

APPENDIX A TO CABINET REPORT

MEMORANDUM OF UNDERSTANDING

between

(1) THE MAYOR & BURGESSES OF THE LONDON BOROUGH OF BRENT

**(2) THE MAYOR & BURGESSES OF THE LONDON BOROUGH OF
LEWISHAM**

and

**(3) THE MAYOR & BURGESSES OF THE LONDON BOROUGH OF
SOUTHWARK**

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THIS MEMORANDUM OF UNDERSTANDING

is dated

2017

Parties

- (1) **THE MAYOR & BURGESSES OF THE LONDON BOROUGH OF BRENT** of the Civic Centre, Engineers Way, Wembley, HA9 0FJ (“**LBB**”)
- (2) **THE MAYOR & BURGESSES OF THE LONDON BOROUGH OF LEWISHAM** of Laurence House, Catford, London, SE6 4RU (“**LBL**”); and
- (3) **THE MAYOR & BURGESSES OF THE LONDON BOROUGH OF SOUTHWARK** of 160 Tooley Street, London SE1 2QH (“**LBS**”)

1. BACKGROUND

- 1.1 LBB and LBL have agreed to collaborate and work with one another to establish and participate in a Shared ICT Service (the “Shared Service”) which started on 1 April 2016. LBS is interested in collaborating and participating in the Shared Service and the parties wish to work together to investigate the possibility of LBS joining the existing Shared Service arrangement or the possibility of the three parties agreeing tri-partite arrangements either based on the existing agreement (with adjustments to accommodate and cater for new equal participant and related service needs) or a different service model possibly a new company with directors appointed from the three parties or other tri-partite service model to be discussed and mutually agreed between the parties. With this in mind LBS has drawn up some details of the matters it wishes to explore and discuss with representatives of LBB and LBL and an outline of these matters is given in Annex A to this MoU (the discussions and matters referred to in this paragraph and in Annex A are referred to in this MoU as the “**Project**”).
- 1.2 The parties wish to record the basis on which they will collaborate with each other on the Project. This Memorandum of Understanding (“**MoU**”) aims to outline:
 - (a) the key objectives of the Project;
 - (b) the principles of collaboration prior to entry into a more detailed legally binding Collaboration and Inter Authority Agreement;
 - (c) the interim governance structures the parties will put in place for the purposes of furtherance of the Project; and
 - (d) the respective roles and responsibilities the parties plan to have during the Project.

2. KEY OBJECTIVES FOR THE PROJECT

The parties shall undertake the Project to achieve the key objectives set out in Annex A to this MoU (“**Key Objectives**”).

3. PRINCIPLES OF COLLABORATION

The parties agree to adopt the following principles when carrying out the Project (**Principles**): The parties will use their reasonable endeavours to

- (a) collaborate and co-operate with one another in pursuit of the Key Objectives;
- (b) Communicate openly about major concerns, issues or opportunities relating to the Project;
- (c) learn, develop and seek to achieve the Key Objectives. Share information and experience to learn from each other, work collaboratively to identify solutions, eliminate duplication of effort, mitigate risk and reduce cost;
- (d) adopt a positive outlook. Behave in a positive, proactive manner;
- (e) adhere to statutory requirements and good practice. Comply with applicable laws and standards including EU procurement rules, data protection and freedom of information legislation;
- (f) endeavour to act in a timely manner recognising the timing and dates needed to achieve performance of the Project;
- (g) manage stakeholders; and
- (h) act in good faith to support achievement of the Key Objectives and compliance with these Principles.

4. PROJECT GOVERNANCE

4.1 Overview

The governance structure referred to below will apply in relation to the Project.

4.2 Guiding principles

The following guiding principles are adopted. The Project's governance will:

- (a) provide strategic oversight and direction;
- (b) be based on agreed roles and responsibilities at organisation, group and, where necessary, individual level;
- (c) align decision-making authority with the criticality of the decisions required;

- (d) be aligned with Project scope and each Project stage (and may therefore require changes over time);
- (e) aim to provide coherent, timely and efficient decision-making; and
- (f) correspond with the key features of the Project governance arrangements anticipated by this MoU.

4.3 **Sponsors' Board**

- (a) The **Sponsors' Board provides** overall strategic oversight and direction to the Project. This group will consist of:

LBB : Althea Loderick & Peter Gadstone

LBL : Kevin Sheehan

LBS : Emma Marinos

4.4 **Project Group**

- (a) The Project Group will provide strategic management at Project and work stream level. It will provide assurance to the Sponsors' Board that the Key Objectives are being pursued and that the Project is aiming to perform within any boundaries set by the Sponsors' Board.
- (b) It is intended that the Project Group will consist of representatives from each of the parties. The Project Group should be able to draw on technical, commercial, legal and communications resources as appropriate into the Project Group.

5. **ROLES AND RESPONSIBILITIES**

The parties intend to enter discussions on the details of the Project and as part of these discussions may choose to agree that there will be a more specific allocation of roles and responsibilities for particular aspects of the Project. Any such allocation will need to have the agreement of all the parties.

6. **ESCALATION**

- 6.1 If either party has any issues, concerns or complaints about the Project, or any matter in this MoU, that party shall notify the other party and the parties shall then seek to resolve the issue by a process of consultation. If the issue cannot be resolved within a reasonable period of time, the matter shall be escalated to the Project Group, which shall decide on the appropriate course of action to take. If the matter cannot be resolved by the Project Group within ten days, the matter may be escalated to the Sponsors' Board for resolution.

- 6.2 If either party receives any formal inquiry, complaint, claim or threat of action from a third party (including, but not limited to, claims made by a supplier or requests for information made under the Freedom of Information Act 2000) in relation to the Project, the matter shall be promptly referred to the Project Group (or its nominated representatives). No action shall be taken in response to any such inquiry, complaint, claim or action, to the extent that such response would adversely affect the Project, without the prior approval of the Project Group (or its nominated representatives).

7. INTELLECTUAL PROPERTY, CONFIDENTIALITY & FOI

- 7.1 The parties intend that any intellectual property rights created in the course of the Project shall vest in the party whose employee created them (or in the case of any intellectual property rights created jointly by employees of two or more parties it is the party that is lead party for the work concerned).
- 7.2 Where any intellectual property right vests in either party in accordance with the intention set out in clause 7.1 above, that party shall grant an irrevocable licence to the other parties to use that intellectual property for the purposes of the Project.
- 7.3 Each party shall keep confidential information relating to the intellectual property rights of the other parties, commercially sensitive information and confidential information with regard to the Shared Service, the Project and plans envisaged by this MoU shall use all reasonable endeavours to prevent its employees and agents from making any disclosure to any person of such information. This shall not apply to:
- a) Information 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;
 - b) Any disclosure which is required by any law (including any order of a court of competent jurisdiction), any Parliamentary obligation or the rules of a governmental or regulatory authority having the force of law, however where a disclosure is to be made pursuant to FOI Legislation the parties agree that the provisions of clause 7.5 and 7.6 shall apply to any disclosure;
 - c) Any disclosure of information which is already lawfully in the possession of the receiving party prior to its disclosure by the disclosing party;
 - d) Any disclosure by a party to a department, office or agency of the Government; or
 - e) Any disclosure for the purpose of the examination and certification of a party's accounts and audit requirements.
- 7.4 Where disclosure is permitted under clause 7.3, the disclosing party/Council shall endeavour to ensure that the recipients of the information shall be placed under the

same conditions of confidentiality as expressed above by the disclosing Council although the parties acknowledge that this may not always be possible.

7.5 Freedom of Information:

a) The parties recognise that they are public authorities as defined by Freedom of Information (FOI) Legislation and therefore recognise that information relating to this MoU may be the subject of an Information Request under FOI Legislation (“Information Request”).

b) The parties shall assist each other in complying with their obligations under FOI Legislation, including but not limited to reasonable assistance without charge, in gathering information to respond to a valid Information Request made under the FOI Legislation.

c) Any Council/party (“Council”) shall be entitled to disclose any information relating to this MoU in response to an Information Request, save that in respect of any Information Request which is in whole or part a request for Exempt Information (i.e. exempt information that is exempt of may be lawfully withheld within the parameters of the FOI Legislation) in such circumstances the following procedure shall apply:

- the Council which receives the Information Request shall circulate the Information Request and shall discuss it with the other parties;
- the Council which receives the Information Request shall in good faith consider any representations raised by the other parties when deciding whether to disclose Exempt Information; and
- the Council which receives the Information Request shall not disclose any Exempt Information beyond the disclosure required by FOI Legislation without the consent of the other parties to which it relates.

7.6 The parties to this MoU acknowledge and agree that any decision made by a Council which receives an Information Request as to whether to disclose information relating to this MoU pursuant to FOI Legislation is solely the decision of that Council. A Council will not be liable to the other parties for any loss, damage, harm or detrimental effect arising from or in connection with the disclosure of information in response to a valid Information Request under the FOI Legislation.

8. TERM AND TERMINATION

8.1 It is intended that this MoU shall commence on the date of signature by all the parties hereto, and shall expire on either:

- the date of completion of the Project;
- the date when the parties enter into a more detailed Collaboration & Inter Authority Agreement for the Shared Service, which will supersede the arrangements in this MoU; **or**
- the date falling 12 months after 17th February 2017;

whichever of those dates occurs soonest.

8.2 Either party may terminate this MoU by giving at least one months' notice in writing to the other parties.

9. VARIATION

This MoU, including the Annexes, may only be varied by written agreement of all three parties as represented by the Sponsor's Board.

10. COSTS

10.1 Except as otherwise provided, the parties shall each bear their own costs and expenses incurred in entering into and implementing this MoU.

11. STATUS

11.1 This MoU is not intended to be legally binding, and no legal obligations or legal rights shall arise between the parties from this MoU.

11.2 Nothing in this MoU is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party as the agent of the other party, nor authorise any of the parties to make or enter into any commitments for or on behalf of the other party or parties.

11.3 The entry into and signature of this MoU shall be subject to approval of:

- the Cabinet of the London Borough of Brent

- The Mayor of the London Borough of Lewisham
- the Cabinet of the London Borough of Southwark.

12. GOVERNING LAW AND JURISDICTION

This MoU shall be governed by and construed in accordance with English law and, without affecting the escalation procedure set out in clause 6; each party agrees to submit to the exclusive jurisdiction of the courts of England and Wales.

ANNEX A – PROJECT OVERVIEW

The aim of the Project over the period of twelve months following the approval of the Cabinet and/or Mayor of the three Council authorities, is to undertake a review of the existing arrangements for a Shared ICT service, Southwark Council's service arrangements and needs and the adaptation of these and the respective needs and arrangements of the other two councils so that all three councils can join together as equal parties in a tri-partite shared service arrangement.

The parties wish to develop plans and examine alternative models for to implement changes in the existing arrangements so to bring Southwark Council into the Shared Service arrangement as an equal partner. This could be based on a Joint Committee structure with each party having one-third equal representation rights or possibly a new company model with each party appointing representatives on a Board of Directors and having equal voting rights; or could be an alternative hybrid model that the parties mutually agree to use.

The proposal is to aim for the initial tri-partite service to Go-Live by August 2017 and for there to be a Run-in period between August and December. During this time the parties would review how the service is working, service needs, operational factors and related matters, with a view to using the information gathered, to decide how best to adjust the existing governance arrangements and to adapt a governance model best suited to three parties being equal members in the venture.

KEY OBJECTIVES & PRINCIPLES

KEY ISSUES FOR CONSIDERATION

Strategic Outcomes

1. To enable the three councils to maximise the use of digital technologies to transform themselves into responsive, efficient and cost-effective organisations.

2. The objective of the ICT service will be to achieve the strategic outcomes described in table 1 below by 2020.

Primary outcomes	Secondary outcomes needed to achieve primary outcome
Building a solid platform for transformation	<ul style="list-style-type: none"> • Building a modern, common infrastructure that partners can rely on. • Generating more innovation by investing together to make the most of technology. • Creating shared strategies and roadmaps, with the flexibility to reflect local needs.
Delivering a quality service	<ul style="list-style-type: none"> • Providing a reliable, quality user experience. • Delivering constant improvement by keeping service levels and processes under review. • Building a talented team with a great reputation.
Providing great value-for-money	<ul style="list-style-type: none"> • Maximising economies of scale, taking a common approach where practical and beneficial. • Offering affordable services that compare well with other providers. • Benefiting by sharing the cost of investment in new developments.
Forging a lasting partnership	<ul style="list-style-type: none"> • Acting as a partnership of equals that everyone benefits from. • Delivering greater resilience by sharing and mitigating risks. • Offering each partner more capacity and capability by pooling resources and knowledge.

Table 1: Strategic Outcomes

3. The strategic outcomes referenced in Table 1 are underpinned by the agreed partnership principles and future behaviours (see below) that address and enable the opinions and expectations of all three authorities.

Partnership Principles

4. Senior stakeholders agreed the following overarching principles upon which the shared service will be founded;-
- I. **Part of the family**, they are our in-house service and an important part of our team in each organisation.
 - II. **Modern and forward-looking**, working closely with our digital strategists to transform our organisations.
 - III. **Our expert ICT adviser** on the technology solutions needed to deliver the partners' digital strategies.
 - IV. **Our provider for all ICT services**, using external services and support when they needed.
 - V. **Managed collectively**, with sponsors from each partner providing leadership for the service.

- VI. **Committed to converging** to a common approach and infrastructure by default, varied only when strictly necessary.
 - VII. **Delivering on an ambitious plan** for the development of the service that is agreed and monitored by the partnership.
 - VIII. **Working to common standards** of service levels and performance that are realistic given the funding available.
 - IX. **Accounting for its success** in performing well against those standards, including through benchmarking.
 - X. **Committed to reducing costs** both in its own budgets and in the cost of partners' services to the public.
 - XI. **Managed simply and transparently** in the way it is governed, makes decisions, spends money and manages its budget.
 - XII. **Open to growth**, but only at a sustainable rate that does not represent a risk to the service.
 - XIII. The agreed principles and supported by five partnership behaviours that the partners (together and individually) are determined to adopt: -
5. Senior stakeholders have accepted that managing a shared service was very different to managing an outsourced service or indeed an in-house team in a single authority. In order to ensure the shared service has the best possible relationship with the managing authorities stakeholders agreed that adopting partnership behaviours would be critical. They therefore agreed;-
 - We will not **treat the service as a separate entity** that is external to our organisations and will not give it a separate identity.
 - We will adopt a **non-adversarial mind-set** and will not treat the partnership as a contracted, commercial supplier that needs 'clienting'.
 - We will not **complicate the partnership's decision-making** by operating different levels of delegation from each partner.
 - We will not **insist on significant differences** in the service processes and technology for a London Borough.
 - We will not **take unilateral decisions** on technology or funding that impact the ICT service's ability to deliver for all partners.
 6. These potentially represent significant cultural and behavioural changes for Southwark's officers and further work is required across the organisation to ensure that these changes are adopted and embedded. Consequently, each will be entered on the risk register for further mitigating action.
 7. Detail underpinning the partnership principles will be further developed and agreed during transition planning and due diligence.
 8. The partnership principles are fundamental to the memorandum of understanding which is intended to enable the detailed work required to agree the legal and governance mechanisms for establishment of the shared service to be completed.

Signed for and on behalf of
**THE MAYOR & BURGESSES OF THE
LONDON BOROUGH OF BRENT**

Signature:
Name:
Position:
Date:

Signed for and on behalf of
**THE MAYOR & BURGESSES OF THE
LONDON BOROUGH OF LEWISHAM**

Signature:
Name:
Position:
Date:

Signed for and on behalf of
**THE MAYOR & BURGESSES OF
THE LONDON BOROUGH OF
SOUTHWARK**

Signature:
Name:
Position:
Date:
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