

DATED

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MAIDSTONE BOROUGH COUNCIL

and

SWALE BOROUGH COUNCIL

and

TUNBRIDGE COUNCIL BOROUGH COUNCIL

MKS MODEL SHARED SERVICE COLLABORATION AGREEMENT

Mid Kent Legal Services
Maidstone Borough Council
Maidstone House
King Street
Maidstone ME15 6JQ
Ref:

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THIS AGREEMENT is made on

2016

BETWEEN:

- (1) **MAIDSTONE BOROUGH COUNCIL** of Maidstone House, King Street, Maidstone, Kent ME15 6JQ ("**MBC**");
- (2) **SWALE BOROUGH COUNCIL** of Swale House East Street Sittingbourne ME10 3HT ("**SBC**")
- (3) **TUNBRIDGE WELLS BOROUGH COUNCIL** of the Town Hall Royal Tunbridge Wells, Kent TN1 1RS ("**TWBC**").

(3) **WHEREAS:**

- (A) As members of Mid Kent Services (MKS), MBC, SBC and TWBC (together called "**the Authorities**") have agreed to create a single combined [] Shared Service for the Authorities.
- (B) The Authorities now wish to record their agreement on the terms of this Collaboration Agreement for the purposes of the management, operation and delivery of the [] Shared Service.
- (C) The Authorities agree that the overarching arrangements for the governance of MKS are set out in the Governance Arrangements dated [] and shown at Schedule 8. The Authorities agree that this Agreement should be read together with the Governance Document.

IT IS HEREBY AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

In this Agreement:

- 1.1** the following expressions have the following meanings unless inconsistent with the context:

"Agreement" Means this Collaboration Agreement

"Agreed Service Plan" means the initial Agreed Service Plan at Schedule 1.

"Authorities"	means MBC, SBC and TWBC and "Authority" means any one of them.
"Board"	means the MKS [] Shared Service Board which consists of representatives from each Authority.
"Budget"	Means the budget for the [] Shared Service
"Commencement Date"	means []
"DPA"	means the Data Protection Act 1998.
"Exempt Information"	means any information or class of information relating to this Agreement which may fall within an exemption to disclosure under Freedom of Information Legislation.
"FOI"	Means Freedom of Information
"FOIA"	means both the Freedom of Information Act 2000 and subordinate legislation made under this Act and the Environmental Information Regulations 2004.
"Head of [] Shared Service"	means [] or such other officer who holds the post of Head of the MKS [] Shared Service.
"Head of Paid Service"	means the Head of Paid Service as designated by each of the Authorities for the purposes of s4 of the Local Government Housing Act 1989 Act or their nominees.
"Host Authority"	Means [] Authority.
"Intellectual Property Rights"	means all rights in patents, trademarks, service marks, design rights (whether registerable or otherwise), applications for any of the foregoing copyright (including rights in Software), database rights, know-how, trade secrets, confidential business information, trade or business names and any similar or analogous rights to any of the above whether arising or granted under the Laws of England or of any other jurisdiction.
"Law"	any statute statutory instrument subordinate legislation standard law proclamation order resolution notice rule of court bye-law directive

	code of conduct or other instrument or requirement having the force of Law within any national or local jurisdiction issued declared passed or given effect to in any manner by HM Parliament the legislation making institutions of the European Union any court or other judicial forum any Commission of Inquiry local authority statutory undertaking or relevant authority or any other body or person having such power.
"LGPS Regulations"	means the Local Government Pensions Scheme (Benefits Membership and Contributions) Regulations 2007 (as amended or replaced) and the Local Government Pension Scheme (Administration) Regulations 2008 (as amended or replaced).
"MKS Board"	means the Leaders and Chief Executives of the Authorities.
"MKSD"	Means the Mid Kent Services Director
"Non-Pooled Funds"	means MKS [] Shared Service revenue budgets retained by each Authority outside of the Pooled Fund referred to in clause 10 and Schedule 6.
"Pension Scheme"	means the Local Government Pension Scheme pursuant to the LGPS Regulations.
"Personal Data"	means personal data and sensitive personal data as defined in the DPA which is disclosed by an Authority to enable another Authority to comply with its obligations under this Agreement.
"Pool Manager"	Means the Head of the [] Shared Service who manages the Pooled and Non Pooled Funds.

"Pooled Funds"	means MKS [] Shared Service revenue budgets for staffing and related costs consolidated into a single budget held by [] with contributions from (list all Authorities signing the Agreement) referred to in clause 10 and Schedule 5.
"Relevant Contracts"	means the third party supply contracts providing services to an Authority; and "Relevant Contractors" mean the contractors who contract with an Authority under the Relevant Contracts listed in Schedule 7.
"Relevant Employees"	means those persons employed by (list the Authorities) as employees of the MKS [] Shared Service being the Head of [] Shared Service and those persons set out in Schedule 3 for as long as they remain employed as part of the MKS [] Shared Service and any other persons who are employed in the future by (list the Authorities) in the provision of the MKS [] Shared Service.
"Request"	means a request for information made to a responsible Authority under the FOIA.
"Services"	means the [] Shared Services to be provided in accordance with the Service Level Agreement and as set out in Schedule 2.
"Service Period"	means the period during which the Services are provided under this Agreement.
"Service Level Agreement"	means the agreement to be entered into and/or deemed entered into on the date of this agreement in the form as set out in Schedule 2 as may be amended from time to time with the prior written agreement of the Authorities, the general principles for which are also set out in Schedule 2.
"Software Systems"	means the software systems used and procured by one or more Authority to enable the delivery

of the Services.

"Transfer Date"

means the date [] on which the contracts of employment of the Relevant Employees are transferred from one Authority to another as agreed between the Authorities.

"TUPE Regulations"

means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (implementing EC Directives 1998/59/EC and 2001/23/EC) as amended, modified or replaced from time to time.

- 1.2** References to any statute or statutory provision (including any EU Instrument) shall unless the context otherwise requires be construed as including references to any earlier statute or the corresponding provisions of any earlier statute whether repealed or not directly or indirectly amended consolidated extended or replaced by such statute or provision or re-enacted in any such statute or provision and to any subsequent statute or the corresponding provisions of any subsequent statute directly or indirectly amending consolidating extending replacing or re-enacting the same and will include any orders regulations instruments or other subordinate legislation made under the relevant statute or statutory provision;
- 1.3** The headings are inserted for convenience only and shall not affect the construction of this Agreement;
- 1.4** Words importing one gender include all other genders and words importing the singular include the plural and vice versa;
- 1.5** A reference in this Agreement to any clause paragraph or Schedule is except where it is expressly stated to the contrary a reference to a clause or paragraph of or Schedule to this Agreement;
- 1.6** Any reference to this Agreement or to any other document unless otherwise specified shall include any variation, amendment or supplement to such document expressly permitted by this Agreement or otherwise agreed in writing between the relevant parties;

- 1.7** Words preceding “include” “includes” “including” and “included” shall be construed without limitation by the words which follow those words unless inconsistent with the context and the rule of interpretation known as *eiusdem generis* shall not apply;
- 1.8** The Schedules form part of this Agreement and will have the same force and effect as if expressly set out in the body of this Agreement and any reference to this Agreement includes the Schedules; and
- 1.9** References to "the Parties" shall be to the Parties to this Agreement.
- 1.10** The following order of precedence shall apply:
- 1.10.1 the terms and conditions of this Collaboration Agreement;
 - 1.10.2 the Schedules to this Collaboration Agreement;
 - 1.10.3 The Governance Arrangements;
 - 1.10.4 all predecessor agreements or arrangements made between the Authorities in connection with the provision of [] Services by MBC, SBC and TWBC in connection with MKS. For the avoidance of doubt, where there is any conflict between this Agreement and the Service Level Agreement, this Agreement shall prevail.

2. COMMENCEMENT AND DURATION

This Agreement shall commence on [] and shall expire at the close of business on [] **or** and shall continue unless this Agreement is terminated by mutual agreement of all the Authorities or upon notice given under clause 14.

3. RELATIONSHIP BETWEEN THE PARTIES

- 3.1** Each of the Parties confirms that it is not and shall not hold itself out as being the servant or agent of the other for any purpose connected with the subject matter of this Agreement other than as expressly conferred by this Agreement.
- 3.2** The intention of the Authorities is that they will work together on a non-commercial basis and will attempt to resolve problems amicably and in a spirit of co-operation.

3.3 Without prejudice to the requirements of this Agreement, all Authorities will act in good faith towards each other and act reasonably at all times in relation to all matters arising under the Relevant Contracts and this Agreement.

3.4 Each Authority shall ensure that an officer is appointed whose day-to-day responsibility includes ensuring the efficient and appropriate application of this Agreement in combination with the Relevant Contracts.

4. PROVISION OF THE SERVICE

4.1 The Authorities agree that:

4.1.1 with effect from [] [] will commence the delivery of the Services in Schedule 1 as a [] Shared Service to be continued in accordance with clause 2;

4.1.2 the [] Shared Service will be operated so that each Relevant Employee member can be required to undertake work for any of the Authorities, and not just the Authority which employs him/her and

4.1.3 the Services shall be delivered by the Host Authority in accordance with the Service Level Agreement (as may be amended from time to time with the agreement of the Authorities, the MKSD and the Board and which shall be reviewed annually by the Board).

4.2 The Authorities acknowledge and agree that:

4.2.1 [] shall be responsible for the administration, management, operation and delivery of the [] Shared Service in its capacity as the Host Authority;

4.2.2 [] accepts no liability whatsoever (including, but not limited to, liability for loss, damage, costs or interest) which [] and [] have incurred or might incur) howsoever caused or incurred arising under or in connection with:

4.2.2.1 any Relevant Contracts entered into by [] or [] or any other third party contracts; or

4.2.2.2 revenue or capital budgets which are not within [] control; and

4.3 The Authorities acknowledge and agree that in respect of liabilities incurred prior to [date] or during the Term of this Agreement where a material breach of this Agreement or default by any Authority and/or any of its Relevant Contractors causes

an adverse impact on the provision of MKS [] Shared Service referred to in clauses 12.5, 16 and 17 below, the other Authorities shall not be responsible for those liabilities or any costs of or in connection with them, which shall be liabilities of either defaulting Authority (as the case may be).

- 4.4** Insofar as any issue or dispute arising from the arrangements under this Agreement or under any Relevant Contract adversely affects or might adversely affect the provision of the Services, the Authorities agree that they shall not commence legal proceedings or defend or reach a compromise in connection with the issue or dispute or incur costs, damages or other liabilities (other than in respect of the payment for goods or services which have been provided by a Relevant Contractor under a Contract) without prior notification to the Head of [] Shared Service and the MKSD and the agreement of the Board (whose consent shall not be unreasonably withheld or delayed).

5. SUPPORT SERVICES

- 5.1** Each of the Authorities shall provide appropriate accommodation and facilities for the provision of any part of the Service that reasonably requires the visiting of (or working at) their offices by Relevant Employees working on behalf of the MKS[] Shared Service.
- 5.2** The Head of the [] Shared Service shall be entitled to procure such support services or other resources as he considers may be necessary to deliver the Service the costs of which shall be treated as costs of the MKS Shared Service.
- 5.3** Clause 5.2 does not authorise the Head of the [] Shared Service to procure additional support services without the prior consent of the Board (and of the Authority or Authorities affected) where the effect would be to either increase the relevant financial contribution payable by an Authority or incur actual or potential liabilities to third parties.
- 5.4** Nothing in this Agreement shall prevent the Head of the[] Shared Service from obtaining (at the written request of one of the Authorities) any additional external resources required for that Authority to be paid out of a different budget unconnected with the MKS [] Shared Service budget.

6. HEAD OF [] SHARED SERVICE

- 6.1** The Head of the [] Shared Service shall report to the Board and receive specific instructions in respect of the strategic direction of the [] Shared Service from the Board. For day-to-day and operational matters in relation to the [] Shared Service, s/he will be given direction by the MKSD who will be Line Manager for the Head of the [] Shared Service.
- 6.2** The Head of the [], Shared Service shall have the authority and rights to:
- 6.2.1 access each Authority's premises at reasonable times;
 - 6.2.2 receive any information and explanation considered necessary for the running of the Service;
 - 6.2.3 report to and attend meetings of the Board;
 - 6.2.4 commit and authorise expenditure in connection with the Service; and
 - 6.2.5 recruit, employ and direct Relevant Employees.
- provided that nothing in this Agreement will authorise the Head of the [] Shared Service to incur expenditure over and above the budgets approved by the Authorities and the Board.
- 6.3** The Head of the [] Shared Service will provide the following reports to each of the Authorities as well as to the Board:
- 6.3.1 a quarterly and half yearly update against the work in the Service Level Agreement identifying significant changes;
 - 6.3.2 budget information as required; and
 - 6.3.3 any other reports as may be required.
- 6.4** The Head of the [] Shared Service will provide an annual report to the MKS Board about the performance of the [] Shared Service against the agreed Service Level Agreement and budget.

7. THE BOARD

- 7.1** The members of the Board shall consist of Directors nominated by each Authority.

- 7.2** The Board shall meet at least quarterly in April, July, October and January of each year ("**Scheduled Meetings**"). Any member of the Board may call additional meetings ("**Additional Meetings**").
- 7.3** The Head of the [] Shared Service and other officers (or their nominated substitutes) may attend any meetings of the Board to support its operation at the invitation of the Board. The board may continue with a meeting after asking the Head of the [] Shared Service and/or any other officers to leave the meeting (and in any such a case will be under no obligation to inform the Head of the [] Shared Service or other officer of what is being discussed during any confidential part of that meeting).
- 7.4** The Head of Paid Service of each of the Authorities shall have the right to meet the Head of the [] Shared Service with or without the Board as often as they reasonably deem necessary.
- 7.5** In considering or requesting funding for development proposals or proposals outside of agreed budgets, the Board shall abide by each Authority's relevant decision making processes and will not be entitled to commit any of the Authorities to expenditure that has not already been formally agreed by that Authority.

8. MKS [] SHARED SERVICE STRUCTURE

The structure for the MKS [] Shared Service is set out in Schedule 4 and may be revised by the agreement of the Authorities and the Board from time to time.

9. SERVICE PLAN AND BUDGET

- 9.1** The Service Level Agreement in Schedule 2, which will be operational from 1 April to 31 March, shall be reviewed and updated annually by the Head of the [] Shared Service.
- 9.2** The Head of the [] Shared Service shall be given the budget allocation for the [] Shared Service by the Board by 31 October each year for the following financial year. The budget allocation shall be prepared in accordance with clause 10.
- 9.3** The Head of the [] Shared Service shall prepare a draft Service Level Agreement and Agreed Service Plan for the following financial year by 31 December following consultation with the Authorities and taking into account the budget allocation for the following financial year.

- 9.4** The draft Service Level Agreement and Agreed Service Plan and budget shall be put before the Board for formal consideration by 31 January and the Board will approve the Service Level Agreement and Agreed Service Plan and budget for each financial year by 31 March before the start of that forthcoming financial year.
- 9.5** The draft Service Level Agreement and Agreed Service Plan (as further amended if appropriate) once fully agreed and approved will come into force and become the agreed Service Level Agreement and Agreed Service Plan as at 1 April each year.
- 9.6** Any dispute in connection with the Service Level Agreement may be referred for resolution under clause 18.

10. FINANCIAL PROVISIONS

Pooled Funds

10.1 The [] Shared Service Pooled Fund shall apply from the Commencement Date of this Agreement.

10.2 The Pooled Fund established at the Commencement Date shall comprise staffing related costs and agreed annual running costs. All costs relating to Relevant Employees during the period in which they are employed in the [] Shared Service will be apportioned and charged to the contributions to the Pooled Fund in a fair and reasonable manner. Such costs shall include, but shall not be limited, to:

10.2.1 salaries (including other contractual payments and expenses) and employer's on-costs;

10.2.2 redundancy and any other related payments.

provided that such costs in respect of events occurring prior to the Commencement Date or relating to predecessor arrangements under any previous agreements shall not be funded from the Pooled or Non-Pooled Funds.

10.3 Subject to compliance with any applicable legal requirements, the Authorities may agree in writing to:

10.3.1 establish further Pooled Funds; or

10.3.2 vary any existing Pooled Funds; or

10.3.3 introduce Pooled Funds during a Financial Year.

B. Financial Contributions

10.4 The Authorities shall agree the methodology for calculating the amount of the Pooled Fund and each Authority's contribution to the Pooled Fund in each financial year. This shall be based on the contributions and percentage shares set out in Clause 10 as agreed upon at the time the Pooled Fund is established updated to reflect the transfer of funds from the Non-Pooled Fund to the Pooled Fund.

10.5 The Authorities may agree in writing to change the methodology that will apply to the Pooled Fund (if any) with effect from the beginning of any Financial Year.

10.6 The Authorities have agreed that their contributions (and percentage share) to the Pooled Fund for the Financial Year beginning 1 April [] shall be as set out in Schedule 5 as follows:

MBC: (%)

SBC: (%)

TWBC (%)

Total (100%)

10.7 When determining the contributions to the Pooled Fund in financial years subsequent to the financial year beginning on 1st April [] ("**Financial Year**"), it is the intention of the Authorities, in normal circumstances, to update the percentage share to reflect the transfer of any Non-Pooled Funds to the Pooled Fund and apply the following principles:

10.7.1 each Authority shall take its previous year's baseline contribution and add to that the relevant inflation factor and any other cost pressure on the relevant services, less any local and national savings requirements;

10.7.2 in considering the baseline contributions in the previous Financial Year, this shall be an Authority's contribution as agreed at the commencement of the previous Financial Year and any underspends or overspends during that year shall be ignored. Where Pooled Funds are introduced during a Financial Year the Authorities shall agree when introducing the Pooled Funds what figures shall be taken as the baseline contributions for that Financial Year for the purposes of this clause (as though the Pooled Funds were introduced at the commencement of that Financial Year).

10.8 In determining financial contributions for subsequent financial years the Authorities will also consider whether it is possible to fund any growth proposals.

10.9 In the event that the financial contributions of the Authorities to any Pooled Fund in any Financial Year (the "**new Financial Year**"):

10.9.1 are less than that in the previous Financial Year as increased by the relevant inflation factor; and/or

10.9.2 do not cover cost pressures on the relevant Services,

the Authorities shall negotiate appropriate changes in funding and/or Services so that expenditure will be covered by the financial contributions for the new Financial Year.

Non-Pooled Fund

- 10.10** The MKS [] Service Non-Pooled Funds (if any), for the avoidance of doubt, shall not constitute Pooled Funds. Non-Pooled Funds (if any) are held outside of the Pooled Funds and can be held by any of the Authorities, but relate to the MKS [] Shared Service and are managed by the Head of [] Shared Service.
- 10.11** The Non-Pooled Funds (if any) shall comprise those costs as set out in Schedule 6.
- 10.12** The Head of the [] Shared Service will be the responsible budget holder for the Non-Pooled Funds. No expenditure should be incurred on the Non-Pooled Funds without the authorisation of the Head of [] Shared Service. The Authorities should notify the Head of [] Shared Service within ten business days of any unauthorised expenditure that has been incurred. Any overspends occurring on any Non-Pooled Funds arising from unauthorised expenditure will not be treated as part of the general provisions for overspends in clauses 10.25 to 10.26 and will be met by the Authority in which the overspend occurred.
- 10.13** The Head of the [] Shared Service will review the expenditure related to the Non-Pooled Funds the “**Non-Pooled Funds Review**”). The Review will identify the nature of the expenditure and the related contractual arrangements, if any. The Non-Pooled Funds Review will set out the arrangements required to move the Non-Pooled Funds to the Pooled Funds and the timescales for doing so. The recommendations arising from the Non-Pooled Funds Review will be presented to the Board for consideration and approval. The Review will be completed within of the commencement date unless otherwise agreed by the Board.
- 10.14** The Authorities acknowledge that at the Commencement Date there are no Non-Pooled Funds. If the requirement for Non-Pooled Funds arises during the course of the Agreement, the Authorities shall agree in writing their % contributions to the Non-Pooled Fund **Or**

The Authorities have agreed that their contributions (and percentage share) to the Non-Pooled Fund for the Financial Year beginning 1 April [] shall be as set out in Schedule 6 and as follows:

MBC: £ (%)

SBC: £ (%)

TWBC: £ (%)

Total: £ (100%)

10.15 When determining the contributions to the Non-Pooled Funds in Financial Years subsequent to the Financial Year in beginning on 1 April [] it is the intention of the Authorities, in normal circumstances, to apply the following principles:

10.15.1 each Authority shall take its previous year's baseline contribution and add to that the relevant inflation factor and any other cost pressure on the relevant services, less any local and national savings requirements;

10.15.2 in considering the baseline contributions in the previous financial year, this shall be an Authority's contribution as agreed at the commencement of the previous financial year and any underspends or overspends during that year shall be ignored.

10.16 Not used.

10.17 In the event that the financial contributions of the Authorities to any Non-Pooled Funds in any financial year (the "**New Financial Year**"):

10.17.1 are less than that in the previous financial year as increased by the relevant inflation factor; and/or

10.17.2 do not cover cost pressures on the relevant Services,

each Authority shall make the appropriate changes in funding and/or services from their Non-Pooled Funds so that expenditure will be covered by their financial contributions for the new Financial Year without impacting on the MKS [] Shared Service.

Administration of Pooled and Non-Pooled Funds

10.18 [Host Authority] holds the Pooled and Non-Pooled Funds.

10.19 The Head of [] Shared Services will act as the Pool Manager.

10.20 The Pool Manager will be responsible for:

10.20.1 Managing the relevant Pooled Fund; and

10.20.2 Managing the relevant Non-Pooled Fund.

10.21 The monies in any Pooled and Non-Pooled Fund may be expended on Services in different proportions to that in which the Authorities shall have contributed to the Pooled or Non-Pooled Fund.

10.22 The monies in Pooled and Non-Pooled Funds shall be spent in accordance with any restrictions agreed between the Authorities on the establishment of the Pooled and Non-Pooled Fund or as may be varied by agreement from time to time.

General Provisions on Overspends and Underspends

10.23 The Authorities shall use their reasonable endeavours to ensure that the Services included in any Pooled and Non-Pooled Fund are carried out within each Financial Year.

10.24 The Head of [] Shared Services shall keep the Authorities informed of any projection of an overspend or underspend in that Pooled or Non-Pooled Fund within 10 Business Days of such projection being made.

Overspends

10.25 Whenever an overspend is projected in the Pooled and/or Non-Pooled Funds the Authorities shall agree how to manage the overspend and shall keep the position under review. The Authorities shall act in good faith and in a reasonable manner in agreeing the management of the overspend.

10.26 If at the end of any Financial Year there is an overspend the Authorities shall identify the reasons for the overspend in any Pooled or Non-Pooled Fund (unless arising from unauthorised expenditure as set in clause 10.12) and may agree that resources in the next Financial Year shall be applied in meeting the overspend. If this is not agreed, the overspend shall be apportioned between the Authorities in a just and equitable manner taking into account the circumstances of and reasons for the overspend and the Authorities shall make such payments as shall be required to reflect this allocation based on the percentage share of their respective contributions in clause 10.6, updated to reflect the last financial year.

Underspends

- 10.27** Whenever an under spend is projected in any Pooled or Non-Pooled Fund the Authorities may agree to the redeployment of that underspend or that the money shall be retained as a contingency in the Pooled or Non-Pooled Funds where the under spending has occurred. In the event that agreement cannot be reached the under spend shall be retained as a contingency in the Pooled Fund.
- 10.28** Any underspend in relation to any Pooled Fund at the end of a Financial Year or upon termination of this Agreement (in whole or part) shall be apportioned between the Authorities based on the percentage share of their respective contributions in clause 10.6 the Authorities shall receive such payments as are necessary to reflect such allocation, updated to reflect the last financial year.
- 10.29** Without prejudice to clause 10.28, the Authorities may agree to carry forward any underspend in relation to Pooled or Non-Pooled Funds provided that such carry forward will be in accordance with any relevant statutory or other legal requirement or guidance.

Other Resources

- 10.30** [Host Authority] will provide or make available the administrative services listed below:
- Finance;
 - Any other services as required;
- 10.31** These Other Resources will be managed by [Host Authority] providing these services outside of the MKS [] Shared Service arrangements under this Agreement.
- 10.32** It is not [host Authority's] current intention to make any charge for the services referred to in clause 10.30 on the basis that the Authorities will be providing broadly equivalent services proportionate to the financial contributions of each Authority. However [Host Authority] may at any time on giving 6 months' notice, elect that its reasonable actual costs in providing these Other Resources be apportioned and charged to the Pooled Funds and any Non-Pooled Funds in a fair and reasonable manner.

Capital Expenditure

- 10.32** The financial contributions in respect of revenue expenditure referred to in clauses 10.1, 10.2 and 10.32 shall not be applied towards Capital Expenditure.
- 10.33** The Authorities agree that, at the Commencement Date it is not envisaged that there will be any capital expenditure. If capital expenditure is required during the Service Period the Authorities will agree in writing the % share for each Authority or the appropriate contribution for such capital expenditure from time to time.
- 10.34** The following matters shall be agreed in writing between the Authorities before any Capital Expenditure is incurred in relation to the MKS Shared Service arrangements:
- 10.35.1 the business case, including the on-going revenue and financial implications and efficiencies, a feasibility study and a whole life costing;
 - 10.35.2 the capital requirement; the proportions in which it is to be met by the Authorities; which of the Authorities is to make the Capital Expenditure; and ownership of any newly acquired asset and any arrangements for use by the Authorities or third parties and the accounting treatment to be applied.
- 10.35** Each Authority shall give reasonable consideration to any proposals that incur any Capital Expenditure but shall not be obliged to provide such funding.

VAT

- 10.36** The Authorities shall agree the treatment of the MKS [] Shared Service Arrangements for VAT purposes in accordance with any directions and/or guidance of HM Revenue & Customs. In the event that VAT is or becomes payable then it shall be paid in addition to the sums mentioned or referred to under this Agreement which shall be deemed to be stated or calculated exclusive of VAT.

Accounting and Reporting Requirements

- 10.37** The Authorities shall ensure that full and proper records for accounting purposes are kept in respect of the MKS [] Shared Service Arrangements in this Agreement.
- 10.38** The Authorities shall co-operate with each other in preparation of accounts in

relation to the MKS [] Shared Service arrangements in accordance with financial rules, regulations and legislation.

10.39 The Authorities will supply all information reasonably required by:

- 10.39.1 persons exercising a statutory function in relation to each Authority including their external auditors, Monitoring Officers (appointed under section 5 of the Local Government and Housing Act 1989) and their Section 151 Officers (as defined by the Local Government Act 1972); and
- 10.39.2 other persons or bodies with an authorised monitoring or scrutiny function, including a Council Scrutiny Committee and internal audit, having regard to an Authority's obligations of confidentiality and such information sharing protocols as shall be agreed between the Authorities from time to time.

Miscellaneous Provisions

10.40 Expenditure on the [] Shared Services can only be incurred with the prior approval of the Head of [] Shared Service, or one of his/her nominated deputies.

10.41 The following shall be provided by the Head of the [] Shared Service to assist with the efficient running of the [] Shared Service:

- 10.41.1 Monthly budget monitoring reports for revenue and capital expenditure, detailing budget, actual spend to date, projected outturn and projected variance.
- 10.41.2 Performance Reports for the whole [] Shared Service and for each Authority setting out targets/outcomes, performance to date and expected year end performance; and
- 10.41.3 Action plans for corrective action when required.

10.42 The Head of the [] Shared Service shall be given access as required to the financial management systems and information at [other Authorities' sites] in order to fulfil his obligations as the Pool Manager and the Head of the [] Shared Service and to any other information that he may reasonably request from each Authority.

10.43 [Host Authority] will invoice [the other Authorities] on a quarterly basis for any contributions due to the Pooled Fund. These invoices (and others that may be sent with regard to their contributions) should be paid within payment terms agreed by [Host Authority] and if a late payment is made without good reason then [Host Authority] reserves the right to charge interest on the amount due at the Lloyd's base rate applicable at the time.

10.44 The Authorities acknowledge that any present imbalance between them in terms of pension liabilities will be managed for the time being by the Parties' s151 officers. The s151 Officers will bring any significant issues to the attention of the MKS Board and propose a course of action following any future guidance provided by Kent County Council.

11. RELEVANT EMPLOYEES

11.1 The Authorities acknowledge and agree that in relation to Relevant Employees that:

11.1.1 The Head of the [] Shared Service,[]is employed by [Host Authority] but line managed by the MKSD in accordance with the [Host Authority's policies and procedures.

11.1.2 The Relevant Employees listed in Schedule 3 have commenced/will commence working together as the MKS [] Shared Service after a formal process of consultation in accordance with the requirements of Regulation 13 of the TUPE Regulations resulting in the transfer of the other Authorities') employees into the employment of [Host Authority on] [Date.]

11.1.3 The Relevant Employees at the date of this Agreement are all listed in Schedule 3 by reference to the Authority which employed them prior to the Transfer Date, their names and their job titles subsequent to the Transfer Date.

11.2 From the Transfer Date each of the members of the MKS [] Shared Service (as varied from time to time) will or may be required to work on matters for any of the Authorities in pursuance of the activities of the MKS [] Shared Service.

11.3 Any employment related costs (including administrative costs) of or relating to any Relevant Employee (including for the avoidance of doubt the costs of salary and pension, the cost of contractual or statutory redundancy payments, any pension contributions required under statute, including any contributions necessary to make

good any pension fund deficit or pension payments required by the contract of employment or by statute on retirement or redundancy the costs of defending any employment or personal injury related claim (including legal costs) and the costs of any fines, damages, compensation or interest (including legal costs) associated with or relating to any such claims and/or any claims which result from the transfer of any Relevant Employee from the non-employing authority to the employing authority in accordance with the TUPE Regulations will (unless otherwise stated in this Agreement) be considered to be costs attributable to the Pooled Fund for the MKS [] Shared Service and will be split between the Authorities as set out in Clause 10.6 of this Agreement.

- 11.4** Clause 11.3, shall not apply to the costs of defending any employment or personal injury related claim (including legal costs) and the costs of any fines, damages, compensation or interest (including legal costs) associated with or relating to any such claims where the claim or part of the claim arose or relates to the actions or inactions of an Authority prior to the Transfer Date. In cases where the claim arose or relates wholly to a time prior to Transfer Date all such costs will be met by the former employing Authority at that time. Where a claim arose or relates partly to a time before and a time after Transfer Date, liability will be apportioned between the former employing Authority prior to the Transfer Date and the budget of the MKS [] Shared Service in such proportions as the Authorities agree to be appropriate. Where any costs are incurred by an Authority which it was not reasonably necessary to incur then such costs shall not be shared but shall be borne by the Authority which incurred them.
- 11.5** The Authorities agree that all new staff employed on or after the Transfer Date who are appointed as members of the MKS Shared Service will be employed by [Host Authority].
- 11.6** On the date of the termination or expiry of the Services, the Authorities will agree that if they are applicable, they will comply with the TUPE regulations at that time in force in relation to any future transfer of Relevant Employees. Where it is possible to ensure the continuous service of Relevant Employees this will be the preferred option.
- 11.7** If any Authority on the termination of the whole or part of the Service chooses to organise its future provision of the Services in such a way where the TUPE Regulations would not apply and refuses voluntarily to take into its employment the

Relevant Employees who would have transferred to it had the TUPE Regulations applied, that Authority will be responsible for the whole of the redundancy, pension and other costs relating to the termination of the employment of those Relevant Employees including any costs awards compensation or fines relating to or arising from any litigation brought by those Relevant Employees and/or their trades unions. Otherwise the responsibility for the financial cost associated with the redundancy pension and other costs relating to the termination of the employment of any Relevant Employees including any costs, awards, compensation or fines relating to or arising from any litigation brought by those employees or their trades unions will be shared in line with arrangements for the MKS Shared Service Pooled Fund.

- 11.8** If on the termination of the whole or part of the Services there cannot be a transfer pursuant to the TUPE Regulations of some or all of the Relevant Employees from one Authority to another as the case may be or to a third party contractor, because the way in which the MKS [] Shared Service has been organised and/or run prevents a transfer pursuant to the TUPE Regulations from either Authority to the other or to a third party contractor from occurring, then the liability for the redundancy and other costs associated with the termination of the employment of any Relevant Employees no longer required by any Authority (including, but not limited to, any fines, compensation, legal and administrative costs) will be agreed between the Authorities and failing any such agreement shall be shared by the parties in accordance with clause 10.1 and 10.2 of this Agreement. This is subject to a proviso that, within six months of the termination of the Services, [Host Authority] shall not be permitted to reorganise its staff involved with the Services without the consent of the other Authorities. (which will not be unreasonably withheld or delayed).
- 11.9** The Authorities agree that upon transfer of any Relevant Employees pursuant to TUPE to an employer who is not another local authority that the Authorities will ensure compliance with the Best Value Authorities Staff Transfers (Pensions) Direction 2007 and (where applicable) the Pensions Acts of 2004, 2008 and 2011, the Public Services Pensions Act 2013 and any future legislation, order or direction that amends, augments or replaces the same.
- 11.10** The Authorities agree that upon a future transfer of the whole or any part of the MKS [] Shared Service to a third party contractor whether pursuant to TUPE or otherwise, the liability for the redundancy and other costs associated with the termination of the employment of any Relevant Employees including but not limited to any fines, compensation, legal and administrative costs will be agreed between

the Authorities and failing any such agreement shall be shared by the parties in accordance with clause 10.1 and 10.2 of this Agreement.

- 11.11** [] and/or [] may request the employment liability information as defined by Regulation 11 of the TUPE Regulations at any time irrespective of whether there is to be a transfer pursuant to the TUPE Regulations within the timeframe envisaged by Regulation 11 and [] and/or [] will provide such information (within 28 days of that request to that Authority) to which that Authority would be entitled to receive if there was to be a transfer of any Relevant Employees within 28 days of that request irrespective of whether there will be such a transfer [] and/or [] agree to pay the administrative costs associated with compliance with any such request save where the information is provided by the Authority pursuant to the TUPE Regulations in contemplation of a transfer pursuant to the TUPE Regulations. Further, [] and [] acknowledge that save where the information is provided by the Authority pursuant to the TUPE Regulations in contemplation of a transfer pursuant to the TUPE Regulations, the Authority may redact that information to ensure compliance with the DPA (or any successor legislation). Further the Authorities agree only to use any information provided to them pursuant to this clause 11.11 lawfully and in accordance with the DPA and any common law duty of confidentiality that may apply and agree to fully indemnify [] against all and any losses howsoever caused arising from or relating to any breach by them of this clause.
- 11.12** The Authorities agree that if they are applicable, they will comply with the TUPE Regulations in relation to any future transfer of Relevant Employees. If the Regulations are not applicable, the Authorities agree to carry out such actions and enter into such documentation as are necessary and appropriate to procure that Relevant Employees whose employment is to be transferred to any of the Authorities are transferred on the same terms and conditions as applied immediately before such transfer including full continuity of employment and with the rights mentioned in clause 11.13 below.
- 11.13** The Authorities acknowledge and undertake to use their best endeavours to ensure that upon any future transfer of employment of Relevant Employees between the Authorities as contemplated by this Agreement those Relevant Employees whose employment transfers between the Authorities whether pursuant to TUPE or otherwise retain membership of or retain the right to join the LGPS Pension Scheme and that the Relevant Employees will where permitted by the LGPS

Regulations have continuity of service for the purposes of entitlement to pension under the Pension Scheme.

11.14 The Authorities agree that:

- 11.14.1 [Authority A] shall be responsible for all remuneration, benefits entitlements and outgoings in respect of [Authority A's] Relevant Employees up to the Transfer Date and for those employees from MKS [] Shared Service who remain in its employment after the termination of the Services (including without limitation all wages, holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions);
- 11.14.2 [Authority B] shall be responsible for all remuneration, benefits, entitlements and outgoings in respect of [Authority B]'s Relevant Employees as up to the Transfer Date and for those employees who transfer to it upon the termination of the Services from the MKS Shared Service on and after the date of that transfer (including without limitation all wages, holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions).
- 11.14.3 [Authority C] shall be responsible for all remuneration, benefits, entitlements and outgoings in respect of [Authority C]'s Relevant Employees as up to the Transfer Date and for those employees who transfer to it upon the termination of the Services from the MKS Shared Service on and after the date of that transfer (including without limitation all wages, holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions).

11.15 From the Transfer Date until the date of the termination of the Services (subject to payment of the relevant share of the costs in accordance with this Agreement) [Host Authority] shall in respect of any Relevant Employee or any agency worker engaged in connection with the provision of the Services be responsible for all remuneration, benefits, entitlements and outgoings in respect of that person (including without limitation all wages, holiday pay, bonuses, commission, payment of PAYE, national insurance contributions and pension contributions).

11.16 Each Authority undertakes that in relation to any transfer of Relevant Employees pursuant to this Agreement to which the TUPE Regulations do not apply that it will

supply the other Authorities (or other future employer) on reasonable request with the information which would have been required under the TUPE Regulations (had they applied) regarding the identity, number, age, sex, length of service, job title, grade and terms and conditions of employment of any employees who transfer to the other Authority together with:

11.16.1 details of any disciplinary or grievance proceedings initiated by or in relation to that employee in the two years preceding; and details of any legal proceedings (of whatever nature) brought by such employee against them within the same period and of any potential legal proceedings which that Authority has reasonable grounds to believe that that employee may bring against them arising out of that employee's employment with them.

11.17 Each Authority shall indemnify and keep indemnified in full the other Authorities against all costs, claims, demands or losses incurred by the other Authorities in connection with or as a result of:

11.17.1 a breach by the indemnifying Authority of its obligations under the TUPE Regulations or under this clause 11;

11.17.2 any claim or demand by any [Authority B] or [Authority C] employee against [Authority A] (where Authority B or Authority C is the indemnifying Authority) arising out of their employment with [Authority B] or [Authority C] before the Transfer Date including for the avoidance of doubt any claim relating to inequality in pay where that inequality existed before the commencement of the Shared Service and continued to exist after but subject always to [Authority A] taking reasonable steps to eradicate such inequalities in a timely manner when it becomes aware of the same; and

11.17.3 any claim or demand by one of [Authority A] Employees against [Authority B] or [Authority C] (where [Authority A] is the indemnifying Authority) arising out of their employment with Authority A before the Transfer Date.

11.18 Each Authority agrees to recognise the trades unions representing the transferring Employees after the Transfer Date to the same extent they were recognised by the other Authorities before the Transfer Date.

11.19 If any Authority proposes to take any decision in relation to a Relevant Employee which is outside the terms of the any of the Authorities' approved employment policies, the Authorities agree (via the Head of [] Shared Service) to consult the Board before that decision is made.

11.20 Clause 11 shall survive the termination or expiry of this Agreement.

12. LIABILITIES AND INDEMNITIES

12.1 The MKS [] Shared Service is being provided on a collaborative and not for profit basis with the intention that (save as otherwise provided for in this Agreement) each Authority shall bear the risks of any losses caused to itself or any of its staff by the provision of the Services under this Agreement except in the case of fraud or bad faith in which case the defaulting Authority shall indemnify the other Authority against claims and/or liabilities in respect thereof provided that all costs and losses in respect of the employment of Relevant Employees engaged in the MKS [] Shared Service shall (save as otherwise provided for in Clause 11 above) be considered to be costs of the provision of the MKS Shared Service and will be shared between the Authorities in the same proportion as they have shared in the Pooled Funds in accordance with clause 10.6.

12.2 If one Authority requires a reduction in the level of the Services, then that Authority shall indemnify the other Authorities in respect of all reasonable losses, costs or expenses (including for the avoidance of doubt any redundancy costs or any other costs related to employees' and their legal entitlements) incurred as a consequence of that reduction of the Services.

12.3 Any costs arising as a result of legislative change shall be shared by the Authorities in the same proportion as they have shared in the Pooled Funds in accordance with clause 10.6.

12.4 Each of the Authorities shall at all times take all reasonable steps within its powers to minimise and mitigate any loss for which it is seeking re-imbursement from any of the other Authorities.

12.5 Each Authority shall retain responsibility (the "**Responsible Authority**") for meeting all the costs of and in connection with the conduct of any proceedings including settlement of any action or claim relating to the provision of [] Shared Services where

responsibility therefore arises directly or indirectly from any act, omission or default of the Responsible Authority and/or its Relevant Contractor whether:

12.5.1 prior to the Commencement Date of this Agreement; or

12.5.2 during the Term of this Agreement where the provisions of clause 16 shall apply.

12.6 Clause 12 shall survive the termination or expiry of this Agreement.

13. INSURANCE

13.1 Each Authority shall ensure that adequate insurance cover is taken out and maintained and notified annually to the Head of [] Shared Service in respect of:

13.1.1 any property held by it for the purposes of this Agreement; and

13.1.2 Employer's liability, Public liability including liability for secondees working from any of the other Authorities' premises.

14. TERMINATION OF THIS AGREEMENT

14.1 (There shall be a review of the Service (the " **Review**") carried out by the Authorities jointly in [Date] which will report to the Board by [Date]).

14.3 (Following the Review), any of the Authorities may terminate this Agreement by notice (the "**Termination Notice**") given to the Board 6 calendar months before the date specified in the Termination Notice. Termination shall be subject to the provisions of clause 15 below.

15. EFFECTS OF TERMINATION

Upon the termination or expiry of this Agreement:

15.1 The decision to terminate the provision of the [] Shared Service shall be taken by a co-located meeting of the Authorities' decision making bodies. Upon the decision to terminate, the Authorities shall cease to provide the [] Shared Service jointly.

15.2 Notwithstanding the termination of this Agreement, all Relevant Contracts will remain in full force and effect and each Authority shall continue to discharge its obligations under those Contracts.

- 15.3** Each Authority shall retain ownership of any capital assets purchased by the Authority, except for those capital assets purchased by either authority on behalf of the MKS [] Shared Service. Any capital assets purchased on behalf of the MKS [] Shared Service will continue to be made available for use by the Authorities until such time as their continued use and ownership has been agreed by the Authorities. Any dispute in connection with the treatment of capital assets may be referred for resolution under clause 18.
- 15.4** The Authorities will proceed as set out in Clause 11 with regard to the employment and/or transfer of Relevant Employees.
- 15.5** There shall be a calculation of the increased costs to each Authority (including any other loss, liability, damage, claim, cost or expense which would be incurred by the MKS [] Shared Service by reason of such early termination, to include the costs involved in the administrative arrangements to continue to provide a Shared Service if agreed by the remaining Authorities) and the Authorities hereby further agree that no termination will take effect until they have all agreed how liability for costs at termination shall be allocated between them (taking account of the methodology agreed in clause 10) and that such agreement has been approved by the Board.
- 15.6** Without prejudice to the provisions of clause 15.1, upon expiry or termination of this Agreement each Authority will provide to the other Authorities such data within its possession as the other Authorities shall reasonably require (to the extent that such provision is lawful) in order to carry out their own [] function either as a function of each Authority on its own or as a shared service between the other two Authorities and the reasonable costs (necessarily and reasonably incurred) of assembling and providing such data will be treated as a cost of the MKS [] Shared Service and be shared between the Authorities in the proportions to be approved by the Board.
- 15.7** It shall be the duty of all the Authorities to use their reasonable endeavours to minimise any losses arising from the termination of this Agreement. For the avoidance of doubt, any liabilities accrued prior to the termination or expiry of this Agreement shall be borne by the Authorities in the agreed proportions at clause 10.6 or as may be agreed and determined by the Board.
- 15.8** Clause 15 shall survive the termination or expiry of this Agreement.

16. DEFAULT BY AN AUTHORITY

- 16.1** Where there has been a Material Breach of this Agreement or a default by any of the Authorities (“The Responsible Authority”) or any of the Relevant Contractors which causes an adverse impact on the provision of the MKS [] Shared Service, the Board shall agree such reasonable and proportionate action as it considers necessary to remedy the consequences of the breach or default in order to mitigate the adverse effects to the [] Shared Service to enable the Services to be continued (insofar as possible) in accordance with this Agreement. During the implementation of this action, the authorities will act reasonably and proportionately to implement the agreed course of action and take whatever action is necessary in order to mitigate any losses. If agreement cannot be reached within 40 working days of the breach any party may refer the dispute to arbitration pursuant to clause 19.
- 16.2** All costs of and in connection with a Material Breach or default by the Responsible Authority shall be the sole liability of the Responsible Authority and shall not be shared by or attributable to the MKS [] Shared Service or other Authority.
- 16.3** Host Authority shall be entitled to invoice the Responsible Authority for the costs of remedial action and such costs shall be payable by the Responsible Authority within 28 days of receipt of the invoice. Upon receipt of the payment, the monies shall be paid to the account of [Host Authority].

17. DEFAULT BY A RELEVANT CONTRACTOR

- 17.1** In the event that any of the Relevant Contracts shall be terminated or come to an end prior to the end of the Service Period, the Authorities shall meet as soon as practicable to agree arrangements for the management and/or completion of any matters arising in consequence of the termination (including, but not limited to, the procurement of a replacement contractor and the apportionment of any payments and/or costs).

18. DISPUTE RESOLUTION

- 18.1** Any dispute arising under this Agreement shall be referred initially to the Head of the [] Shared Service.
- 18.2** If the Head of [] Shared Service is unable to resolve the matter in discussion with the MKSD s/he shall refer the dispute to the Board and shall do so no later than within 20 Business Days of becoming aware of the dispute.

- 18.3** If the Board is unable to resolve the matter, the Board shall refer the dispute to the MKS Board and shall do so no later than within 40 Business Days of becoming aware of the dispute.
- 18.4** If the MKS Board is unable to resolve the matter then any Authority which is a Party to the dispute may refer the dispute to arbitration in accordance with clause 19 and shall do so no later than within 40 Business Days of becoming aware of the dispute.

19. ARBITRATION

Any disputes or differences between the Authorities arising out of this Agreement which have not been resolved in accordance with clause 18 may be referred by any Party to the dispute to a single arbitrator to be agreed between the Authorities or where no agreement can be reached and having regard to the nature of the dispute by an arbitrator nominated by the President or Vice President of the Chartered Institute of Arbitrators. The Arbitrator shall have power to determine the appropriate procedure and to make a binding determination of the disputes referred to him including an award of costs.

20. ASSISTANCE IN LEGAL PROCEEDINGS

- 20.1** To the extent that the institution and defence of necessary litigation arising out of or in connection with the provision of the [] Shared Service during the Service Period is not undertaken by an insurer acting for any of the Authorities it shall be undertaken by the legal advisors for such of the Authorities as may be agreed by the Board.
- 20.2** All claims or potential claims received by an Authority shall be notified to the Head of the [] Shared Service, the MKSD and the Board within seven days.
- 20.3** Each Authority will provide all reasonable assistance to the other Authorities (and their insurers) as the case may be in defending any claims and, if requested to do so, each Authority shall provide the other with any relevant information (including but not limited to documentation or statements) in connection with any legal enquiry, arbitration, court proceedings or hearings in which the requesting Authority might become involved arising out of or pursuant to the terms of the Relevant Contracts and/or this Agreement.

21 DATA PROTECTION

- 21.1** With respect to the Parties' rights and obligations under this Agreement, the parties acknowledge that the Authorities will be acting as both Data Controllers and Data Processors according to circumstance during the term of the Agreement.
- 21.2** The Authorities will take all reasonable steps to ensure the reliability and integrity of any employees who have access to Personal Data and ensure that employees:
- (i) are aware of and comply both the Authority's Data Controller duties and with the Authority's Data Processor duties under this Agreement;
 - (ii) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Data Controller Authority or as otherwise permitted by this Agreement; and
 - (iii) have undergone adequate training in the use, care, protection and handling of personal data (as defined in the DPA);
- 21.3** When an Authority is acting as Data Processor it shall:
- (i) process the Personal Data only in accordance with instructions from the Authority who is the Data Controller,
 - (ii) ensure that at all times it has in place appropriate technical and organisational measures to guard against unauthorised or unlawful processing of the Personal Data and/or accidental loss, destruction or damage to the Personal Data,
 - (iii) not disclose or transfer the Personal Data to any third party or Supplier unless necessary for the provision of the Services and,
 - (iv) notify the Data Controller within 3 Working Days if it receives from a Data Subject (or third party on their behalf) a Data Subject Access Request (or purported Data Subject Access Request);
 - (v) a request to rectify, block or erase any Personal Data; or any other request, complaint or communication relating to the Authority's obligations under the DPA;
 - (vi) any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data; or

- (vii) a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law;
 - (viii) provide the Data Controller with full cooperation and assistance (within the timescales reasonably required by that Authority) in relation to any complaint, communication or request made including by promptly providing that Authority with full details and copies of the complaint, communication or request and where applicable, such assistance as is reasonably requested by the Authority to enable the Authority to comply with the Data Subject Access Request within the relevant timescales set out in the DPA.
- 21.4** The Authorities agree that they shall not Process or otherwise transfer any Personal Data in or to any country outside the European Economic Area or any country not deemed adequate by the European Commission pursuant to Article 25(6) of Directive 95/46/EC.
- 21.5** The Authorities shall use their reasonable endeavours to assist each other to comply with any obligations under the DPA and shall not perform their obligations under this Agreement in such a way as to cause the other Authority to breach any of its obligations under the DPA to the extent the Authority is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations.

22. FREEDOM OF INFORMATION

- 22.1** The parties recognise that the Authorities are public authorities as defined within the FOIA and therefore recognise that information relating to this Agreement may be the subject of a Request.
- 22.2** Each of the Authorities shall assist one another in complying with their obligations under the FOIA including but not limited to assistance without charge in gathering information to respond to a Request.
- 22.3** Each of the Authorities shall be entitled to disclose any information relating to this Agreement and the Services in response to a Request save that in respect of any Request which is in whole or part a request for Exempt Information:
- 22.3.1** The Authority which receives the Request shall circulate the Request and shall discuss it with the other Authorities;

22.3.2 the Authority which receives the Request shall in good faith consider any representations raised by the other Authorities when deciding whether to disclose Exempt Information save that the Authority which receives the Request shall retain the right to determine at their absolute discretion how to respond to the Request; and

22.3.3 the Authority which receives the Request shall not disclose any Exempt Information beyond the disclosure required by FOIA without the consent of the other Authorities.

22.4 The parties to this Agreement acknowledge and agree that any decision made by an Authority which receives a Request as to whether to disclose information relating to this Agreement pursuant to FOIA is solely the decision of that Authority.

23. CONFIDENTIALITY

23.1 The Parties shall keep confidential all matters relating to this Agreement unless it is already in the public domain or all the parties agree that it may be disclosed and shall use all reasonable endeavours to prevent their employees and agents from making any disclosure to any person of any matter relating to this Agreement.

23.2 Clause 23.1 shall not apply to:

23.2.1 Any disclosure of information that is reasonably required by persons engaged in the performance of their obligations under this Agreement;

23.2.2 Any matter which a party can demonstrate is already generally available and in the public domain otherwise than as a result of a breach of this clause 23;

23.2.3 Any disclosure to enable a determination to be made under clause 19 (Arbitration);

23.2.4 Any disclosure which is required by any Law (including any order of a court of competent jurisdiction) any Parliamentary obligation or the rules of any stock exchange or governmental or regulatory authority having the force of Law;

23.2.5 Any disclosure of information which is already lawfully in the possession of the receiving party prior to its disclosure by the disclosing party;

23.2.6 Any disclosure by a Party to this Agreement to a department office or agency of the Government; or

23.2.7 Any disclosure for the purpose of the examination and certification of the accounts of a Party to this Agreement.

23.3 Where disclosure is permitted under Clause 23.2 the disclosing party shall ensure where practicable that the recipient of the information shall be subject to the same obligation of confidentiality as that contained in this Agreement.

24. SCRUTINY

Scrutiny will be the responsibility of each individual Authority. Each Authority (and the relevant committee charged with audit) shall have the right to inspect any documents relating to that Authority and to require the Head of the [] Shared Service to answer any questions raised by them.

25. NOTICES

25.1 Any notice or other communication which is to be given by one Authority to the other Authorities shall be given by letter (sent by hand, post, registered post or by the recorded delivery service), or electronic mail. Such letters shall be addressed to the other Authority or Authorities to their normal business addresses. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given two Business Days after the day on which the letter was posted, or on the same day if received by 4pm, in the case of electronic mail or sooner where the other Authority(ies) acknowledge(s) receipt of such letters or electronic mail.

25.2 Any Authority may change its address for service by serving a notice in accordance with this clause 25.

26 ASSIGNMENT

This Agreement is personal to the Authorities and not capable of assignment, novation or transfers by any of them save to their lawful successors.

27 VARIATION

Any variation to this Agreement must be approved by the Board and by each Authority in writing.

28 WAIVER

28.1 The failure of the Authorities to insist upon strict performance of any provision of this Agreement shall not cause any diminution of the obligations established by this Agreement.

28.2 A waiver of any default shall not constitute a waiver of any subsequent default whether or not of a similar or identical nature.

29 SEVERANCE

29.1 If any provision of this Agreement is held invalid, illegal or unenforceable for any reason, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if the Agreement had been executed with the invalid, illegal or unenforceable provision eliminated.

29.2 In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Agreement, the Authorities shall immediately commence good faith negotiations to remedy such invalidity.

30 THIRD PARTIES

The Authorities do not intend that any terms of this Agreement will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

31. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the parties with respect to its subject matter. Each Authority acknowledges that it has not relied on any undertaking, promise, assurance, statement, proposal, representation, warranty or understanding (whether or not in writing) relating to the subject matter of this Agreement except those expressly incorporated in this Agreement.

32. LAW AND JURISDICTION

This Agreement shall be governed by the Laws of England and the Parties hereby submit to the non-exclusive jurisdiction of the courts of England.

Signed on behalf of

**MAIDSTONE BOROUGH
COUNCIL**

.....

Authorised Signatory

Signed on behalf of

SWALE BOROUGH COUNCIL

)

.....

Authorised Signatory

Signed on behalf of

**TUNBRIDGE WELLS
BOROUGH COUNCIL**

.....

Authorised Signatory

Schedules to be completed by each Shared Service

Schedule 1

Agreed Service Plan

Schedule 2

Service Level Agreement

Schedule 3

Relevant Employees

Schedule 4

Shared Service Structure

Schedule 5

MKS [] Shared Service Pooled Fund as at Commencement Date

Schedule 6

MKS [] Shared Service Non Pooled Fund (if any) as at Commencement Date

Schedule 7

Relevant Contracts

Schedule 8

MKS Governance Arrangements