

DATED 2022

Between

THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF HARROW

AND

THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF BRENT

**INTER-AUTHORITY AGREEMENT FOR THE PROVISION
OF HARROW AND BRENT COUNCILS'
SPECIAL NEEDS TRANSPORT**

HB Public Law
working in collaboration with you

Harrow Council
PO Box 2
Civic Centre
Station Road
Harrow
HA1 2UH

DX 30450 HARROW 3
REF: HRWC-CECC-050153

THIS Agreement is made the day of 2022

BETWEEN:

- (1) **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF HARROW** of Civic Centre, Station Road, Harrow HA1 2XF ("**Harrow**");
- (2) **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF BRENT** of Brent Civic Centre, Engineers Way, Wembley HA9 0FJ ("**Brent**");

together known as the parties to this Agreement ("**The Parties**").

WHEREAS:

- (A) The Parties are the statutory authorities for their respective administrative areas.
- (B) The Parties are working together to provide the Harrow and Brent Special Needs Transport Service ("**HB SNT**"), hosted by Harrow at its Forward Drive Depot.
- (C) The Parties 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 the HB SNT is to be established by the Parties in exercise of their powers under section 101, 111, 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 Regulation 12 (7) of the Public Contract Regulations 2015.
- (D) The Parties agree that the special needs transport service currently provided by each Party will continue to be merged and operate under HB SNT for the duration of the Agreement.
- (D) The Parties agree that this arrangement will assist in achieving Best Value in Harrow and Brent, by maximising economies of scale and cost efficiencies for both councils and so have agreed that in order to achieve this the provision of HB SNT by and for the Parties and the costs of doing so will be shared between the Parties as more particularly set out in this Agreement.
- (E) This Agreement sets out the terms on which Harrow will manage and deliver the HB SNT to Harrow and Brent.

IT IS HEREBY AGREED AS FOLLOWS:

1 Definitions

1.1 The following definitions shall apply and have effect in relation to the words and expressions used in this Agreement and the interpretation and construction of this Agreement.

"1972 Act"
means the Local Government Act 1972;

"1999 Act"
means the Local Government Act 1999;

"2014 Regulations"
means the Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2014;

"Agreed Variation Notice"
is a variation notice which has been agreed in accordance with Clause 21;

"Best Value"

means each Party's duty to secure economy, efficiency and effectiveness in delivery of the HB SNT Service pursuant to section 3 of the 1999 Act;

"Business Continuity Plan"

means any plan prepared pursuant to clause 29 (Business Continuity), as may be amended from time to time.

"CEDR"

means the Centre for Effective Dispute Resolution;

"Charges"

means the payments made to Harrow by Brent in accordance with Clause 11;

"Commencement Date"

means **01 August 2022**;

"Consents"

means all permissions, consents, approvals, certificates, permits, licences and authorisations required for the performance of the Service in accordance with this Agreement and consents of Service Users, the court or as may be required to comply with any relevant codes of conduct;

"Contract Manager"

means the Senior Officer appointed by Brent in accordance with Clause 3.10;

"Core Budget"

has the meaning set out at Appendix 2 (Charging Provisions);

"Data"

Means any data (including metadata), record, document or information howsoever stored which is communicated in writing, orally, electronically or by any other means by Harrow, its staff, sub-contractors and agents relating to the Service and the Agreement;

"Data Controller" and "Data Processor"

means the same as set out in the Data Protection Act 2018;

"Day(s)"

means a calendar day unless specifically noted to be a Working Day;

"Data Protection Act"

means the Data Protection Act 2018;

"Default"

means a breach of the Agreement which does not amount to a Fundamental Breach;

"Dispute Resolution"

means the dispute resolution process set out in Clause 20;

"Emergency"

means war or terrorism which threatens serious damage to the security of the UK or an event or situation causing or, in the reasonable opinion of a Party, threatening to cause serious damage to human welfare or the environment or death or injury to any individual, or serious disruption to the lives of a number of people or extensive damage to property, or contamination of the environment or giving rise to financial losses as specified in the Civil Contingencies Act 2004, in each case on a scale beyond the capacity of the emergency services or preventing the Services operating under normal circumstances and requiring the mobilisation and organisation of the emergency services;

"Employees"

means the employees listed in Appendix 7;

"Employee Liability Information"

means the information that a transferor is obliged to notify to a transferee under Regulation 11(2) of TUPE;

"Employment Claim"

has the meaning given in Clause 6.10;

"EI Regulations"

means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such regulations;

"Exit Plan"

means a document agreed between the Parties in accordance with Appendix 5;

"Expenditure"

has the meaning set out at Appendix 2;

"Expiry Date"

means **31 July 2023**;

"Financial Year"

means any year during this Agreement commencing on 1 April and finishing on 31 March;

"FOI Act"

means the Freedom of Information Act 2000;

"Force Majeure"

has the meaning given in Clause 17;

"Fundamental Breach"

means:

- a) a breach of Clause 12.1;
- b) three or more Defaults in a six month period;
- c) a default which is not capable of remedy in accordance with Clause 15 and which has or will have a material adverse impact on the affected Party/Parties;

"Future Provider"

A provider of the Services or part thereof or of services substantially the same as the Services or part thereof upon the cessation of provision thereof by Harrow;

"Guidance"

means any applicable guidance or directions with which Harrow is bound to comply;

"Intellectual Property Rights"

means any and all patents, trade marks, service marks, copyright, database rights, moral rights, rights in a design, know-how, confidential information and all or any other intellectual or industrial property rights whether or not registered or capable of registration and whether

subsisting in the United Kingdom or any other part of the world together with all or any goodwill relating or attached thereto;

“Legislation”

means any one or more of the following:

- a) any Act of Parliament;
- b) any subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978;
- c) any exercise of the Royal Prerogative; and
- d) any enforceable community right within the meaning of Section 2 of the European Communities Act 1972,

in each case in the United Kingdom;

"Losses"

has the meaning given in Clause 6.6;

"Material Breach"

means a breach of the terms of this Agreement of sufficient significance to impede the effective delivery of the Service, or which creates a significant risk for either Party, or causes Brent significant losses or costs;

"Mediator"

means a mediator appointed in accordance with Clause 20;

“Major Emergency Plan”

means Brent’s procedures for responding to, dealing with and recovering from an incident/Emergency (as updated from time to time);

"Model Procedure"

has the meaning given in Clause 20.4;

"Notice of Termination"

means a notice to terminate this Agreement served in accordance with Clause 16;

“Performance Indicators”

Means the key performance indicators contained in Appendix 1 as amended from time to time by the Parties forming part of the Service Standards

"Personal Data"

has the meaning ascribed to it in the Data Protection Act 2018;

"Potential Returning Employees"

has the meaning given in Appendix 5 Clause 5.3;

"Premises"

Means **Central Depot, Forward Drive, Harrow, Middlesex HA3 8NT**;

"Redundant"

means redundant as defined in section 139 of the Employment Rights Act 1996;

"Relevant Transfer"

a transfer to which TUPE applies;

"Returning Employees"

an employee who transfers to Brent or a Future Provider on a Relevant Transfer;

"Returning Services"

the Service or part thereof, or of services substantially the same as the Service or part thereof upon cessation of provision thereof by Harrow, which will continue to be provided by Brent or each of their respective Future Providers

"Senior Officer"

means in relation to **Harrow the Divisional Director – Commissioning and Commercial Services; in relation to Brent the Operational Director, Planning & Regeneration;**

"Service"

means the Harrow and Brent Special Educational Needs Transport Service to be delivered by Harrow for both Harrow and Brent Councils as described at Appendix 1;

"Services Manager" means the Head of Special Needs Transport appointed by Harrow;

"Service Standards"

means the standards to be applied at all times in the provision of the Service by Harrow [including the service standards set out in Appendix 1 (Description of the Service) and Appendix 4 (Operational Matters);

"Service User(s)"

means vulnerable adults and children with special needs and their parents/guardians with whom the HB SNT Service will liaise, co-operate or interact with in the provision of the Services.

"Staff"

means any employee who delivers the Service (including the Employees);

"SNT Advisory Board"

means the board established in accordance with Clause 3.7 and Appendix 3;

"Term"

means the duration of the Agreement from the Commencement Date to the Expiry Date;

"Termination"

means termination of the Agreement in accordance with Clause 15;

"TUPE"

the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended by the 2014 Regulations;

"Variation Notice"

means a notice served in accordance with Clause 20.2;

"Working Day(s)"

means a day on which clearing banks in the City of London are (or would be but for strike, lock-out or other stoppage affecting particular banks generally) open during banking hours.

1.2 In this Agreement except where the context otherwise requires:

1.2.1 the masculine includes the feminine and vice-versa;

- 1.2.2 the singular includes the plural and vice-versa;
- 1.2.3 any reference to this Agreement or to any other document shall include any permitted variation, amendment or supplement to such document;
- 1.2.4 any reference to any enactment, order, regulation, code, guidance or other similar instrument shall be construed as a reference to the enactment, order, regulation, code, guidance or instrument (including any EU instrument) as amended, replaced, consolidated or re-enacted;
- 1.2.5 headings are for convenience of reference only;
- 1.2.6 words preceding include, includes, including and included shall be construed without limitation by the words which follow those words; and
- 1.2.7 the Appendices to this Agreement form part of this Agreement.

1.3 Save as otherwise expressly provided, nothing contained or implied in this Agreement shall prejudice, affect or otherwise fetter the rights, powers, duties and obligations of either Party in the exercise of its functions as a local authority.

1.4 Notwithstanding any other provisions of this Agreement, neither Party shall be entitled to claim an amount, include a figure in a calculation, or recover a cost to the extent that it had already been accounted for, included, or recovered pursuant to this Agreement or otherwise.

2 **Start and duration of this Agreement**

2.1 Subject to Clause 2.2 this Agreement will start on the Commencement Date and will remain in force for a period of one (1) year until the Expiry Date unless terminated earlier in accordance with the provisions of this Agreement.

2.2 NOT USED.

2.3 NOT USED.

2.4 NOT USED.

3 **Governance**

3.1 Brent warrants that it has validly resolved to enter into this Agreement, and copies of the relevant resolutions of Brent are attached at Appendix 6 of this Agreement and that to the best of its knowledge and belief it has not received notification of any call in, scrutiny or legal challenge to that resolution and that such resolution remains valid.

3.2 Harrow warrants that it has validly resolved to enter into this Agreement, and copies of the relevant resolutions of Harrow are attached at Appendix 6 of this Agreement and that to the best of its knowledge and belief it has not received notification of any call in, scrutiny or legal challenge to that resolution and that such resolution remains valid.

3.3 The Parties confirm that the Service shall be delivered through the HB SNT Service under the terms of this Agreement.

- 3.4 The Parties confirm that subject to the terms of this Agreement the delivery of the Service and the expenditure of the costs directed to the provision of the Service in accordance with Appendix 2 shall be the responsibility of the HB SNT Service.
- 3.5 The Parties will establish a SNT Advisory Board with the overall purpose of monitoring, directing, advising and securing adherence to the effective performance of the Agreement and the delivery of the Service.
- 3.6 The SNT Advisory Board will have the membership and terms of reference as set out at Appendix 3 of this Agreement provided always that the Parties may agree at any time to amend the membership and/or the terms of reference of the SNT Advisory Board.
- 3.7 The Parties agree that they shall seek to operate this Agreement through consensus wherever possible and shall use the SNT Advisory Board as a forum for discussing and seeking to resolve any issues, concerns or complaints arising in relation to the operation of this Agreement.
- 3.8 The Parties agree that they will therefore use reasonable endeavours to seek to resolve any issues, concerns or complaints arising in relation to the operation of this Agreement through the SNT Advisory Board before seeking to invoke any of the provisions of this Agreement relating to Default, Termination or Dispute Resolution.
- 3.9 Harrow will appoint a Senior Officer who as Service Manager will take day to day management decisions relating to the Service.
- 3.10 Brent will appoint a Senior Officer as the Contract or Client Manager for the Service in relation to delivery of the Service to Brent.

4 The Agreement

- 4.1 This Agreement sets out all the terms and conditions which the Parties have agreed regarding the provision of the Service and supersedes any representations, documents, negotiations or understandings, whether oral or written, made, carried out or entered into before the date of this Agreement.
- 4.2 The Parties have satisfied themselves in relation to any matters or information which they are relying upon in deciding to enter into this Agreement save where the Parties have warranted matters, in Clauses 3.1, 3.2 and 6.2.
- 4.3 The Parties agree that (except for any liability which a Party has under or in respect of any breach of this Agreement in particular but not limited to the provision of the Service in accordance with the Service Standards, of any liabilities relating to fraud, death, personal injury or any other liability which cannot be excluded or limited by law and Clauses 10.6 and 10.7), no Party shall owe any duty of care or have any liability in tort or otherwise to any other Party in respect of, arising out of or in any way relating to the transactions contemplated by this Agreement, provided that nothing in this Clause 4 shall exclude any liability for, or remedy in respect of, fraudulent or negligent misrepresentation.

5 Objectives and Partnership Working

- 5.1 The Parties shall establish, develop and implement their collaborative relationship with the objective of:

- 5.1.1 implementing the Service from the Commencement Date and within the Core Budget agreed by SNT Advisory Board at the start of the year set out in Appendix 2;
- 5.1.2 providing high quality Service and in accordance with the Service Standards;
- 5.1.3 commitment to people including Staff and Service Users of the Service; and
- 5.1.4 delivering long term savings and benefits to all Parties .

5.2 The objectives are to be kept under review through meetings and effective communication.

5.3 The Parties agree to adopt a systematic approach to partnership working and problem resolution which is based on:

- 5.3.1 achieving solutions for the benefit of Service Users and to achieve Best Value for each Party equally;
- 5.3.2 trust, fairness, mutual co-operation, dedication to agreed common goals and an understanding of each Party's expectations and values;
- 5.3.3 seeking solutions without apportioning blame;
- 5.3.4 mutually beneficial outcomes;
- 5.3.5 treating the Parties as equals in the dispute resolution process;
- 5.3.6 a mutual acceptance that adversarial attitudes waste time and money; and
- 5.3.7 all Parties being equal stakeholders.

6 **Staffing**

6.1 The Parties acknowledge that the provision by Harrow of the Service to Brent shall be through the HB SNT Service from the Commencement Date.

6.2 NOT USED

6.3 NOT USED

6.4 Brent shall be responsible for all operational costs throughout the duration of the Term of this Agreement. Harrow shall be responsible for the operational management during the performance of daily routine activities throughout the duration of the Term of this Agreement.

7 **Application of section 113 Local Government Act 1972**

The Parties agree that where the employees of the HB SNT Service are engaged on work for Harrow the provisions of section 113 of the 1972 Act will apply and that those employees will be placed by Harrow at the disposal of Brent for the purposes of their functions.

8 **Accommodation**

8.1 The Parties agree that the HB SNT Service is to be hosted at the Premises and Harrow accordingly undertakes to make available all necessary accommodation, working space, and associated facilities and services, including such telephone systems and meeting rooms as shall be necessary to host the HB SNT Service unless otherwise agreed by the Parties.

9 **Equipment and Information Technology**

9.1 Brent undertakes to the HB SNT Service to license free of charge (insofar as it is able to legally and contractually do so) the Staff as reasonably necessary in order to enable the HB SNT Service and its employees to access its Data systems, records, information technology systems, computer systems, telephone and other systems as may be necessary from time to time as to deliver the Service to Brent; and to allow and facilitate free of charge (insofar as it is able to legally and contractually do so), the transfer of necessary data records and information as may be held by Brent to the HB SNT Service for the purposes of the delivery of the Service to Brent.

9.2 In the event of Brent levying a charge on the HB SNT Service to access the systems and/or to transfer the Data, records and information referred to in Clause 9.1 such charge shall be treated as Expenditure.

9.3 No HB SNT Service employee shall access Brent systems unless prior written approval is granted by Brent at its absolute discretion, in order to preserve confidentiality or prevent and manage a potential or actual conflict of interest.

10 **Intellectual Property**

10.1 Nothing in this Agreement is intended to transfer to Harrow any Intellectual Property Rights owned by Brent whether solely or jointly as at the Commencement Date.

10.2 Brent hereby grants to Harrow for the purposes of the HB SNT Service a non-exclusive, revocable, royalty-free licence to use and copy materials the Intellectual Property Rights in which vest solely in Brent solely for the purpose of providing the Service through the HB SNT Service to Brent for the duration of this Agreement.

10.3 All and any Intellectual Property Rights in materials developed for or on behalf of the HB SNT Service during the duration of this Agreement shall vest in Harrow unless agreed otherwise.

10.4 Harrow shall on expiry or termination of this Agreement, if required, grant Brent a non-exclusive, perpetual, irrevocable, royalty-free licence to use and copy materials the Intellectual Property Rights which, vest in Harrow for the purpose of providing or having provided the Service to Brent through the HB SNT Service.

10.5 Nothing in this Clause 10 shall require either Party to provide or disclose to the other Party 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.

10.6 Where a claim or proceeding is made or brought against Brent which arises out of the infringement of any Intellectual Property Rights or because the use of any materials, Data,

plant, machinery or equipment in connection with the Service infringes any Intellectual Property Rights of a third party then, unless such infringement has arisen out of the use of any Intellectual Property by or on behalf of Brent otherwise than in accordance with the terms of this Agreement, Harrow shall indemnify Brent at all times from and against all direct and indirect losses arising as a result of such claims and proceedings.

10.7 Where a claim or proceeding is made or brought against Harrow which arises out of the infringement of any Intellectual Property Rights or because the use of any materials, data, plant, machinery or equipment in connection with the Service infringes any Intellectual Property Rights of a third party then, unless such infringement has arisen out of the use of any Intellectual Property by or on behalf of Brent otherwise than in accordance with the terms of this Agreement, Brent shall indemnify Harrow at all times from and against all direct and indirect losses arising as a result of such claims and proceedings.

11 **Financial provisions, Revenue Contributions and Contingency Fund Operation**

11.1 In return for Harrow carrying out its obligations under this Agreement Brent shall pay to Harrow the Charges relating to the Service in accordance with Appendix 2.

11.1.2 If any item or part of an item of any Charges stated within an invoice is disputed or subject to clarification by Brent, the payment by Brent of such disputed or questioned sums may be withheld pending resolution of the disputed sums by the SNT Advisory Board, provided Brent serves notice of its intention to withhold payment on Harrow not less than 5 days before the final date for payment. Such notice shall set out:

.a the amount proposed to be withheld and the ground for doing so; or

.b If more than one ground, each one and the amount attributable to each.

For the avoidance of doubt undisputed items in any invoice submitted by Harrow during the Term shall be paid in accordance with Appendix 2.

11.1.3 Where the disputed or questioned sums referred to in clause 11.1.2 fails to be resolved by the SNT Advisory Board; the Parties shall refer the matter to the Dispute Resolution process in accordance with clause 19 for final determination.

11.1.4 Pending the final determination of the disputed or questioned sums in accordance with the Dispute Resolution process, Harrow shall suspend the element of the Service which is in dispute and to which those specific Charges apply.

Revenue Costs Contributions

11.2 The Parties agree and undertake to meet their respective revenue costs for delivering the service

Capital and Revenue Contingency Fund Contributions

11.3 From the Commencement Date, Harrow shall maintain a Capital and Revenue HB SNT Service account which will cover all income and expenditure relevant to the service. This account shall clearly demonstrate the costs attributable to each borough's service where those costs are identifiable as distinct to each borough.

11.4 Harrow shall account to Brent for the expenditure incurred in providing the Brent aspect of the service. This is to include any Capital maintenance expenditure as it relates to the fleet of vehicles.

11.5 **The Service Standard, Adherence to Policies and Service User Satisfaction Surveys**

11.5.1 Harrow shall ensure that the HB SNT Service provides the Service in accordance with its obligations under this Agreement including the Service Standards (and Performance Indicators) using all the skill, care and diligence to be expected of a competent local authority special needs transport service including compliance with the Education Act 1996, the Education and Inspections Act 2006, the Equality Act 2010 with any subordinate legislation or regulations made under those acts and the codes of practice

11.6 In providing the Service Harrow shall ensure that the HB SNT Service:

11.6.1 complies with any and all codes of practice, performance ratings and quality standards that are laid down in this Agreement or that are issued to Brent as part of an Agreed Variation Notice;

11.6.2 complies with any Legislation, statutory or regulatory provisions which apply to the Service;

11.6.3 obtains, maintains and complies with all Consents;

11.6.4 allocates sufficient and appropriately qualified and experienced resources to provide the Service at all times in accordance with the terms of this Agreement;

11.6.5 proactively manages the performance of the Staff including but not limited to effective appraisal and review mechanisms, supervision and one-to-one meetings between Staff and supervisors, setting and regular monitoring of personal performance targets;

11.6.6 implements an effective risk management procedure in accordance with Appendix 9; and

11.6.7 provides the Service in accordance with the codes of practice.

11.7 NOT USED.

11.8 Harrow shall ensure that sufficient numbers of Staff are available with appropriate levels of experience and expertise to provide the Service to Brent in accordance with Appendix 1 and Appendix 4 and procedures are in place to ensure the Service is not disrupted by staffing issues (unless this is outside of Harrow's control).

11.9 In delivering the Service the HB SNT Service shall comply with the Brent policies listed in Appendix 8 together with any additional Harrow policies relevant to the delivery of the Service which are introduced by Harrow during the operation of the Agreement.

Satisfaction Surveys

11.10 Harrow shall carry out surveys annually (or more frequently as agreed by the Parties) and shall carry out any other surveys reasonably required by Brent in relation to the provision of the

Services. The form, frequency and method of reporting such surveys shall be reviewed and approved by the SNT Advisory Board.

11.11 Harrow shall review the results of the surveys and provide a written report to Brent on request on the results of each survey carried out under clause 11.10 and identify any actions reasonably required to be taken by Brent in response to the surveys. Harrow must implement such actions as agreed with Brent as soon as reasonably practicable SUBJECT ALWAYS to Harrow obtaining the necessary internal Cabinet and/or Chief Officer approval where such actions require approval in accordance with Harrow's Constitution.

11.12 Harrow shall on request provide copies of completed Service User surveys to Brent.

12 Proceedings and Insurance

12.1 Harrow shall be solely liable for all proceedings, claims, damages, fines, penalties, expenses, compensation, court or tribunal orders (including and order for reinstatement or re-engagement), awards, costs and all other liabilities whatsoever payable or incurred which arise out of or are connected with this Agreement ('the Liabilities') save where Brent has directly contributed to the Liabilities in which case Brent shall also be liable for the Liabilities to the extent that it has directly contributed to the Liabilities.

12.2 Harrow shall effect and maintain with a reputable insurance company a policy or policies of insurance providing as a minimum the following levels of cover:

12.2.1 public liability 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;

12.2.2 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;

12.2.3 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 and shall ensure that all professional consultants or Sub-Contractors involved in the provision of the Services hold and maintain appropriate cover;

("the **Required Insurances**") in respect of all risks which may be incurred by Harrow, arising out of Harrow's performance of the Agreement, including death or personal injury, loss of or damage to property.

12.3 Harrow shall give Brent, on request, 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, provided that Harrow shall only be required to provide a broker's verification in the event that disclosure of any of the policies would invalidate any terms of its insurance policies.

12.4 If, for whatever reason, Harrow fails to give effect to and maintain the Required Insurances, Brent may make alternative arrangements to protect its interests and may recover the reasonable costs of such arrangements from Harrow.

12.5 The terms of any insurance or the amount of cover shall not relieve Harrow of any liabilities under the Agreement.

13 **Monitoring of the Service**

13.1 The Service will be monitored in accordance with the procedures and service standards referred to in Appendix 1 (Description of Services – Performance Indicators), Appendix 2 (Charging Arrangements), Appendix 3 (Governance Arrangements) and Appendix 4 (Operational Arrangements).

13.2 Subject to clause 25 (Confidentiality and Data), Brent shall endeavour to make available to Harrow, for the Term of the Agreement, access to Brent’s systems so as to allow reviewing of Brent’s statistical reports pursuant to the delivery of the Services by Harrow.

14 **Defaults**

14.1 If a Party commits a Default then they shall as soon as reasonably practicable notify the other Parties in writing and take such steps as are necessary to rectify the Default.

14.2 If the Default has not been rectified within thirty (30) Working Days to the reasonable satisfaction of the other Party then the matter shall be referred to the SNT Advisory Board unless the Parties agree a longer period.

14.3 The Parties shall use reasonable endeavours to resolve the Default through the SNT Advisory Board in accordance with Clauses 3.8 and 3.9 of this Agreement.

14.4 If the Parties cannot resolve the Default through the SNT Advisory Board within a reasonable time any of the Parties can refer the matter for resolution, in accordance with Clause 19(Dispute Resolution).

15 **Termination**

15.1 If Harrow,

15.1.1 commits or causes the commission of any criminal offence in providing the Service (except for any minor offence or minor traffic offence);

15.1.2 or any person employed by it or acting on its behalf, in relation to this Agreement, commit(s) an offence under the Bribery Act 2010, or shall have given any fee or reward the receipt of which is an offence under Section 117(2) of the 1972 Act;

15.1.3 commits a default which is identified by any term of this Agreement as being a Fundamental Breach or is otherwise a fundamental breach of its obligations under this Agreement, or

15.1.4 invalidates the insurance referred to in Clause 12.2 and/or does not otherwise provide sufficient cover to Brent against the risk of potential claims against Brent from Service Users or third parties arising directly or indirectly from provision or omission in the provision of the Service by the HB SNT Service.

then Brent will be entitled to give Harrow a Notice of Termination with a notice period of at least three (3) months.

15.2 If Brent terminates this Agreement under Clause 15.1 then Harrow will continue to provide the Service during the period of notice unless Brent request otherwise.

- 15.3 Brent shall be entitled (provided the same is not in dispute):
- 15.3.1 to retain any monies owed to Harrow under this Agreement until Harrow has paid any monies owed to Brent under this Agreement; or
 - 15.3.2 to deduct any such monies owed to Brent under this Agreement from the monies owed to Harrow under this Agreement.
- 15.4 If:
- 15.4.1 on three (3) separate occasions in any period of twelve (12) months (whether consecutive or not) Brent has failed to pay Harrow any undisputed Charges on time, then Harrow may terminate this Agreement by giving Brent not less than three (3) months written notice or such other notice period agreed by the Parties or otherwise agreed by SNT Advisory Board;
 - 15.4.2 Brent has committed a Default which is identified by any term of this Agreement as being a Fundamental Breach, then Harrow may terminate this Agreement by giving Brent not less than twelve (12) months written notice or such notice other period agreed by the Parties or otherwise agreed by SNT Advisory Board;
- 15.5 Subject to Clause 15.6 below, if this Agreement or its application to a particular Service is terminated, whether under Clause 14 (Defaults), this Clause 15 (Termination) or Clause 2.4 (Extending the Partnership) then Brent shall continue to pay Harrow the Charges throughout the notice period (whether or not Brent have requested Harrow to stop providing the Service during such period).
- 15.6 Nothing in Clause 15.5 shall entitle Harrow to receive the Charges for the notice period a second time if Harrow has already received the Charges for this period.

Break Clause

- 15.7 It is also provided that any Party may terminate this Agreement before the end of the Term, by giving the other Parties not less than six (6) months written notice by serving a Notice of Termination such Notice not to be given prior to 1 February 2023.
- 15.7.1 For the avoidance of doubt, where Brent elects to terminate this Agreement pursuant to clause 15.7 then it acknowledges and agrees that it will not be permitted to recover the agreed residual value of its assets.

Exit Arrangements

- 15.8 The Parties shall comply with the exit arrangements set out in Appendix 5 and any current Exit Plan in the period leading up to Termination or the Expiry Date.

16 Force Majeure and Non-Performance

- 16.1 If Brent believes that Harrow is failing to provide the requisite Service detailed in the Agreement, then the dispute resolution procedures outlined in Clause 19 will apply.

- 16.2 If an event of Force Majeure occurs then Harrow shall meet with Brent to discuss how best Brent can continue to provide the Service until the Force Majeure event ceases, which may include Brent providing Harrow with assistance, where possible.
- 16.3 Clause 17 is subject to the proviso that whichever Party is affected shall have given the other Parties notice that such failure is the result of Force Majeure within ten (10) Working Days of such failure occurring. If notice is not given in accordance with this Clause 16 then the failure may be regarded as a Default.
- 16.4 If either Party fails to carry out its respective obligations under this Agreement as a result of Force Majeure then whichever Party is affected shall not be liable under this Agreement for any such failure.
- 16.5 In this Clause Force Majeure means:
- 16.5.1 acts of war;
 - 16.5.2 acts of God;
 - 16.5.3 decrees of Government;
 - 16.5.4 riots; and
 - 16.5.5 civil commotion
 - 16.5.6 and any event or circumstance which is both beyond the control of whichever Party is affected and which could not have been prevented by acting prudently, diligently or with reasonable foresight.
- 16.6 Force Majeure shall not include any labour dispute between Harrow and Staff, any other staffing problem or the failure to provide the Service by any of Harrow's sub-contractors.
- 16.7 In the event that a Party is prevented from carrying out its obligations under the Agreement by any act of Force Majeure which continues for a period of thirty (30) days, the other Party may terminate the Agreement by notice in writing giving fourteen (14) Days notice.
- 17.8 The Parties shall at all times following an act of Force Majeure use all reasonable endeavours to mitigate the effects of the event of Force Majeure and facilitate the continued performance of this Agreement.
- 17.9 If Harrow does not provide or only partially provides the Service for a period of at least thirty (30) Days as a consequence of Force Majeure, the SNT Advisory Board shall consider whether and if so how the charges payable by Brent in accordance with clause 11 shall be reduced in a proportion commensurate with the Service actually provided to Brent and/or whether any and if so how much reimbursement shall be made by Harrow to Brent in respect of the charges paid during the period of the event of Force Majeure, the consideration of the issue by the SNT Advisory Board to be based on the principle that the impact of the period of Force Majeure shall as far as reasonably possible be the same for all Parties.

17 Consequences of Termination

- 17.1 Following the service of a Notice of Termination for any reason, Harrow shall continue to provide the Service in accordance with this Agreement and shall ensure that there is no degradation and diminution in the Service between the date of the Notice of Termination and the date of termination.
- 17.2 Between the service of a Notice of Termination and the date of termination Harrow shall ensure that comprehensive handover and attendance notes are compiled, all correspondence, files, records, documents and other information in whatever format which are part of and connected with the provision of the Service for Brent shall be filed; either electronically or as paper documents as Brent may require and the HB SNT Service shall put into good and proper order for handover to whichever officers or other agents representing Brent as notified to Harrow. The HB SNT Service shall make arrangements for the nominated officer or agent by Brent to collect such files and documents that relate to the Service provided to Brent.
- 17.3 Brent hereby undertake that in the event of such termination and the return of such documents and files these same shall be stored in accordance with the Data Protection Act, whether by Brent or by their agents and that Brent shall allow Harrow reasonable access on demand free of such charge to such documents records and files, however held and whether electronic or paper documents.
- 17.4 Brent hereby undertake to reimburse Harrow for any reasonable, proper and mitigated costs which may arise in respect of the transfer of electronic or other Data from the HB SNT Service to Brent that have arisen as a result of the early termination of the Agreement, other than where termination is due to a Fundamental Breach by Harrow.
- 17.5 In the event of Termination of this Agreement the Parties agree that (unless such Termination follows a Fundamental Breach (where Harrow is the perpetrator) in which case Harrow shall bear its own costs and shall be liable for the entirety of Brent's reasonable costs) they will share in accordance with the provisions of **Appendix 2**, all of the financial liabilities (other than any liability owed to any other Parties under the terms of this Agreement) which have arisen as a result of the Agreement save for any financial liabilities resulting from the HB SNT Service's fraudulent or negligent act or omission; which liabilities shall include, but not be confined to, the following:
- 17.5.1 leasehold or tenancy payments where the HB SNT Service has by prior agreement between the Parties taken on additional premises outside the Premises and where a liability arises due to the early termination of the Agreement;
 - 17.5.2 payments for the leasing of equipment for the HB SNT Service where a liability arises due to the early termination of the Agreement.
 - 17.5.3 losses, expenses or liabilities in connection with works to expand, improve or maintain the Premises which have been agreed by the parties as being necessary in order for the provision of the HB SNT Service (if any) which have commenced at the time of termination and cannot be cancelled, provided that at all times Brent shall mitigate any such losses, expenses or liabilities to the fullest extent possible.
- 17.6 The Parties shall individually and collectively use reasonable endeavours to reduce and mitigate the amount of financial liabilities which may arise in the event of Termination

17.7 Harrow shall repay to Brent within thirty (30) Working Days any element of the Charges attributable to any part of the Service which has not been provided due to termination of the Agreement.

17.8 Clause 6 (Staffing) and Appendix 5 shall apply in relation to the staffing consequences of the expiry or termination of the Agreement.

18 **Operational matters, Undertakings and Indemnities**

18.1 The day to day operation of the provision of the Service shall be in accordance with Appendix 4 (including without limitation the annexes to Appendix 4).

18.2 The Parties agree that:

18.2.1 during the continuance of this Agreement all transactions entered into by them shall be conducted in good faith and on the basis set out in this Agreement;

18.2.2 that at all times they will act in good faith towards the other and use reasonable endeavours to ensure the observance of the terms of this Agreement;

18.2.3 that they shall use reasonable endeavours to give effect to this Agreement provided always that any disagreement between the Parties shall be resolved in accordance with the Dispute Resolution Clause 20,

where any Party fails to meet its responsibilities and liabilities under this Agreement at any time during the Term of this Agreement the cost of any resulting losses, liabilities or loss or failure of the HB SNT Service which is caused to the other Parties shall be passed to the defaulting Party and shall be apportioned equitably.

19 **Dispute Resolution**

19.1 This Clause 19 is subject to Clauses 3.8 and 3.9 of this Agreement.

19.2 If there is a dispute between Harrow and Brent (or between any two Parties) concerning the interpretation or operation of this Agreement, then either Party may notify the other Parties in writing that it wishes the dispute to be referred to a meeting of the SNT Advisory Board to resolve, negotiating on the basis of good faith.

19.3 If after twenty-eight (28) Working Days (or such longer period as the Parties may agree) of the date of the notice referred to in Clause 19.2 (above), the dispute has not been resolved then any Party may notify the other Parties that it wishes the dispute to be referred to a meeting of the Chief Executive of Harrow, (or a person appointed by him or her to act on his or her behalf) and the Chief Executive of Brent (or a person appointed by him or her to act on his or her behalf), to resolve, negotiating on the basis of good faith.

19.4 If after twenty-eight (28) Working Days (or such longer period as the Parties may agree) of the date of the notice referred to in Clause 19.3 (above), the dispute has not been resolved then any Party may notify the other Parties that it wishes to attempt to settle the dispute by mediation, in accordance with the CEDR Model Mediation Procedure 2001 (the "Model Procedure") or such later edition as may be in force from time to time.

- 19.5 If Harrow and Brent do not agree on the identity of the Mediator then any Party may request CEDR to appoint one.
- 19.6 The procedure in the Model Procedure will be amended to take account of:
- 19.6.1 any relevant provisions in this Agreement; or
 - 19.6.2 any other agreement which Harrow and Brent may enter into in relation to the conduct of the mediation.
- 19.7 The Parties must:
- 19.7.1 use their reasonable endeavours to ensure that the mediation starts within twenty (20) Working Days of service of the notice referred to in Clause 19.4 (above); and
 - 19.7.2 pay the Mediator's fee in equal shares.
- 19.8 Any agreement the Parties reach as a result of mediation shall be binding, as set out in the Model Procedure, but if the dispute has not been settled by mediation within ten (10) Working Days of the mediation starting then any Party may commence litigation proceedings (but not before then).
- 19.9 Neither Party shall be precluded by Clause 19.8 (above), from taking such steps in relation to court proceedings as either may deem necessary or desirable to protect their respective positions. This shall include:
- 19.9.1 issuing or otherwise pursuing proceedings to prevent limitation periods from expiring; and
 - 19.9.2 applying for interim relief.
- 19.10 The use of the dispute resolution procedures set out in this Clause 19, (Dispute Resolution) shall not delay or take precedence over the provisions for termination set out in Clause 14 (Default) and Clause 15 (Termination).
- 20 Variations To The Agreement**
- 20.1 A variation to this Agreement shall only be valid if it has been agreed in writing and executed as a deed by duly authorised representatives of each Party.
- 20.2 If any of the Parties wishes to vary this Agreement then it shall serve on the other Party a Variation Notice which shall set out the nature of the variation sought and the reasons for it.
- 20.3 If any Party receives a Variation Notice then within twenty-eight (28) Working Days of receipt it shall notify the other Parties in writing whether or not it agrees to the variation and if not, the reasons.
- 21 Waiver**
- 21.1 If any Party fails to exercise or delays in exercising any right or remedy to which it is entitled under this Agreement or at law then this shall not constitute a waiver of any such right or remedy.

21.2 If any Party waives a Default on the part of another Party or Parties then this shall not constitute a waiver of any future Default.

21.3 No waiver shall be effective unless it is:

21.3.1 expressly stated to be a waiver;

21.3.2 in writing; and

21.3.3 signed by the relevant Senior Officer.

22 **Contracts (Rights of Third Parties) Act 1999**

Neither Party intends to confer any right or benefit upon a third party and the provisions of the Contracts (Rights of Third Parties) Act 1999 are expressly excluded from this Agreement.

23 **Best Value**

Harrow undertakes that it will seek to achieve a continuous improvement in economy, efficiency and effectiveness (including productivity of the Staff) in carrying out its obligations throughout the term of the Agreement to deliver the savings agreed by the Parties and will seek to deliver outcomes in less time and at less cost whilst maintaining quality; Brent undertakes that it will use its reasonable endeavours to assist Harrow in achieving this on the basis that the improvements will benefit the communities of both Brent and Harrow.

24 **Notices**

24.1 Any notice or other communication under this Agreement must be in writing and can only be sent by:

24.1.1 Pre paid 1st class post;

24.1.2 Recorded delivery post; or

24.1.3 Personal delivery,

no notices under this Agreement will be accepted by email.

24.2 For the purposes of sending notices by post or personal delivery or other communication by post, or personal delivery:

24.2.1 Harrow's address is Civic Centre, Station Road, Harrow HA1 2XF;

24.2.2 Brent's address is Brent Civic Centre, Engineers Way, Wembley, HA9 0JF

all notices and communications must be sent to the relevant Senior Officer.

24.3 If the address of any Party changes, it must notify the other Parties in accordance with this Clause 24.

24.4 Subject to Clauses 24.2 and 24.3, all notices and communications shall be deemed to have been served:

24.4.1 if posted, two (2) Working Days after the date when posted; or

24.4.2 if personally delivered, on signature of a delivery receipt.

24.5 Notwithstanding Clause 24.4, if by applying its provisions a notice is deemed to have been served on a Day which is not a Working Day or it is not received between the hours of 9am to 5pm on a Working Day then it shall be deemed to have been served on the next immediately following Working Day.

25 **Confidentiality and Data**

25.1 Harrow undertakes that the HB SNT Service will respect the confidentiality of information provided to it. Exceptionally the HB SNT Service may need to disclose this information where required to do so by the Court or under FOI legislation in which case Harrow shall inform Brent of such proposed disclosure as soon as reasonably practicable.

25.2 Harrow shall ensure that all Data held on behalf of Brent (save for such information as may be returned to Brent on Expiry or Termination) is retained for disclosure for at least six (6) years (from the date it is acquired) and shall permit Brent to inspect such Data as requested from time to time.

25.3 Harrow shall permit all Data to be examined and copied from time to time by Brent's auditors (whether internal or external) and their representatives upon reasonable notice.

26 **Data Protection, Freedom of Information and Environmental Information Regulations**

26.1 The Parties shall comply with the Data Protection Act, the FOI Act and the EI Regulations.

26.2 Brent shall co-operate with and provide assistance to Harrow at its own cost in enabling Harrow to comply with Clause 26.1 relating to disclosure of information arising from the performance of the Service by the HB SNT Service.

26.3 A Party in receipt of a request for information in relation to the FOI Act or the EI Regulations should, if the request relates to one of the other Parties, promptly refer the request to that Party for comments before a decision whether to disclose is made.

26.4 The Party subject to any request for information in relation to the FOI Act or the EI Regulations will decide whether information should be disclosed and will make disclosure when that Party considers that such disclosure is proper and in accordance with this Clause.

26.5 The Parties will ensure that the information requested and comments sought are supplied to the other Party or Parties within sufficient time to comply with the timescales set out in the FOI Act or the EI Regulations.

26.6 In relation to all Personal Data supplied or created under or in connection with this Agreement, each Party shall at all times comply with the Data Protection Act, as a Data Controller and/or a Data Processor and/or as Data Controller in common with the other Party or Parties as the case may be which includes (but is not limited to) maintaining a valid and up to date registration or notification under the Data Protection Act covering the data processing activities to be performed by it in connection with this Agreement and/or the HB SNT Service. The Parties may agree for any specific purpose which of them is Data Controller (or that they are Data Controllers in common) but, in the absence of any such specific agreement, the Parties hereby

agree that Harrow shall, acting as (where the Parties are all Data Controllers for the same Personal Data or where two of the Parties are Data Controllers for the same Personal Data) Data Controller in common with Brent and (where Brent is not Data Controller for the relevant Personal Data) sole Data Controller, have primary control of all Personal Data processes by it for the purposes of or in connection with the provision of the Service (the **Service Data**) and that Harrow shall be responsible for implementing appropriate technical and organisational measures to protect the security and integrity of that Service Data.

26.7 Each Party:

26.7.1 shall process Personal Data belonging to or supplied by another Party, or Personal Data derived from or created using Personal Data belonging to or supplied by another Party) only on the instructions of that Party (subject to compliance with applicable law); and

26.7.2 shall only undertake processing of Personal Data reasonably required in connection with the operation of this Agreement and shall not transfer any Personal Data belonging to or supplied by another Party (or derived from or created using Personal Data belonging to or supplied by another Party) to any country or territory outside the European Economic Area without that Party's prior written consent.

26.8 None of the Parties shall disclose Personal Data supplied or created under or in connection with this Agreement to any third parties other than:

26.8.1 to its employees to whom such disclosure is reasonably necessary in order for that Party to carry out its obligations under this Agreement; or

26.8.2 to the extent required under a court order binding on it or to comply with any applicable laws including (but not limited to) any statute, bye law, European Directive or regulation;

provided that each Party shall give notice in writing to the other Parties of any disclosure of Personal Data belonging to it or them which it is required to make under Clause 26.8.2 immediately upon becoming aware of such a requirement.

26.9 Each Party shall bring into effect and maintain all reasonable technical and organisational measures necessary to prevent unauthorised or unlawful processing of Personal Data and accidental loss or destruction of, or damage to, Personal Data including but not limited to taking reasonable steps to ensure the reliability and probity of any employee having access to the Personal Data.

26.10 Any Party may, at reasonable intervals, request a written description of the technical and organisational methods employed by the other Parties. Within five (5) Working Days of such a request, or such other period as the Parties may agree, the Party requested to do so shall supply written particulars of all such measures as it is maintaining detailed to a reasonable level such that the requesting Party can determine whether or not, in connection with the relevant Personal Data, the other Party is compliant with the Data Protection Act and/or its obligations under this Agreement.

26.11 Each Party shall ensure that any Personal Data it obtains and provides to the other has been obtained lawfully in accordance with the Data Protection Act.

- 26.12 If:-
- 26.12.1 under the Data Protection Act any Party (the "required Party") is required to provide information to a data subject (as defined in the Data Protection Act) in relation to Personal Data when such data is in the possession or under control of another Party (the "controlling Party"); and
- 26.12.2 the required Party informs the controlling Party in writing that this is the case.
- then the controlling Party shall, at its own expense, provide all reasonable and prompt co-operation to the required Party in meeting its obligations under the DPA including making and/or providing (as the case may be) copies of the relevant Personal Data, and other relevant information reasonably required by the required Party, to the extent the same are in its possession or under its control.
- 26.13 The Parties shall provide the other Parties, as soon as reasonably practicable, with such information in relation to Personal Data and their processing as the other Party or Parties may reasonably request in writing and the Party asked to provide the relevant data has in its possession or under its control in order for the other Party or Parties to:-
- 26.13.1 comply with its obligations under this Clause and/or the Data Protection Act; and
- 26.13.2 assess whether the processing of the relevant Personal Data in connection with this Agreement is breaching or may breach the Data Protection Act in a manner which is material and not effectively sanctioned by any guidance statement issued by the Information Commissioner.
- 26.14 Each Party shall take reasonable precautions (having regard to the nature of its obligations under this Agreement) to preserve the integrity of any Personal Data supplied or created under or in connection with this Agreement and in its possession or under its control.
- 26.15 The Parties may agree such information protocol(s) as they think necessary from time to time in respect of the Data or Personal Data processed for the purposes of the HB SNT Service and this Agreement.

27 Audit and Provision of Information

- 27.1 Except where an audit is imposed on Harrow by a regulatory body Harrow may, not more than once in any Financial Year and for a period of 12 months following the Term; conduct an audit for the following purposes unless otherwise agreed by the SNT Advisory Board:
- 27.1.1 to verify the accuracy of Expenditure (and proposed or actual variations to them in accordance with this Agreement) and any cost reduction and income generation initiatives carried out pursuant to clause 5.1;
- 27.1.2 to review the integrity, confidentiality and security of Brent Data;
- 27.1.3 to review the HB SNT Service compliance with the Data Protection Act, FOIA and any other legislation applicable to the Service;
- 27.1.4 to review the HB SNT Service compliance with its obligations in Appendix 4;

- 27.1.5 to review any records created during the provision of Service;
 - 27.1.6 to review any books of account kept by Harrow or the HB SNT Service in connection with the provision of the Service;
 - 27.1.7 to carry out the audit and certification of Brent's accounts;
 - 27.1.8 to carry out an examination of the economy, efficiency and effectiveness with which the HB SNT Service has provided the Service;
 - 27.1.9 to verify the accuracy and completeness of any management information delivered or required by this Agreement;
- 27.2 Brent shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the HB SNT Service or delay the provision of the Service.
- 27.3 The HB SNT Service shall on demand provide Brent with any relevant regulatory body (and/to their agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including:
- 27.3.1 all information requested by Brent within the permitted scope of the audit;
 - 27.3.2 reasonable access to any premises controlled by Harrow and to any equipment used (whether exclusively or non-exclusively) in the performance of the Service and
 - 27.3.3 access to the Staff.
- 27.4 Brent shall endeavour to provide at least fifteen (15) Working Days notice of their intention to conduct an audit;
- 27.5 The Party who required an audit in accordance with this Clause 27 shall reimburse the HB SNT Service's reasonable costs and expenses incurred in respect of compliance with their obligations under this clause, unless the audit identifies a Material Breach of the terms of the Agreement by the HB SNT Service in which case the HB SNT Service shall reimburse Brent for all Brent's reasonable costs incurred in the course of the audit.
- 27.6 If an audit identifies that:
- 27.6.1 the HB SNT Service has failed to perform its obligations under this Agreement in any material manner, the Parties shall agree and implement a remedial plan. If the HB SNT Service's failure relates to a failure to provide any information to Brent about the Charges, proposed Charges or the HB SNT Service's costs, then the remedial plan shall include a requirement for the provision of all such information;
 - 27.6.2 Brent has overpaid any Charges, the HB SNT Service shall pay to Brent the amount overpaid within thirty (30) Days. Brent may deduct such amount from the Charges if the HB SNT Service fails to make this payment; and
 - 27.6.3 Brent has underpaid any Charges, Brent shall pay to the HB SNT Service the amount of the under-payment less the cost of audit incurred by Brent if this was due to a Default by the HB SNT Service in relation to invoicing within thirty (30) Days.

27.7 The HB SNT Service shall respond to any reasonable request by Brent to provide information in relation to the operation of the HB SNT Service in order to assist Brent in responding to reasonable and legitimate inquiries about the operation of the HB SNT Service provided that the collection and provision of such information by the HB SNT Service does not unreasonably disrupt the HB SNT Service or delay the provision of the Service and the costs of the collection and provision of information are reimbursed by the Party who requested such information to the HB SNT Service if these are material.

28 **Business Continuity**

28.1 The parties shall comply with the provisions of the Business Continuity Plan(s) and Harrow shall ensure that it is able to implement the Business Continuity Plan at any time in accordance with its terms.

28.2 Harrow shall review, update and test the Business Continuity Plan(s) on a regular basis (and in any event not less than once in every twelve (12) month period and within six (6) months before the expiry of this Agreement). Brent may require Harrow to conduct additional reviews and tests of the Business Continuity Plan(s) where Brent considers it necessary, (acting reasonably) including where there has been any change to the Services or any underlying business processes, or on the occurrence of any event which may increase the likelihood of the need to implement the Business Continuity Plan(s).

28.3 Following each review/test, Harrow shall send to Brent a written report summarising the results of the review/test and shall promptly implement any actions or remedial measures which Brent (acting reasonably) consider to be necessary as a result of those review/tests.

29 **Emergencies**

29.1 Where Brent requires Harrow to assist it to comply with, or otherwise satisfy, its obligations pursuant to the Civil Contingencies Act 2004 and the Major Emergency Plan, in connection with the Services Harrow shall:

29.1.1 ensure that plans and procedures are in place to enable the continued operation of the Services during any surge in demand or any form of Emergency or other disruption on the basis set out in such plans and procedures;

29.1.2 ensure that it is able to provide emergency data recovery and data backup services; and

29.1.3 ensure that it is able to provide increased support for the provision of the Services and any emergency support and/or backup to enable the continued provision of the Services; the cost of which shall be shared equally between the Parties.

29.2 Harrow shall undertake a test of their continued operation plans and procedures annually, or more frequently as required by Brent; and

29.2.1 Harrow shall inform Brent when such tests or exercises are scheduled (providing at least one (1) months notice) and provide details of the proposed tests or exercises. Harrow shall consider any reasonable comments made by Brent before undertaking such tests or exercises. If requested to do so, Harrow shall provide the outcomes of these tests or exercises to Brent in writing;

29.2.2 Harrow shall promptly (and in any case within three (3) months notice), subject to the proviso contained in clause 12.8, implement any actions or remedial measures which Brent reasonably considers to be necessary as a result of audits, tests or exercises, business interruptions, emerging risks, or a change to the Services.

29.3 If an Emergency arises at any time during the Term, Brent may instruct Harrow to use all reasonable endeavours to procure that such additional or alternative services are undertaken by Harrow as and when required by Brent to ensure that the Emergency is dealt with and normal operation of the Services resumes as soon as is reasonably practicable.

30 **Sub-Contracting and Assignment**

This Agreement is personal to the Parties (save for any statutory successors) and assignment and sub-contracting is not permitted.

31 **Prevent Duty**

31.1 The Parties acknowledge that they are both under a duty in the exercise of its functions pursuant to section 26 of the Counter Terrorism and Security Act 2015 to have “due regard to the need to prevent people from being drawn into terrorism” (the “Prevent Duty”). Harrow will ensure the Services are provided in accordance with the Counter Terrorism and Security Act 2015 and the Prevent Duty and will assist Brent in responding to any request for information regarding such compliance.

32 **Counterparts**

This Agreement may be executed in any number of counterparts or duplicates each of which shall be an original but such counterparts or duplicates shall together constitute one and the same agreement.

33 **Law and Jurisdiction**

33.1 This Agreement shall be construed as a contract made in England and shall:

33.1.1 be governed by and shall be construed in accordance with English law; and

33.1.2 be subject to the exclusive jurisdiction of the courts of England, to which both Parties shall submit.

In witness whereof the Parties have executed this deed the day and year set out above

Executed **as a Deed** by)
THE MAYOR AND BURGESSES OF)
THE LONDON BOROUGH OF BRENT)
By affixing its **Common Seal** hereunto)
In the presence of:)

Authorised Officer _____

Executed **as a Deed** by)
of the MAYOR AND BURGESSES OF)
THE LONDON BOROUGH OF HARROW)
By affixing its **Common Seal** hereunto)
In the presence of:)

Authorised Officer _____

APPENDIX 1

DESCRIPTION OF THE SERVICE

PART A – GENERAL

1. This Appendix defines the HB SNT Service and the partnering principles and behaviours that underpin the delivery of this Service, which together are deemed to be the Service to be provided by Harrow under this Agreement. The Service shall also include the provision of advice and services which are incidental to the description contained within this Appendix 1.

PART B – PARTNERING PRINCIPLES & BEHAVIOURS

- 2 The Parties shall establish, develop and implement their collaborative relationship as described earlier in Clause 5 Objectives and Partnering Working of this Agreement. The services will be underpinned by five key partnering principles and behaviours, these are of equal standing and are detailed as follows:
 - 2.1 **Mutuality** – The parties will agree via a service planning process, the service objectives, outcomes and performance that mutually benefit Harrow and Brent. There is a clear commitment from both Parties to have a shared ambition to deliver a service that is of high quality, efficient, value for money and is valued by the Service Users.
 - 2.2 **Sustainable commitment and teamwork** – Both Parties will commit their support to the agreed contractual period, and proactively encourage a positive attitude towards joint teamwork for all officers and staff directly or indirectly delivering the defined services. Through this service partnership staff will share a pride in what they do, jointly develop ideas and continually improve the service they deliver to the Service User.
 - 2.3 **Open communication, trust and openness** – Both Parties will commit to high ethical standards, without prejudice, and will (where reasonably possible) be totally transparent with each other, and ultimately be accountable for all actions relating to the delivery of the defined services;
 - 2.4 **Commitment to continuous improvement** – Both parties will continually seek opportunities to improve the quality and performance of services delivered to Service Users, be responsive to changes in law and regulation and provide clear value for money;
 - 2.5 **Clarity and communication** – Both Parties will be clear on what is expected from them to ensure the optimum delivery of defined services, and ensure that all communication both internally and to third parties emanates from the same source and is clear, consistent and accurate.

PART C – CATEGORIES OF SERVICE

3. The following areas of the HB SNT Service shall constitute the Service, and will be provided by Harrow (in its role as partnership shared services provider).

It is accepted by both Parties that during the Agreement period there may be agreed variations to services in accordance with Clause 20.

Corporate and Governance

- Formal advice within the area of professional expertise of HB SNT Services to Brent Council Officers, Council, Cabinet, Committees and other decision making bodies of Harrow or Brent;
- Formal advice to Brent officers through agreed and secure protocols;

Statutory Services

Harrow shall provide the Service in accordance with all relevant primary and secondary Legislation including but not limited to the Education Act 1996, Education and Inspections Act 2006 and the Equality Act 2010.

PART D – SERVICE STANDARDS

4. Standards

In addition to provisions described in Clause 11 and incorporated in Appendix 4 Operational Matters of the Agreement, Harrow will ensure the standards used to deliver the services described earlier in this Appendix will include:

- 4.1 **Service User Focus** – the Service shall be delivered with a continual regard to the needs and satisfaction of the Service Users and their parents/guardians;
- 4.2 **Leadership** – the service will have clearly defined and professionally based leadership;
- 4.3 **People Involvement** – members, stakeholders and staff will be involved with the continual improvement and delivery of the service;
- 4.4 **Process Approach** – all service standards and processes will be defined, continually reviewed and communicated to staff;
- 4.5 **Systematic Service Delivery** – processes will be integrated, consistent and aligned to ensure a comprehensive and efficient delivery of services;
- 4.6 **Continual Improvement** – the service shall be subject to continual review and improvement;
- 4.7 **Clear Decision Making** – all key decisions will be timely, clearly communicated and made subject to a defined delegation of responsibility.

5. Quality

- 5.1 Harrow shall use all reasonable care, consideration and skill in providing the Service to the Service Users.
- 5.2 Where relevant and applicable quality standards for the services will align them with recognised and agreed 'best practice'.

PART E – SERVICE PERFORMANCE AND OPENING HOURS

- 6.1 Service data will be collected and reported to the Brent Client Manager/Liaison, on a monthly cycle, who will then use this as a part of monitoring the performance of the service and the achievement of pre-set targets and objectives.

- 6.2 Service data will be collected by the Harrow Head of Special Needs Transport and reported to the SNT Advisory Board on a quarterly cycle, who will then use this as a part of monitoring the performance of the service and the achievement of pre-set targets and objectives.
- 6.3 Where performance targets for KPI's have not been achieved and reported to the Client Manager/Liaison as a part of the agreed monthly reporting cycle, it is the responsibility of the Client/ Contract Manager to inform members of the SNT Advisory Board of the situation and agree remedial action.
- 6.4 Where performance targets have not been achieved, Harrow will provide Brent with a detailed report of the cause together, with a remediation plan that will be a basis for a path for agreed improvement, and a return to the achievement of pre-set targets and objectives. The SNT Advisory Board shall reach agreement and determine the timescales for any such remedial action plan that Harrow must adhere to.
- 6.4.1 Failure by Harrow to achieve and/or meet the pre-set performance targets and objectives as contained in any remedial action plan (referred to in section 6.4 above) within the timescales set by the SNT Advisory Board shall be treated as a Default in accordance with clause 14.
- 6.5 The SNT Advisory Board will determine the communication process to other stakeholders who need to be made aware of situations when performance has not been achieved and remediation plans are in place,
- 6.6 Unless otherwise agreed by the Parties Harrow shall ensure the HB SNT Service is operational between the hours of 6am and 5pm on Working Days and operates an out of hours service at all other times outside on normal operational hours (24 hours per day, seven days per week).
- 6.7 The performance indicators to be used are detailed as follows (for the avoidance of doubt, the Parties acknowledge these Performance Indicators may be reviewed, amended and agreed by the SNT Advisory Board from time to time):

	Performance Indicator	Performance Standard	Measurement Cycle
1	Punctuality	90% or higher of all journeys to be operated within the 5 mins late' window (disregarding delays which would be considered to be beyond our control)	Monthly
2	Reliability	95% or higher of journeys to be operated in entirety (excluding those beyond our control).	Monthly
3	Missed Pick Ups	Each child (or group of children scheduled to be picked up are picked up at the scheduled pick-up time.	Monthly

4 4	Late Pick Ups	Each child (or group of children scheduled to be picked up at specified pick up point) that is picked up more than 20 minutes after the scheduled pick-up time.	Monthly
5	Complaints	Respond in writing to complaint/s within 7 business days	Monthly/Quarterly
6	Enhanced DBS	Ensure 3 year renewal	Monthly/Quarterly
7	Accident/Incidents (Inc Riddor)	Record and respond within 7 business days	Monthly
8	Near Misses	Record and respond within 7 business days	Monthly/Quarterly
9	Training	Health and Safety Securing Wheelchair Passengers Vehicles and Equipment Basic First Aid Child Protection/Safeguarding Disability Awareness Driver – Midas	Monthly/Quarterly

		Passenger Assistants – PATS and <i>Epipen</i>	
10	Customer satisfaction	85% or higher of respondents rate overall performance as satisfactory, good or excellent.	6 Months

APPENDIX 2

CHARGING PROVISIONS

1 This Appendix sets out the details of the charging arrangements agreed by the Parties.

1.1 Definitions

In this Appendix the following definitions shall apply:

“Capital Costs” includes but is not limited to, vehicles equipment and which are funded under capital accounting and not revenue,

“Expenditure” means for any Financial Year the total of incurred costs against the Core Budget in relation to the HB SNT Service including Revenue Costs and Capital Costs.

“Revenue Costs” means the general running costs of the HB SNT Service and shall include but not be limited to: staff costs, training, premises running costs including utilities, business rates, equipment maintenance and repairs, cleaning materials, protective clothing, IT running costs, Licence costs together with a share of the management costs, .

“Service and Management Fee” means the fee payable by Brent to cover the expenditure of the service

“Quarter” means a period of three months beginning on 1st April, 1st July, 1st October and 1st January in any Financial Year.

1.2 Key Principles

1.2.1 The budgeted Expenditure for a Financial Year shall be agreed by both Parties and submitted to the SNT Advisory Board (SAB)¹. This will be updated on an annual basis for each relevant year.

1.2.2 The first year charges will be pro rated from the Commencement Date.

1.2.3 In consideration of Harrow providing the Service, Brent will pay a Service and Management Fee which represents the Expenditure associated with delivering the Brent aspect of the Service.

1.2.4 Harrow will deliver the Service and manage the costs of the HB SNT Service within the budgeted Expenditure and in accordance with the annual service plan agreed by the SAB. For the avoidance of doubt where during the provision of the Services Harrow determines that the budgeted Expenditure is likely to be significantly exceeded in any given Financial Year or where additional expenditure is incurred for any part of the Service exceeding £5,000 for whatever reason, Harrow shall first inform the Brent Senior Officer or Contract Manager as soon as possible to seek in principle approval and present a report to the next SNT Advisory Board for their review, comment and final agreement.

1.2.5 The Parties will act in good faith towards each other in implementing the charging arrangements in this Appendix and shall supply on request to the other Parties any information required to ascertain payments that become due.

1.2.6 Without prejudice paragraph 1.24 above, the Parties acknowledge that where the prior approval from Brent consenting to any increased Expenditure may be detrimental to the smooth effective

delivery of the Service, Harrow shall continue to provide all aspects of the Service and shall inform and notify the SNT Advisory Board of the reasons for incurring the increased Expenditure as soon as it is practicable.

2 Charging arrangements

- 2.1 In respect of financing the HB SNT Service, Harrow shall:
 - 2.1.1 keep a separate record of the income and expenditure it incurs for the purpose of this Agreement and provide a copy of such record to the Senior Officers of Brent in the form of a monitoring report on a quarterly basis within 30 days of the end of the relevant quarter including the final quarter in the form of an end of year outturn;
 - 2.1.2 calculate the net estimated Expenditure it incurs in connection with the provision of the HB SNT Service in accordance with the current recommendations of the Chartered Institute of Public Finance and Accountancy ("CIPFA"); and
 - 2.1.3 ensure that an annual year-end financial outturn report is also provided.
- 2.2 The net expenditure incurred in providing the service to Brent shall be paid by Brent.
- 2.3 Harrow shall invoice Brent respectively for payment on a quarterly basis.
- 2.4 Brent shall pay any undisputed Charges no later than thirty (30) days of receiving the invoice.
- 2.5 Harrow shall prepare an audited annual account of income and expenditure at the end of each financial year ("Annual Account") for submission to Brent as soon as possible and no later than 30 June following the end of each financial year for approval by SAB and Brent. Such approval shall be confirmed, or refuted, no later than four calendar weeks after submission.
- 2.6 If the Annual Account shows that the net Expenditure attributable to Brent calculated in accordance with clause 2.2 above has exceeded the sums paid by Brent as per clause 2.3 above, Brent shall pay to the Director of Finance of Harrow within 30 days after receipt of the Annual Account, that residual amount of unpaid net expenditure (such residual amount shall be apportioned between Harrow and Brent on the same basis set out in clause 2.1.3).
- 2.7 However, if the Annual Account shows that the sums paid by Brent as per clause 2.3 exceeds the net Expenditure attributable to Brent as estimated in accordance with clause 2.2 above, then Harrow shall within thirty (30) days of the Annual Account repay Brent such overpayments.
- 2.8 On an annual basis, Harrow shall provide Brent with a copy of its accounts relating to the HB SNT Service and the Staff or kept for the purposes of this Agreement that are subject to audit by a District Auditor.
- 2.9 Where Staff costs change during a Financial Year after the Expenditure for that year has been set due to nationally agreed pay rises for local government staff, both Parties agree to adjust the Expenditure by an equivalent amount pro rata to their contributions.
- 3.0 Brent will notify Harrow of any changes in service requests as soon as they arise. Harrow will inform Brent of the cost implications of any changes and will implement these changes on the agreement of the cost implications.

Annex 1

B. Charges relating to Vehicle Provision

1. Harrow will negotiate with its vehicle maintenance provider the provision and maintenance of vehicles to deliver the Brent aspect of the Service. Harrow shall recharge Brent the cost of providing and maintenance of vehicles.
2. Quarterly invoices to Brent and will be separately identified.

APPENDIX 3

GOVERNANCE

- 1 As detailed in Clause 3.7 of this Agreement, the Parties shall set up and maintain the following governance arrangements:
 - 1.1 SNT Advisory Board ("SAB")
 - 1.1.1 The SAB shall be a senior level forum for oversight, consultation, discussion, resolution of issues and recommendation back to the Parties on all aspects of the delivery of the HB SNT Service.
 - 1.1.2 The SAB as a group shall have no decision-making powers vested in it by any of the Parties. No issue shall be deemed to be decided by the Parties at the SAB without the agreement of all Senior Officers. Harrow will keep minutes of the SAB meetings and shall fully record all decisions taken by the members.
 - 1.2 The membership of the SAB shall be:
 - 1.2.1 the Senior Officers from Brent and Harrow;
 - 1.2.2 the Harrow Head of Special Needs Transport; and
 - 1.2.3 the Contract Manager/Liaison from Brent
 - 1.2.4 by invite , relevant commissioning officers from Harrow and Brent
 - 1.2.5 The Senior Officer from Harrow will be the Chair of the SAB.
 - 1.2.6 As agreed any other membership from time to time in accordance with Clause 3.7 of this Agreement. Meetings of the SAB shall only go ahead when all Senior Officers are present, however all members of the SAB will be entitled to send a deputy to make decisions on his or her behalf which shall be as valid as if made by the member. The Senior Officers will agree any additional attendees to be invited.
 - 1.3 The terms of reference of the SAB shall include but not be limited to responsibility to:
 - 1.3.1 Monitor the delivery of the service and in particular compliance with statute, regulation and guidelines;
 - 1.3.2 Receive, scrutinise and comment on regular reports on the performance of the HB SNT Service;
 - 1.3.3 Review the proposed Core Budget of the HB SNT Service for subsequent years;
 - 1.3.4 Ensure that service risks are managed and that mitigation actions are in place;
 - 1.3.5 Ensure and enforce the effective performance of the HB SNT Service in accordance with agreed service performance standards;

- 1.3.6 Consider the cost related Performance Indicators contained in Appendix 1 based on the first quarter actual financial data.
 - 1.3.7 Ensure that when there is failure to meet the Service Standards, an achievable plan for rectification is drawn up and approved by the SAB members, which is communicated to the appropriate parties and fully implemented;
 - 1.3.8 Without prejudice to section 6.4.1 in Appendix 1 above, where there are sufficient grounds and evidence that the performance of the HB SNT Service fails to deliver the Services in accordance with this Agreement or meet agreed levels and remediation actions have failed to improve the underperformance, SAB will agree a recommendation that the Senior Officer from Brent take the necessary steps to determine whether to apply Clause 15 of the Agreement;
 - 1.3.9 Receive, scrutinise and comment on all draft versions of the annual service plan for the HB SNT Service (the Service Manager would have the responsibility to prepare this);
 - 1.3.10 Receive, review and comment on any reports during each Financial Year where it is considered that a change in statutory requirements, a change in policy or a change in financial circumstances requires the service plan (and potentially the charges) to be revisited and to recommend appropriate action to Harrow and Brent;
 - 1.3.11 Receive, review and comment on reports on any proposed policy changes in connection with the delivery of the Service and to recommend any revised policy to Harrow and Brent;
 - 1.3.12 Consider, scrutinise and comment on any reports about issues, concerns or complaints relating to the delivery of the service and to seek to resolve these;
 - 1.3.13 Stipulate any necessary action to Harrow or to Brent to resolve any concerns about the delivery or quality of the service which may include but not be limited to recommending changes in practice or operational matters, further training, mentoring, disciplinary action or in severe cases, replacement redeployment or removal of staff or replacement of equipment or IT systems as appropriate;
 - 1.3.14 Review of Service User satisfaction surveys and ensure that the service implements a response to their findings and to consider and make recommendations as to the form, frequency and method of reporting of Service User satisfaction surveys for the remainder of the Term;
 - 1.3.15 Take part in any future recruitment process and approve the appointment of any future Service Manager which the Parties agree shall be advertised internally at Harrow and Brent before externally advertised; and
 - 1.3.16 To consider and agree the transfer of assets from Harrow to Brent (if any) utilised for the provision of the HB SNT Service and to consider any requirements for Harrow to maintain and replace any such assets during the Term of the Agreement or for such assets or replaced assets to be transferred back to Brent on termination or expiry of the Agreement.
- 1.4 Harrow shall pay due regard to any comments of the SAB and ensure any adverse issues are fully addressed or any stipulated actions are implemented within the timescales to be agreed between the Parties.
 - 1.5 The SAB will meet quarterly or more frequently as agreed.

- 1.6 If the SAB cannot agree an issue on which it is required to give a decision on, then such issue may be referred to Dispute Resolution under clause 19 of the Agreement.

APPENDIX 4

OPERATIONAL MATTERS

The operational matters relevant to this Agreement incorporates, inter alia;

- All vehicles used in the delivery of the service will operate from Harrow's Old Driving Centre until such time as they operate from the new depot at Forward Drive
- HB SNT staff will operate at Harrow's Central Depot
- Harrow Head of Special Needs Transport will manage operational requirements including scheduling of routes and use of vehicles.

APPENDIX 5

EXIT ARRANGEMENTS

1 **Overriding objectives**

1.1 Within 3 (three) months of the date of this Agreement the Parties shall prepare a draft exit plan and shall have two overriding objectives in planning and implementing such exit plan, these are to ensure:

1.1.1 a smooth transition so that there is no interruption in the provision of the highest quality Services to Service Users, sufficient and comprehensive handover arrangements and business continuity for the Parties.

1.1.2 that Service Users and the Staff affected by the exit are fairly treated, receive adequate communication, are involved in the process and are not adversely affected.

2 **Procedure on termination or expiry**

2.1 On receipt of notice that the Agreement is to be terminated (whether in whole or in part) in accordance with the terms of the Agreement, the Parties shall implement the exit plan which shall contain details as outlined below:

2.1.1 Governance structure for the transition phase;

2.1.2 Subject to the provisions of this Agreement, identification of any equipment, files, file notes, correspondence, records, documents and other papers used by, produced by or stored by Harrow to deliver the Services (which may include equipment not solely used for the provision of the Services);

2.1.3 Transfer of any data (whether in hard copy or electronic);

2.1.4 NOT USED;

2.1.5 The roles of each Party during the period leading up to Termination.

3 **Review of Exit Plan**

3.1 The exit plan shall be reviewed by the Parties annually throughout the Term of the Agreement or at such other times as may be reasonably requested by a Party.

3.2 Such reviews shall examine the procedures and methodologies set out in the exit plan and assess their suitability in light of any changes to the Services that have occurred since the later of the original approval of the exit plan or the most recent review.

4 **Handover Period**

The Parties shall take all such reasonable steps as shall be necessary for the orderly hand-over of the Services such that the Services can be carried on with the minimum of interruption and inconvenience to Service Users and either Party which shall include but not be limited to [preparation of detailed handover notes summarising the status of each case or matter including relevant time limits and outstanding actions].

5 **Employment issues during exit period**

5.1 The Parties will during the exit period establish an exit group comprising staff of each of the Parties to manage transition of the Services, and to implement the provisions of the exit plan (the "Exit Group"). The Parties will make available sufficient resources to meet the requirements of the Exit Group. The Exit Group will manage all the activities needed for the transfer of the Returning Services from Harrow to Brent or any Future Provider so that the transition is carried out as seamlessly as possible.

5.2 On expiry or earlier termination of this Agreement, as part of the exit plan the Parties agree that it is their intention that TUPE shall apply in respect of the provision thereafter of any service equivalent to a Service to Service Users by Brent or any Future Provider but the position shall be determined in accordance with the Law during the exit period and this paragraph 5 is without prejudice to such determination.

5.3 NOT USED

5.4 During the exit period, to the extent that any Potential Returning Employees resign or their employment is terminated by Harrow, the Exit Group will agree that in the event that this creates any vacancies within the workforce delivering the Returning Services during the exit period, such vacancy shall to the extent possible in light of service delivery requirements in relation to the Returning Services either:

- i not be filled by Harrow during the exit period; or
- ii be filled by the engagement by Harrow of agency staff or staff engaged on fixed term contracts of employment; or
- iii Brent or any third party shall instead recruit a suitable individual in relation to that vacancy and then second such individual to Harrow for the remainder of the exit period to deliver the Returning Services with such secondment to end at the end of the exit period; or
- iv where Harrow recruits any suitable individuals in relation to that vacancy, such recruitment shall be on the basis that the individual will only be engaged in the delivery of the Returning Services and it shall be made clear as part of such recruitment that the individual will be subject to a Relevant Transfer to Brent or any third party at the end of the exit period.

5.5 At the start of the exit period, to the extent possible under TUPE and/or the applicable Law at the relevant time, the Exit Group shall use all reasonable endeavours to consult upon and agree a reorganisation process with the Potential Returning Employees and/or their appointed

employee representatives or trade unions, to confirm who will be the subject of a Relevant Transfer to Brent or any Future Provider at the end of the exit period;

- 5.6 The Exit Group shall use all reasonable endeavours to agree and implement any other steps, measures, processes and/or procedures in order to minimise the potential for any Potential Returning Employees not being the subject of a Relevant Transfer to Brent or any Future Provider at the end of the exit period.
- 5.7 Where, despite the requirements of paragraphs 5.4 – 5.6 having been complied with, there remain any Potential Returning Employees who may not be the subject of a Relevant Transfer, the provisions of paragraphs 5.8 to 5.11 below shall apply.
- 5.8 If TUPE does not apply on the expiry or termination of this Agreement to any Potential Returning Employees, Brent shall or shall procure that each Future Provider shall as far as possible offer employment to the Potential Returning Employees employed by Harrow in the provision of the Returning Services immediately before the end of the exit period.
- 5.9 If an offer of employment is made in accordance with paragraph 5.8, the employment shall be on the same terms and conditions (except for entitlement to membership of an occupational pension scheme) as applied immediately before the expiry or earlier termination of this Agreement including full continuity of employment.
- 5.10 Where any such offer as referred to in paragraph 5.8 is accepted, Harrow shall indemnify and keep indemnified in full Brent and/or any Future Provider on the same terms and conditions as those set out in paragraph 5.17 as if there had been a Relevant Transfer in respect of each and every employee who has accepted any such offer and for the purposes of paragraphs 5.14 - 5.20 each and every such employee shall be treated as if they were a Returning Employee.
- 5.11 Where Brent or any Future Provider does not make any such offer or any such offer as referred to in paragraph 5.8 is not accepted and TUPE does not apply, the provision of paragraph 5.12 below shall apply regarding any redundancy or reorganisation costs incurred by Harrow.

Redundancy and Reorganisation Costs

- 5.12 Where Brent or any Future Provider does not make any such offer or any such offer as referred to in paragraph 5.8 is not accepted and TUPE does not apply to any Potential Returning Employee, then:
- (a) Harrow shall be entitled to dismiss any or all of the Potential Returning Employees by reason of redundancy or for some other substantial reason provided that Harrow shall carry out in the required manner any obligation to consult with the Potential Returning Employees or any of them, or their respective representatives, and shall use all reasonable endeavours to mitigate the amount of any costs payable in respect of the said employees or their dismissal; and
 - (b) Brent shall indemnify Harrow against all Losses and/or Employment Claims relating to the dismissals referred to in paragraph 5.12(a) above reasonably incurred by Harrow (including any additional costs incurred in relation to the Local Government Pension Scheme). Losses and Employment Claims shall

be apportioned between Brent in proportion to the population figure for their respective areas according to the most recent population estimates issued by the Registrar General's estimate (CIPFA statistics).

- 5.13 Without prejudice to the provisions of clauses 5.1 - 5.12 above, and in any event,
- 5.13.1 during the twelve (12) months prior to the expiry of the Agreement or after Brent has given notice to terminate the Agreement and within twenty one (21) Days of being requested to do so, Harrow shall fully and accurately disclose to Brent any and all information in relation to all persons engaged in providing the Service including:
- (a) a list of employees employed by Harrow or any sub-contractor in the provision of the Services;
 - (b) a list of agency workers, agents and independent contractors engaged by Harrow or any sub-contractor in the provision of the Services;
 - (c) the total payroll bill (i.e. total taxable pay and allowances including employer's contributions to pension schemes) of those persons; and
 - (d) the terms and conditions of employment or other contract with such persons
- and shall notify Brent as soon as reasonably practicable of any variation in the information provided under this clause 5.13 and shall provide Brent with the revised and accurate information. Harrow warrant that such information is complete and accurate as far as it is aware or should reasonably be aware as at the date it is provided.
- 5.13.2 during the twelve (12) months prior to expiry of the Agreement or where notice to terminate this Agreement for whatever reason has been given, save where it is as a result of a decision by the Exit Group, Harrow shall not and shall procure that any sub-contractor shall not without the prior written consent of Brent (such consent not to be unreasonably withheld or delayed) unless in the ordinary course of business:
- (a) vary or purport or promise to vary the terms and conditions of employment of any employee employed in connection with the Services;
 - (b) materially increase or decrease the number of employees employed in connection with the Services; or
 - (c) assign or re-deploy any employee employed in connection with the Services to other duties unconnected with the Services or assign or re-deploy any employee employed to carry out duties unconnected with the Services to the duties connected with the Services.
- 5.14 Brent shall be responsible for all remuneration, benefits, entitlements and outgoings in respect of the Returning Employees, including without limitation, all wages, holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions, pension contributions and otherwise, up to the date of any Relevant Transfer in respect of such Returning Employees on expiry or termination of this Agreement.

- 5.15 Brent shall be responsible for all remuneration, benefits, entitlements and outgoings in respect of those Returning Employees returning to Brent, including without limitation, all wages, holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions, pension contributions and otherwise, for the period on or after the date of any Relevant Transfer in respect of such Returning Employees on expiry or termination of this Agreement.
- 5.16 Harrow shall indemnify and keep indemnified Brent and any Future Provider against any Losses caused to Brent or any Future Provider by any inaccuracy or incompleteness in such information as is provided under 5.13 above or by any changes in the information which have not been communicated to Brent (whether relating to the number, identity or details of the Returning Employees or otherwise) which occur prior to the Relevant Transfer Date.
- 5.17 Harrow shall indemnify Brent and any Future Provider in full from and against all Losses and/or Employment Claims which Brent and/or any Future Provider incurs arising from:
- (a) any act or omission of Harrow or any sub-contractor in relation to the Returning Employees,
 - (b) subject to the provisions of paragraph 5.12 above, any claim by an employee or former employee of Brent or any sub-contractor who is not a Returning Employee, and
 - (c) any representations made by Harrow or any sub-contractor in relation to employment by Brent and/or any Future Provider, provided that such Losses and/or Employment Claims are not payable as a result of any act or omission by Brent and/or any Future Provider.
- 5.18 Brent shall indemnify Harrow against all Losses and/or Employment Claims incurred by Harrow in connection with or as a result of any claim or demand
- (a) by an employee of Brent who would, had it not been for the termination of that employee's employment pursuant to the provisions of TUPE Regulation 4(9) and/or 4(11), have been an employee with a right to transfer to Brent under TUPE,
 - (b) arising out of Brent's failure to comply with its obligations under TUPE Regulation 13(4).
- 5.19 Harrow shall indemnify Brent against all Losses and/or Employment Claims incurred by Brent in connection with or as a result of any claim or demand
- (a) by an employee of Brent who would, had it not been for the termination of that employee's employment pursuant to the provisions of TUPE Regulation 4(9) and/or 4(11), have been an employee with a right to transfer to Harrow under TUPE,
 - (b) arising out of Harrow's failure to comply with its obligations under TUPE Regulation 13(4).
- 5.20 Brent shall indemnify Harrow in full from and against all Losses and/or Employment Claims which Brent incurs arising from any act or omission of Brent and/or any Brent Future Provider in relation to the Returning Employees. Brent shall indemnify Harrow in full and against all

Losses and/or Employment Claims which Harrow incurs arising from any act or omission of Harrow and/or any Harrow Future Provider in relation to the Returning Employees.

APPENDIX 6
CABINET DECISIONS

APPENDIX 7

NOT USED

APPENDIX 8

POLICIES

In accordance with Clause 12.6 the HB SNT Service will comply with the following Brent Policies (as amended and updated from time to time) in the delivery of the Service.

- Health and Safety
- DBS checks
- Data Protection
- Freedom of Information
- Equalities
- Licence Checks

APPENDIX 9

RISK MANAGEMENT

1. This Appendix sets out the risk management procedure, which the HB SNT Service should maintain in the delivery of the HB SNT Service. Brent acknowledges that Harrow, as a Local Authority in England and Wales, already operates a compliant and comprehensive corporate and operational Risk Management process.
- 2 **Risk registers, review and risk management**
 - 2.1 The SAB will consider all matters of risk, both external and internal, and agree and implement policies and procedures to deal with them where necessary, which the Services Manager will be responsible for implementing.
 - 2.2 The Services Manager shall ensure that there is a fully managed risk register that details and identifies the position, assessment and mitigation of all risks relating to his/her delivery of the HB SNT Service.
 - 2.3 A full assessment of risks relating to the service should be included in the annual service plan.
 - 2.4 The Services Manager and Contract Manager shall review monthly, the service risk register to ensure that mitigation actions are progressing to plan.
 - 2.5 A report summarising the key risks managed through the risk register will also be made available to SAB at their quarterly meetings, or sooner via an interim report, if agreed with the Contract Manager.
 - 2.6 Harrow shall at all times manage the Service so as to minimise any third party claims for compensation, damages or otherwise or any legal liability to Service Users or third parties arising in connection with or incidental to the carrying out of the Service through the negligence, defaults, acts or omissions of the HB SNT Service Staff. Harrow shall immediately notify Brent of any liability or claim of which it becomes aware for which Brent may be liable.
- 3 **Risk audit**
 - 3.1 As detailed in Clause 27 of the Agreement, the Services Manager (subject to request and reasonable notice) shall comply with the requirements of Brent's annual internal audit programme.
 - 3.2 Where it is agreed that that where Harrow's internal audit undertake a review on behalf of Brent, the Service Manager (subject to request and reasonable notice) will provide the service risk register to Brent's internal audit team.