

Dated

- (1) Canterbury City Council
- (2) Dover District Council
- (3) The District Council of Shepway
- (4) Thanet District Council

Administrative Collaboration Agreement

relating to the provision of Human Resources Services

CONTENTS

Clause		Page
1	DEFINITIONS AND INTERPRETATION	2
2	DELEGATION OF FUNCTIONS	6
3	SHARED INTERNAL AUDIT SERVICE	8
4	ANNUAL AUDIT PLAN	9
5	SUPPORT SERVICES.....	9
6	RESPONSIBILITIES OF SECTION 151 OFFICERS	10
7	VARIATION	11
8	STAFF	12
9	TRANSFER OF ASSETS	15
10	INTELLECTUAL PROPERTY.....	15
12	FUNDING.....	16
14	DURATION OF AGREEMENT.....	18
15	DETERMINATION OF THIS AGREEMENT	18
16	DISPUTE RESOLUTION PROCEDURE.....	19
17	ARBITRATION	19
18	NOTICES	20
22	INFORMATION AND CONFIDENTIALITY.....	22
23	SCRUTINY.....	23
24	AUDIT	23
25	VAT 23	
26	FORCE MAJEURE.....	23
27	SEVERANCE	23
28	CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999.....	24
29	GOVERNING LAW	24
	SCHEDULE 1 ASSETS	25
	SCHEDULE 2 ORGANISATIONAL STRUCTURE	
	SCHEDULE 3 ADDRESSES FOR SERVICE OF NOTICES	27
	SCHEDULE 4 EAST KENT HUMAN RESOURCES SHARED SERVICE	
	- SERVICE LEVEL AGREEMENT	
	SCHEDULE 5 PAYROLL SERVICE LEVEL AGREEMENT	
	SCHEDULE 6 FINANCIAL ARRANGMENTS	

BETWEEN

- (1) Canterbury City Council of Military Road, Canterbury, CT1 1YW ("CCC")
- (2) Dover District Council of White Cliffs Business Park, Dover, Kent, CT16 3PJ ("DDC")
- (3) The District Council of Shepway of Civic Centre, Castle Hill Avenue, Folkestone, Kent, CT20 2QY ("SDC")
- (4) Thanet District Council of Cecil Street, Margate, Kent, CT9 1XZ ("TDC")

BACKGROUND

- (A) CCC, DDC, SDC and TDC wish to collaborate to provide one Shared Human Resource Service for all the Authorities.
- (B) Section 101 of the Local Government Act 1972, and by sections 19 -20 of the Local Government Act 2000 and The Local Authorities (Arrangements for the Discharge of Functions) (England) (Amendment) Regulations 2001, provides for a local authority to arrange for the discharge of its functions by another local authority.
- (C) The Delegating Authorities have agreed to arrange for EKJAC to discharge their function of providing the Services on their behalf, in accordance with the arrangements set out in this Agreement from the Commencement Date.
- (D) Those elements of the Services specified within the Payroll Service Level Agreement are to be delegated to the officer with responsibility for the delivery of Payroll in Employee Services at Kent County Council in accordance with the terms of this Agreement.
- (E) Those elements of the Services specified within the East Kent Human Resources Shared Service - Service Level Agreement are to be delegated to the Head of Human Resource Shared Services in accordance with the terms of this Agreement.
- (F) It is intended that the staff currently involved in the provision of the Services will transfer to DDC as Host Authority with effect from the Commencement Date.

OPERATIVE PROVISIONS

1. DEFINITIONS AND INTERPRETATION

In this Agreement:

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

"Agreed Service Plan"	the plan which the Host Authority is required to prepare and which has been agreed in accordance with clause 4 of this Agreement
"Authorities"	the Host Authority and the Delegating Authorities
"Business Day"	any day other than a Saturday or Sunday or a public or bank holiday in England
"Commencement Date"	1 June 2009
"Consent Matters"	<ul style="list-style-type: none">• expansion of the Services beyond the Host Authority and the Delegating Authorities• Expansion of the scope of the Human Resources Services• Major financial expenditure• Change of Host Authority• Change of Location
"CPA"	Comprehensive Performance Assessment
"Delegating Authorities"	CCC, DDC, SDC and TDC
"DPA"	Data Protection Act 1998
"East Kent Human Resources Shared Service Service Level Agreement"	means the Service Level Agreement annexed to this Agreement at Schedule 4.
"EKJAC"	The East Kent Joint Arrangements Committee which has the function of discharging the Human Resource Shared Services.

"Exempt Information"	any information or class of information relating to this Agreement which may fall within an exemption to disclosure under FOI Legislation
"FOIA"	the Freedom of Information Act 2000 and subordinate legislation made under this and the Environmental Information Regulations 2004
"Force Majeure Event"	the occurrence of: (a) war, civil war, armed conflict or terrorism, or (b) nuclear, chemical or biological contamination unless the source or cause of the contamination is the result of actions of the Affected Party, or (c) pressure waves caused by devices travelling at supersonic speeds, which directly causes any party ("the Affected Party") to be unable to comply with all or a material part of its obligations under this Agreement
"Host Authority"	DDC
"The Head of Human Resource Shared Services"	the officer at the Host Authority holding the post which has the functions ascribed to it by this Agreement
"Human Resource Shared Service"	refers to the provision of the Services in respect of the staff employed and elected members of the Authorities which are detailed within clause 2. of the East Kent Human Resources Shared Service - Service Level Agreement annexed to this Agreement at Schedule 4.
"Intellectual Property Rights"	rights in patents, trade marks, service marks, design rights (whether registrable 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"	the Local Government Pensions Scheme Regulations 1997 (as amended)
"Minor Variation"	a variation to the Agreed Service Plan which does not increase or decrease the workflow by more than 10%
"Payroll Service Level Agreement"	means the Service Level Agreement annexed to this Agreement at Schedule 5.
"Pension Scheme"	the Local Government Pension Scheme
"Personal Data"	personal data and sensitive personal data as defined in the DPA which is disclosed by a Delegating Authority to the Host Authority, to enable the Host Authority to comply with its obligations under this Agreement
"Regulations"	the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended or modified from time to time;
"Relevant Employees"	the employees who are the subject of a Relevant Transfer and for the purposes of the Relevant Transfer at the Commencement Date are those employees whose details are set out in Schedule 1;
"Relevant Transfer"	a relevant transfer for the purposes of the Regulations

"Request"	a request for information made under the FOIA
"The Head of Paid Service"	The Head of Paid Service as designated by each authority for the purposes of s4 of the Local Government Housing Act 1989 Act or his nominee
"The Strategic Human Resources Board"	Refers to the group formed by the Delegating Authorities to oversee collaborative working between the Authorities and consisting of the Strategic Human Resources Lead Officer or their nominated substitute of each Authority.
"Services"	The services as provided pursuant to the Agreed Service Plan for the relevant Authority or Authorities
"Software"	any and all computer programs in both source and object code form, including all modules, routines and sub-routines of such programs and all source and other preparatory materials relating to them, including user requirements, functional specifications and programming specifications, ideas, principles, programming languages, algorithms, flow charges, logic, logic diagrams, orthographic representations, file structures, coding sheets, coding and any manuals or other documentation relating to them and computer generated works
"Substantial Variation"	a variation to the Agreed Service Plan which increases or decreases the workflow by more than 10% of the Authorities annual financial commitment to this project.

- 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 supplements 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 ejusdem 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.
- 1.9 References to "the parties" shall be to the parties to this Agreement.

2. DELEGATION OF FUNCTIONS

- 2.1 In exercise of their powers under section 101(1)(b) and 101(5) of the Local Government Act 1972, sections 19 and 20 of the Local Government Act 2000 and all other enabling powers the Delegating Authorities delegate the function of their Human Resource Shared Service to EKJAC.
- 2.2 There following matters are reserved to the Delegating Authorities at the present time;

- 2.2.1 Regulatory and Investigative Powers Act 2000
 - 2.2.2 The Employment Practice Code (produced by the Information Commissioner)
 - 2.2.3 Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000
 - 2.2.4 the procedural aspects leading to the appointment and/or removal of the Head of Paid Services, Monitoring Officer and s151 Officer.
- 2.3 Should a Delegating Authority wish to exercise human resource functions (as referred to in Schedule 4) concurrently with EKJAC then The Head of Human Resource Shared Services shall be consulted in writing in advance of exercising the function.
- 2.4 Subject to the terms of this agreement each of the Delegating Authorities hereby empowers EKJAC to discharge on its behalf the Human Resource Shared Services in anticipation of EKJAC arranging for the discharge of its functions by The Head of Human Resource Shared Services subject to the East Kent Human Resources Shared Service Service Level Agreement and the Payroll Service Level Agreement to be approved from time to time by the Head of Paid Services of each Authority.
- 2.5 Subject to clause 2.6 and to the consultation referred to in clause 2.2, a Delegating Authority wishing to procure a substantial proportion of its Human Resources function other than through EKJAC shall give notice of its proposal to EKJAC. For the purposes of this clause any such action will be considered to be a Substantial Variation.
- 2.6 The Host Authority shall be required no later than one month after receipt of the notice referred to in clause 8.5 to determine whether the proposal of the Delegating Authority giving such notice is acceptable. If the proposal is accepted, the Host Authority shall arrange for a new version of the Agreed Service Plan to be prepared (if necessary) and for any consequential changes to be notified to the parties to this Agreement. If the proposal is not accepted, the Head of the Partnership shall refer the matter for consideration to the Strategic Human Resources Board which may, by majority vote, elect to treat the notice as the giving of twelve months notice of withdrawal from this Agreement given under clause 14.2 effective from the date of the notice and in such circumstances the provisions of clause 14 shall apply.

- 2.7 Clauses 2.4 and 2.5 shall not apply in circumstances where the Delegating Authority appoints another organisation or individual to provide any additional service requirement over and above the Agreed Service Plan pursuant to its rights under clause 8.4 following a refusal by the Strategic Human Resources Board to agree to a request for a Substantial Variation
- 2.8 Each Authority shall ensure that it reflects any required changes in its own constitution.

3. HUMAN RESOURCE SHARED SERVICE

- 3.1 Subject to the delegation by EKJAC The Head of Human Resource Shared Services shall;
- 3.1.1 undertake the Human Resource Shared Service function for the Delegating Authorities.
- 3.1.2 The Head of Human Resource Shared Services shall provide the following reports/plans to the Head of Paid Service of each of the Delegating Authorities:
- a. an Agreed Service Plan by January in each year for the following financial year;
 - b. a quarterly and half yearly update against the work in the Agreed Annual Service Plan, identifying significant changes;
 - c. Information to support the Annual Governance Assurance Statement e.g. a certificate or statement
- and shall report on them to EKJAC
- 3.2 The Services shall be delivered in accordance with the following key controls:
- 3.2.1 The Head of Human Resource Shared Services having direct access to all staff;
- 3.2.2 Compliance with any applicable regulations and codes of practice.
- 3.3 The Head of Human Resource Shared Services has the authority to:
- 3.3.1 Access the Authorities' premises at reasonable times;
 - 3.3.2 Receive any information and explanation considered necessary concerning any matter under consideration;
 - 3.3.3 report to and attend meetings of EKJAC for the purpose of fulfilling their functions in accordance with the terms of this Agreement

4. AGREED SERVICE PLAN AND BUDGET FOR THE HUMAN RESOURCE SHARED SERVICE

- 4.1 Following representations from the Authorities (if any) each year The Head of Human Resource Shared Services shall in consultation with the Strategic Human Resources Board prepare a draft rolling three (3) year Agreed Service Plan for presentation to EKJAC for approval. The Agreed Service Plan shall be taken as agreed in respect of the first year only.
- 4.2 EKJAC shall have the final decision on the content of the Agreed Service Plan to be presented for approval to the Delegating Authority's relevant committee and shall be responsible for justifying the plan and securing approval of the plan before the start of each financial year with details finalised for the forthcoming financial year.
- 4.3 Any dispute over the draft Agreed Service Plan shall be dealt with in accordance with the provisions of clause 17 (Dispute Resolution Procedure).
- 4.4 The forthcoming financial year's commitment will become the Agreed Service Plan; the remaining 24 months showing in the three year rolling plan will be treated as indicative only and will be reconsidered as part of the annual process.

5. SUPPORT SERVICES

- 5.1 The Host Authority shall provide support services including amongst other things Legal and Accountancy services, relating to the delivery of the Human Resource Shared Service and shall treat the costs of such support as part of the costs of the Service, along with appropriate IT hardware and software, subject to 5.2 below.
- 5.2 Each Delegating Authority shall provide appropriate accommodation and facilities for the provision of the employee relation advice element of the Services, at their authority by staff of the Service, (including a serviced workstation and access to power, stationery and supplies), relevant hardware and software, (including MS Word Office, Excel and Outlook or equivalent), and telephone at their own cost - the extent of which will depend upon the Agreed Service Plan.
- 5.3 The Head of Human Resource Shared Services shall be entitled to procure such support services or other resources as they consider may be necessary to deliver the Agreed Service Plan the costs of which shall be treated as costs of the Services.

5.4 Clause 5.3 shall not authorise The Head of Human Resource Shared Services to procure additional support services without the prior consent of the relevant Head of Paid Service where the effect would be to increase the financial contribution payable by the relevant Delegating Authority in the Agreed Service Plan for any year.

6. THE STRATEGIC HUMAN RESOURCES BOARD

6.1 There shall be a group made up of the Strategic Human Resources Lead Officers at each Authority or their nominated substitute.

6.2 The Strategic Human Resources Board shall be responsible for providing professional advice/guidance to The Head of Human Resource Shared Services and generally on the Human Resource Shared Service.

6.3 The activities of the Group shall include but shall not be limited to: providing advice and guidance on strategic direction of the Human Resource Shared Service; setting monitoring and reviewing service standards; reviewing feedback questionnaires; monitoring performance (including financial performance); providing general supervision of the provision of the Human Resource Shared Service; and arbitrating in functions ascribed to the Group elsewhere in this Agreement.

6.4 The Group may address poor performance and may serve notice of the extent of improvement required. The Group shall provide the Delegating Authorities in December of each year with a report giving details of any such notices served in the previous twelve months.

6.5 The Group shall meet at least quarterly in April, July October and January of each year ("Scheduled Meetings"). Any member of the Strategic Human Resources Board may call additional meetings ("Additional Meetings").

6.6 The Group shall have a quorum of one representative from each Delegating Authority.

6.7 The Group shall in matters of performance, management, strategic direction and development of the Human Resource Shared Service act by a majority of those attending a meeting voting in favour of a resolution. In particular, in relation to any consent matter a unanimous vote of the Group is required.

6.8 The Host Authority shall be responsible for giving notice and keeping minutes of the meetings of the Group.

6.9 The Head of the Human Resource Shared Service or their nominated substitute shall attend Scheduled Meetings of the Group and may be invited to attend Additional Meetings to support its operation.

6.10 The Head of Paid Service of each of the Delegating Authorities shall have the right to meet The Head of Human Resource Shared Services and the Strategic Human Resources Board as often as they deem necessary.

7. VARIATION

7.1 Any variation to this Agreement must be made in accordance with the procedure set out within this clause.

7.2 Any party to this Agreement may request a Minor Variation to their part of the Agreed Service Plan by making a request in writing to the Host Authority.

7.3 The Host Authority shall consider the request and the Head of the Human Resource Shared Service shall use their best endeavours to accommodate and agree such changes in their absolute discretion and confirm the change in writing within ten (10) business days to the addresses specified at Schedule 2 as the addresses for service of notices.

7.4 Any party to this Agreement may request a Substantial Variation to their part of the Agreed Service Plan by submitting a request in writing to the Host Authority.

7.5 The Host Authority shall be required no later than one month after receipt of a request for a Substantial Variation to determine whether the requested variation shall be accepted.

7.6 If the request for a Substantial Variation is accepted, the Host Authority shall arrange for a new version of the Agreed Service Plan to be prepared and for any consequential changes to be notified to the parties to this Agreement.

7.7 If the request for a substantial variation is not accepted, the Head of the Human Resource Shared Service shall refer the matter for consideration to the Group.

7.8 If the request for a Substantial Variation is not accepted following consideration by the Group, then the requesting authority is bound by the original Agreed Service Plan but may appoint another organisation or individual to provide any additional service requirement over and above the Agreed Service Plan.

7.9 If the requesting authority requires significantly less service then it shall be bound by the Agreed Service Plan for the remainder of the relevant financial year.

7.10 Any party may request a change to this Agreement by making a request to the Host Authority after which the Host Authority shall be required to circulate the request to all the Delegating Authorities within ten (10) business days of receipt of the request.

- 7.11 If no Delegating Authority raises any objection to the request within ten (10) Business Days of the date on which the Host Authority circulates it, the requested variation shall be effective from the tenth Business Day after the Host Authority circulates the request.
- 7.12 If any Delegating Authority objects to the request, the Host Authority shall treat the request as a matter to be considered by the Group and shall arrange for it to be considered accordingly.
- 7.13 If the request is not agreed by the Group it shall be addressed under the dispute resolution procedure set out in clause 17 of this Agreement.
- 7.14 Any party to this Agreement requiring a Substantial Variation to the indicative three years in the three year rolling Agreed Service Plan shall give as much notice as reasonably possible to the Head of the Human Resource Shared Service in order to assist resource planning, control cost and reduce risk in the mutual interests of all parties to this Agreement.
- 7.15 The notice shall be considered within the context of arrangements for agreeing the next forthcoming Agreed Service Plan as set out in Clause 4.

8. STAFF

8.1 The Authorities agree that the following events:

8.1.1 the Commencement Date; and

8.1.2 where the identity of the provider of the Service (including the Host Authority) is changed whether in anticipation of changes pursuant to this Agreement or not,

shall constitute a Relevant Transfer and that the contracts of employment of any Relevant Employees shall have effect (subject to Regulation 4(7) and (8) of the Regulations) thereafter as if originally made between those employees and the new provider except insofar as such contracts relate to those parts of an occupational pension scheme relating to old age, invalidity and survivors' benefits. For the avoidance of doubt, on the Commencement Date, the contracts of employment of the Relevant Employees shall have effect (subject to Regulation 4(7) and (8) of the Regulations) as if originally made between those employees and the Host Authority except insofar as such contracts relate to those parts of an occupational pension scheme relating to old age, invalidity and survivors' benefits.

- 8.2 The Delegating Authorities shall be responsible for all remuneration, benefits, entitlements and outgoings in respect of the Relevant Employees transferring at the Commencement Date including without limitation all wages, holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions, pension contributions and otherwise, up to the Commencement Date.
- 8.3 Subject to clause 12, the Host Authority shall be responsible for all remuneration, benefits, entitlements and outgoings in respect of the Relevant Employees and any other person who is or will be employed or engaged by the Host Authority in connection with the provision of the Service, including without limitation all wages, holiday pay, bonuses, commission, payment of PAYE, national insurance contributions, pension contributions and otherwise, from and including the Commencement Date.
- 8.4 The Delegating Authorities confirm that they have supplied the Host Authority with the information, as at the date of this Agreement, which is contained in Schedule 1 regarding the identity, number, age, sex, length of service, job title, grade, and terms and conditions of employment of those employees of the Delegating Authorities who are Relevant Employees as at the Commencement Date. The Delegating Authorities also confirm that they have supplied to the Host Authority details of any disciplinary or grievance proceedings initiated by or in relation to the Relevant Employees in the two years preceding the date of this Agreement and details of any actual or threatened legal proceedings (of whatever nature) brought by the Relevant Employees in the same period.
- 8.5 The Delegating Authorities shall indemnify and keep indemnified in full the Host Authority against all costs, claims, demands or losses incurred by the Host Authority in connection with or as a result of:
- 8.5.1 a breach by one or more of the Delegating Authorities of their obligations under clause 9.2 above;
 - 8.5.2 any claim or demand by the Relevant Employees arising out of the employment of any such employee provided that this arises from any act, fault or omission of the Delegating Authorities prior to the Commencement Date.
- 8.6 The Host Authority shall indemnify and keep indemnified the Delegating Authorities against:
- 8.6.1 all losses incurred by the Delegating Authorities in connection with or as a result of any claim or demand against the Delegating Authorities by any person who is or has been employed or engaged by the Host Authority in connection with the provision of the Service where such claim arises as a result of any act, fault or omission of the Host Authority or relevant sub-contractor after the Commencement Date;

- 8.6.2 all losses incurred by the Delegating Authorities in connection with or as a result of a breach by the Host Authority of its obligations under clause 8.3 above.
- 8.7 The Host Authority agrees to recognise in accordance with the Regulations the trade unions representing Relevant Employees after the Commencement Date to the same extent as they were recognised by the Delegating Authorities before the Commencement Date.
- 8.8 The Delegating Authorities shall comply with their obligations (including without limitation the obligation under Regulation 13 of the Regulations) under the Regulations in respect of each Relevant Transfer pursuant to this Agreement and the Host Authority shall comply with its obligations (including without limitation the obligation under Regulation 13 of the Regulations) under the Regulations in respect of each Relevant Transfer pursuant to this Agreement and each of the Delegating Authorities and the Host Authority shall indemnify the other against all losses sustained as a result of any breach of this clause 9.9 by the party in default.
- 8.9 On the termination of this Agreement, the Authorities agree that it is their intention that the Regulations shall apply in respect of the Service or the provision thereafter of any service equivalent to the Service but the position shall be determined in accordance with the Regulations and relevant law and any subsequent agreement between the parties at the date of termination as the case may be.
- 8.10 If the Regulations do not apply on termination of this Agreement, the Authorities shall ensure that any new provider or new providers of the Services or any service equivalent to the Service (including by any of the Authorities which may take back that part of the Service which applies to them) shall offer employment to the persons employed by the Host Authority in the provision of that part of the Service immediately before the date of termination of this Agreement. If an offer of employment is made in accordance with this clause 9.10 the employment shall be on the same terms and conditions as applied immediately before the termination of this Agreement including full continuity of employment, and in accordance with the Transfer of Employment (Pension Protection) Regulations 2005

- 8.11 The Authorities acknowledge and undertake to ensure that the Relevant Employees will, on completion of a Relevant Transfer, as contemplated by this Agreement, retain membership of, or retain the right to join, the 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. The Delegating Authorities further acknowledge and undertake to the Host Authority that the Host Authority will not be required to contribute to any deficit in funding of the Pension Scheme in respect of the accrued rights of the Relevant Employees up to the Commencement Date.

9. TRANSFER OF EMPLOYEES AND ASSETS

- 9.1 The assets listed at Schedule 1 are to transfer from the Delegating Authorities to the Host Authority to be used for the purposes of this Agreement.
- 9.2 All assets held for the purposes of this Agreement shall be used and maintained in an appropriate manner and their use shall be supervised by the Host Authority.

10. INTELLECTUAL PROPERTY

- 10.1 Any Intellectual Property Rights created during the provision of the Service shall vest in the Host Authority and be held on behalf of all of the parties.

11. LIABILITIES IN RESPECT OF THIS AGREEMENT

- 11.1 All losses, claims, expenses, actions, demands, costs and liability incurred in relation to this Agreement shall be shared by the Authorities on such terms as may be agreed from time to time between the Authorities, based on an apportionment which is proportionate to use of the Service.
- 11.2 Each and every Authority shall (and hereby undertakes with every other Authority to) indemnify each of the other Authorities against and/or contribute to and pay a share of all or any liabilities claims costs and/or expenses of or incurred by that Authority arising out of or in connection with or in the course of or as a result of it being a party to this Agreement and fulfilling its obligations under this Agreement with the intent that the Authority being indemnified and the other Authorities shall be jointly liable for all such liability to claims costs and/or expenses.

PROVIDED THAT such indemnity on the part of the Authorities shall not extend to liabilities or claims arising or costs and/or expenses incurred by reason or in consequence of any of the following on the part of the Authorities seeking to be indemnified that is to say;

- a) breach by the Authority of its obligations under this Agreement,
- b) gross negligence, gross misconduct, persistent breach of Law or duty (this is to say persisted in after the same shall have been brought to the attention of the relevant Authority)
- c) any act or omission known to the relevant Authority to be contrary to proper accounting or local government practice or local government Law or
- d) any substantial or persistent failure (after reasonable notice) to redress performance of the duties of the relevant Authority which shall not comply with the requirements or the standards set by this Agreement.

11.3 The amount due from each Authority in respect of each financial year as a result of the indemnity given in clause 12.2 shall be included in the annual account supplied by the Host Authority to the parties in accordance with clause 13.8.

11.4 The parties reserve the right to recover from any party to this Agreement, the cost of any liabilities which have been caused by that party and which are discovered after that party withdraws from this Agreement or this Agreement is determined.

11.5 Any costs arising as a result of legislative change shall be shared equally between the parties.

11.6 For the avoidance of doubt, the indemnity given by the parties to this Agreement shall include matters relating to the employment and transfer of staff.

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

11.8 This clause 12 shall survive the expiry or determination of this Agreement.

12. FINANCIAL ARRANGEMENTS

12.1 The Authorities agree that the annual costs of the shared Service shall be shared in proportion to the amount of Services received by each Delegating Authority and set out in the Agreed Service Plan (as amended) in accordance with Schedule 6 of this Agreement.

12.2 The Head of Human Resource Shared Services shall prepare a calculation of the amount to be paid by each Delegating Authority and shall regularly provide each Head of Paid Service with a summary of the financial performance against budget of the Service highlighting any variances.

- 12.3 In determining the annual cost of the shared Service and the amount to be paid by each Authority, the Head of the Partnership shall take account of:
- 12.3.1 Current and future liabilities;
 - 12.3.2 Working capital;
 - 12.3.3 Desirable service developments; and
 - 12.3.4 Unforeseen revenue requirements, and a reserve or contingency may be included in the calculation each year to cover such requirements.
 - 12.3.5 Such other matters as are referred to in Schedule 6.
- 12.4 The Authorities will pay such sums as they shall be liable to contribute to the Host Authority in accordance with this clause by four equal payments annually. These payments are to be made quarterly in advance, on the following dates each year: 1 April, 1 July, 1 October and 1 January with a final statement for the preceding year by the end of April, identifying any over or under payments. Any resulting adjustment shall be effective on the July invoice.
- 12.5 If any Delegating Authority disagrees with the amount of their contribution payable in accordance with this clause then they may implement the dispute resolution provisions in accordance with clause 16 below or withdraw from this Agreement in accordance with clause 13 below.
- 12.6 An annual account detailing the expenditure and income relating to this Agreement shall be supplied by the Host Authority to the parties by 30 June or as soon thereafter as is reasonably practicable in each year in respect of the previous financial year.
- 12.7 The Head of Paid Service or other authorised officers of the Authorities shall have access at all reasonable times and with due notice to the financial records relating to this Agreement and shall be entitled to seek explanations concerning queries relating thereto.

13. WITHDRAWAL FROM THIS AGREEMENT

- 13.1 Any Authority may withdraw from this Agreement in accordance with the following procedure PROVIDED THAT the Executive and full Council of the parties to this Agreement so resolve.
- 13.2 Any Authority which wishes to withdraw from this Agreement shall give not less than six months notice to the other Authorities of its intention to do so and in any event any notice of withdrawal can only be effective at the end of the municipal year. The Host Authority shall consult all other Authorities upon which such notice has been served giving due consideration to:-

- 13.2.1 any loss of funding which may arise from such withdrawal to include any non-payment, clawback or repayment of such funding;
 - 13.2.2 any increased costs to the remaining Authorities in operating this Agreement or otherwise;
 - 13.2.3 any other loss, liability, damage, claim or expense; which would be incurred by the other Authorities by reason of such withdrawal from this Agreement;
 - 13.2.4 whether as a result of the withdrawal the Human Resource Shared Service should cease.
- 13.3 Any Authority wishing to withdraw from this Agreement undertakes as a condition of such withdrawal to make, prior to withdrawal, such reasonable payment or payments which fairly reflect the actual losses caused by the withdrawal as shall be determined by the Head of the Human Resource Shared Service Partnership following consultation with the remaining Authorities and no notice under clause 14 shall take effect unless and until such payment has been made.

14. DURATION OF AGREEMENT

- 14.1 This Agreement shall come into force on the Commencement Date and shall continue for a period of five years and thereafter continue from year to year or until terminated in accordance with the provisions of this Agreement.

15. DETERMINATION OF THIS AGREEMENT

- 15.1 All of the parties to this Agreement may agree that this Agreement shall be determined or varied upon terms agreed by all of them.
- 15.2 Upon termination of this Agreement or the withdrawal of any party from this Agreement all intellectual and physical properties any works created in advance of or during the provision of the Human Resource Shared Service shall vest or re-vest in the relevant Delegating Authority and the Host Authority shall cooperate in the prompt transfer therefore including but not limited to the physical transfer of any data held by the Host Authority and passwords required to access any electronic files.
- 15.3 Upon termination of this Agreement all property and assets acquired by the Host Authority and/or held by it for the purposes of this Agreement shall either:
- 15.3.1 where reasonably practicable be divided between the parties to this Agreement proportionate to the average cost of the shared Service over the previous 2 years; or

15.3.2 be sold by the Host Authority for the best consideration possible and the proceeds divided between the parties proportionate to average cost of the shared Service over the previous 2 years; or

15.3.3 be retained by the Host Authority for its own use and purposes subject to an equitable financial settlement to the Delegating Authorities as agreed between the parties to this Agreement or in the absence of agreement in accordance with the dispute resolution procedure; or

15.3.4 be dealt with as otherwise agreed between the parties.

15.4 It shall be the duty of all of the parties to try to minimise any losses arising from the termination of this Agreement and all Authorities shall use their best endeavours to offer priority redeployment to any staff employed by the Host Authority in the provision of the Human Resource Shared Service, by taking a transfer of any of the staff working from the Authority's offices to provide Human Resource Shared Service or to be redeployed more generally and by helping to seek alternative employment for them.

16. DISPUTE RESOLUTION PROCEDURE

16.1 In the event of any dispute arising, this should be referred initially to the Head of Human Resource Shared Service by the relevant Head of Paid Service.

16.2 If the Head of Human Resource Shared Service and the party in dispute are unable to resolve the matter within one month, they shall refer the dispute to the Group.

16.3 If the Group is unable to resolve the matter within two (2) months, they shall refer the dispute to the Head of Paid Service of each party in dispute.

16.4 If the Head of Paid Service is unable to resolve the matter within a further month, they shall refer the dispute to the EKJAC.

16.5 If EKJAC is unable to resolve the matter within two (2) months, the matter shall be referred to arbitration in accordance with clause 18.

17. ARBITRATION

Any dispute between the Parties arising out of these arrangements shall be referred to a single arbitrator to be agreed between the Parties, or, where no agreement can be reached, and having regard to the nature of the dispute, by an arbitrator nominated by the chairman of the Local Government Association and will be carried out in accordance with the provisions of the Arbitration Act 1996 as amended modified and in force for the time being.

18. NOTICES

18.1 Form of notice

With the exception of confirmation of any demand, notice or other communication given in connection with or required by this Agreement shall be made in writing and shall be delivered to, or sent by pre-paid first class post to, the recipient at the address stated in Schedule 2 (or such other address as may be notified in writing from time to time) or sent by facsimile transmission to the recipient to the facsimile number stated in Schedule 2.

18.2 Service

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

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

18.2.2 if given or made by pre-paid first class post, two (2) Business Days after being posted; or

18.2.3 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 19.1 (Form of Notice),

provided in each case that if the time of such deemed service is either after 4.00 pm on a Business Day or on a day other than a Business Day service shall be deemed to occur instead at 10.00 am on the next following Business Day.

19. Data Protection

19.1 The Host Authority and the Delegating Authorities shall at all times comply with the DPA, including maintaining a valid and up to date registration or notification under the DPA, including but not restricted to any data processing to be performed in connection with this Agreement.

19.2 The Host Authority shall only undertake processing of Personal Data reasonably required in connection with the operation of this Agreement.

- 19.3 The Host Authority shall not disclose Personal Data to any third parties other than:
- 19.3.1 in response to a data subject access request;
 - 19.3.2 to employees and contractors to whom such disclosure is necessary in order for the Host Authority to comply with its obligations under this Agreement; or
 - 19.3.3 to the extent required to comply with a legal obligation.

20. Freedom of Information

- 20.1 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.
- 20.2 The parties shall assist each of the Authorities in complying with their obligations under the FOIA, including but not limited to assistance without charge in gathering information to respond to a Request.
- 20.3 Any Authority 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:
- 20.3.1 the Authority which receives the Request shall circulate the Request and shall discuss it with the Host Authority or all of the other Authorities;
 - 20.3.2 the Authority which receives the Request shall in good faith consider any representations raised by 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
 - 20.3.3 the Authority which receives the Request shall not disclose any Exempt Information beyond the disclosure required by FOIA without the consent of the Authority or Authorities to which it relates.
- 20.4 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.
- 20.5 An Authority will not be liable to any party to this Agreement for any loss, damage, harm or detrimental effect arising from or in connection with the disclosure of information in response to an Information Request.

21. Insurance

- 21.1 The Host Authority shall ensure that adequate insurance cover is effected and maintained and notified annually to each Head of Paid Service in respect of: any property held by it for the purposes of this Agreement; employers liability, public liability and liability for secondees working from other Authorities' premises.
- 21.2 Any Authority which allows its premises to be used to allow staff to work on matters relating to this Agreement shall ensure that adequate insurance cover is effected and maintained to cover employee liability (including vicarious liability for the Host Authority staff), public liability and any other insurance requirements which may accord with good practice.

22. Information and Confidentiality

- 22.1 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.
- 22.2 Clause 23.1 shall not apply to:
- 22.2.1 Any disclosure of information that is reasonably required by persons engaged in the performance of their obligations under this Agreement;
 - 22.2.2 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;
 - 22.2.3 Any disclosure to enable a determination to be made under clause 17 (Arbitration);
 - 22.2.4 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;
 - 22.2.5 Any disclosure of information which is already lawfully in the possession of the receiving party prior to its disclosure by the disclosing party;
 - 22.2.6 Any disclosure by a party to this Agreement to a department, office or agency of the Government;
 - 22.2.7 Any disclosure for the purpose of the examination and certification of the accounts of a party to this Agreement.

22.3 Where disclosure is permitted under clause 23.2, the recipient of the information shall be subject to the same obligation of confidentiality as that contained in this Agreement.

23. Scrutiny

23.1 Scrutiny will be the responsibility of each individual Authority. The relevant committee of each Authority charged with audit shall have the right to inspect any documents relating to this Agreement and to require the Head of Paid Service of the Host Authority or the Head of Human Resource Shared Service to answer any questions raised by them.

24. Audit

24.1 The accounts relating to this Agreement shall be the subject of audit by the Host Authority and shall be open to inspection by the Delegating Authorities.

25. VAT

25.1 The Host Authority shall not charge VAT on any amounts payable to it by the parties under the terms of this Agreement, as a non-business supply arising out of an administrative event.

26. Force Majeure

26.1 All parties shall be released from their respective obligations in the event that a Force Majeure Event renders the performance of this Agreement not reasonably practicable whereupon all money due to the Host Authority under this Agreement shall be paid immediately and clause 16 (Determination Of This Agreement) shall apply.

27. Severance

27.1 If at any time any clause or part of a clause or Schedule or part of a Schedule to this Agreement is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid or unenforceable in any respect:

27.1.1 that shall not affect or impair the legality, validity or enforceability of any other provision of this Agreement;

27.1.2 the parties shall in good faith amend this Agreement to reflect as nearly as possible the spirit and intention behind that illegal, invalid or unenforceable provision to the extent that such spirit and intention is consistent with the Laws of that jurisdiction and so that the amended clause complies with the Laws of that jurisdiction; and

27.1.3 if the parties cannot agree upon the terms of any amendment within six months of the date upon which a clause was determined to be wholly or partly illegal, invalid or unenforceable by any court, tribunal or administrative body of competent jurisdiction, the dispute will be determined in accordance with the dispute resolution procedure described at clause 16.

28. Contracts (Right of Third Parties) Act 1999

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

29. Governing Law

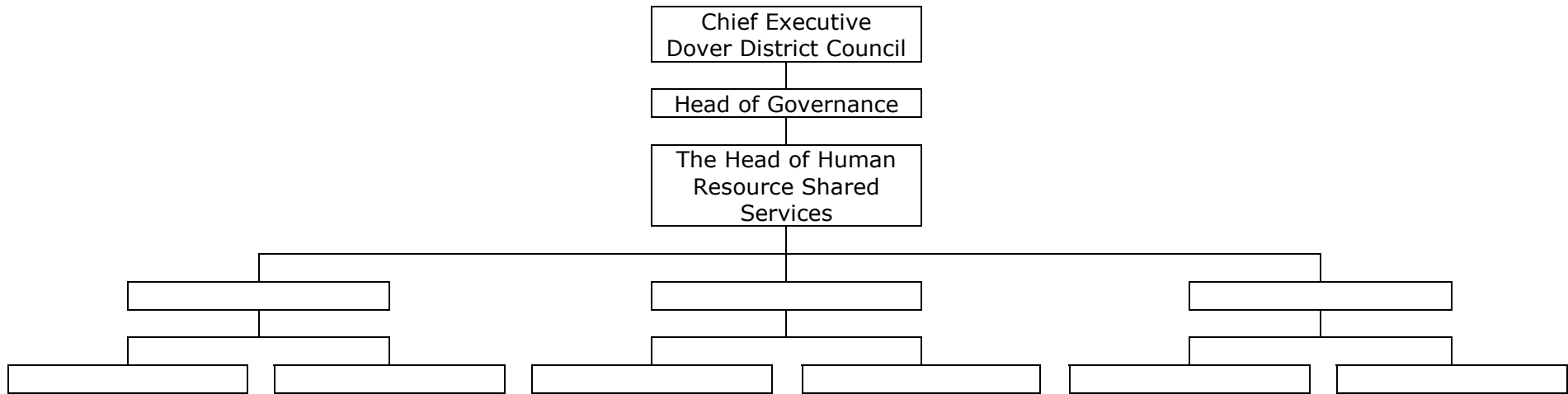
29.1 This Agreement shall be governed by the Laws of England and the parties submit to the exclusive jurisdiction of the courts of England.

SCHEDULE 1

ASSETS & STAFF

SCHEDULE 2

Organisational Structure



SCHEDULE 3

ADDRESSES FOR SERVICE OF NOTICES

For the attention of the Chief Executive
Canterbury City Council
Military Road,
Canterbury,
CT1 1YW

For the attention of Chief Executive
Dover District Council
White Cliffs Business Park,
Dover,
Kent,
CT16 3PJ

For the attention of Chief Executive
The District Council of Shepway
Civic Centre,
Castle Hill Avenue,
Folkestone,
Kent,
CT20 2QY

For the attention of Chief Executive
Thanet District Council
Cecil Street,
Margate,
Kent,
CT9 1XZ

SCHEDULE 4

**EAST KENT HUMAN RESOURCES SHARED SERVICE - SERVICE
LEVEL AGREEMENT**

SCHEDULE 5

KENT COUNTY COUNCIL - PAYROLL SERVICE LEVEL AGREEMENT

SCHEDULE 6
Financial Arrangements

THE COMMON SEAL of **CANTERBURY CITY COUNCIL** was hereunto affixed in the presence of:-

affix seal here

Authorised Signatory

THE COMMON SEAL of **DOVER DISTRICT COUNCIL** was hereunto affixed in the presence of:-

affix seal here

Authorised Signatory

THE COMMON SEAL of **THE DISTRICT COUNCIL OF SHEPWAY** was hereunto affixed in the presence of:-

affix seal here

Authorised Signatory

THE COMMON SEAL of **THANET DISTRICT COUNCIL** was hereunto affixed in the presence of:-

affix seal here

Authorised Signatory