of that Partner Authority pursuant to this Agreement on the basis set out in clauses 7, 10 and 13.
- 14.3 In the event of termination of this Agreement, all Assets held by any of the Partner Authorities for the purposes of this Agreement shall:
- 14.3.1 where reasonably practicable, be divided between the Partner Authorities proportionate to the average cost of the relevant Shared Service over the previous year;
 - 14.3.2 be sold for the best consideration possible and the proceeds of sale divided between the Partner Authorities proportionate to the average cost of the Shared Services over the previous year;
 - 14.3.3 where relevant, be retained by a Partner Authority for its own use and purposes subject to an equitable financial settlement to the other Partner Authorities as agreed between the Partner Authorities;
 - 14.3.4 be dealt with as otherwise agreed between the Partner Authorities; or
 - 14.3.5 in the absence of agreement, in accordance with the dispute resolution procedure in clause 15.
- 14.4 It shall be the duty of all of the parties to try to minimise any losses arising from the determination of this Agreement. Amongst other issues the Partner Authorities shall use their best endeavours to offer priority redeployment to any Relevant Staff then employed in the provision of the Shared Services, by taking a transfer of any of the staff to provide the Shared Service or to be redeployed more generally and/or by helping to seek alternative employment for them.

15. Internal Dispute Resolution

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

- 15.2 Any dispute or difference shall, in the first instance, be referred to the relevant Partnership Leader to resolve in liaison with both Partner Authorities. In the event that such matters cannot be resolved within 10 Working Days it shall be referred to the Heads of Paid Service and, in default of agreement, it shall be referred to the Joint Committee for determination.
- 15.3 In the event of any dispute or difference between the Partner Authorities relating to this Agreement which it has not been possible to resolve through the decision making processes of the Joint Committee (whether this be a matter of interpretation or otherwise) the matter shall be referred to arbitration in accordance with clause 16.

16. Arbitration

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

17. Notices

- 17.1 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 to the recipient by:
- 17.1.1 pre-paid first class post at the address set out at the beginning of this Agreement (or such other address as may be notified in writing from time to time);
 - 17.1.2 facsimile transmission at the number as may be notified in writing from time to time; or
 - 17.1.3 by e-mail to the address as may be notified in writing from time to time.
- 17.2 Any such demand, notice or other communication shall be deemed to have been duly served:
- 17.2.1 if delivered by hand, when left at the proper address for service;
 - 17.2.2 if given or made by pre-paid first class post, two Working Days after being posted;
 - 17.2.3 if sent by facsimile, at the time of transmission provided that a confirmatory copy is, on the same day that the facsimile is transmitted, sent by pre-paid first class post in the manner provided for in clause 17.1; or
 - 17.2.4 if sent by e-mail, at the time of transmission

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 Working Day.

18. Freedom of Information

- 18.1 The Partner Authorities acknowledge that each is subject to the requirements of the FOIA and the EIR.
- 18.2 In accordance with clause 18.1 the Partner Authorities shall provide all necessary assistance and cooperation as reasonably requested by one another to enable them to comply with their obligations under the FOIA and EIR.
- 18.3 The Partner Authorities acknowledge that one or other of them may be required under the FOIA or EIR to disclose Information (including Information that may be deemed to be commercially sensitive) without consulting or obtaining consent from the other. The Partner Authorities shall take reasonable steps to notify one another of a Request For Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for them to do so but (notwithstanding any other provision in this agreement) the Partner Authority that received the Request for Information shall be responsible for determining in its absolute discretion whether any commercially sensitive information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIR.

19. Data Protection

- 19.1 Each of the Partner Authorities shall duly observe all their obligations under the Data Protection Act 1998 (**DPA**), which arise in connection with this Agreement.
- 19.2 Notwithstanding the general obligation in clause 19.1, where one of the Partner Authorities is processing Personal Data as a Data Processor (**Data Processor Authority**) for the other Partner Authority (**Data Controller Authority**), the Data Processor Authority shall ensure that it has in place appropriate technical and contractual measures to ensure the security of the Personal Data (and to guard against unauthorised or unlawful processing of the Personal Data and against accidental loss or destruction of, or damage to, the Personal Data), as required under the Seventh Data Protection Principle in Schedule 1 to the DPA; and
 - 19.2.1 provide the Data Controller Authority with such information as the Data Controller Authority may reasonably require to satisfy itself that the Data Processor Authority is complying with its obligations under the DPA;
 - 19.2.2 promptly notify the Data Controller Authority of any breach of the security measures required to be put in place pursuant to 19.2; and
 - 19.2.3 ensure it does not knowingly or negligently do or omit to do anything which places the Data Controller Authority in breach of the Data Controller Authority's obligations under the DPA.

19.3 The provisions of this clause shall apply during the continuance of the Agreement and indefinitely after its expiry or termination.

20. Scrutiny and Audit

20.1 The Partner Authorities agree that scrutiny relating to this Agreement and the Agreed Functions shall be the responsibility of each Partner Authority.

20.2 The relevant committees of each Partner Authority responsible for scrutiny and audit shall have the right to inspect any documents relating to this Agreement and to require the Joint Committee to answer any questions raised by them.

20.3 The accounts relating to Shared Services and this Agreement shall be the subject of audit by any external auditor appointed by any of the Partner Authorities and shall be open to inspection by any external auditor appointed by the Audit Commission.

20.4 Any increased cost in undertaking any audit relating to the Shared Services and this Agreement shall be shared pro rata between the Partner Authorities on such terms as may be agreed by the Partner Authorities.

21. Intellectual Property

21.1 The Partner Authorities intend that, notwithstanding any secondment, any Intellectual Property Rights created in the course of any of the Shared Services shall vest in the Partner Authority whose employee created them (or in the case of any Intellectual Property Rights created jointly by employees of all of the Partner Authorities, in the party that is the agreed lead party for that part of the Shared Service that the Intellectual Property Rights relates to).

21.2 Where any Intellectual Property Rights vest in either Partner Authority in accordance with the intention set out in clause 21.1 above, that Partner Authority shall grant an irrevocable licence to the other Partner Authority to use those Intellectual Property Rights for the purposes of the applicable Shared Service.

22. Force Majeure

All parties shall be released from their respective obligations in the event that a Force Majeure Event renders the performance of this Agreement not reasonably practicable whereupon all money due to any party under this Agreement shall be paid immediately and clause 12 shall apply as if all Partner Authorities in membership of the Joint Committee had agreed to determine this Agreement.

23. Severability

23.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this

clause shall not affect the validity and enforceability of the rest of this Agreement.

- 23.2 If any provision or part-provision of this Agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

24. Successors

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

25. Relationship of the parties

Each of the parties is an independent local authority and nothing contained in this Agreement shall be construed to imply that there is any relationship between the parties of a legal partnership or of principal/agent or of employer/employee. Except to the extent expressly permitted by the terms of this Agreement or where otherwise expressly authorised in writing, no party shall have any right or authority to act on behalf of another party or to bind another party by contract or otherwise.

26. Third party rights

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

27. Entire agreement

- 27.1 This Agreement, the schedules and the documents annexed to it or otherwise referred to in it constitute the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

- 27.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.

28. Governing law

This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

EXECUTED as a **DEED** by the
affixing of the **COMMON SEAL** of
NORTH DEVON DISTRICT
COUNCIL

in the presence of:

.....

Authorised Signatory

EXECUTED as a **DEED** by the
affixing of the **COMMON SEAL** of
MID DEVON DISTRICT COUNCIL

in the presence of:

.....

Authorised Signatory

SCHEDULE 1
Constitution of the Joint Committee

1. Each of the Partner Authorities shall appoint two members (being elected members of that Partner Authority) as its nominated member of the Joint Committee. The members appointed shall have full voting rights.
2. Each Partner Authority may nominate one or more substitute members to attend any meeting in place of an appointed member from that Partner Authority, subject to notification being given to the Lead Authority responsible for governance and secretarial Support Services, before the start of the meeting. The member appointed as a substitute shall have full voting rights where the member for whom they are substituting does not attend. If all of a Partner Authority's nominated members attend a meeting of the Joint Committee, any named substitute may also attend as an observer but shall not be entitled to vote.
3. Each member of the Joint Committee shall comply with the Code of Conduct of their Partner Authority when acting as a member of the Joint Committee.
4. Each of the Partner Authorities may remove any of its nominated members or substitute members of the Joint Committee and appoint a different member or substitute to the Joint Committee by giving written notice to the Lead Authority for governance and secretarial Support Services.
5. Each Partner Authority shall have two votes. These shall be exercised by the nominated members who are elected members of the Partner Authority. In the absence of a Partner Authority's nominated member, a vote may be exercised by the named substitute who is an elected member of the Partner Authority or, where notice has been given to the Lead Authority responsible for governance and secretarial Support Services before the start of the meeting, by proxy by the other nominated member of that Partner Authority.
6. Each member of the Joint Committee shall serve upon the Joint Committee for as long as he or she is appointed to the Joint Committee by the relevant Partner Authority but a member shall cease to be a member of the Joint Committee if he or she ceases to be a member of the Partner Authority appointing him or her as a member of the Joint Committee.
7. Any casual vacancies howsoever arising shall be filled by the Partner Authority from which the vacancy arises by notice in writing sent to the Lead Authority for governance and secretarial Support Services.
8. Meetings of the Joint Committee shall be held at the offices of the member appointed as chairperson, unless otherwise agreed by the Joint Committee.
9. The Partner Authority hosting the first meeting shall appoint one of its nominated members as chairperson and that member shall remain chairperson until the first meeting taking place after the elapse of one year from the time of his or her appointment unless he or she ceases to be a member of the Joint Committee. On the expiry of the first chairperson's term

of office as chairperson, the Partner Authority which did not appoint the first chairperson shall appoint one of its nominated members as chairperson for a period of one year from the time of his or her appointment. The same procedure shall be followed for the appointment of chairperson in subsequent years.

10. The Partner Authority which has not appointed the chairperson of the Joint Committee in any year shall appoint one of its nominated members as vice chairperson.
11. The Joint Committee shall meet once every quarter unless otherwise determined by the Joint Committee.
12. The Lead Authority for governance and secretarial Support Services may call additional meetings by providing at least five clear days' notice to members of the Joint Committee, for the purposes of resolving urgent matters arising between the bi-monthly meetings of the Joint Committee. The Lead Authority for governance and secretarial Support Services must call a meeting of the Joint Committee if at least one member of the Joint Committee from each Partner Authority requests it or if the Head of Paid Service of both Partner Authorities requests it.
13. Meetings shall be notified to members of the Joint Committee by the Lead Authority for governance and secretarial Support Services.
14. The Lead Authority for governance and secretarial Support Services shall send, electronically, to all members and relevant officers of each Partner Authority, the agenda for each meeting of the Joint Committee no later than five clear Working Days before the date of the relevant meeting. That Lead Authority shall also send, to all members of the Joint Committee, to the Political Group Leaders of each Partner Authority and relevant officers of each Partner Authority, printed copies of the agenda for each meeting of the Joint Committee no later than five clear Working Days before the date of the relevant meeting.
15. The Lead Authority for governance and secretarial Support Services shall arrange for written minutes to be taken of each meeting of the Joint Committee and shall arrange for an officer to present them to the Joint Committee at its next meeting for approval as a correct record. If the Joint Committee confirms that the minutes contain an accurate record of the previous meeting, those minutes shall be signed by the chairperson and vice chairperson.
16. Meetings of the Joint Committee will commence at 10.00am unless otherwise agreed by the Joint Committee. Meetings of the Joint Committee shall end no later than 1.00pm unless otherwise agreed by the Joint Committee.
17. A meeting of the Joint Committee shall require a quorum of two members with at least one member being from each Partner Authority who is entitled to attend and vote. If there is a quorum of members present but neither the

chair nor the vice-chair is present, the members present shall designate one member to preside as chair for that meeting.

18. Subject to the provisions of any enactment, all questions coming or arising before the Joint Committee shall be decided by a majority of the Partner Authority members of the Joint Committee immediately present and voting thereon. Subject to the provisions of any enactment, in the case of an equality of votes the chairperson shall have a second or casting vote but, before exercising this, the chairperson shall consider whether it is appropriate to defer the matter to the next meeting of the Joint Committee.
19. Any member of the Joint Committee may request the Joint Committee to record the votes of individual members of the Joint Committee on a matter for decision.
20. A member, when speaking, shall address the chairperson. If two or more members wish to speak, the chairperson shall call on one to speak. While a member is speaking all other members shall remain silent.
21. A member shall direct his/her speech to the question under discussion or to a personal explanation or to a point of order.
22. Only one amendment to a proposal may be moved and discussed at a time and no further amendment shall be moved until the amendment under discussion has been disposed of, providing the chairperson may permit two or more amendments to be discussed (but not voted on) together if circumstances suggest that this course would facilitate the proper conduct of the Joint Committee's business.
23. If an amendment is lost, other amendments may be moved on the original motion. If an amendment is carried, the motion, as amended, shall take the place of the original motion and shall become the motion upon which any further amendment may be moved.
24. The order of business shall be indicated in the agenda for the meeting.
25. When a motion is under debate by the Joint Committee no other motion shall be moved except the following:
 - 25.1 to amend the motion;
 - 25.2 to adjourn the meeting;
 - 25.3 to adjourn the debate;
 - 25.4 to proceed to the next business;
 - 25.5 that the question may now be put;
 - 25.6 that a member shall not be further heard;
 - 25.7 by the chairperson, that a member leave the meeting;
 - 25.8 a motion under section 100(A)(4) of the Local Government Act 1972 to exclude the public; or

- 25.9 to postpone consideration on an item.
- 26. A member may move without comment at the conclusion of a speech of another member, "That the Committee proceed to the next business", "That the question may now be put", "That the debate is now adjourned", or "That the Committee now adjourn", on the seconding of which the chair shall proceed as follows:
 - 26.1 on a motion to proceed to next business: unless in his/her opinion the matter before the meeting has been insufficiently discussed to put to the vote, the motion to proceed to next business;
 - 26.2 on a motion that the question may now be put: unless in his/her opinion the matter before the meeting has been insufficiently discussed he/she shall first put to the vote the motion that the question may now be put; or
 - 26.3 on a motion to adjourn the debate or meeting: if in his/her opinion the matter before the meeting has not been sufficiently discussed and cannot reasonably be sufficiently discussed on that occasion put the adjournment motion to the vote.

The ruling of the chair shall not be open for discussion.

- 27. Any member of the Partner Authorities who is not a member of the Joint Committee is entitled to attend the Joint Committee but he/she shall not be entitled to vote, shall not take part in the consideration or discussion of any business, save by leave of the chairperson, and comments will be recorded only on the direction of the chairperson.
- 28. The following elected representatives are entitled to attend the Joint Committee but they shall not be entitled to vote, shall not take part in the consideration or discussion of any business, save by leave of the chairperson and comments will be recorded only on the direction of the chairperson:
 - 28.1 Members of parish councils within the districts of the Partner Authorities;
 - 28.2 Members of Parliament for the residents of the Partner Authorities; and
 - 28.3 Members of the European Parliament for the residents of the Partner Authorities.
- 29. Meetings of the Joint Committee will be open to the public except to the extent that they are excluded under paragraph 31.
- 30. Members of the public wishing to address the Joint Committee (or a sub-committee of the Joint Committee) on Part I reports contained within the agenda for the meeting shall be given the opportunity to do so subject to:
 - 30.1 the opportunity being extended to one person to speak in support of each agenda item and one person to speak against each agenda item when called to do so by the chairperson;
 - 30.2 an indication of the desire to speak on the agenda item being made by the person just prior to the meeting and the name supplied to the chairperson

(by means of a register), the first person registering to have precedence in the event of more than one person wishing to speak either for or against an agenda item;

- 30.3 each person addressing the Joint Committee or sub-committee of the Joint Committee being limited to three minutes' speech;
 - 30.4 an opportunity being provided for an expression of a contrary view, even though no prior notice has been given, when a member of the public has spoken for or against an item;
 - 30.5 in the event of the person having registered to speak on an agenda item not wishing to take up their right to speak on the agenda item because it was deferred, that person will automatically be given the right to speak on the agenda item at the next meeting of the Joint Committee or sub-committee of the Joint Committee; and
 - 30.6 the chairperson of the meeting having discretion to rule that a person wishing to address the meeting shall not be heard if, in the chairperson's view, that issue or the organisation or the person wishing to make the representation on that issue has received an adequate hearing.
31. In accordance with the requirements of the 1972 Act and the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012, the public or press must be excluded from a meeting by resolution of the Joint Committee during an item of business if that item includes:
 - 31.1 confidential information, as defined in section 100A(3) of the 1972 Act; or
 - 31.2 exempt information, as defined in section 100I of the 1972 Act.
 32. Each Partner Authority may call in any decision of the Joint Committee in accordance with the overview and scrutiny provisions of that Partner Authority's constitution. If any decision of the Joint Committee is subject to call-in by a Partner Authority, the Joint Committee shall take no action to implement that decision unless the call-in process upholds the decision.
 33. The Joint Committee may delegate a function to an officer.
 34. Any contractual arrangements that relate to a Shared Service will be undertaken by one of the Partner Authorities and that Partner Authority shall apply its own financial regulations and contract procedure rules to such an arrangement. The Partnership Leader of the relevant Shared Service that is incurring the expenditure will normally determine which of the Partner Authority's financial regulations and contract procedure rules will apply and, in the event of any dispute or uncertainty, the matter should be referred to the Heads of Paid Service for determination.
 35. The Lead Authority responsible for governance and secretarial Support Services shall provide administrative support services to the Joint Committee on such terms as may be agreed from time to time between the Partner Authorities. The Partner Authorities shall make available committee officers

to provide administrative services at the meetings of the Joint Committee as appropriate and in consideration of where the meetings are being held.

36. The Lead Authority for legal Support Services shall provide the Joint Committee with legal advice and support on such terms as may be agreed from time to time between the Partner Authorities.
37. The Lead Authority for financial Support Services shall provide the Joint Committee with financial advice and support on such terms as may be agreed from time to time between the Partner Authorities.

SCHEDULE 2
Agreed Functions and Shared Services

1. The Joint Committee shall be responsible for and shall have delegated to it the following functions of the Partner Authorities:
 - 1.1 the building control function insofar as is provided at paragraph 5 of this Schedule 2; and
 - 1.2 such other functions which it is agreed between the Partner Authorities should become a Shared Service.
2. The Joint Committee shall act in the manner laid down in the Constitution of the Joint Committee as set out in Schedule 1.
3. The Joint Committee shall act as the ultimate arbiter in the case of unresolved disputes between the Partner Authorities unless such matters are referred to arbitration pursuant to clause 16.
4. It has been agreed that the Shared Services as referred to in paragraph 1 should be delivered in the manner laid down in this Agreement.

Building control:

5. In respect of the Shared Services for building control the Joint Committee shall:
 - 5.1 oversee the joint building control team; and
 - 5.2 formulate the budget, including any fees and charges, for the joint building control team as a recommendation for each Partner Authority to approve.

SCHEDULE 3
Support Services

1. To enable the Partnership to function effectively the Joint Committee shall require the following key Support Services from the Partner Authorities:
 - 1.1 financial support and advice;
 - 1.2 legal support and advice; and
 - 1.3 governance and secretarial support.
2. Each Support Service shall, from the Commencement Date, be provided by the following identified Lead Authority, which may be varied during the term of this Agreement by written agreement between the Partner Authorities:

Support Service	Lead Authority
Financial support and advice	NDDC
Legal support and advice	NDDC
Governance and secretarial support	NDDC

**SCHEDULE 4
Financial Arrangements**

PART 1 – Distribution Formula

1. Joint Committee costs

Annual costs relating to the Joint Committee shall be shared in equal proportions between the Partner Authorities, this shall include (but shall not be limited to):

- 1.1 administrative costs of the Joint Committee;
- 1.2 costs of room booking, refreshments and any Joint Committee events (e.g. training).
- 1.3 any other incidental expenses of the Joint Committee or Joint Committee members.

2. Shared Services operational costs

2.1 Subject to Part 2 of this Schedule 4, the annual costs of each Shared Service will be set and agreed by the Joint Committee:

2.1.1 For the first financial year, following the Commencement Date, each Partner Authority will contribute the following proportion of the annual cost of each service [based on the differences in workload]:

Service	NDDC	MDDC	Workload measure
Building control			

2.1.2 From the second financial year following the Commencement Date the workload metrics will be recalculated based on the previous year's actual workload.

2.2 Any changes to the approach of sharing operational costs between the Partner Authorities will be agreed by the Partner Authorities once Shared Services are fully operational.

3. Shared Services implementation costs

The implementation costs of the Shared Services shall be apportioned in equal proportions between the Partner Authorities.

PART 2 – Building Control Financial Arrangements

1. Lead Authority

The Lead Authority, for the purposes of this Part 2, shall be NDDC.

2. Pooled Budget and Trading Account

- 2.1 The Lead Authority will manage and pool the budgets of the Partner Authorities relating to the building control element of the Partnership (**Pooled Budget**).
- 2.2 The Lead Authority will also create a trading account, to be a 3 year earmarked reserve where surpluses or deficits occur, to demonstrate a breakeven position taking one financial year with another (**Trading Account**).
- 2.3 The Pooled Budget and the Trading Account will be ring fenced for the provision of the Partnership, in accordance with guidance from the CIPFA Code of Practice on Local Authority Accounting, Local Authority Building Control Accounting (Revised Second Edition 2010) and the Building (Local Authority Charges) Regulations 2010.
- 2.4 To isolate various income and expenditure the Lead Authority will separate the Pooled Budget into four separate accounts (**Pooled Accounts**):
 - 2.4.1 Chargeable Functions account: which includes all direct and indirect costs in accordance with the chargeable functions, as defined by the Building (Local Authority Charges) Regulations 2010 (**Chargeable Functions**);
 - 2.4.2 Non Chargeable Activities account: which includes all the direct and indirect costs which provide a statutory building regulation service for the Partner Authorities (**Non-Chargeable Functions**);
 - 2.4.3 All Other Building Control Services account: which includes all the direct and indirect costs for the provision of other regulative services for the Partner Authorities or for professional building control services which are outside of the administrative area of the Partner Authorities or for the provision of additional services (**Other Building Control Services**); and
 - 2.4.4 the Trading Account.
- 2.5 The Lead Authority shall:
 - 2.5.1 establish clearly defined accountancy arrangements;
 - 2.5.2 make arrangements for the payment of building control charges into the designated bank account coded to the relevant Partner Authority;
 - 2.5.3 establish designated and separate Pooled Accounts for the Partnership to receive the budgets of the Partner Authorities and income for the Partnership;
 - 2.5.4 present the Joint Committee and Partner Authorities with year-end and half-year accounts showing income received, expenditure and any balance remaining in the Trading Account;
 - 2.5.5 arrange for the Pooled Accounts to be available for inspection and audited and certified in line with the Lead Authority's governance and administration procedures and thereafter available for inspection; and

- 2.5.6 create a clear identifiable accounting structure which identifies trading of each Partnership Authority for the Pooled Accounts to enable effective monitoring and reporting.
- 2.6 Each Partner Authority will agree a level of service and a budget for the Non-Chargeable Functions and the Chargeable Functions and for Other Building Control Services which will be discharged into the Pooled Accounts for the mutual benefit of the Partner Authorities. The level of activity for Non-Chargeable Functions and Other Building Control Services will be based upon an agreed level of performance and any variation will be agreed in advance of setting the budget in order to give the Partner Authorities, the Partnership and the Lead Authority sufficient time to respond to changing market or budgetary conditions.
- 2.7 If additional costs are incurred in providing the Non-Chargeable Functions as a result of increases which were not reasonably foreseen at the budget setting process, the Partnership will raise this with the Partner Authorities with a view of offsetting the costs by agreeing appropriate savings.
- 2.8 On the commencement of the financial year these budgets and all building control charges will be discharged into the Pooled Accounts. Pooled Budgets cannot be adjusted during the financial year and they will be merged into the Pooled Accounts but they will be recorded separately in the year-end accounts.
- 3. Chargeable Functions**
- 3.1 The Lead Authority will be responsible for the collection of all income from the Chargeable Functions although there will be an initial transition period from collection by other Partner Authorities.
- 3.2 Income will be paid into the designated bank account administered by the Lead Authority. To ensure that each Partner Authority receives its correct income apportionment, all income will be allocated to a Partner Authority code based upon the location of the building work. Where the income is generated outside of the Partnership's administrative area, this will be allocated as Other Building Control Services.
- 4. Not for profit**
- 4.1 The Partnership account will be a rolling three year, zero based, not-for-profit account. Over and under spend to be levelled at the end of each accounting year using the Trading Account with relevant adjustments made to the subsequent year's budget.
- 4.2 Should it be determined, by agreement of the Partner Authorities, that any surplus will be distributed, or any deficit be met, by the Partner Authorities, contributions will be calculated using the ratio of chargeable income received in each Partner Authority's area over the relevant accounting period.
- 5. Over and under spends**
- 5.1 The Lead Authority is responsible for monitoring the budgets and the "breakeven position" to "take one financial year with another" to demonstrate

that the Chargeable Functions is equal, as far as practicable, to the actual costs incurred.

- 5.2 In accordance with paragraph 5.1 above, the Lead Authority will set up an “earmarked reserve” with a three year rolling Trading Account for the use of surpluses or deficits to offset future Chargeable Functions or for re-investment in service improvements.

6. Payments between Partner Authorities

Payments will be made regularly between the Partnership and the Partner Authorities at intervals to be determined by the Partner Authorities’ finance officers to reimburse for expenditure made and income earned by each Partner Authority less the amount due for Non-Chargeable Functions and any Other Building Control Services of that Partner Authority.

SCHEDULE 5
Relevant Posts

The following posts are in scope of the Shared Services:

Building Control

Council	Current Role	Proposed Role	Status
NDDC	Building Control Team Leader	Building Control Manager	FT
NDDC	Senior Building Control Surveyor	Senior Building Control Surveyor	FT
NDDC	Senior Building Control Surveyor	Senior Building Control Surveyor	FT
NDDC	Assistant Building Control Surveyor	Building Control Surveyor	FT
NDDC	Assistant Building Control Surveyor	Building Control Surveyor	FT
NDDC	Vacant Post	Vacant Post	On hold at Commencement Date
NDDC	Administration Assistant	Technical Support Officer	PT
NDDC	Administration Assistant	Technical Support Officer	PT
NDDC	Administration Assistant	Technical Support Officer	FT (temp)
MDDC	Building Control Officer	Senior Building Control Surveyor	FT
MDDC	Building Control Officer	Senior Building Control Surveyor	FT
MDDC	Building Control Surveyor	Building Control Surveyor	FT
MDDC	Building Control Surveyor	Building Control Surveyor	FT
MDDC	Building Control Support Officer	Technical Support Officer	FT
MDDC	Building Control Support Officer	Technical Support Officer	PT