

Dated

2021

THE MAYOR AND BURGESSES OF THE
LONDON BOROUGH OF BRENT

And

THE MAYOR AND BURGESSES OF THE
LONDON BOROUGH OF LEWISHAM

And

THE MAYOR AND BURGESSES OF THE LONDON
BOROUGH OF SOUTHWARK

Collaboration Agreement
in relation to the provision of a
Shared Technology Service

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THIS DEED OF AGREEMENT is made on day of 2021

BETWEEN

(1) The Mayor and Burgesses of the London Borough of Brent of the Civic Centre, Engineers Way, Wembley, HA9 0FJ (“Brent”) (being the Host Council)

AND

(2) The Mayor and Burgesses of the London Borough of Lewisham of Laurence House, Catford, London, SE6 4RU (“Lewisham”) (being the delegating Council)

AND

(3) **The Mayor and Burgesses of the London Borough of Southwark** of 160 Tooley Street, London SE1 2QH (“Southwark”) being the delegating Council)

Individually referred to as a “Council” and together referred to as “the Councils”.

BACKGROUND

- (A) The Councils are local authorities for the purposes of the Local Government Act 1972 and best value authorities for the purposes of the Local Government Act 1999. The creation of Shared Technology Services is to be established by the Councils in exercise of their powers under section 101, 111, 112, 113 and 136 of the Local Government Act 1972, section 3 of the Local Government Act 1999, sections 1 – 8 of the Localism Act 2011 and the Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2012 and all other enabling powers.
- (B) Brent and Lewisham established a Shared Technology Services with a commencement date of 1st April 2016. Having successfully transitioned Lewisham to the Brent hosted Shared Technology Services, both authorities have been seeking to expand the service to other partners in order to achieve further efficiencies and economies of scale. Southwark has been considering options for its ICT service since late 2015. The synergies with Brent and Lewisham and the advantages of Southwark joining the Brent/Lewisham Shared Technology Services were considered and work undertaken to develop and agree a shared strategic vision for Shared Technology Services.
- (C) Outcomes from the work including identified business benefits to be achieved were set out in the reports to the three Councils' Cabinets. The respective Cabinets approved the Councils entering into an interim inter-authority agreement which was signed on 31st March 2017. This provided the framework within which all parties were able to explore and define a 3-way shared service proposal.
- (D) The Councils have agreed to establish and to participate in a Shared Technology Services ("Shared Technology Services") to facilitate the joint delivery of their Information, Communications and Technology (ICT) services with a view to their more economical, efficient and effective discharge. Shared Technology Services activities are more particularly detailed in this Agreement.

- (E) Shared Technology Services will be hosted by Brent and, in exercise of their powers under section 101(1) (b) and 101(5) of the Local Government Act 1972 and the Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2012, Lewisham and Southwark delegate the delivery of their ICT service to Brent and Brent has agreed to undertake the delegated Agreed Service on the basis set out herein. Further, all the Councils wish to discharge their ICT functions jointly by way of Shared Technology Services. The Councils wish to enter into this Agreement to establish a relationship between them to ensure the collaborative discharge of their respective ICT services.
- (F) Shared Technology Services is considered by the Councils to be an inter authority cooperation and in particular an in-house provision to each of them with the objective of providing ICT services to the Councils to assist them in meeting their public service duties, notwithstanding that Shared Technology Services is hosted by Brent, for reasons including, but not limited to:
- (i) Reserved Decisions in relation to Shared Technology Services are reserved to each of the Councils;
 - (ii) Shared Technology Services is required by the Councils to carry out the tasks as set out in this Agreement and is limited to the business and objectives as set out by the Councils;
 - (iii) Shared Technology Services is considered to be and acts as internal, dependent and subordinate to the Councils and its primary relationships with them are governed by way of this Agreement, which provides a mutuality of obligations and recovery of costs, rather than by way of a contract for services;
 - (iv) Shared Technology Services funding is derived from a financial methodology set out and controlled by each Council as detailed in clause 12 of this Agreement. It is not intended to be a commercial operation nor

does it intend to materially transfer risk from one Council to another other than where it is right and proper to do so. Any contributions made by any of the Councils are intended to represent a fair distribution of the costs of running Shared Technology Services rather than to provide any financial gain;

- (v) Shared Technology Services has been established to operate as an instrument and a technical service of the Councils (including any bodies associated with the Councils or under the control of, or connected or in partnership with the Councils) and the essential part of its activities are to be carried out with them;
 - (vi) the Councils owe each other a duty to be just and true towards one another and act in good faith as detailed in clause 2.6 of this Agreement.
- (G) This Agreement is intended to regulate the provision of the Agreed Services, the business and activity of Shared Technology Services and the relationship between the Councils.

IT IS AGREED AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

of this Agreement

- 1.1. The following expressions have the following meanings unless inconsistent with the context

DEFINITIONS

Accommodation	means suitably serviced accommodation for the use of Shared Technology Services as referred to in clause 7.2
Agreed Service	means those Services set out in Schedule 3 which are to be delivered by Shared Technology Services in the manner described in this Agreement and such further services as may be agreed with/by the Councils;
Annual Budget	means the annual budget for Shared Technology Services to be prepared and agreed and approved in accordance with the clause 5 (Annual Service Plan, Annual Budget, Annual Service Report and Performance Management Framework)
Annual Service Plan	means the annual business plan of Shared Technology Services agreed and approved pursuant to clause 5

Annual Service Report	means the annual service report of Shared Technology Services received and approved pursuant to clause 5
Appointed Director	means a director exercising delegated powers and authorised on behalf of the Council he/she represents to act as the Council's representative on the Joint Management Board in all matters detailed within this Agreement;
Appointed Members	means the two elected members from each Council who are appointed to the Joint Committee.
Assets	means all and any assets used in the delivery of the Agreed Services including all items of information technology (including Software), Intellectual Property owned or developed during the continuance of Shared Technology Services and all other equipment supplied by the Councils for use in the delivery of the Agreed Services;
Asset Register	means a register of all the Assets used by the Councils in the delivery of Shared Technology Services;
Auditors	means a person qualified to audit accounts;
Business Day	means any day other than a Saturday or Sunday on which banks are open for domestic business in the City of London;
Change in Law	means the coming into effect after the date of this Agreement of: <ul style="list-style-type: none"> (a) Law other than any Law which on the Commencement Date has been published:

- (i) in a bill;
- (ii) in a draft statutory instrument; or
- (iii) as a proposal in the Official Journal of the European Union;

(b) any guidance; or

(c) any applicable judgment of a relevant court of law which changes a binding precedent;

Commencement Date means 1st April 2021;

Commercially Sensitive Information

means any information the nature of which ought reasonably to be considered as confidential or in respect of which the Council notifies the other Councils that disclosure would or would be likely to prejudice the commercial interests of any person;

Conflicts of interest Protocol

means the conflicts of interest protocol set out in Schedule 4 of this Agreement;

Consumables

means goods and/or materials used daily in the day-to day activities of Shared Technology Services

Contracts

means Existing Contracts and New Contracts

Councils

means the London Borough of Brent, the London Borough of Lewisham and the London Borough of Southwark and including any other additional council approved to join Shared Technology Services;

Data Controller

means:

- i) prior to the GDPR coming into force and becoming applicable within the United Kingdom, the meaning given to such term in the DPA; and
- ii) once the GDPR comes into force and becomes applicable within the United Kingdom, the meaning given to the term "controller" as set out in Article 4 thereof;

Data Processor

means:

- i) prior to the GDPR coming into force and becoming applicable within the United Kingdom, the meaning given to such term in the DPA; and
- ii) once the GDPR comes into force and becomes applicable within the United Kingdom, the meaning given to the term "processor" as set out in Article 4 thereof;

Data Protection Legislation

means the DPA, the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000, the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations all of which are current at the time of any Processing of Personal Data or relate to privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner or any replacement body.

Data Subject	shall have the meaning given to such term in the DPA
Directive	means EC Council Directive 2001/23/EC as amended
DPA/Data Protection Act	means Data Protection Act 1998 or any successor or replacement legislation, including without limitation, the GDPR when it comes into force and applies in the United Kingdom;
Effective Date	means the date of this Agreement
Equipment	means any equipment purchased by Brent on behalf of the Councils or any equipment used in the provision or delivery of Shared Technology Services.
Exempt Information	means any information or class of information relating to this Agreement which may fall within an exemption under FOI Legislation;
Existing Assets	means such assets as are owned or operated by the Host Council for or in relation to Shared Technology Services prior to the Effective Date or such assets owned or operated by Lewisham and Southwark to be transferred to the Host Council prior to the Effective Date for the delivery of Shared Technology Services.
Existing Contracts	means any contracts for services, works, supplies and goods (including Software) entered into by the Host Council for or in relation to Shared Technology Services prior to the Effective Date or any contracts assigned, transferred or novated to it by Lewisham or Southwark prior to the Effective Date.

Exit Period	means the period between the date on which notice under clause 14 (withdrawal) or clause 15 (termination) is received by the Councils and the date on which a Council withdraws or the Agreement is terminated. The Exit Period shall be two years unless agreed otherwise by all Councils.
Finance Officer to Shared Technology Services	means such appropriately qualified duly authorised financial officer of the Host Council;
Financial Principles	means those financial principles (attached in Schedule 8) which are agreed between the Councils as a guide to working together to agree Shared Technology Services Costs, although for the avoidance of doubt to the extent of any inconsistency between Financial Principles and this Agreement, the terms of this Agreement will prevail;
Financial Year	means 1st April to 31st March each year during the Agreement period save for the first and last years which may differ;
Fixed Costs	means those costs required to run Shared Technology Services which do not vary from year to year which are to be apportioned in accordance with clause 12 and Schedule 8.
FOI Legislation	means the Freedom of Information Act 2000 and subordinate legislation made under this and the Environmental Information Regulations 2004;
Force Majeure Event	means any event or occurrence which is outside the reasonable control of the party concerned including but not limited to explosion, malicious damage, acts of terrorism, warfare, fire, flood, violent storm or

extreme weather conditions, power failure, internet or world wide web failure or interruptions or an disaster natural or manmade.

GDPR means the EU General Data Protection Regulation 2016/679 or any successor or replacement legislation

Hardware any and all hardware devices including but not limited to servers, server components, storage devices, tape drives, switches, routers, telephony equipment, computer appliances, personal computers, laptops, phones, mobile communications equipment,

Head of Paid Service means an officer designated by a Council as the Council's Head of Paid Service in accordance with section 4 of the Local Government and Housing Act 1989;

Host Council means the London Borough of Brent;

Income means any income received by Shared Technology Services in any way whatsoever including, as a result of providing services to a third party.

Information Request means a request for information under the FOI Legislation;

Intellectual Property Rights means rights howsoever arising and in whatever media including (without limitation) rights in patents, trademarks, service marks, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright (including rights in software), logos, domain names, computer software and

hardware programs and data, and all or any other intellectual property rights whether existing now or created in the future and whether or not registered or capable of registration, database rights, know-how, trade secrets, confidential business information, trade or business names and any similar analogous rights to any of the above, whether arising or granted under the Laws of England or of any other jurisdiction;

Joint Committee

means the Joint Committee established by the Councils to oversee the effective delivery of Shared Technology Services comprising two (2) elected members of each Council as set out in accordance with clause 4 and with the functions listed in Schedule 6a;

Joint Management Board

means the joint management board overseeing the activities of Shared Technology Services as referred to in this Agreement with the functions listed in Schedule 6b and to whom the Managing Director of Shared Technology Services reports.

Key Personnel

means those roles and officers identified in Schedule 7;

Law

means any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1979, exercise of the Royal Prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, bye-law, regulatory policy, guidance or industry code, judgement of a relevant court of law, or directives or requirements of any

regulatory body with which the Councils are bound to comply

Managing Director of Shared Technology Service

means the officer appointed with responsibility for leading and managing Shared Technology Services on behalf of the Councils in accordance with clause 8;

New Contracts

any contracts entered into or arranged by the Host Council, solely in accordance with this Agreement, for the purpose of or in connection with Shared Technology Services after the Effective Date

Operational Management Group

means the operational management group that collectively manages the activities of Shared Technology Services as referred to in this Agreement with the functions listed in Schedule 6b, chaired by the Managing Director of Shared Technology Service

Performance Management Framework

means the set of strategies, plans, policies, indicators and performance measures including but not limited to service level agreement key performance indicators referred to in Schedule 3 that are used to monitor how Shared Technology Services is performing

Personal Data

shall have the meaning given to such term in the DPA and GDPR

Personal Data Breach

means

- a) prior to the GDPR coming into force and becoming applicable within the United Kingdom, any unauthorised or unlawful processing, use of, access to, theft of, loss of, damage to or destruction of Personal Data processed in accordance with this Contract; and
- b) once the GDPR comes into force and becomes applicable within the United Kingdom, anything which constitutes a "personal data breach" as set out in as set out in Article 4 thereof;

Processing shall have the meaning given to such term in the DPA and the terms 'Processed' and their derivatives shall be construed accordingly

Procurement Protocol means the procurement protocol set out in Schedule 9 of this Agreement;

Reorganisation Costs: statutory redundancy payments, contractual redundancy payments, and contractual notice pay payable to the Redundant Shared Technology Services Staff, including agreed LGPS Capital Costs but excluding any payments or liabilities arising from any claim as to the fairness of the dismissal and/or unlawful discrimination.

Required Insurances means the level of insurance to be maintained in accordance with clause 10 being individually for each Council

- a) public liability insurance with a limit of indemnity of not less than ten million pounds (£10,000,000) in relation to any one claim or series of claims;

- b) employer's liability insurance with a limit of indemnity of not less than ten million pounds (£10,000,000) in relation to any one claim or series of claims;
- c) professional indemnity insurance with a limit of indemnity of not less than five million pounds (£5,000,000) in relation to any one claim or series of claims;
- d) Officials indemnity with a cap on liability of no less than five million pounds (£5,000,000) in relation to any one claim or series of claims;
- e) Equipment insurance for Equipment on premises owned or controlled by that Council.
- f) Buildings insurance for any and all premises owned or controlled by the relevant Council where Shared Technology Services Staff are located.

Reserved Decision(s)

a decision regarding Shared Technology Services activities which has been reserved to the Councils jointly or individually and all such Reserved Decisions are as follows:

- a) admit any body as a new member of Shared Technology Services (joint);
- b) adopt the Annual Budget and make any changes to it (joint);
- c) agree the termination of this Agreement pursuant to clause 15.1 (joint);
- d) withdrawal from Shared Technology Services pursuant to clause 14.1 (individual);
- e) alteration of any provisions of the Agreement where such alteration has a material effect

on the Agreed Services and/or Shared Technology Services Cost; (joint)

- f) license, assign or otherwise dispose of Intellectual Property Rights owned jointly by the Councils pursuant to Shared Technology Services arrangements (joint);
- g) authorisation and award of any and all Contracts with a value of £500,000 or more unless otherwise agreed in the procurement protocol (schedule 9) (individual).
- h) dissolution, dismantling, altering or reconstituting the Joint Committee (joint);
- i) restructuring of Shared Technology Services (as established by the present Agreement) either by incorporation of assets into a corporate entity, company or other type of legal entity (joint).

Risk Register

means the risk register to be maintained by the Managing Director of Shared Technology Services and presented to the Joint Management Board

Sensitive Personal Data means

- a) prior to the GDPR coming into force and becoming applicable within the United Kingdom, the meaning given to such term in the DPA; and
- b) once the GDPR comes into force and becomes applicable within the United Kingdom, the meaning given to the term "special categories of personal data" as set out in Article 9 thereof

Shared Technology Service

means Shared Technology Services established jointly by the Councils pursuant to clause 2 and hosted by the Host Council in accordance with the provisions of this Agreement

Shared Technology Services Accounting Policies

means the accounting policies of the Host Council

Shared Technology Services Costs

means all costs of Shared Technology Services, save as may be agreed between the Councils from time to time, which for the avoidance of doubt shall include employee costs, overhead costs of accommodation and Support Services Hardware, Software, 3rd party Contracts and all costs which the Councils agree (acting reasonably) to be costs of Shared Technology Services which will be met by the Councils proportionately in accordance with clause 12

Shared Technology Services Policies and Procedures

means any policies and procedures which the Councils agree should apply to Shared Technology Services Staff or some of them

Shared Technology Services Staff means staff employed or to be employed by the Host Council in Shared Technology Services who work in Shared Technology Services (also referred to as "Staff").

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 changes, logic, logic diagrams, orthographic representations, file structures, coding sheets, coding and any manuals or other documentation relating to them and computer generated works

Subject Access Request means

- a) prior to the GDPR coming into force and becoming applicable within the United Kingdom, any request from a Data Subject concerning his or her Personal Data or its existence or potential existence; and
- b) once the GDPR comes into force and becomes applicable within the United Kingdom, any request from such Data Subject under Chapter III Section 2 (information and Access to Data) thereof.

Support Services

means the services provided by each Council which may be required by Shared Technology Services or more particularly the Host Council, in the delivery of the Agreed Service as referred to in clause 7.1;

Terms of Reference

means the terms of reference underpinning the governance arrangements for the Joint Committee as set out in detail at Schedule 6a;

TUPE

the Transfer of Undertakings Protection of Employment Regulations 2006 as amended by the Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2014

Variable Costs means Shared Technology Services Costs other than Fixed Costs, expended by the Council(s) for the provision of Shared Technology Services which, may vary from year-to-year; such costs to be apportioned in accordance with clause 12

Withdrawing Council: a Council which withdraws from the Agreement pursuant to clause 14 of the Agreement.

- 1.2. References to any statute or statutory provision, governmental policy or guidance (including any EU instrument) is a reference to it as it is in force for the time being, taking into account any amendment, extension or reenactment and includes any subordinate legislation made under the relevant statute or statutory provision.
- 1.3. The headings and sub-headings are inserted for convenience only and shall not affect the construction of this Agreement.
- 1.4. Schedules shall form part of this Agreement.
- 1.5. Words importing one gender include all other genders and words importing the singular include the plural and vice versa.
- 1.6. 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.
- 1.7. Any reference to this Agreement, or any part of it, 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.
- 1.8. No rule of construction shall apply to the disadvantage of a party because that party was responsible for the preparation of this Agreement or any part of it.

- 1.9. All definitions in the Agreement and Schedules shall be deemed to apply to the Agreement and all Schedules save where specifically indicated otherwise.
- 1.10. This Agreement may be executed in counterparts each of which when executed and delivered shall constitute one and the same instrument. No counterpart shall be effective until each Party has executed at least one counterpart.

2. ESTABLISHMENT OF SHARED TECHNOLOGY SERVICES

- 2.1. The Councils gave approval for the establishment of the 3-way Shared Technology Services, at the time referred to as the Shared ICT Service, in reports to Cabinet approved by Brent Members at the 19th June 2017 Cabinet, by Lewisham at the Mayor and Cabinet Committee on 19th July 2017 and by Southwark at the Cabinet Meeting on 20th June 2017.
- 2.2. The Councils agree that the following key objectives and overriding principles underpin their collaborative working and the terms of this Agreement as follows:
 - 2.2.1. Mutual cooperation;
 - 2.2.2. Accountability;
 - 2.2.3. Transparency;
 - 2.2.4. Mutual benefits; and
 - 2.2.5. Shared risks.

and have agreed the Partnership Principles as set out in Schedule 1 (Strategic Outcomes, Partnership Principles & Behaviours).

- 2.3. Each of the Councils has the power to provide and maintain an in house internal ICT Service by virtue of section 111 of the Local Government Act 1972.
- 2.4. In exercise of their powers as referred to in the Background, the Councils have entered into this Agreement and wish to establish Shared Technology

Services (to fulfil the vision in the Cabinet reports referred to in clause 2.1) and in order to make provision for delivery of a Shared Technology Services to be hosted by the Host Council and to be provided to the Councils.

- 2.5. In furtherance of the powers to provide ICT services and establish Shared Technology Services set out in clauses 2.1 and 2.4 the Councils believe that the arrangements contemplated by this Agreement will allow the Councils to deliver their wider services more effectively and accordingly they agree to enter into this Agreement for Shared Technology Services known as the London Borough of Brent, the London Borough of Lewisham and the London Borough of Southwark Shared Technology Services, or such other name as the Joint Management Board determines (and within this Agreement also referred to as the “Shared Technology Service”) with effect from the Commencement Date.
- 2.6. Each Council covenants with the other Councils that so long as it remains a member of Shared Technology Services it will:
 - 2.6.1. be just and true to the other Councils and act in good faith;
 - 2.6.2. as soon as practicable report to the Joint Management Board matters of which it becomes aware which may affect Shared Technology Services or the effective delivery of the Agreed Services;
 - 2.6.3. not allow Shared Technology Services to do any matter which is a joint Reserved Decision without the approval of each Council as required by clause 16;
 - 2.6.4. give all reasonable assistance to the Host Council to allow the best possible service to be delivered to client departments at the Councils;
 - 2.6.5. ensure that Shared Technology Services is engaged appropriately and in a timely manner to allow for its cost effective use;

- 2.6.6. whilst always respecting the need to maintain the obligations of confidentiality and the need to avoid conflicts of interest, facilitate best practice and the sharing of information and knowledge;
 - 2.6.7. seek to maximise efficiencies and aim to achieve a high quality Shared Technology Services and to maximise the use of all resources available and achieve improved efficiency;
- 2.7. The Councils expect that they will commission Shared Technology Services for all services that Shared Technology Services can provide within the agreed scope of Agreed Services in Schedule 3 (Agreed Services (Service Description)) until a notice for withdrawal is given under clause 14 or until termination is agreed under clause 15, save in respect of the following:
- 2.7.1. situations of conflict (and in such event the Managing Director of Shared Technology Services shall source such advice in accordance with Schedule 4 (Conflicts of Interest Protocol),
 - 2.7.2. where there is a compelling business case which is agreed by the Joint Management Board,
 - 2.7.3. as determined otherwise by a Council to meet specific service requirements.

3. DURATION OF AGREEMENT

- 3.1. This Agreement shall come into force on the Effective Date and shall continue until the end of the Exit Period where notice is given in accordance with clause 15 or is otherwise terminated in accordance with the provisions of this Agreement.

4. SHARED TECHNOLOGY SERVICES GOVERNANCE

- 4.1. Shared Technology Services Joint Committee
 - 4.1.1. Subject always to any limitations set out in this Agreement and the Terms of Reference underpinning the governance of the Joint

Committee, including any matter being a Reserved Decision, the Joint Committee shall:

- (a) oversee the implementation of Shared Technology Services through:
 - (i) annually reviewing reports, including performance monitoring reports, from the Joint Management Board
 - (ii) setting the key strategic direction and associated activities for Shared Technology Services
- (b) as stakeholders, provide feedback regarding current arrangements for ICT services & areas for improvement
- (c) act as final arbiter where there is a conflict in either direction or priority of each Council.

4.1.2. Membership of the Joint Committee is two (2) elected Members from each of the Councils.

4.1.3. Meetings will alternate between Brent, Lewisham and Southwark. The initial meeting of the Joint Committee shall take place within six (6) months of the Effective Date and thereafter, they shall occur twice yearly.

4.1.4. The remit and Governance and Terms of Reference of the Joint Committee is set out in detail in Schedule 6a (Joint Committee - Governance & Terms of Reference) to this Agreement.

4.2. Joint Management Board

4.2.1. Subject always to any limitations set out in this Agreement and the governance and terms of reference underpinning the operation of the Joint Management Board, including any matter being a Reserved Decision, the Joint Management Board shall be accountable to the Joint Committee for the implementation of the agreed ICT strategies and delivery of agreed services.

4.2.2. The governance and terms of reference of the Joint Management Board is set out in detail in Schedule 6b (Joint Management Board - Governance & Terms of Reference) to this Agreement.

4.3. Operational Management Group

4.3.1. Subject always to any limitations set out in this Agreement and the governance and terms of reference underpinning the operation of the Operational Management Group, including any matter being a Reserved Decision, the Operational Management Group shall be accountable to the Joint Management Board for the delivery of agreed services.

4.3.2. The governance and terms of reference of the Operational Management Group is set out in detail in Schedule 6c (Operational Management Group - Governance & Terms of Reference) to this Agreement.

5. ANNUAL SERVICE PLAN, ANNUAL BUDGET, ANNUAL SERVICE REPORT AND PERFORMANCE MANAGEMENT FRAMEWORK

5.1. For each Financial Year, the Managing Director of Shared Technology Services will in accordance with the Councils' corporate performance and budgeting cycles cause to be prepared and delivered to the Joint Management Board a draft Annual Service Plan including the draft Annual Budget for that Financial Year and will obtain the Joint Management Board's unanimous approval of the same.

5.2. The draft Annual Service Plan and draft Annual Budget for the following Financial Year will be reviewed in August/September taking into consideration service performance, inflation and other cost pressures in relation to Shared Technology Services, Councils' savings targets, the requirement to increase or decrease resource as a result of changes or planned changes to service requirements or demand and any other factors reasonably considered relevant.

- 5.3. The draft Annual Service Plan and draft Annual Budget requirements, having been agreed by the Joint Management Board, will be recommended to the Joint Committee for their approval no later than 30 November.
- 5.4. Each of the Councils will be responsible for agreeing the ICT budget within their respective Councils which is a Reserved Decision.
- 5.5. For each Financial Year, the Managing Director of Shared Technology Services shall review and propose any amendments to the Performance Management Framework and will obtain the Joint Management Board's approval of the same.
- 5.6. Each Council shall not unreasonably withhold or delay the process for seeking approval of the draft Annual Service Plan, draft Annual Budget or the Performance Management Framework. In any event the draft Annual Budget shall be presented to the Joint Committee no later than 30 November for each forthcoming Financial Year, this being subject to the respective approval of each Council's budget which is a Reserved Decision.
- 5.7. The Managing Director of Shared Technology Services will cause to be prepared and delivered no later than 30 April for the agreement of the Joint Management Board an Annual Service Report for the preceding Financial Year. The Annual Service Report will detail service performance against the agreed Annual Service Plan, Performance Management Framework and ICT strategy.
- 5.8. Shared Technology Services will be monitored by means of monthly service reports presented to the Joint Management Board.
- 5.9. Any variation by a Council to the agreed budget of that Council will be notified to the Managing Director of Shared Technology Services at the earliest opportunity so that, pursuant to clause 12.8, any required changes to service arrangements can be considered and implemented.

- 5.10. The Managing Director of Shared Technology Services will cause to be prepared and delivered every 3 years an additional report which sets out the proposed strategy and technology roadmap for Shared Technology Services.

6. ROLE OF THE HOST COUNCIL

6.1. General

- 6.1.1. Shared Technology Services will, subject to the provisions of this Agreement, be led and hosted by the Host Council and it will conduct itself in the provision of Shared Technology Services in the manner set out in this clause 6. Accordingly, where Shared Technology Services is obliged to act pursuant to this Agreement it will be the Host Council with the support of the other Council(s) who shall endeavor to ensure that it is so provided.
- 6.1.2. The Councils agree that as a matter of general principle the Host Council shall be in materially no worse a position than each and every other Council who is a member of Shared Technology Services solely as a result of it consenting to act as Host Council.
- 6.1.3. All costs incurred by the Host Council in the supply of Shared Technology Services shall be met by the Councils in the manner set out in clause 12.

6.2. Employment of Staff

- 6.2.1. The provisions of Schedule 2 (Employment & Pensions), Schedule 5 (Exit Management Protocol) and Schedule 8 (Financial Principles) shall apply in relation to the transfer and employment of staff to, from and by the Host Council and each Council shall comply with their respective obligations therein.
- 6.2.2. The Host Council will be the employer of all Shared Technology Services Staff. The principle agreed in clause 6.1.2 shall be extended to the Host Council's duty as employer of all Shared Technology Services Staff.

- 6.2.3. Where a restructure of Shared Technology Services Staff is required the Host Council shall undertake such restructure as soon as possible after a Transfer Date (as defined in Schedule 2 (Employment & Pensions)) and in any event within six (6) months of the Transfer Date. The new Shared Technology Services Staff structure must be agreed by the Joint Management Board prior to the restructure commencing. All Reorganisation Costs incurred by the Host Council as a result of the restructure of Shared Technology Services Staff shall be met by the Councils and apportioned as set out in Schedule 8. The relevant provisions in Schedule 2 (Employment & Pensions) shall also apply.
- 6.2.4. Subject always to applicable Law, further Shared Technology Services Policies and Procedures for all Shared Technology Services Staff employed in Shared Technology Services may be agreed by the Joint Management Board but these will also require the prior approval of Brent's Human Resource Manager.
- 6.2.5. Where any Shared Technology Services Staff member leaves any post or a new post is created, the Managing Director of Shared Technology Services, in compliance with the relevant policies of the Host Council will appoint to such vacancy.
- 6.2.6. Where a vacancy arises in relation to the post of the Managing Director of Shared Technology Services and other Key Personnel the Host Council shall consult the Joint Management Board before appointing a replacement post-holder. The Joint Management Board shall, together with the HR department of the Host Council, participate in the recruitment and interview and recommend to appoint a candidate to such vacancy. Such recruitment shall be in compliance with the relevant HR policies of the Host Council. Any replacement of the Managing Director of Shared Technology Services or other Key Personnel shall be as, or more, qualified and experienced as and as fully competent to carry out the tasks assigned to the previous incumbent.

6.2.7. The Managing Director of Shared Technology Services shall be responsible for the day to day management of Shared Technology Services Staff, including but not limited to performance management, allocation of holiday, training, personal development reviews and sickness absence issues in accordance at all times with the Host Council's employment terms and conditions and any Shared Technology Services Policies and Procedures where possible. However, it is acknowledged by the Councils that as a result of TUPE, Shared Technology Services Staff may need to be managed in accordance with other terms, conditions, policies and procedures from previous employment. In such circumstances each Council will assist the Host Council and shall endeavour to ensure it has all necessary terms, conditions, policies and procedures in order to allow it to manage effectively.

6.2.8. Each Council shall ensure that all Shared Technology Services Staff are provided with appropriate authorisation to undertake work within the administrative areas of the Councils as necessary for the performance of Shared Technology Services.

6.3. Service Provision and the Measurement of Performance

6.3.1. Shared Technology Services shall provide those Agreed Services to the Councils that are set out in Schedule 3 (Agreed Services (Service Description)) the costs for which will be calculated in accordance with clause 12. Any amendments to the Agreed Services shall be agreed by the Joint Management Board unless it is a Reserved Decision and Schedule 3 (Agreed Services (Service Description)) shall be updated accordingly.

6.3.2. The Managing Director of Shared Technology Services may make changes to the individual programmes and projects within the agreed Annual Service Plan as dictated by Shared Technology Services needs, subject to the prior agreement of the Joint Management Board. Where urgent changes are required, and in

the absence of a timely Joint Management Board meeting, any such changes must be agreed with the Appointed Directors and reported back formally to the Joint Management Board at its next period meeting and recorded in writing by the Chair.

- 6.3.3. Notwithstanding the programmes and activities laid out within the Annual Service Plan, the Councils may, individually, severally or jointly, commission Shared Technology Services to provide additional Services, or changes to existing Agreed Services, providing that, unless agreed otherwise, the full life costs thereof will be fully met by the Council, or Councils, making such requests and that there is no negative impact on the delivery of the agreed Annual Service Plan.
- 6.3.4. In addition to the requirements of clause 5.8, the Managing Director of Shared Technology Services shall produce such additional reports on the performance of Shared Technology Services as required by the Joint Management Board.
- 6.3.5. The Joint Management Board shall be ultimately responsible for reviewing actual performance of Shared Technology Services against the Performance Management Framework.

7. SUPPORT SERVICES

7.1. General

- 7.1.1. Support Services shall ordinarily be provided by the Host Council as may be necessary to support Shared Technology Services in the discharge of the Agreed Services. The level of such Support Services will be detailed and agreed by the Joint Management Board and the costs of such will be reviewed annually and will form part of Shared Technology Services Costs for the purposes of clause 12 and the cost recovery principles in Schedule 8 (Financial Principles).

7.2. Accommodation

7.2.1. It shall be the responsibility of the Councils to provide the Accommodation for the use of Shared Technology Services to a level agreed by the Joint Management Board. The Accommodation shall mean the provision of office accommodation for employees and accommodation for infrastructure necessary to deliver Shared Technology Services. The costs of such Accommodation will be dealt with in accordance with clause 12 or otherwise as unanimously agreed by the Councils.

7.2.2. Each of the Councils shall be responsible for meeting the health and safety obligations for Shared Technology Services Staff whilst based at their Councils' premises and in particular they shall ensure that:

- (a) the Accommodation is properly and regularly maintained;
- (b) the Accommodation is regularly risk assessed in accordance with applicable Laws; and
- (c) they make Shared Technology Services Staff aware of the premises security policy, Health and Safety policy and all other policies of the relevant Council which apply to persons permitted access to the Accommodation and enforce adherence to such policies.

7.3. Contract and Contracting

7.3.1. The Host Council shall (unless otherwise agreed by the Joint Management Board) enter into New Contracts for and on behalf of the Councils for the purpose of or in connection with Shared Technology Services, in accordance with Schedule 9 (Procurement Protocol). Any costs which arise out of the New Contracts (and Existing Contracts) shall be Shared Technology Services Costs met in accordance with the provisions of clause 12 and Schedule 8 (Financial Principles). Save where otherwise

agreed with the Councils, the Host Council shall ensure that each New Contract entered into by the Host Council for and on behalf of the Councils includes:

- (a) the right, under the Contracts (Rights of Third Parties) Act 1999, for each Council to enforce the terms of that Contract as if it were the Host Council; and
- (b) a provision enabling the Host Council to assign, novate or otherwise transfer any of its rights and obligations under the New Contract, in whole or in part, to any of the other Councils that will receive services under the New Contract (or to transfer to any replacement Host Council with the written consent of the other Council(s)).

7.3.2. After the Commencement Date the Procurement Protocol shall apply in relation to the procurement of goods, services and works of any kind for the purposes or relating to Shared Technology Services. Authorisation and award of New Contracts and variations and extensions to Existing Contracts and New Contracts is intended to occur in accordance with the principles and rules in Schedule 9 (Procurement Protocol).

7.3.3. By agreement, the Existing Contracts shall be transferred to the Host Council where they are in the name of any of the other Councils. Any contracts entered into by the Host Council for and on behalf of another Council before the Effective Date are to be included as Existing Contracts.

7.3.4. The costs relating to the Contracts shall be recoverable by the Host Council as agreed in clause 12 and Schedule 8 (Financial Principles).

8. MANAGING DIRECTOR OF SHARED TECHNOLOGY SERVICE

8.1. The Managing Director of Shared Technology Services will:

- 8.1.1. be responsible for the day to day management of Shared Technology Services within the terms of the Annual Service Plan approved and adopted by the Joint Management Board;
 - 8.1.2. perform such other duties as may be delegated to the Managing Director of Shared Technology Services from time to time by the Joint Management Board;
 - 8.1.3. report to the Joint Management Board with such frequency and in such manner as may be required by the Joint Management Board;
 - 8.1.4. comply with the decisions and directions of the Joint Management Board;
 - 8.1.5. comply with the rules, regulations and policies of the Host Council;
 - 8.1.6. be responsible for the leadership and management of such other services within the Councils as the Joint Management Board may reasonably determine (where possible, failing which he/she shall take on a monitoring role for Shared Technology Services to manage any impact on service delivery), where such services relate to the effective delivery of Shared Technology Services;
 - 8.1.7. perform all his or her duties in accordance with the priorities and Annual Service Plan approved by the Joint Management Board;
 - 8.1.8. prepare a risk register for all aspects of Shared Technology Services operations;
- 8.2. Should there be a conflict between any of the provisions of clause 8.1, the Managing Director of Shared Technology Services will report such conflict to the Joint Management Board for resolution in accordance with Schedule 4 (Conflicts of Interest Protocol).
- 8.3. The Managing Director of Shared Technology Services will be the employee of the Host Council. The Councils will take all reasonable steps to ensure that the Managing Director of Shared Technology Services is not subject to a

relevant transfer from the Host Council pursuant to this Agreement or any Council's withdrawal from it. If, notwithstanding the Councils' reasonable endeavours, the Managing Director of Shared Technology Services is held to be subject to a relevant transfer from the Host Council by operation of law, the Councils undertake to use their reasonable endeavours to mitigate any costs or liabilities arising from the Managing Director of Shared Technology Service's transfer and agree that any such costs or liabilities should be met jointly by the Councils as Shared Technology Services Costs.

9. ASSETS

- 9.1. The Councils each undertake and agree that they will draw up an inventory of Assets (the "Asset Register") to be made available and recorded by the Joint Management Board at its initial meeting after the Commencement Date which will be kept and regularly updated by the Managing Director of Shared Technology Services thereafter.
- 9.2. The Councils agree that the Asset Register will detail which Council or other party holds title to such Assets, including new or replacement Assets. The Asset Register shall detail ownership, purchase cost, depreciation and residual values of such Assets.
- 9.3. Nothing in this Agreement shall be deemed to pass title of any Existing Assets from one Council to another unless all the Councils specifically agree otherwise in writing.
- 9.4. The Joint Management Board will agree a maintenance programme and cost on an annual basis and these costs will be included in the annual revenue and/or capital budgets agreed pursuant to clause 12 and the Annual Budget agreed under clause 5.
- 9.5. The Joint Management Board may agree a replacement and/or modification programme for Assets, the costs of such programme will be agreed pursuant to clause 12.

9.6. The treatment of Assets on withdrawal from or termination of this Agreement will be as set out in Schedule 5 (Exit Management).

9.7. Contracts

9.7.1. If the benefit and/or obligations of any Existing Contracts intended for transfer to the Host Council cannot be assigned or novated to the Host Council except with the agreement or consent of a third party then the transferor Council will use its best endeavours to procure such agreement or consent with the co-operation of the Host Council.

9.7.2. Unless and until the benefit and/or obligations of the Existing Contracts is assigned or novated, or where any of the contracts are incapable of transfer by assignment or novation to the Host Council:

9.7.2.1. The intended transferor Council ("Transferor Council") will hold the benefit of those contracts upon trust for the Host Council absolutely and account to the Host Council without any deduction for all sums and other benefits derived from those contracts;

9.7.2.2. The Host Council will perform those contracts in accordance with their terms as sub-contractor to the Transferor Council. If sub-contracting is not permissible, the Host Council will perform the contract in accordance with its terms as agent for the Transferor Council;

9.7.2.3. The Transferor Council will give all reasonable assistance to the Host Council to enable it to enforce the rights of the Transferor Council under those Contract(s) and at all times act in accordance with the Host Council's reasonable instructions in connection with the Contracts; and

- 9.7.2.4. The Transferor Council will not take any action in respect of those contracts without the prior written approval of the Host Council, which the Host Council will not unreasonably withhold or delay.

10. INSURANCE

- 10.1. The Councils shall ensure that cover for the Required Insurances is obtained and maintained by them respectively, for Shared Technology Services. Each Council shall bear its own costs incurred by taking out the policies and maintaining the Required Insurances for the duration of Shared Technology Services. The Councils shall review insurance arrangements annually.
- 10.2. Each Council shall hold the other Councils harmless from and against all actions, claims, demands, liabilities and expenses (“actions”) resulting from any circumstances where the indemnifying party can make an insurance claim but only to the extent that such actions are covered by the payout under the insurance claim.
- 10.3. On request, each Council shall provide to the others, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the Required Insurances are in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 10.4. Where insurances are on a claim made basis, the Councils shall hold and maintain the Required Insurances for a minimum period of six (6) years following the expiration or earlier termination of this Agreement.

11. COSTS AND LIABILITIES IN RESPECT OF SHARED TECHNOLOGY SERVICES

- 11.1. Subject to clauses 11.2 to 11.5, each Council shall indemnify and keep indemnified the other Councils from and against all actions, proceedings, costs, claims, demands, liabilities, losses and expenses whatsoever whether arising in tort (including negligence) default or breach of this Agreement, to the extent that any such loss or claim is due to the breach of contract,

negligence, wilful default or fraud of itself or of its employees or of any of its sub-contractors save to the extent that the same is directly caused by or directly arises from the negligence, breach of this Agreement or applicable law by the indemnified party/defaulting party or parties.

- 11.2. No party shall be liable to the other parties (as far as permitted by English law) for indirect special or consequential loss or damage in connection with this Agreement or Shared Technology Services which shall include, without limitation, any loss of or damage to profit, revenue, contracts, anticipated savings, goodwill or business opportunities whether direct or indirect.
- 11.3. Each of the parties shall at all times take all reasonable steps to minimise and mitigate any loss or damage for which the relevant party is entitled to bring a claim against the other party pursuant to this Agreement.
- 11.4. Each of the parties agrees that:
 - 11.4.1. Where liability arises under this Agreement and that liability is insured through the Required Insurances, a claim will be made on that insurance by the insured party.
 - 11.4.2. Where liability arises under this Agreement and that liability is uninsured, the parties agree that (unless otherwise agreed by unanimous approval of the Joint Management Board) the liability shall be met by the Council receiving the benefit of those Assets, property or services in respect of which the claim arises. Where more than one Council receives the benefit of those Assets, property or services in respect of which the claim arises, the liability is to be shared in accordance with Table 2 in Schedule 8 (Financial Principles) or as otherwise agreed by the liable Councils.
 - 11.4.3. For the purposes of this clause “uninsured” shall include any claim which is below the level of excess for the Required Insurance or where any payment made under the Required Insurance falls below the level of liability suffered.

11.5. Notwithstanding any other provision of this Agreement no party limits or excludes its liability for:

11.5.1. fraud or fraudulent misrepresentation;

11.5.2. death or personal injury caused by its negligence;

11.5.3. breach of any obligation as to title implied by statute; or

11.5.4. any other act or omission, liability for which may not be limited under any applicable law.

12. FUNDING OF SHARED TECHNOLOGY SERVICES

12.1. Unless otherwise agreed by the Joint Management Board all costs associated with the implementation and provision of Shared Technology Services will be agreed between Brent, Lewisham and Southwark in accordance with clause 5, the approval process for Annual Budget and Annual Service Plan, and the principles of cost allocation in this Agreement and Schedule 8 (Financial Principles).

12.2. Where the Councils mutually agree to the use of Shared Technology Services resource and/or assets to deliver services outside of Shared Technology Services, or where the Councils mutually agree to invest in the provision of a new service and mutually agree to split the costs associated with it, unless agreed otherwise by the Joint Management Board, any surplus income arising from the Councils' investment will be apportioned to the Councils as detailed in Schedule 8 (Financial Principles).

12.3. If the Councils cannot agree or they determine that they shall not invest jointly in the provision of a new service, then each Council may seek its own solution in which case, any surplus Income generated from the new service shall be retained by the Council/s which invested in the new service in proportions determined by them.

12.4. For the avoidance of doubt, no Council shall use the resources and/or assets of Shared Technology Services in the provision of a new service where:

- (a) the Councils have not agreed to do so; and/or
- (b) a Council seeks its own solution outside of Shared Technology Services.

- 12.5. Subject to clauses 12.2, 12.5, 12.6, 12.7 and the other provisions in this Agreement including Schedule 8 (Financial Principles) where the Councils have specifically agreed how they wish to apportion and treat costs (whether they be Fixed Costs or Variable Costs or other costs relating to Shared Technology Services) and Income, the Joint Management Board shall agree the mechanism by which other costs, Income and savings shall be fairly and reasonably apportioned between the Councils.
- 12.6. The method of payment will be as set out in Schedule 8 (Financial Principles) or as otherwise agreed by the Joint Management Board.
- 12.7. Any changes to the level of service which may be commissioned by a Council or any changes in the associated costs of implementing the Annual Service Plan, will be agreed by the Joint Management Board, along with the appropriate allocation of costs between the Councils, which may require approval as a Reserved Decision.
- 12.8. The Councils agree that each Council will be responsible for its own support service costs and the agreed share of the Support Services costs (as referred to in clause 7). Where there is an incremental increase or decrease due to Shared Technology Services, the incremental increase or decrease will be apportioned between the Councils as set out in this Agreement and will be a Shared Technology Services Cost. This applies as a default principle as between the Councils unless they have specifically agreed a different apportionment shall apply in respect of certain elements of the costs in Schedule 8 (Financial Principles). The appropriate charging and recharging of Support Services costs will be reviewed on an annual basis.
- 12.9. Invoices shall be issued by the Host Council for the Agreed Service delivered by Shared Technology Services on a quarterly basis in arrears and shall be payable by the other two Councils within thirty (30) Business Days of the date of invoice (quarterly in this context means every 3 months to the end of March, June, September and December).

- 12.10. At the end of each financial year a financial outturn report detailing the expenditure and income of Shared Technology Services shall be prepared by the Finance Officer to Shared Technology Services with support from the Managing Director of Shared Technology Services and delivered to the Councils by 30 April each year or as soon thereafter as is reasonably practicable. Such accounts will be prepared on the basis of Shared Technology Services Accounting Policies (the Annual Accounts).
- 12.11. Lewisham and Southwark shall within ten (10) Business Days of the delivery of the Annual Accounts either confirm their agreement to the figures set out or give written notice to Brent of where they disagree and the reasons for disagreement. The provisions of clause 17 will apply to the resolution of any dispute over Annual Accounts.
- 12.12. Upon agreement or determination of the Annual Accounts any surplus or deficit for the previous financial year will be apportioned in accordance with Schedule 8 (Financial Principles).
- 12.13. The Auditors, Section 151 Officers and other authorised officers of the Councils shall have access at all reasonable times and with due notice to the relevant financial records of Shared Technology Services and shall be entitled to seek explanations concerning queries relating thereto.

13. AUDIT

- 13.1. Should any Council wish to review any financial matters relating to Shared Technology Services using an external audit function, the Joint Management Board shall provide reasonable assistance to any such audit function at the cost of the requesting Council.
- 13.2. The Host Council shall provide all reasonable assistance to the external Auditor which shall include access to their systems, documents, accounting records and transactions relating to the provision of Shared Technology Services as and when required.

14. WITHDRAWAL FROM SHARED TECHNOLOGY SERVICES

- 14.1. Any Council may serve notice and withdraw from Shared Technology Services by giving not less than two years written notice to the other Councils of its intention to do so.
- 14.2. Upon receipt of a notice of withdrawal, an extraordinary meeting of the Joint Management Board shall be convened at which the Withdrawing Council shall be required to send its Appointed Director. The meeting shall consider the implication of such withdrawal and endeavour to agree any immediate steps. Immediately following that meeting or within 10 Business Days of receipt of withdrawal notice under clause 14.1 the Councils shall be bound to comply with their obligations applicable in the Exit Period referred to in Schedule 5 (Exit Management Protocol). The Exit Period of two years shall begin on receipt of notice and the Councils shall proceed to agree and make exit arrangements in accordance with Schedule 5 (Exit Management Protocol) and the provisions of Schedule 2 (Employment and Pensions). Failure to agree an exit management plan or to progress the exit management arrangements in accordance with Schedule 5 (Exit Management Protocol) may be referred to the dispute resolution procedure set out in clause 17.
- 14.3. All Councils agree that they will provide all reasonable assistance to one another to allow the exit of any Council.
- 14.4. Costs resulting from the withdrawal of one Council from this Agreement shall be determined in accordance with Schedule 5 (Exit Management Protocol), Schedule 8 (Financial Principles), Schedule 2 (Employment and Pensions) and the principles and provisions agreed in this Agreement.
- 14.5. The Withdrawing Council will remain liable for its share (as calculated in accordance with the terms of this Agreement) of any costs incurred by Shared Technology Services during its time as a member up to and including the date of its withdrawal even if
 - 14.5.1. such costs do not become apparent or become due for payment until after the date of such withdrawal.

- 14.5.2. such costs are for services which extend beyond the Exit Period as set out in Schedule 8 (Financial Principles).
- 14.6. The Councils agree to use the Service Plan and Agreed Budget (and staffing costs therein) for the Financial Year ending before the Exit Period as the base starting point for their planning and discussions relating to prospective changes in service requirements, staffing arrangements, transfers and any redundancies or other changes necessary as a result of a Council withdrawing from the Agreement. The service and staffing requirements of the Withdrawing Council and the Remaining Councils should be apparent from the figures taken from the previous Financial Year.
- 14.7. Immediately prior to withdrawal from Shared Technology Services the Councils agree and shall ensure that:
- 14.7.1. the Host Council will pass an appropriate resolution in accordance with section 101(1)(b) and 101(5) of the Local Government Act 1972 or sections 19-20 of the Local Government Act 2000 (as appropriate) removing any delegations or obligation to discharge duties on behalf of the Withdrawing Council and any existing Council(s) will pass a similar resolution acknowledging the withdrawal and copies of such resolutions will be provided on request;
- 14.7.2. The Withdrawing Council agrees to waive any right of claim against the Managing Director of Shared Technology Services personally in relation to any claim which may be made against him or her for services provided and for the avoidance of doubt the provisions of clause 12 will apply.
- 14.8. For the avoidance of doubt the Councils agree that they will use their reasonable endeavours to ensure that the Managing Director of Shared Technology Services will continue to be an employee of the Host Council following the withdrawal of any other Council and undertake to mitigate and jointly meet any liabilities that exist or arise should it be held Managing

Director of Shared Technology Service's is subject to a relevant transfer from the Host Council notwithstanding the Councils' reasonable endeavours to ensure it is not.

15. TERMINATION OF THIS AGREEMENT

- 15.1. In addition to the provisions of clause 14.1, the Councils agree that this Agreement may be determined upon terms agreed by the Councils in writing.
- 15.2. In the event of termination of this Agreement the provisions set out in Schedule 5 (Exit Management Plan) and Schedule 2 (Employment and Pensions) shall apply and the Councils shall comply with their obligations set out therein.
- 15.3. It shall be the duty of all of the Councils to try to mitigate and try to minimise any losses arising from the termination of this Agreement. The provisions contained in clause 14.6, Schedule 2 (Employment and Pensions) and Schedule 5 (Exit Management Protocol) shall also apply in the case of termination of this Agreement in accordance with clause 15.1 unless termination is solely as a result of a Council withdrawing. The Financial Principles for cost apportionment specifically where there is a mutual agreement under 15.1, shall be as contained in Schedule 8 (Financial Principles) save if the Councils decide to agree otherwise in writing.
- 15.4. The clauses in this Agreement which expressly or impliedly have effect after termination will continue to be enforceable notwithstanding termination which without limitation shall include clauses 1, 2, 10, 11, 12, 13, 17, 18, 20 – 27 36, 37, and 38.

16. MATTERS REQUIRING INDIVIDUAL OR UNANIMOUS APPROVAL

- 16.1. Notwithstanding any other provisions of this Agreement, any matter of Shared Technology Services which exclusively affects any Council's ability to attain

or fulfil its public interest objectives in full at all times shall require the consent in writing of such Council.

16.2. Unless otherwise agreed by the Councils in writing, Shared Technology Services will not undertake those matters that are Reserved Decisions and the Councils will exercise their respective powers under this Agreement, and otherwise, to ensure that Shared Technology Services will not undertake or carry out the Reserved Decisions without such agreements.

16.3. Meaning of Deadlock

16.3.1. For the purposes of this clause 16 there shall be a Deadlock if:

16.3.1.1. a matter constituting a joint Reserved Decision has been considered by the Councils; and

16.3.1.2. no resolution has been carried by the Councils in relation to the matter because of a failure of any Council to consent to such resolution; and

16.3.1.3. the matter is not resolved within thirty (30) Business Days or such longer periods as agreed by the Councils from the date of the referral to the Councils for consent (as appropriate).

16.4. Council's Obligations

16.4.1. In any case of Deadlock each of the Councils shall (at the request of any Council) within fifteen (15) Business Days of Deadlock having arisen or becoming apparent, cause its Appointed Director on the Joint Management Board to prepare and circulate to the Councils a memorandum or other form of statement setting out its position on the matter in respect of which the Deadlock has arisen and its reasons for adopting that position, but on the basis that such memorandum or statement shall always be prepared and delivered on a "without prejudice" basis. Each Council shall then

refer the Deadlock to dispute resolution provisions of clause 17 of the Agreement.

16.5. Failure to resolve Deadlock or Dispute

16.5.1. If a resolution of a Deadlock or a dispute referred pursuant to clause 16.4 is not resolved or is not agreed in accordance with that clause (or such longer period as the Councils may agree in writing) and clauses 17 and 18, then either:

16.5.1.1. there will be no change to existing arrangements; or

16.5.1.2. if this cannot be unanimously agreed between the Councils the Council who has failed to agree the motion in question will be deemed to have issued notice to withdraw its membership of Shared Technology Services and the provisions of clause 14 of the Agreement will apply with the notice of withdrawal under clause 14 being deemed to commence ten (10) Business Days after the failure to agree the matter.

17. INTERNAL DISPUTE RESOLUTION

17.1. In the event of any dispute or difference between the Councils relating to this Agreement which it has not been possible to resolve through the decision making processes of Shared Technology Services (whether this may be a matter of interpretation or otherwise), or in the event of there being a Deadlock or a Council otherwise elects to refer a matter to dispute resolution the matter shall be dealt with in accordance with this clause 17 and Schedule 10a (Internal Dispute Resolution Process).

17.2. Any dispute or difference shall in the first instance be discussed at the Joint Management Board. Thereafter it shall be referred to the Joint Committee.

17.3. The Councils undertake and agree to pursue a positive approach towards dispute resolution which seeks (in the context of this joint working arrangement) to identify a solution at the lowest operational level that is

appropriate to the subject of the dispute and which avoids legal proceedings and maintains a strong working relationship between the Councils.

- 17.4. Where the Councils are unable to resolve any dispute or difference in accordance with this clause 17 or they agree the use of the Internal Dispute Procedure is inappropriate, a Council may refer the matter to External Dispute Resolution pursuant to clause 18.

18. EXTERNAL DISPUTE RESOLUTION

- 18.1 The Councils will attempt to settle any dispute or difference by mediation in accordance with Schedule 10b (External Dispute Resolution Process and the model mediation procedures (“the Procedures”) published by the Centre for Effective Dispute Resolution (CEDR). The Councils shall agree the appointment of a mediator. In the absence of agreement by the Councils regarding the appointment of the mediator, the mediator shall be nominated by CEDR Solve. To initiate mediation, a Council must give notice in writing (the “Mediation Notice”) to the other Councils. A copy of the Mediation Notice should be sent to CEDR Solve and the mediation will start no later than thirty (30) days after the date of the Mediation Notice.

19. NOTICES

- 19.1. All notices under this Agreement shall be in writing and all certificates, notices or written instructions to be given under the terms of this Agreement shall be served by sending the same by first class post, email, facsimile or by hand, leaving the same at:

If to Brent: Strategic Director Resources, Civic Centre, Engineers Way,
Wembley, HA9 0FJ

If to Lewisham: Head of Service Change and Technology, 5th Floor,
Laurence House, Catford, London, SE6 4RU

If to Southwark: Strategic Director of Housing and Modernisation, 160 Tooley
Street, London SE1 2QH

- 19.2. Any party to this Agreement may change its nominated individual or address by prior notice to the other parties.
- 19.3. Notices given by post shall be effective upon the earlier of (i) actual receipt and (ii) five (5) Business Days after mailing. Notices delivered by hand shall be effective upon delivery. Notices given by facsimile or email shall be deemed to have been received where there is confirmation of uninterrupted transmission or delivery by a transmission report or delivery report and where there has been no telephonic communication by the recipient to the senders (to be confirmed in writing) that the facsimile or email has not been received in legible form:
- 19.3.1. within two (2) hours after sending, if sent on a Business Day between the hours of 9am and 4pm; or
 - 19.3.2. by 11am on the next following Business Day, if sent after 4pm, or
 - 19.3.3. by 11am on the same Business Day if sent before 9am on that Business Day.

20. INFORMATION AND CONFIDENTIALITY

- 20.1. The Councils shall keep confidential any Commercially Sensitive Information relating to this Agreement or the Intellectual Property Rights of the Councils in relation to Shared Technology Services and shall use all reasonable endeavours to prevent their employees and agents from making any disclosure to any person of any Commercially Sensitive Information relating to the Agreement or Intellectual Property Rights of the Councils.
- 20.2. Clause 20.1 shall not apply to:
- 20.2.1. Any disclosure of information that is reasonably required by or to persons engaged in the performance of their obligations under this Agreement;

- 20.2.2. 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 20;
 - 20.2.3. Any disclosure to enable a determination to be made under clause 18 (External Dispute Resolution);
 - 20.2.4. 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, however where a disclosure is to be made pursuant to FOI Legislation the Councils agree that the provisions of clause 20.4 shall apply to any disclosure;
 - 20.2.5. Any disclosure of information which is already lawfully in the possession of the receiving party prior to its disclosure by the disclosing party;
 - 20.2.6. Any disclosure by a party to a department, office or agency of the Government; or
 - 20.2.7. Any disclosure for the purpose of the examination and certification of a party's accounts.
- 20.3. Where disclosure is permitted under clause 20.2, the Councils shall endeavour to ensure that the recipients of the information shall be placed under the same obligation of confidentiality as that contained in this Agreement by the disclosing Council although the Councils acknowledge that this may not always be possible.
- 20.4. Freedom of Information:
- 20.4.1. The Councils recognise that the Councils are public authorities as defined by FOI Legislation and therefore recognise that information relating to this Agreement may be the subject of an Information Request.

- 20.4.2. The Councils shall assist each other in complying with their obligations under FOI Legislation, including but not limited to assistance without charge, in gathering information to respond to an Information Request.
- 20.4.3. Any Council shall be entitled to disclose any information relating to this Agreement and Shared Technology Services 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 the following procedure shall apply:
- i) the Council which receives the Information Request shall circulate the Information Request and shall discuss it with the other Councils; and
 - ii) the Council which receives the Information Request shall in good faith consider any representations raised by the other Councils when deciding whether to disclose Exempt Information.
- 20.4.4. The Councils to this Agreement acknowledge and agree that any decision made by a Council which receives an Information Request as to whether to disclose information relating to this Agreement pursuant to FOI Legislation is solely the decision of that Council. A Council will not be liable to the other Councils 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. DATA PROTECTION

- 21.1. For the purposes of this clause 21 and for the avoidance of doubt, references to Personal Data shall be deemed to include Sensitive Personal Data.
- 21.2. The Councils shall at all times comply with the DPA, including maintaining a valid and up to date registration or notification under the DPA, covering any data processing to be performed in connection with this Agreement and their responsibilities as Data Processors and/or Data Controllers, and shall duly

observe all their obligations under the Data Protection Legislation which arise in connection with this Agreement..

- 21.3. Where a Council is acting as a Data Processor, the processor shall only undertake Processing of Personal Data reasonably required in connection with the operation of this Agreement or the operation of Shared Technology Services, and in accordance with this clause 21.
- 21.4. Unless agreed otherwise in writing by the Councils, where a Council is acting as the Data Processor it shall Process the Personal Data only in accordance with the instructions of the relevant Data Controller from time to time and shall not Process the Personal Data for any purpose other than those expressly authorised by the relevant Data Controller.
- 21.5. Notwithstanding the general obligation in clause 21.3 the Council which is acting as the Data Processor shall ensure that it has in place appropriate technical, organisational and contractual measures to ensure the security of the Personal Data processed by it (and to guard against unauthorised or unlawful Processing of the Personal Data and against accidental loss, disclosure or destruction of, or damage to, the Personal Data). These measures shall be appropriate to the harm which might result from unauthorised or unlawful Processing of the Personal Data, accidental loss, disclosure or destruction of, or damage to, the Personal Data having regard to the nature of the Personal Data which is to be protected; and it shall;
 - 21.5.1. take reasonable steps to ensure the reliability of any Shared Technology Services Staff who have access to the Personal Data;
 - 21.5.2. ensure that all Shared Technology Services Staff required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this Agreement;
 - 21.5.3. take reasonable steps to ensure that none of Shared Technology Services Staff publish, disclose or divulge any of the Personal

Data to any third party unless directed in writing to do so by the relevant Data Controller;

- 21.5.4. provide the relevant Data Controller with such information as the Data Controller may reasonably require to satisfy itself that the Data Processor is complying with its obligations under the Data Protection Act;
- 21.5.5. promptly (and in any event within one (1) Business Day) notify the Data Controller of any breach of the security measures required to be put in place pursuant to this clause 21.5;
- 21.5.6. ensure it does not knowingly or negligently do or omit to do anything which places the Data Controller in breach of the Data Controller's obligations under the Data Protection Act;
- 21.5.7. notify the relevant Data Controller (within five (5) Business Days), if it receives:
 - (a) a Subject Access Request from a Data Subject to have access to that person's Personal Data; or
 - (b) a complaint or request relating to the relevant Data Controller's obligations under the Data Protection Legislation; and
- 21.5.8. provide the relevant Data Controller with full co-operation and assistance in relation to any complaint or request made, including by:
 - (a) providing the Data Controller with full details of the complaint or request;
 - (b) complying with a Subject Access Request within the relevant timescales set out in the Data Protection Legislation and in accordance with the Data Controller's instructions;
 - (c) providing the Data Controller with any Personal Data it holds in relation to a Data Subject; and

- (d) providing the Data Controller with any relevant information reasonably requested by the Data Controller;

21.6. The Data Processor shall not transfer any Personal Data to any country or territory outside the European Economic Area unless in accordance with the relevant legislation and shall only do so with the consent of the relevant Data Controller.

21.7. The Data Processor may authorise a third party to process the Personal Data provided that the third party's contract:

- 21.7.1. includes terms which are substantially the same as this clause 21; and

- 21.7.2. will terminate automatically on termination of this Agreement for any reason.

21.8. Without prejudice to the requirements of this clause 21, the Data Processor shall not disclose Personal Data to any third parties other than:

- 21.8.1. to employees and contractors to whom such disclosure is necessary in order to comply with their obligations under this Agreement;

- 21.8.2. to the extent required to comply with a legal obligation;

- 21.8.3. to the extent necessary for the performance of functions of Shared Technology Services/the Agreed Services; or

- 21.8.4. in accordance with written instructions from or at the request of the Data Controller.

21.9. The Data Processor shall permit the Data Controller (s) or the Data Controller (s)' representative (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit , pursuant to this clause and clause 36, the Data Processor's data processing activities (and/or those of its agents, subsidiaries and sub-contractors) and comply with all reasonable requests or

directions by the Data Controller to enable the Data Controller to verify and/or procure that the Data Processor is in full compliance with its obligations under this Agreement and provide a written description of the technical and organisational methods employed by the Data Processor for processing Personal Data (within the timescales required by the Data Controller).

22. SCRUTINY AND AUDIT

- 22.1. The Councils agree that scrutiny relating to this Agreement and the provision of the Agreed Services shall be the responsibility of each Council in line with the existing constitutional provisions of each Council.
- 22.2. The relevant committees of each Council responsible for scrutiny and audit shall have the right to inspect any documents relating to this Agreement and to require either the Joint Committee, the Joint Management Board, the Operational Management Group or Shared Technology Services to answer any questions raised by them. The relevant committees of each Council shall also have a right to require the Managing Director of Shared Technology Services to attend any meetings of those committees (whether cabinet or overview and scrutiny) to respond to questions regarding Shared Technology Services and this Agreement.
- 22.3. The accounts relating to Shared Technology Services and this Agreement shall be the subject of audit by any external auditor appointed by any of the Councils or the Joint Committee (as the case may be) and shall be open to inspection by any external auditor appointed by or on behalf of any of the Councils.
- 22.4. Each Council will seek to maximise efficiencies in audits that are required of Shared Technology Services by co-ordinating the planning and execution of audits relating to Shared Technology Services.

23. VAT AND TAX

- 23.1. Any amounts payable pursuant to the provisions of this Agreement shall be exclusive of VAT, which if properly due shall be payable by the paying party

against production of a valid invoice from the Council making the relevant supply of goods and/or services and the rate applicable shall be the rate prevailing at time of invoice.

24. INTELLECTUAL PROPERTY

- 24.1. Any Intellectual Property Rights created as a result of delivery of Shared Technology Services (referred to in this clause as Developed IPR) shall vest jointly in the Councils however the Host Council will hold the Intellectual Property Rights in such Developed IPR on behalf of all of the Councils.
- 24.2. Each Council hereby grant to the other Councils a non-exclusive, royalty-free licence for use of their Intellectual Property Rights in any form (including the right to use and copy materials) in which Intellectual Property Rights exist prior to the Commencement Date or which may come into existence thereafter (whether solely belonging to the granting Council or materials from Developed IPR owned partially as a joint co-owner) solely for the purpose of effective delivery of Shared Technology Services for the duration of this Agreement and for performance of this Agreement. This licence applies to both background Intellectual Property Rights (relating to pre-existing materials and IPR) and foreground Intellectual Property Rights (relating to materials coming into existence after the Commencement Date and) and shall include the right to sub-licence if required or necessary for the purpose of effective delivery of Shared Technology Services or performance of this Agreement.
- 24.3. On withdrawal from or termination of this Agreement for any reason, each Council shall grant the other Councils a non-exclusive, perpetual, irrevocable, royalty-free licence to use the Developed IPR and materials in which their Intellectual Property Rights exist or have vested as referred to in clauses 24.1 and 24.2 (including the right to copy materials and sub-licence to third parties), solely for the purpose of the Councils being able to continue in the provision or receipt of ICT services without disruption or hindrance.
- 24.4. Nothing in this clause 24 shall require any of the Councils to provide or disclose to the other Councils any materials to the extent that they contain confidential information or attract legal professional privilege or Intellectual

Property Rights where such provision or disclosure would amount to a waiver of privilege or put either Party or any employee in breach of any legal obligation or Codes of Conduct or infringe any Intellectual Property Rights.

- 24.5. Where a claim or proceeding is made or brought against any of the Councils which, arises out of the infringement or alleged infringement of any Intellectual Property Rights or because the use of any materials, data, Software, plant, machinery or equipment in connection with Shared Technology Services infringes any Intellectual Property Rights of a third party then, unless such infringement has arisen due to any of the Councils or its Staff's proven deliberate or negligent actions, any resulting costs and/or expenses liable for payment by Shared Technology Services shall be apportioned equally between the Councils.
- 24.6. The Councils confirm that they are not aware of any pre-existing IPR in connection with the Agreed Services.

25. FORCE MAJEURE

- 25.1. If any party is affected by an event of Force Majeure, it must take all reasonable steps to mitigate the consequences of it, resume performance of its obligations under this Agreement as soon as practicable and use its reasonable efforts to remedy its failure to perform any of its obligations under this Agreement. Subject to the forgoing the party claiming relief as a result of an event of Force Majeure will be relieved from liability under this Agreement to the extent that because of the event of Force Majeure it is not able to perform its obligations hereunder.
- 25.2. Should an event of Force Majeure continue for more than sixty (60) Business Days the Agreement may be terminated by agreement of all of the Councils, or one Council may withdraw, on the giving of five (5) Business Days notice and the provisions of clause 15.2 shall apply (and a reasonable time for exit shall be agreed between the Councils).

26. SEVERABILITY

26.1. If at any time any clause or part of a clause or schedule or appendix or part of a schedule or appendix 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;

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

26.1.2. the Councils 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 Agreement complies with the laws of that jurisdiction.

27. SUCCESSOR AND ASSIGNMENT

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

27.2. Save as set out in clause 27.1 no Council shall assign, sub-contract or in any way dispose of its interest under this Agreement or any part of it without the prior written approval of the Joint Management Board.

28. WAIVER

28.1. No forbearance or delay by any Council in enforcing its respective rights will prejudice or restrict the rights of that Council and no waiver of any such rights or of any breach of any contractual terms will be deemed to be a waiver of any other right or of any later breach.

29. STATUTORY DUTY

29.1. The Councils acknowledge that nothing in this Agreement will prevent them from carrying out their respective statutory duties and responsibilities or unduly restrict the decisions to be made with regard to their respective statutory functions.

30. RELATIONSHIP OF PARTIES

30.1. Each of the Councils is an independent local authority and nothing contained in this Agreement shall be construed to imply that there is any relationship between the Councils of partnership or principal/agent or of employer/employee. No Councils shall have any right or authority to act on behalf of another party nor bind another Council by contract or otherwise except to the extent expressly permitted by the terms of this Agreement.

31. REVIEW, VARIATION AND FAIR DEALINGS

31.1. The Councils are committed to ensuring on-going efficiency improvements from Shared Technology Services and agree to review the operation of this Agreement in all its aspects at appropriate intervals, but not less than annually, to ensure that this Agreement is operating in the most satisfactory manner and that Shared Technology Services is being delivered to the standards set out in this Agreement. The Councils may review the governance arrangements and change the governance arrangements in the context of any other shared services which may currently exist between the Councils or may come to exist in the future.

31.2. The Councils recognise that it is impracticable to make provision for every contingency which may arise during the course of this Agreement and they declare it to be their intention that this Agreement shall operate between them with fairness and without detriment to the interests of any of them and that if, in the course of the performance of this Agreement, unfairness to any of them does or may result then the others shall use reasonable endeavours to agree upon such action as to be necessary to remove the cause or causes of such unfairness.

31.3. In the event of a Change in Law which impacts on the Agreement, the Managing Director of Shared Technology Services will report to the Joint Management Board on the effect of that change and confirm that all necessary steps have been taken to ensure that Shared Technology Services is provided in accordance with the Law. If the event of a Change in Law impacts on the Agreed Services or on Shared Technology Services Costs,

the Councils will work together to agree any necessary changes to the Agreed Services and to mitigate the effect on Shared Technology Services Costs. Any change to Shared Technology Services Costs will be agreed in accordance with clause 12.2.

31.4. Where any of the Councils requests a change to this Agreement or to any of the Schedules, excluding where it is a Reserved Decision, the Joint Management Board shall discuss the change which shall result in any one of the following:

- a) the change is not agreed and no further action is taken; or
- b) a change is agreed by unanimous decision of the Joint Management Board and the change is implemented.

31.5. Where a change is agreed in accordance with clause 31.4(b), the change shall be recorded in writing and signed by all Appointed Directors. Any cost implications as a result of the change shall be dealt with in accordance with clause 12.

32. THIRD PARTY RIGHTS

32.1. The Councils agree that they do not intend that any third party which may benefit from this Agreement shall have any rights of enforcement under the terms of the Contracts (Rights of Third Parties) Act 1999.

33. ENTIRE AGREEMENT

33.1. This Agreement and all documents referred to in this Agreement set forth the entire agreement between the Councils with respect to the subject matter covered by them and supersede and replace all prior communications, representations (other fraudulent representations), warranties, stipulations, undertakings and agreements whether oral or written between the Councils. Each party acknowledges that it does not enter into this Agreement on reliance on any warranty, representation or undertaking other than those contained in this Agreement and that its only remedies for breach of this Agreement are those contained in this Agreement, provided that this shall not

exclude any liability which either party would otherwise have to the other in respect of any statements made fraudulently by or on behalf of it prior to the Date of this Agreement.

- 33.2. For the avoidance of doubt to the extent there is any inconsistency between this Agreement and the Schedules the provisions of this Agreement will prevail.

34. WHISTLEBLOWING

- 34.1. The Councils shall ensure that staff employed by them in connection with this Agreement (including sub contractor staff where appropriate) are aware of their and the other Councils whistle blowing policy, and the arrangements to be followed in the event of them having any concerns and wishing to make a disclosure pursuant to the policy.
- 34.2. The Councils shall assist each other without charge in dealing with, and fulfilling any responsibilities relating to, any protected disclosure relating to Shared Technology Services made in accordance with ss. 43A – 43L of the Employment Rights Act 1996 as amended by the Public Interest Disclosure Act 1998 (a "Protected Disclosure").
- 34.3. Upon receiving notification of such Protected Disclosure the Council to which the Protected Disclosure relates shall disclose the Protected Disclosure to the other Councils and shall discuss any issues which arise with the other Councils.
- 34.4. Each Council shall in good faith consider representations of the other Councils in deciding how to deal with any Protected Disclosure.
- 34.5. The Councils to this Agreement acknowledge and agree that any decision made, or any action taken by, a Council in relation to a Protected Disclosure is solely the decision of that Council. A Council will not be liable to the other Councils for any loss, damage, harm or detrimental effect arising from or in

connection with the Council's actions in dealing with any Protected Disclosure received.

35. FURTHER ASSISTANCE

35.1. Each Council shall use reasonable endeavours to procure that any necessary third party shall execute such documents and perform such acts as may reasonably be required for the purpose of giving full effect to this Agreement and Shared Technology Services, the costs of which will be shared by the Councils on such terms as may be agreed, or in the absence of agreement equally.

36. RECORDS AND ACCESS

36.1. The Councils agree that they shall keep and maintain until six years after Shared Technology Services has been terminated, or as long a period as may be agreed between the Councils, full and accurate records of the Agreement and Shared Technology Services, all expenditure and all payments made by each Council. The Councils shall afford on request to each of the other Council(s) or their representatives such access to those records as may be required by them in connection with the Agreement. This provision shall survive expiry or termination of this Agreement.

37. JURISDICTION

37.1. This Agreement shall be governed by the laws of England and Wales and subject to clause 17 the Councils submit to the exclusive jurisdiction of the courts of England and Wales.

38. CIVIL CONTINGENCY AND BUSINESS CONTINUITY

38.1. The Councils are a Category 1 responder for the purposes of the Civil Contingencies Act 2004 (as amended) ("the 2004 Act"). The 2004 Act defines an emergency ("Emergency") as:

- a) an event or situation which threatens serious damage to human welfare;

- b) an event or situation which threatens serious damage to the environment; or
- c) war, or terrorism, which threatens serious damage to security.

- 38.2. The Councils shall each make available, on request, its emergency contingency plans and business continuity management arrangements available for inspection by the other upon reasonable notice.
- 38.3. In the event of an Emergency the Host Council shall make every effort to continue the provision of Shared Technology Services under this Agreement. Depending upon the nature of the Emergency however, should the Host Council be unable to continue the provision of Shared Technology Services, in consultation with the other Councils, the provisions of clause 26 (Force Majeure) will apply.
- 38.4. The Host Council shall have business contingency plans to cover situations that might reasonably arise that may affect the delivery of Shared Technology Services; which shall be tested and reviewed periodically in accordance with good industry practice and at least annually.

This Agreement is executed as a Deed and is delivered and takes effect as a Deed on the date stated at the beginning of it.

**Executed as a Deed by
Affixing the common seal of the
MAYOR AND BURGESSES OF
THE LONDON BOROUGH OF
BRENT
in the presence of:**

[COMMON SEAL]

.....
Signature of Authorised signatory

**Executed as a Deed by
Affixing the common seal of the
MAYOR AND BURGESSES OF THE
LONDON BOROUGH OF LEWISHAM
in the presence of:**

[COMMON SEAL]

.....
Signature of Authorised signatory

**Executed as a Deed by
Affixing the common seal of the
MAYOR AND BURGESSES OF
THE LONDON BOROUGH OF
SOUTHWARK
in the presence of:**

[COMMON SEAL]

.....
Signature of Authorised signatory