

**Dated**

**2016**

**NORTH DEVON DISTRICT COUNCIL**

and

**MID DEVON DISTRICT COUNCIL**

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**AGREEMENT FOR THE PROVISION OF A JOINT BUILDING  
CONTROL TEAM**

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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) MDDC and NDDC (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 formed a Joint Committee for Shared Services pursuant to an agreement dated (**Joint Working Agreement**) to which this Agreement is supplemental.
- (C) Pursuant to the Joint Working Agreement the Partner Authorities have agreed to work together to facilitate a partnership to jointly deliver their building control functions with a view to their more economical, efficient and effective discharge (**Partnership**).
- (D) Pursuant to the Partnership the Partner Authorities have agreed that MDDC shall provide the ICT Assets at the Premises and that both Partner Authorities may use the Premises in the provision of the Partnership.
- (E) The Partner Authorities have entered into this Agreement further to the establishment of the Partnership and in accordance with the rights given to local authorities to allow the use by third parties of spare capacity of their computers pursuant to section 38 of the Local Government (Miscellaneous Provisions) Act 1976.

## **Agreed terms**

### **1. Definitions**

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

**Assets:** all and any assets used in the delivery of the Shared Services including the ICT Assets, the 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.

**Communal Car Park:** the car park shown edged blue on the Plan.

**EIR:** Environmental Information Regulations 2004.

**FOIA:** Freedom of Information Act 2000.

**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.

**Health and Safety Policy:** NDDC's health and safety policy as provided to MDDC on or before the Commencement Date and as subsequently provided to MDDC from time to time except any provision of any such subsequently provided policy that cannot be reasonably reconciled to ensuring compliance with applicable law regarding health and safety

**ICT Assets:** those Assets that are identified in Appendix A to Schedule 1.

**ICT Support Services:** shall be as defined in Schedule 1.

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

**Joint Committee:** the Joint Committee for Shared Services formed pursuant to the Joint Working Agreement.

**Joint Team:** the joint Building Control team formed by pursuant to the Partnership.

**MDDC Software:** the software identified at Part 1 to Appendix B to Schedule 1 to this Agreement.

**NDDC Software:** the software identified at Part 2 to Appendix B to Schedule 1 to this Agreement.

**Partnership Leader:** the officer with responsibility for managing the Partnership on behalf of the Partner Authorities.

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

**Plan:** the site plan attached to this Agreement.

**Premises:** the business support centre at Woodlands Enterprise Centre, Pathfields Business Park, South Molton EX36 3LH as shown edged red on the Plan.

**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.

**Service Level Agreement:** the service level agreement contained in this Agreement at Schedule 2.

**Software:** MDDC Software and NDDC Software collectively and any other software provided by either Partner Authority.

**Staff:** all employees, staff, other workers, agents, consultants and sub-contractors who are engaged by, or are acting on behalf of, the Joint Team from time to time pursuant to the Partnership.

**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 Pursuant to the Partnership the Partner Authorities have agreed to form the Joint Team.
- 2.2 In order to enable to the Joint Team to act in pursuance of the Partnership the Partner Authorities shall, pursuant to this Agreement:
  - 2.2.1 utilise the Premises to accommodate the Joint Team in accordance with clause 3;
  - 2.2.2 install the Assets, including the ICT Assets and Software, at the Premises for use by the Joint Team and in accordance with clause 4;
  - 2.2.3 provide ICT Support Services in respect of the ICT Assets and Software in accordance with clause 5; and
  - 2.2.4 process Personal Data in accordance with clause 14.

## **3. Premises**

- 3.1 NDDC shall provide MDDC (and MDDC's Staff) with access to such parts of the Premises as MDDC reasonably requires for the purposes only of properly carrying out the Partnership, the ICT Support Services (which may require out of hours access) or any other support services connected with the Partnership.
- 3.2 NDDC shall provide the Staff with such accommodation and facilities in the Premises as is specified in Schedule 1 or which is otherwise agreed by the parties from time to time.
- 3.3 Subject to the requirements of the Exit Management Plan, in the event of the expiry or termination of this Agreement, NDDC shall on reasonable notice

provide MDDC with such access as MDDC reasonably requires to the Premises to remove Assets belonging to MDDC (except for those that have been transferred to NDDC pursuant to the Exit Management Plan). All such Assets shall be promptly removed by MDDC.

3.4 MDDC shall ensure that:

3.4.1 where using the Premises they are kept properly secure and it will comply and cooperate with the Partnership Leader's reasonable directions regarding the security of the same;

3.4.2 it and its Staff do not do anything in contradiction of, or to conflict with, any of the provisions of the leases held between the private businesses that operate at Woodlands Enterprise Centre and NDDC;

3.4.3 whilst at the Premises, its Staff complies with the Health and Safety Policy and any other applicable policies related to use of the Premises as notified to it by NDDC from time to time; and

3.4.4 only those of its Staff that are duly authorised to enter upon the Premises for the purposes of properly carrying out the Partnership (or any support services connected with the Partnership) do so.

3.5 MDDC shall notify NDDC immediately on becoming aware of any damage caused by MDDC (or its Staff) to the Premises.

3.6 Each Partner Authority shall notify the other as soon as practicable of any health and safety incidents or material health and safety hazards at the Premises of which it becomes aware and which relate to or arise in connection with the performance of this agreement. MDDC shall instruct its Staff to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.

#### **4. Assets**

4.1 Each Partner Authority shall provide the Assets identified in Schedule 1 for the purposes of providing the Partnership and for use at the Premises in pursuance of the Partnership.

4.2 The list of Assets referred to at Schedule 1 is correct at the Commencement Date but may be varied by agreement of the parties in writing from time to time to ensure that it is accurate and up to date.

#### **5. Support Services**

5.1 The Partner Authorities shall support the Joint Team by providing the ICT Support Services in accordance with the Service Level Agreement.

5.2 NDDC shall support the Joint Team by ensuring that it commits appropriate resources to the processing of appropriately made payments on behalf of the Joint Team and in accordance with the Joint Working Agreement.

5.3 In addition to the ICT Support Services the Joint Team shall have the ability to request support from either Partner Authority as and when required for legal, human resources, financial and other support services over and above those provided in accordance with the Joint Working Agreement.

5.4 Such support services referred to in clause 5.3 may be re-allocated by agreement between the Partner Authorities (or worked on by both Partner Authorities jointly) depending on capacity and any prior knowledge/experience of the matter of the support request.

5.5 Where any support is required by the Joint Team from human resources by, or in relation to, particular members of Staff then this shall be dealt with by the human resources team of whichever of the Partner Authorities is determined to be the employer of the member of Staff.

## **6. Compliance**

Where either Partner Authority procures a contract on behalf of the other Partner Authority or on behalf of both Partner Authorities, it warrants that it shall comply with all relevant procurement (including the Public Contracts Regulations 2015), state aid and local government legislation.

## **7. Charges and liabilities**

7.1 Except as otherwise provided, the Partner Authorities shall each bear their own costs and expenses incurred in complying with their obligations under this Agreement.

7.2 In order to set up the Joint Team at the Premises the parties agree to the financial contributions arising in respect of the Partnership in accordance with Schedule 3 to this Agreement.

7.3 Both parties shall remain liable for any losses or liabilities incurred due to their own or their employee's actions and neither party intends that the other party shall be liable for any loss it suffers as a result of this Agreement.

## **8. 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.

## **9. Variations to this Agreement**

No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives)

## **10. Termination of this Agreement**

10.1 The Partner Authorities agree that this Agreement may be determined upon terms agreed by both Partner Authorities.

10.2 In the event that this Agreement is terminated in whole or in part for any reason the provisions of the Exit Management Plan shall come into effect and the Partner Authorities shall co-operate fully with one another to ensure an orderly exit of MDDC's Staff from the Premises, the appropriate transfer of ICT Assets to NDDC and an orderly migration of the ICT Support Services back to the Staff of each Partner Authority.

10.3 The provisions of clause 6 (Compliance), 13 (Freedom of Information), 14 (Data Protection) and this clause 10 shall survive termination or expiry of this Agreement.

## **11. Internal Dispute Resolution**

11.1 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.

11.2 Any dispute or difference shall, in the first instance, be referred to the 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 each Partner Authority's Head of Paid Service and, in default of agreement, it shall be referred to the Joint Committee for determination.

11.3 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 Joint Working Agreement.

## **12. Notices**

12.1 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:

12.1.1 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);

12.1.2 facsimile transmission at the number as may be notified in writing from time to time; or

12.1.3 by e-mail to the address as may be notified in writing from time to time.

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

12.2.1 if delivered by hand, when left at the proper address for service;

12.2.2 if given or made by pre-paid first class post, two Working Days after being posted;

12.2.3 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 12.1; or

12.2.4 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.

### **13. Freedom of Information**

- 13.1 The Partner Authorities acknowledge that each is subject to the requirements of the FOIA and the EIR.
- 13.2 In accordance with clause 13.1 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.
- 13.3 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.

### **14. Data Protection**

- 14.1 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.
- 14.2 Notwithstanding the general obligation in clause 14.1, where one of the Partner Authorities is processing Personal Data on behalf of the other then they must comply with the Data Processing Agreement.

### **15. Severability**

- 15.1 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.
- 15.2 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.

**16. Successors**

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

**17. 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.

**18. 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.

**19. Entire agreement**

19.1 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.

19.2 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.

**20. 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**

### **Assets and Premises**

#### **1. Premises**

- 1.1 The Premises (which have been provided by NDDC for use by the Joint Team to provide the Partnership) is a part of the Woodlands Enterprise Centre, Pathfields Business Park, South Molton EX36 3LH and is the freehold property of NDDC.
- 1.2 At the Premises the Joint Team shall initially be based on the first floor.
- 1.3 The Joint Team shall be able to use the reception, kitchen and lower floor meeting facilities in the Premises although shall ensure that this is managed, where appropriate, in consultation with the businesses that hold leases of the various units at Woodlands Enterprise Centre which also have access to the Premises to use these facilities.
- 1.4 The Joint Team shall also have the use of the Communal Car Park and bike shed along with NDDC's tenants at the Woodlands Enterprise Centre.

#### **2. Assets**

##### **2.1 ICT Assets**

###### 2.1.1 NDDC shall:

- 2.1.1.1 where applicable, procure additional licences for the NDDC Software on behalf of and for use by the Joint Team;
- 2.1.1.2 establish:
  - (a) a connection to the Devon WAN for the Premises; and
  - (b) a Virtual Routing and Forwarding (VRF) link between the Partner Authorities.

###### 2.1.2 MDDC shall:

- 2.1.2.1 procure, on behalf of and for use by the Joint Team:
  - (a) the ICT Assets on behalf of the Partner Authorities; and
  - (b) where applicable, additional licences for the MDDC Software;
- 2.1.2.2 issue asset numbers for the ICT Assets to enable these to be maintained for the duration of this Agreement;
- 2.1.2.3 adopt and maintain for the duration of the Partnership the connection and VRF link as provided at paragraph 2.1.1.2 of this Schedule 1; and
- 2.1.2.4 install, or provide access via the network connection to, the MDDC Software and other Software on the ICT Assets.

2.1.3 The ICT Assets and the Software shall be managed and maintained by the Partner Authorities in accordance with clause 5 and Schedule 2 of this Agreement.

**2.2 Furniture at the Premises**

2.2.1 NDDC shall provide furniture for use by the Joint Team at the Premises.

2.2.2 Any furniture provided pursuant to paragraph 2.2.1 shall be modified, maintained, repaired and replaced by NDDC (at NDDC's option) on receipt of reasonable requests by members of the Joint Team, in line with NDDC's maintenance and refresh of office furniture at its other sites and, in any event, in accordance its Health and Safety Policy and in line with any applicable law.

## **APPENDIX A – ICT Assets**

**APPENDIX B – Software**  
**PART 1 – MDDC Software**

## **PART 2 – NDDC Software**



## SCHEDULE 2 Service Level Agreement

### 1. Interpretation

The following definitions and rules of interpretation apply in this Schedule 2:

#### 1.1 Definitions:

**Contact List:** a current list of contacts and telephone numbers to enable the Joint Team to escalate Support Requests, including:

- (a) the first person to contact; and
- (b) the persons in successively more qualified or experienced positions to provide the support sought.

**Fault:** any failure of the ICT Assets or the Software to operate in all material respects in accordance with the specification or documentation provided in respect of that ICT Asset or Software.

**Help Desk Support:** any support provided by help desk technicians sufficiently qualified and experienced to identify and resolve most support issues relating to the ICT Assets or the Software as appropriate to that Partner Authority.

**Higher-level Support:** any higher-level support provided by an individual on the Contact List or a supplier of the relevant Partner Authority in respect of Software/device management, diagnosis and resolution.

**ICT Support Services:** maintenance, including Help Desk Support and Higher-level Support, but excluding any Out-of-scope Services, by:

- (a) MDDC of the ICT Assets and the then-current version or release of the MDDC Software; and
- (b) NDDC of the then-current version or release of the NDDC Software

**Joint Team Cause:** any of the following causes:

- (a) any improper use, misuse or unauthorised alteration of the Software by the Joint Team;
- (b) any use of the Software by the Joint Team in a manner inconsistent with the then-current specification or documentation provided in respect of that Software;
- (c) the use by the Joint Team of any hardware or software not approved for use by the Joint Team by:

- (i) MDDC in connection with the MDDC Software; or
- (ii) NDDC in connection with the NDDC Software; or
- (d) the use of a non-current version or release of the Software.

**Out-of-scope Services:** any services provided in connection with any apparent problem regarding the ICT Assets or the Software reasonably determined not to have been caused by a Fault, but rather by a Joint Team Cause or a cause outside the relevant Partner Authority's control (including any investigational work resulting in such a determination)

**Support Hours:** 9am until 5pm on all Working Days.

**Support Request:** request made by a member of the Joint Team in accordance with this agreement for support in relation to the ICT Assets or the Software, including correction of a Fault.

## **2. ICT Support Services**

2.1 As part of the ICT Support Services, each Partner Authority shall ensure that their ICT teams:

2.1.1 provide Help Desk Support by means of a telephone number and e-mail address notified and agreed with the other Partner Authority in advance;

2.1.2 commit appropriate resources to the provision of Higher-Level Support;

2.1.3 use reasonable efforts to correct all Faults notified under paragraph 3.3.1; and

2.1.4 provide technical support for the Software and ICT Assets.

2.2 The Partner Authorities' ICT teams may reasonably determine that any request for services by the Joint Team is a request for Out-of-scope Services. If such a determination is made, the relevant Partner Authority shall promptly notify the Joint Team of that determination.

2.3 Each Partner Authority acknowledges that the other is not obliged to provide Out-of-scope Services.

## **3. Submitting Support Requests and Access**

3.1 The Joint Team may request ICT Support Services by way of a Support Request.

3.2 Each Support Request shall include a description of the problem and the start time of the incident.

3.3 The Joint Team shall provide the relevant Partner Authority with:

- 3.3.1 prompt notice of any Faults; and
- 3.3.2 such output and other data, documents, information, assistance and remote access as are reasonably necessary to assist the relevant Partner Authority to reproduce operating conditions similar to those present when the Joint Team detected the relevant Fault and to respond to the relevant Support Request.
- 3.4 All ICT Support Services shall be provided from each Partner Authority's offices.
- 3.5 Where a Partner Authority receives a Support Request in respect of an ICT Asset or Software which is the responsibility of the other Partner Authority's ICT team then such Support Request shall be promptly redirected to that other Partner Authority for resolution or, where the first Partner Authority deems it possible to resolve the Support Request without referring it on, it shall notify the other Partner Authority of the Support Request and agree the resolution with the other Partner Authority before proceeding.
- 3.6 NDDC acknowledges that, to properly assess and resolve Support Requests, it may be necessary to permit MDDC's ICT Staff direct access to the Premises and to files held on NDDC's behalf as well as to the Assets and NDDC's Staff.
- 3.7 NDDC shall provide such access promptly, provided that MDDC complies with all NDDC's security requirements and other policies and procedures relating to entering and working on the Premises notified to MDDC.

#### **4. Service Levels**

- 4.1 For the duration of this Agreement the Partner Authorities shall ensure that the ICT Support Services are performed during the Support Hours.
- 4.2 The Partner Authorities shall:
  - 4.2.1 prioritise all Support Requests based on a reasonable assessment of the severity level of the problem reported; and
  - 4.2.2 respond to all Support Requests promptly, providing the Joint Team with the same level of ICT Support Service as each of the Partner Authorities' Staff involved in ICT Support Services provide to internal departments and as though the Joint Team were another department at that Partner Authority.
- 4.3 Where a Fault of sufficient severity occurs, such as system defect or business critical failure which affects the operations of the Joint Team's business, the relevant Partner Authority shall provide the other Partner Authority with updates, on request, of the nature and status of its efforts to correct any Fault.

#### **5. Escalation**

- 5.1 If an issue arises with the provision of the ICT Support Services then either Partner Authority may escalate the problem and seek resolution in accordance with clause 11.

**SCHEDULE 3**  
**Financial contributions**

## **SCHEDULE 4 Data Processing**

**Data Controller:** has the meaning set out in section 1(1) of the DPA.

**Data Processor:** has the meaning set out in section 1(1) of the DPA.

**Data Subject:** an individual who is the subject of Personal Data.

**Processing and process:** have the meaning set out in section 1(1) of the DPA.

### **1. Obligations of the Data Processor**

- 1.1 The Partner Authorities are aware that in the provision of the Partnership each Partner Authority will need to process Personal Data in respect of which the other Partner Authority shall be the Data Controller.
- 1.2 Except for the general provision for Processing of Personal Data in paragraph 1.1, the Partner Authorities are aware, in particular, that pursuant to this Agreement and to allow the Joint Team to work effectively:
  - 1.2.1 NDDC shall be transferring its building control electronic files and records from NDDC's systems to MDDC's systems pursuant to this Agreement, such files and records shall contain Personal Data in respect of which NDDC shall be the Data Controller and MDDC shall be Data Processor; and
  - 1.2.2 MDDC shall be transferring to NDDC details of its customers to enable the processing of payments on NDDC's Software, such details shall contain Personal Data in respect of which MDDC shall be the Data Controller and NDDC shall be Data Processor.
- 1.3 The Data Processor shall process the Personal Data only to the extent, and in such a manner, as is necessary for the purposes of carrying out the Partnership and in accordance with the Data Controller's instructions from time to time and shall not process the Personal Data for any other purpose. The Data Processor will keep a record of any processing of personal data it carries out on behalf of the Data Controller.
- 1.4 The Data Processor shall promptly comply with any request from the Data Controller requiring the Data Processor to amend, transfer or delete the Personal Data.
- 1.5 If the Data Processor receives any complaint, notice or communication which relates directly or indirectly to the processing of the Personal Data or to either party's compliance with the DPA and the data protection principles set out therein, it shall immediately notify the Data Controller and it shall provide the Data Controller with full co-operation and assistance in relation to any such complaint, notice or communication.
- 1.6 At the Data Controller's request, the Data Processor shall provide to the Data Controller a copy of all Personal Data held by it in the format and on the media reasonably specified by the Data Controller.

1.7 The Data Processor shall not transfer the Personal Data outside the European Economic Area without the prior written consent of the Data Controller.

1.8 The Data Processor shall promptly inform the Data Controller if any Personal Data is lost or destroyed or becomes damaged, corrupted, or unusable. The Data Processor will restore such Personal Data at its own expense.

## **2. Data Processor's Employees**

2.1 The Data Processor shall ensure that access to the Personal Data is limited to:

2.1.1 those employees who need access to the Personal Data to meet the Data Processor's obligations under this Agreement; and

2.1.2 in the case of any access by any employee, such part or parts of the Personal Data as is strictly necessary for performance of that employee's duties.

2.2 The Data Processor shall ensure that all employees:

2.2.1 are informed of the confidential nature of the Personal Data;

2.2.2 have undertaken training in the laws relating to handling personal data; and

2.2.3 are aware both of the Data Processor's duties and their personal duties and obligations under such laws and this Agreement.

2.3 The Data Processor shall take reasonable steps to ensure the reliability of any of the Data Processor's employees who have access to the Personal Data.

## **3. Rights of the Data Subject**

3.1 The Data Processor shall notify the Data Controller within 10 working days if it receives a request from a Data Subject for access to that person's Personal Data.

3.2 The Data Processor shall provide the Data Controller with full co-operation and assistance in relation to any request made by a Data Subject to have access to that person's Personal Data.

3.3 The Data Processor shall not disclose the Personal Data to any Data Subject or to a third party other than at the request of the Data Controller or as provided for in this Agreement.

## **4. Rights of the Data Controller**

4.1 The Data Controller is entitled, on giving at least 10 days' notice to the Data Processor, to inspect or appoint representatives to inspect all facilities, equipment, documents and electronic data relating to the processing of Personal Data by the Data Processor.

4.2 The requirement under clause 4.1 to give notice will not apply if the Data Controller believes that the Data Processor is in breach of any of its obligations under this Agreement.

## **5. Warranties**

- 5.1 The Data Processor warrants that:
  - 5.1.1 it will process the Personal Data in compliance with all applicable laws, enactments, regulations, orders, standards and other similar instruments; and
  - 5.1.2 it will take appropriate technical and organisational measures against the unauthorised or unlawful processing of personal data and against the accidental loss or destruction of, or damage to, Personal Data to ensure the Data Controller's compliance with the seventh data protection principle.
- 5.2 The Data Processor shall notify the Data Controller immediately if it becomes aware of:
  - 5.2.1 any unauthorised or unlawful processing, loss of, damage to or destruction of the Personal Data; or
  - 5.2.2 any advance in technology and methods of working which mean that the Data Controller should revise its security measures.

## **6. Indemnity**

The Data Processor agrees to indemnify and keep indemnified and defend at its own expense the Data Controller against all costs, claims, damages or expenses incurred by the Data Controller or for which the Data Controller may become liable due to any failure by the Data Processor or its employees or agents to comply with any of its obligations under this Agreement.

## **7. Appointment of Subcontractors**

- 7.1 The Data Processor may only authorise a third party (**sub-contractor**) to process the Personal Data:
  - 7.1.1 subject to the Data Controller's prior written consent where the Data Processor has supplied the Data Controller with full details of such sub-contractor;
  - 7.1.2 provided that the sub-contractor's contract is on terms which are substantially the same as those set out in this Agreement; and
  - 7.1.3 provided that the sub-contractor's contract terminates automatically on termination of this Agreement for any reason.

## **SCHEDULE 5**

### **Exit Management**

#### **1. Definitions**

The definitions in this paragraph apply in this Schedule 5

**Data:** any data (including any Personal Data relating to the Staff, customers or suppliers of a Partner Authority), documents, text, drawings, diagrams, images or sounds (together with any database made up of any of those), embodied in any medium, that are supplied to a Partner Authority by or on behalf of the other Partner Authority, or which the former Partner Authority is required to generate, process, store or transmit pursuant to this Agreement.

**Registers:** registers and databases including all applicable detail for the continued operation of the Partnership including a list of sub-contracts.

**Transferable Contracts:** the sub-contracts, licences or other agreements which are necessary to enable the Partner Authorities to continue to provide their respective building control functions independently.

**Transitional Assistance Services:** the services to be provided by the Partner Authorities in the event of the expiry or termination of this Agreement for any reason to facilitate the transfer of the Partnership to the respective Partner Authorities.

**Transitional Period** the period during which it is anticipated the Transitional Assistance Services will be required, such period to be reasonable in duration.

#### **2. Purpose of Schedule**

In the event of this Agreement terminating the Partner Authorities wish to ensure the orderly exit of MDDC's Staff from the Premises and the orderly transition of each Partner Authority's Data back to the applicable Partner Authority. This Schedule sets out the principles of the exit and service transition arrangements which are intended to achieve this and upon which the Exit Management Plan shall be based.

#### **3. Exit Management Plan**

3.1 The Exit Management Plan shall:

3.1.1 detail how the Partnership will transfer to the respective Partner Authorities including details of the processes, documentation, data transfer, systems migration and security by each Partner Authority or any of its Staff (where applicable);



- 3.1.2 specify the scope of the Transitional Assistance Services that may be required by each of the Partner Authorities, (subject to paragraph 7 of this Schedule 5) and detail how such services would be provided (if required) in the run up to termination;
- 3.1.3 provide a timetable and identify critical issues for carrying out the Transitional Assistance Services; and
- 3.1.4 set out the management structure to be put in place and employed during the run up to termination.

#### **4. Obligations During the Term**

- 4.1 Both Partner Authorities shall ensure that the Partnership Leader has the requisite authority to arrange and procure any resources of either Partner Authority as are reasonably necessary to enable compliance with this Schedule 5.
- 4.2 During the term of this Agreement, the Partnership Leader shall create, maintain and agree with each of the Partner Authorities all applicable Registers to ensure, as far as possible, the smooth transition of the Partnership back to the Partner Authorities with the minimum of disruption.
- 4.3 On reasonable notice, each Partner Authority shall provide to the other such material and information as the other Partner Authority shall reasonably require in order to facilitate due diligence (including in relation to the Partnership, Assets, Registers and Staff).
- 4.4 In respect of the Assets each Partner Authority shall ensure that, in the Exit Management Plan, it takes account of and complies with its obligations set out at clause 4 of this agreement.

#### **5. Transitional Assistance Services**

- 5.1 The Partner Authorities shall ensure that they continue to provide the Partnership during the Transitional Period.
- 5.2 During the Transitional Period, each Partner Authority shall, in addition to providing the Partnership and any Transitional Assistance Services, provide to the other Partner Authority any reasonable assistance requested by them to allow the Partnership to continue without interruption and to facilitate the orderly transfer of the Partnership. Each Partner Authority shall use all reasonable endeavours to reallocate resources to provide these services without additional costs. However if this is not possible, any additional reasonable costs incurred by the relevant Partner Authority in this regard which are not already in the scope of the Transitional Assistance Services or the Exit Management Plan shall need to be agreed by both Partner Authorities in advance.
- 5.3 On notice of termination neither Partner Authority shall terminate or vary in any material respect any Transferable Contract without the other Partner Authority's prior written consent, such consent not to be unreasonably withheld or delayed.
- 5.4 On termination of this Agreement or, provided that it does not have an adverse impact on either Partner Authority in providing the Partnership or the

Transitional Assistance Services, within the 6 months leading up to termination:

- 5.4.1 MDDC shall arrange for the ICT Assets and sufficient licences for the MDDC Software to be formally transferred to NDDC (subject to the signing by an authorised signatory on behalf of NDDC of any applicable asset disposal form(s) provided by MDDC);
  - 5.4.2 MDDC shall vacate the Premises;
  - 5.4.3 NDDC shall remove any Software for which it does not have a licence from the ICT Assets transferred to it, save for any MDDC Software being transferred to NDDC; and
  - 5.4.4 where Data is held by a Partner Authority (**Transferring Authority**) on behalf of the other Partner Authority (**Receiving Authority**) for whatever reason, the Transferring Authority shall ensure that all Data is returned to the Receiving Authority in line with the Receiving Authority's instructions and, when the transfer is complete, the Transferring Authority shall certify that it does not retain any of the Receiving Authority's Data.
- 5.5 The Transitional Assistance Services to be provided by each Partner Authority shall include (without limitation) such of the following services as the Partner Authorities may agree:
- 5.5.1 providing assistance and expertise as necessary to examine all operational and business processes (including all supporting documentation) in place and re-writing and implementing processes and procedures such that they are appropriate for use by each of the Partner Authorities after termination; and
  - 5.5.2 answering all reasonable questions from the other Partner Authority regarding the Partnership or any matter covered by this Agreement.

## **6. Transfer of Contracts**

- 6.1 The Partner Authorities shall provide such assistance as may be necessary to help one another to identify which Transferable Contracts are required for the continued provision of the Partnership up to termination and to allow the Partnership to transfer to each Partner Authority following termination of this Agreement.
- 6.2 On request by a Partner Authority (**Requesting Authority**) the other Partner Authority shall, with the co-operation of the Requesting Authority procure the novation or assignment to the Requesting Authority of any Transferable Contracts which are to be transferred and shall, on request, help the Requesting Authority correctly apportion the costs associated with transferring any Transferable Contract.

## **7. Payment on Termination**

Any charges to be made by either Partner Authority to the other Partner Authority in respect of performing its obligations in this Schedule 5 shall be reasonable and agreed by both Partner Authorities in advance.