

Somerset County Council and Taunton Deane Borough Council ("the Authorities")

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Risk Register February 2008 - Risks arising from JV Co occupation of part of the Authorities premises

- Assumptions:**
- 1. Unavailability means it is not possible to provide the MSDC services or undertake the Permitted Use from the premises due to a change arising from an Authority related event.**
 - 2. If JV Co vitiates the Authorities insurance, the JV Co shall be liable to the extent the Authorities insurance is vitiated.**
 - 3. If the premises are unavailable the Authorities will only be responsible if the unavailability is due to their actions - the Authorities will not be liable for omissions or for actions of staff outside of their control such as secondees.**
 - 4. If insurance is available in respect of any liability that arises then a claim is to be first made against the relevant insurance and then in respect of any outstanding liability against the Authorities/JV Co (as the case may be).**
 - 5. JV Co will be responsible for insuring its own fixtures, fittings, contents and equipment.**
 - 6. To the extent the Authorities are unable to recover against their insurance due to JV Co's insurance, JV Co shall be liable to the extent the Authorities insurance is irrecoverable.**

Type of Insurance	Who Insures?	Event	Description of Liability	Authorities Risk	Shared Risk	JV Co Risk	Comments
Buildings	Authorities	Pre-existing facilities defects arise	Latent defect to Building			√	The buildings are the Authorities liability but JV Co has agreed to take the premises in their current condition with no warranties or indemnities from the Authorities concerning such condition and accordingly any risk of any latent defect affecting the JV Co's premises is to be met from JV Co's Business Interruption insurance
			Space is adequate for the Permitted Use			√	JV Co has agreed to take the premises in their current condition with no warranties or indemnities from the Authorities concerning such condition
		Ongoing maintenance/repairs (including structural repairs, subsidence etc)	Identify, prioritise, cost and advise the Authority on required remedial works			√	<p>The management of the budget for ongoing maintenance/repairs has passed to JV Co which will be responsible for carrying out such works.</p> <p>The Authorities retain control of the ongoing maintenance/repairs budget, and after receiving advice from JV Co as to how the budget should be allocated, the Authorities direct JV Co as to how the budget shall be allocated.</p>

Type of Insurance	Who Insures?	Event	Description of Liability	Authorities Risk	Shared Risk	JV Co Risk	Comments
			Impact of any change to JV Co's proposed prioritisation by the Authority	√			In the event that the Authorities override JV Co's advice as to the allocation of the ongoing maintenance/repairs budget and liability arises as a result, the Authorities shall be responsible for the liability to the extent their overriding of JV Co's advice can be attributed and prevents a claim on JV Co's insurance.
			Impact of the Authority not providing budget required to deliver all reasonable and proper remedial works recommended by JV Co	√			In the event that the Authorities override JV Co's advice as to the provision of a reasonable and proper budget for the ongoing maintenance/repairs budget and liability arises as a result, the Authorities shall be responsible for the liability to the extent their overriding of JV Co's advice can be attributed and prevents a claim on JV Co's insurance.
			Performance of suppliers whose contracts are novated to or directly with SWOne			√	

Type of Insurance	Who Insures?	Event	Description of Liability	Authorities Risk	Shared Risk	JV Co Risk	Comments
			Performance of suppliers whose contracts are with the Authority but are managed by JV Co		√		The risk shall be shared save to the extent that JV Co manages the suppliers contrary to the instructions of the Authority and a liability arises as a result.
			Procure and deliver remedial works as instructed by the Authority against agreed budget			√	
		Vandalism (broken windows, graffiti, etc)	Identify, prioritise, cost and advise the Authority on required remedial works			√	The Authorities self insure vandalism and an allowance is made for such expenditure in the ongoing maintenance/repairs budget and the risk and liability shall be the same as for ongoing maintenance/repair.

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			Impact of any change to JV Co's proposed prioritisation by the Authority	√			In the event that the Authorities override JV Co's advice as to the allocation of the ongoing maintenance/repairs budget and liability arises as a result, the Authorities shall be responsible for the liability to the extent their overriding of JV Co's advice can be attributed and prevents a claim on JV Co's insurance.
			Impact of the Authority not providing budget required to deliver all reasonable and proper remedial works recommended by JV Co	√			In the event that the Authorities override JV Co's advice as to the provision of a reasonable and proper budget for the ongoing maintenance/repairs budget and liability arises as a result, the Authorities shall be responsible for the liability to the extent their overriding of JV Co's advice can be attributed and prevents a claim on JV Co's insurance.
			Performance of suppliers whose contracts are novated to or directly with SWOne			√	

Type of Insurance	Who Insures?	Event	Description of Liability	Authorities Risk	Shared Risk	JV Co Risk	Comments
			Performance of suppliers whose contracts are with the Authority but are managed by JV Co		√		The risk shall be shared save to the extent that JV Co manages the suppliers contrary to the instructions of the Authority and a liability arises as a result.
			Procure and deliver remedial works as instructed by the Authority against agreed budget			√	
		Pest control	Identify, prioritise, cost and advise the Authority on required works			√	The Authorities self insure pest control and an allowance is made for such expenditure in the ongoing maintenance/repairs budget and the risk and liability shall be the same as for ongoing maintenance/repair.

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			Impact of the Authority not providing budget required to deliver all reasonable and proper remedial works recommended by JV Co	√			In the event that the Authorities override JV Co's advice as to the provision of a reasonable and proper budget for the ongoing maintenance/repairs budget and liability arises as a result, the Authorities shall be responsible for the liability to the extent their overriding of JV Co's advice can be attributed and prevents a claim on JV Co's insurance.
			Performance of suppliers whose contracts are novated to or directly with SWOne			√	

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			Performance of suppliers whose contracts are with the Authority but are managed by JV Co		√		The risk shall be shared save to the extent that JV Co manages the suppliers contrary to the instructions of the Authority and a liability arises as a result.
			Procure and deliver remedial works as instructed by the Authority against agreed budget			√	
		Increase in insurance premiums due to default		√		√	Authorities to meet increase where it is a result of Authorities or Authorities Related Parties actions. JV Co to meet increase in all other situations.
Public liability	Authorities	Third Party loss caused by state of the premises				√	See notes for ongoing repairs/maintenance.

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(includes occupiers and employers insurance)		Third Party loss caused by management of the premises (e.g. personal injury or damage to property arising from unforeseen events such as spillages, falling roof tiles, etc)				√	JV Co is responsible for management of the premises it occupies
		Increase in insurance premiums due to default		√		√	Authorities to meet increase where it is a result of the Authorities or the Authorities Related Parties actions. JV Co to meet increase in all other situations.

Type of Insurance	Who Insures?	Event	Description of Liability	Authorities Risk	Shared Risk	JV Co Risk	Comments
Property Damage (strictly speaking forms part of the Buildings Insurance and relates to consequential loss only)	Authorities	Authority damages premises so that they cannot be used or occupied		√			<p>Authority to claim but shall only reinstate the premises if sufficient insurance monies are available under the buildings insurance.</p> <p>JV Co to claim on its Business Interruption insurance in respect of unavailable MSDC services and Authorities to only to continue to pay for MSDC services and to pay for more IT equipment / temporary accommodation (up to a maximum of 6 months and £1 million cost) but only to the extent such items are not covered by JV Co's Business Interruption Insurance.</p> <p>If Authorities cannot reinstate and/ or unavailability lasts longer than 6 months and/or the costs reach £1 million then MSDC to be terminated by Force Majeure</p>
		Third Party damages premises so that they cannot be used or occupied			√		<p>Authority to claim but shall only reinstate the premises if sufficient insurance monies are available under the buildings insurance.</p> <p>JV Co to claim on its Business Interruption insurance in respect of unavailable MSDC services and the Authorities will not be liable to pay for the costs of any MSDC services which are interrupted</p> <p>If Authorities cannot reinstate and/or unavailability lasts longer than 6 months then MSDC to be terminated by Force Majeure</p>

Type of Insurance	Who Insures?	Event	Description of Liability	Authorities Risk	Shared Risk	JV Co Risk	Comments
		JV Co damages premises so that they cannot be used or occupied				√	JV Co to claim under its Business Interruption insurance in respect of unavailable MSDC services and the Authorities will not be liable to pay for the costs of any MSDC services which are interrupted. Authorities to claim under its Building Insurance for reinstatement (if possible) but JV Co to be liable for reinstatement costs
		Increase in insurance premiums due to default		√		√	Whichever party is at fault shall bear the cost of the increase in premiums. Where a third party causes the increase the costs of the increase shall be shared

Type of Insurance	Who Insures?	Event	Description of Liability	Authorities Risk	Shared Risk	JV Co Risk	Comments
Business Interruption	JV Co Maximum cover of £30 - 50 million for [] months	Authority damages premises so that they cannot be used or occupied		√			<p>Authority to claim but shall only reinstate the premises if sufficient insurance monies are available under the buildings insurance.</p> <p>JV Co to claim on its Business Interruption insurance in respect of unavailable MSDC services and Authorities to only to continue to pay for MSDC services and to pay for more IT equipment / temporary accommodation (up to a maximum of 6 months and £1 million cost) but only to the extent such items are not covered by JV Co's Business Interruption Insurance.</p> <p>If Authorities cannot reinstate and/ or unavailability lasts longer than 6 months and/or the costs reach £1 million then MSDC to be terminated by Force Majeure</p>
		Third Party damages premises so that they cannot be used or occupied			√		<p>Authority to claim but shall only reinstate the premises if sufficient insurance monies are available under the buildings insurance.</p> <p>JV Co to claim on its Business Interruption insurance in respect of unavailable MSDC services and the Authorities will not be liable to pay for the costs of any MSDC services which are interrupted</p> <p>If Authorities cannot reinstate and/or unavailability lasts longer than 6 months then MSDC to be terminated by Force Majeure</p>

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		JV Co damages premises so that they cannot be used or occupied				√	JV Co to claim under its Business Interruption insurance in respect of unavailable MSDC services and the Authorities will not be liable to pay for the costs of any MSDC services which are interrupted. Authorities to claim under its Building Insurance for reinstatement (if possible) but JV Co to be liable for reinstatement costs
		Increase in insurance premiums due to default				√	JV Co is liable as the Authorities already pay for the costs of JV Co's insurance in so far as it relates to the premises and the MSDC services
		Increases in insurance premiums to reflect the insurance market generally				√	JV Co is liable as the Authorities already pay for the costs of JV Co's insurance in so far as it relates to the premises and the MSDC services
Uninsured Risks		General Change in Law during Contract affecting premises structure		√			Authorities to be responsible as they are responsible for buildings insurance. If either the costs of complying with the general change in law or the costs of providing alternative premises are such that a prudent person acting reasonably would not do so then MSDC to terminate pursuant to a Force Majeure

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		General Change in Law during Contract effecting internal non-structural parts of the premises			√		The Authorities to be liable to the extent their building insurance covers the costs of compliance and JV Co to be liable to the extent its business interruption insurance covers the interruption to its services as a result of compliance.