



Appendix 1

Dated

2016

**THE MAYOR AND BURGESSES OF THE
LONDON BOROUGH OF BRENT**

And

**THE MAYOR AND BURGESSES OF THE
LONDON BOROUGH OF LEWISHAM**

**Collaboration Agreement
in relation to the provision of a
Shared ICT Service**

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BETWEEN

AND

together referred to as “the Councils”.

BACKGROUND

(A) The Councils are local authorities for the purposes of the Local Government Act 1972 and best value authorities for the purposes of the Local Government Act 1999. The creation of the Shared ICT Service is to be established by the Councils in exercise of their powers under section 101, 111, 112, 113 and 136 of the Local Government Act 1972, section 3 of the Local Government Act 1999, sections 1 – 8 of the Localism Act 2011 and the Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2012 and all other enabling powers.

- (B) The Councils have agreed to establish and to participate in a Shared ICT Service (“the Shared ICT Service”) to facilitate the joint delivery of their Information, Communications and Technology (ICT) services with a view to their more economical, efficient and effective discharge. The Shared ICT Service activities are more particularly detailed in this Deed.
- (C) The Shared ICT Service will be hosted by Brent and, in exercise of its powers under section 101(1) (b) and 101(5) of the Local Government Act 1972 and the Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2012 , Lewisham delegates the delivery of its ICT service to Brent, which Brent has agreed to undertake the delegated Agreed Service on the basis set out herein. The Councils wish to enter into this Deed to establish a relationship between them to ensure the collaborative discharge of their respective ICT Services.
- (D) The Shared ICT Service is considered by the Councils to be an inter authority cooperation and in particular an in-house provision to each of them with the objective of providing ICT services to the Councils to assist them in meeting their public service duties, notwithstanding that the Shared ICT Service is hosted by Brent, for reasons including, but not limited to:
- (i) Reserved Decisions in relation to the Shared ICT Service are reserved to each of the Councils;
 - (ii) the Shared ICT Service is required by the Councils to carry out the tasks as set out in this Deed and is limited to the business and objectives as set out by the Councils;
 - (iii) the Shared ICT Service is considered to be, and acts as internal, dependent and subordinate to both Councils, and its primary

relationships with them are governed by way of this Deed, which provides a mutuality of obligations and recovery of costs, rather than by way of contract for services;

- (iv) the Shared ICT Service funding is derived from a financial methodology set out and controlled by each Council as detailed in clause 12 of this Deed. It is not intended to be a commercial operation nor does it intend to materially transfer risk from one Council to another other than where it is right and proper to do so, any contributions made by either Council are intended to represent a fair distribution of the costs of running the Shared ICT Service rather than to provide any financial gain;
 - (v) the Shared ICT Service has been established to operate as an instrument and a technical service of the Councils (including any bodies associated with the Councils or under the control of, or connected or in partnership with the Councils) and the essential part of its activities are to be carried out with them;
 - (vi) the Councils owe each other a duty to be just and true towards one another and act in good faith as detailed in clause 2.6 of this Deed.
- (E) This Deed is intended to regulate the provision of the Agreed Services, the business and activity of the Shared ICT Service and the relationship between the Councils.

IT IS AGREED AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

In this Deed:



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

DEFINITIONS

Agreed Service

means those Services set out in Schedule 2 which are to be delivered by the Shared ICT Service in the manner described in this Deed and such further services as may be agreed with the Councils;

Appointed Director

Means a director appointed to the Shared ICT Service Management Board to act as a Council's representative in all matters detailed within this Deed;

Assets

means all and any assets used in the delivery of the Agreed Services including all items of information technology (including Software), Intellectual Property owned or developed during the continuance of the Shared ICT Service and all other equipment supplied by the Councils for use in the delivery of the Agreed Services;

Asset Register

means a register of all the Assets used by the Councils in the delivery of the Shared ICT Service;

Auditors

means a person qualified to audit accounts;

Business Day

means any day other than a Saturday or Sunday on which banks are open for domestic business in the City of London;



Change in Law

means the coming into effect after the date of this Deed of:

(a) Law other than any Law which on the Commencement Date has been published:

(i) in a bill;

(ii) in a draft statutory instrument; or

(iii) as a proposal in the Official Journal of the European Union;

(b) any guidance; or

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

Commencement Date

means 1st April 2016;

Commercially

Sensitive Information

means any information in respect of which the Council agree that disclosure would or would be likely to prejudice the commercial interests of any person;

Conflicts Protocol

means the conflicts protocol set out in Schedule 3 of this Deed;

Consumables

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

Contracts

means any contracts entered into by the Host Council either prior to commencement of the Shared ICT Service or assigned to it by Lewisham



which are for the benefit of the Shared ICT Service;

Councils

means the London Borough of Brent and the London Borough of Lewisham including any other additional Council approved to join the Shared ICT Service;

DPA

means Data Protection Act 1998;

Exempt Information

means any information or class of information relating to this Deed which may fall within an exemption under FOI Legislation;

Finance Officer to the Shared ICT Service

means such appropriately qualified financial officer of the Host Council;

Financial Principles

means those financial principles which are agreed between the Councils as a guide to working together to agree the Shared ICT Service Costs, although for the avoidance of doubt to the extent of any inconsistency between Financial Principles and this Deed, the terms of this Deed will prevail;

Financial Year

means 1st April to 31st March;

Fixed Costs

means

means the Freedom of Information Act 2000 and subordinate legislation made under this and the Environmental Information Regulations 2004;

Force Majeure Event

the occurrence of (a) war, civil war, armed conflict or terrorism or (b) pressure waves caused by devices travelling at supersonic speeds which directly causes any party (“the Affected Council”) to be unable to comply with all or a material part of its obligations under this Deed or (c) nuclear, chemical or biological contamination unless the source or cause of the contamination is the result of actions of the Affected Council.

Head of Paid Service

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

Host Council

means the London Borough of Brent;

Income

means

Information Request

means a request for information under the FOI Legislation;

Intellectual

Property Rights

means rights howsoever arising and in whatever media including (without limitation) rights in patents, trademarks, service marks, design rights



(whether registrable or otherwise), applications for any of the foregoing, copyright (including rights in software), logos, domain names, computer software and hardware programs and data, and all or any other intellectual property rights relating to the provision of the Shared ICT Service whether existing now or created in the future and whether or not registered or capable of registration, database rights, know-how, trade secrets, confidential business information, trade or business names and any similar analogous rights to any of the above, whether arising or granted under the Laws of England or of any other jurisdiction;

Joint Committee

means a Joint Committee established by the Councils to oversee the effective delivery of the Shared ICT Service comprising two (2) elected members of each Council as set out in accordance with clause 4;

Joint Head of ICT

means the officer appointed with responsibility for leading and managing the Shared ICT Service on behalf of the Councils;

Law

means any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1979, exercise of the Royal Prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, bye-law, regulatory policy,



guidance or industry code, judgement of a relevant court of law, or directives or requirements of any regulatory body of which the Councils are bound to comply

Performance Management Framework the set of strategies, plans, policies, indicators and performance measures that are used to monitor how the Shared ICT Service is performing

Procurement Protocol means the procurement protocol set out in Schedule 5 of this Deed;

Reserved Decision(s) any decision or aspect of the Shared ICT Service activities which has been reserved to either of the Councils and therefore does not comprise part of the Agreed Services described in Schedule 2. All such Reserved Decisions are as follows:

- a) admit any body as a new member of the Shared ICT Service;
- b) adopt the Annual Budget and make any changes to it;
- c) agree withdrawal from the Shared ICT Service pursuant to clause 14.1;
- d) alter any provisions of the Deed;
- e) licence, assign or otherwise dispose of Intellectual Property Rights owned jointly by the Councils pursuant to the Shared ICT Services arrangements;
- f) award of any and all contracts with a value of £500,000 or above.



Required Insurances

means the level of insurance to be maintained by the Councils in accordance with clause 10 being:-

- public liability insurance with a limit of indemnity of not less than £10,000,000 in relation to any one claim or series of claims;
- employer's liability insurance with a limit of indemnity of not less than £10,000,000 in relation to any one claim or series of claims;
- professional indemnity insurance with a limit of indemnity of not less than £5,000,000 in relation to any one claim or series of claims;
- Officials' Indemnity with a cap on liability of no less than £5 million in relation to any one claim or series of claims.
- Insurance to cover the replacement of Assets, infrastructure and reinstatement of data

Service Plan

means the annual business plan and of the Shared ICT Service agreed and approved pursuant to clause 5

Shared ICT Service

means the shared ICT service established jointly by the Councils pursuant to clause 2 and hosted by the Host Council in accordance with the provisions of this Deed

Shared ICT Service

means, unless agreed by the Shared ICT Service



Accounting Policies

Management Board otherwise, the accounting policies of the Host Council

**Shared ICT Service
Management Board**

means the board overseeing the activities of the Shared ICT Service and to whom the Joint Head of ICT reports

Shared ICT Service Costs

means the costs of the Shared ICT Service as more particularly defined clause 12.1 which will be met by the Councils proportionately in accordance with clause 12

**Shared ICT Service
Policies and Procedures**

any policies and procedures which the Councils agree should apply to the Shared ICT Service Staff or some of them

Shared ICT Service Staff

means staff employed by the Host Council in the Shared ICT Service populated by the Shared ICT Service Staff

Software

any and all computer programs in both source and object code form, including all modules, routines and sub-routines of such programs and all source and other preparatory materials relating to them, including user requirements, functional specifications and programming specifications, ideas, principles, programming languages, algorithms, flow changes, logic, logic diagrams, orthographic representations, file structures, coding sheets, coding and any manuals or other



documentation relating to them and computer generated works

Support Services

the service provided by each Council which may be required by the Shared ICT Service or more particularly as the case may be the Host Council, in the delivery of the Agreed Services as defined in clause 7;

Terms of Reference

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

Third Party Employees

means employees of Third Party Employers whose contracts of employment transfer with effect from the Commencement Date (Effective Date) to the Host Council by virtue of the application of TUPE. [An indicative list of the Third Party Employees, as at the date of execution of the Agreement, is attached at Schedule 1]

Third Party Employers

means a supplier engaged by Brent or Lewisham to provide some of the Services to the respective Council(s) before the Commencement Date (the "Effective Date") and whose employees will transfer by virtue of TUPE to the Host Council on the Commencement Date.

TUPE

the Transfer of Undertakings Protection of Employment Regulations 2006 as amended by the Collective Redundancies and Transfer of

Undertakings (Protection of Employment)
(Amendment) Regulations 2014

Variable Costs

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

- 1.2. References to any statute or statutory provision governmental policy or guidance (including any EU instrument) shall, unless the context otherwise requires, be construed as including references to any earlier statute or the corresponding provisions of any earlier statute, whether repealed or not, directly or indirectly amended, consolidated, extended or replaced by such statute or provision, or re-enacted in any such statute or provision, and to any subsequent statute or the corresponding provisions of any subsequent statute directly or indirectly amending, consolidating, extending, replacing or re-enacting the same, and will include any orders, regulations, instruments or other subordinate legislation made under the relevant statute or statutory provision.
- 1.3. The headings and sub-headings are inserted for convenience only and shall not affect the construction of this Deed.
- 1.4. Schedules shall form part of this Deed.
- 1.5. Words importing one gender include all other genders and words importing the singular include the plural and vice versa.

- 1.6. A reference in this Deed to any clause, paragraph or Schedule is, except where it is expressly stated to the contrary, a reference to a clause or paragraph of or Schedule to this Deed.
- 1.7. Any reference to this Deed, or any part of it, or to any other document unless otherwise specified shall include any variation, amendment or supplements to such document expressly permitted by this Deed or otherwise agreed in writing between the relevant parties.
- 1.8. No rule of construction shall apply to the disadvantage of a party because that party was responsible for the preparation of this Deed or any part of it.

2. ESTBALISHMENT OF THE SHARED SERVICE

- 2.1 The Councils developed and agreed their strategic vision for the establishment of the Shared ICT Service and identified the business benefits to be achieved as set out in the reports to Cabinet approved by Brent Members at the 1st June and 16th November 2015 Cabinet meetings and by Lewisham at the Mayor and Cabinet Committee on 11th November 2015
- 2.2 The Councils agree that the following key objectives and overriding principles underpin their collaborative working and the terms of this Deed as follows:
- 2.1.1 Mutual cooperation;
 - 2.1.2 Accountability;
 - 2.1.3 Transparency;
 - 2.1.4 Mutual benefits; and
 - 2.1.5 Shared risks.

- 2.3 Each of the Councils has the power to provide and maintain an in house internal ICT Service by virtue of section 111 of the Local Government Act 1972.
- 2.4 In exercise of their powers as referred to in the recitals, the Councils have entered into this Deed and wish to establish the Shared ICT Service and in order to make provision for delivery of an ICT service to be hosted by the Host Council and to be provided to the Councils.
- 2.5 In furtherance of the powers to provide ICT services and establish the Shared ICT Service set out in clauses 2.1 and 2.4 the Councils believe that the arrangements contemplated by this Deed will allow the Councils to deliver their wider services more effectively and accordingly they agree to enter into this Deed and establish the Shared ICT Service to be known as the London Borough of Brent and the London Borough of Lewisham Shared ICT Service, or such other name as the Shared ICT Service Management Board determines (and within this Deed also referred to as the “Shared ICT Service”) with effect from the Commencement Date.
- 2.6 Each Council covenants with the other Council(s) that so long as it remains a member of the Shared ICT Service it will:
- 2.6.1 be just and true to the other Council(s) and act in good faith;
- 2.6.2 as soon as practicable report to the Shared ICT Service Management Board matters of which it becomes aware which may affect the Shared ICT Service or the effective delivery of the Services;
- 2.6.3 not allow the Shared ICT Service to do any matter which is a Reserved Decision without the approval of each Council as required by clause 16;

- 2.6.4 give all reasonable assistance to the Host Council to allow the best possible service to be delivered to client departments at the Councils;
- 2.6.5 ensure that the Shared ICT Service is engaged appropriately and in a timely manner to allow for its cost effective use;
- 2.6.6 whilst always respecting the need to maintain the obligations of confidentiality and the need to avoid conflicts of interest, facilitate best practice and the sharing of information and knowledge;
- 2.6.7 seek to maximise efficiencies and aiming to achieve high quality Shared ICT Service and to maximise the use of all resources available and achieve improved efficiency;
- 2.6.8 The Councils expect that they will commission the Shared ICT Service for all services that the Shared ICT Service can provide until a notice for termination is given under clause 15, save in respect of the following:
- a) situations of conflict (and in such event the Joint Head of ICT shall source such advice in accordance with the Conflict Protocol),
 - b) where there is a compelling business case which is agreed by the Shared ICT Service Management Board,
 - c) a Change in Law,
 - d) as agreed by a Reserved Decision,.

3. DURATION OF DEED

- 3.1 This Deed shall come into force on the Commencement Date and shall continue from year to year until notice is given in accordance with clause 16 or otherwise terminated in accordance with the provisions of this Deed.

4. SHARED ICT SERVICE GOVERNANCE

4.1 Shared ICT Service Joint Committee

4.1.1 Subject always to any limitations set out in this Deed and the Terms of Reference underpinning the governance of the Joint Committee, including any matter being a Reserved Decision, the Shared ICT Service Joint Committee shall:

- (a) Oversee the implantation of the Shared ICT Service through:
 - (ii) Annually reviewing reports, including performance monitoring reports, from the Shared ICT Service Management board
 - (iii) setting the key strategic direction & associated activities
- (b) As stakeholders, provide feedback regarding current arrangements for ICT services & areas for improvement
- (c) Acting as final arbiter where there is a conflict in either direction or priority of each Council.

4.1.2 Membership of the Joint Committee is 2 elected Members from each Council.

4.1.3 Meetings will alternate between the London Borough of Brent and the London Borough of Lewisham. The initial meeting of the Joint Committee shall take place within one (1) month of the Commencement Date and thereafter, they shall occur every 4 months.

4.1.4 The remit of the Joint Committee is set out in detail in Schedule 6 to this Deed.

4.2 Shared ICT Service Management Board

4.2.1 Subject always to any limitations set out in this Deed, including any matter being a Reserved Decision, the Shared ICT Service Management Board shall:

- (a) Be accountable to the Joint Committee for decisions taken in the provision of the Shared ICT Service and shall cause to be prepared

monitoring report(s) to coincide with each periodic meeting of the Joint Committee as referred to in clause 4.1.3;

- (b) be responsible for implementing the strategic decisions made by the Joint Member Committee, oversight and day-to-day monitoring of the Shared ICT Service and in particular reviewing and agreeing the Performance Management Framework;
- (c) review and monitor a risk register for all aspects of the Shared ICT Service operations;
- (d) be responsible for any matter relating to the Shared ICT Service not specifically reserved to the Joint Committee, any Council or delegated to the Joint Head of ICT;
- (e) resolve any conflict reported to them by the Joint Head of ICT pursuant to clause 8.1.9.
- (f) review the performance of the Joint Head of ICT and make recommendations to the Host Council in relation to that performance. For the avoidance of doubt, it shall be at the sole discretion of the Host Council whether to take any disciplinary action against the Joint Head of ICT and in what form.

4.2.2 The Councils shall each appoint a Director to the Shared ICT Service Management Board to act as the Council's representative in all matters detailed within this Deed.

4.2.3 Quorum for meetings of the Shared ICT Service Management Board will be at least one attendee from each Council, in addition to any attendees from the Shared ICT Service.

4.2.4 The Joint Head of ICT will also be required to attend meetings although will not have a vote.

4.2.5 Regardless of the number of officers in attendance the Councils will have only one vote each on any matter, if agreement cannot be reached on any matter it may be referred to the internal dispute resolution provisions of clause 17.

4.2.6 The Chair of the Shared ICT Service Management Board shall be rotated between the Councils and does not hold a second or casting vote.

4.2.7 The venue for Shared ICT Service Management Board meetings shall be rotated between Councils or as otherwise agreed.

4.2.8 Unless otherwise agreed by the Councils the Shared ICT Service Management Board meetings will be held every month.

4.2.9 The Joint Head of ICT shall ensure that members of the Shared ICT Service Management Board are sent papers for meetings (including but not limited to an agenda and details of any specific resolutions to be put to the meeting) not less than two Business Days before the date of such meeting.

4.2.10 All decisions of the Management Board shall be recorded in writing by the Joint Head of ICT and a copy of the record provided to all members of the Management Board.

5. SERVICE PLAN AND PERFORMANCE MANAGEMENT FRAMEWORK

5.1 For each Financial Year, the Joint Head of ICT will in accordance with the Council's corporate performance and budgeting cycles cause to be prepared

and delivered to the Shared ICT Service Management Board a draft Service Plan for that Financial Year and will obtain the Shared ICT Service Management Board's unanimous approval of the same.

- 5.2 For each Financial Year, the Joint Head of ICT shall prepare a draft Performance Management Framework for that Financial Year and will obtain the Shared ICT Service Management Board's unanimous approval of the same.
- 5.3 Each Council shall not unreasonably withhold or delay the agreement to the preparation of either the draft Service Plan and/or draft Performance Management Framework.
- 5.4 For the avoidance of doubt failure by the Shared ICT Management Board to reach a unanimous decision shall be determined in accordance with clause 16.

6. ROLE OF THE HOST COUNCIL

6.1 General

- 6.1.1 The Shared ICT Service will, subject to the provisions of this Deed, be led and hosted by the Host Council and it will conduct itself in the provision of the Shared ICT Service in the manner set out in this Clause 6. Accordingly, where the Shared ICT Service is obliged to act pursuant to this Deed it will be the Host Council with the support of the other Council(s) who shall endeavour to ensure that it is so provided.
- 6.1.2 The Councils agree that as a matter of general principle the Host Council shall be in materially no worse a position than each and every other Council who is a member of the Shared ICT Service solely as a result of it consenting to act as Host Council.

- 6.1.3 All costs incurred by the Host Council in the supply of the Shared ICT Service shall be met by the Councils in the manner set out in clause 12.

6.2 Employment of Staff

- 6.2.1 The provisions of Schedule 1 (TUPE) shall apply in relation to the transfer and employment of staff to and by the Host Council and each Council shall comply with their respective obligations therein.
- 6.2.2 The Host Council will be the employer of all the Shared ICT Service Staff and as from the Commencement Date.
- 6.2.3 Where a restructure of the Shared ICT Service Staff is required the Host Council shall undertake such restructure as soon as possible after the Commencement Date and in any event within 3 months of the Commencement Date. The new Shared ICT Service Staff structure must be agreed by the Shared ICT Services Management Board prior to the restructure commencing. All costs incurred by the Host Council as a result of the restructure of the Shared ICT Service Staff shall be met by the Councils in the manner set out in clause 12.
- 6.2.4 Any employees who transfer from a Council or other Third Party Provider other than the Host Council shall be employed on such terms and conditions as they were employed upon immediately prior to the date they transfer and all other Shared ICT Service Staff shall be employed on such terms and conditions as the Host Council would ordinarily employ equivalent staff subject to the requirements of any legislation in force from time to time.
- 6.2.5 Subject always to any legal constraints, further Shared ICT Service Policies and Procedures for all Shared ICT Service Staff employed in

the Shared ICT Service may be agreed by the Shared ICT Service Management Board.

6.2.6 Where any Shared ICT Service Staff member leaves any post or a new post is created, the Joint Head of ICT, in compliance with the relevant policies of the Host Council will appoint to such vacancy.

6.2.7 Where a vacancy arises in relation to the post of the Joint Head of ICT the Shared ICT Service Management Board will together with the HR department of the Host Council appoint to such vacancy in compliance with the relevant HR policies of the Host Council.

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

6.2.9 Each Council shall ensure that all Shared ICT Service Staff are provided with appropriate authorisation to undertake work within the administrative areas of the Councils as provided for within this Deed.

6.3 Service Provision and the Measurement of Performance

- 6.3.1 The Shared ICT Service shall provide those Agreed Services to the Councils that are set out in Schedule 2 as and when a Council or any of their respective departments request them (or any part of them) the costs for which will be calculated in accordance with clause 12.
- 6.3.2 The Joint Head of ICT may make changes to the individual programmes and projects within the agreed Service Plan as dictated by Shared ICT Service needs, subject to the prior agreement of the Shared ICT Service Management Board. Where urgent changes are required, and in the absence of a timely Shared ICT Service Management Board meeting, any such changes must be agreed with the Appointed Directors and reported back formally to the ICT Shared Management Board at its next period meeting and recorded in writing by the Chair.
- 6.3.3 Notwithstanding the programmes and activities laid out within the Service Plan, the Councils may, severally or jointly, commission the Shared ICT Service to provide additional Agreed Services, or changes to existing Agreed Services, providing that the full life costs thereof will be fully met by the Council, or Councils, making such requests and that there is no negative impact on the delivery of the agreed Service Plan.
- 6.3.4 The Joint Head of ICT shall produce reports on the performance of the Shared ICT Service as required by the Shared ICT Service Management Board.
- 6.3.5 The Shared ICT Service Management Board shall be ultimately responsible for reviewing actual performance of the Shared ICT Service against the Performance Management Framework.

7. SUPPORT SERVICES

7.1 General

Support service shall ordinarily be provided by the Host Council as may be necessary to support the Shared ICT Service in the discharge of the Agreed Services. The level of such Support Services will be detailed and agreed by the Shared ICT Service Management Board and the costs of such will be reviewed annually and will form part of the Shared ICT Service Costs for the purposes of clause 12 (the “Support Services”).

7.2 Accommodation

7.2.1 It shall be the responsibility of the Councils to provide suitable serviced accommodation for the use of the Shared ICT Service to a level agreed by the Shared ICT Services Management Board. Such accommodation shall be accommodation suitable for the provision of services similar in type to the Agreed Services (the “Accommodation”) the costs of which will be dealt with in accordance with clause 12 or otherwise as unanimously agreed by the Councils.

7.2.2 For the avoidance of doubt the Accommodation shall mean the provision of office accommodation for employees and accommodation for infrastructure necessary to deliver the Shared ICT Service.

7.2.3 The Councils shall be responsible for meeting the health and safety obligations for the Shared ICT Service Staff whilst based at either Council’s premises and in particular they shall ensure that:

- (a) the Accommodation is properly and regularly maintained;
- (b) the Accommodation is regularly risk assessed in accordance with applicable Laws; and
- (c) it makes Shared ICT Service Staff aware of its premises security policy, Health and Safety policy and all other policies of the

relevant Council which apply to persons permitted access to the Accommodation and enforce adherence to such policies.

7.3 Contract and Contracting

7.3.1 The Host Council shall (unless otherwise agreed by the Shared ICT Service Management Board) enter into Contracts for and on behalf of the Shared ICT Service, in accordance with its own Constitution and Contract Standing Orders. Any costs which arise out of the Contracts shall be Shared ICT Service Costs met in accordance with the provisions of clause 12 however, the Host Council shall ensure that each Contract includes:

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

7.3.2 Any new Contracts entered into shall be procured and awarded in accordance with the Procurement Protocol (Schedule 5).

7.3.3 For the avoidance of doubt, the terms of clause 7.1.3 relate solely to Contracts entered into on behalf of all parties to the Shared ICT Service, and do not relate to Contracts entered into separately on behalf of one or more parties.

8. JOINT HEAD OF ICT

8.1 The Joint Head of ICT will:

- 8.1.1 be responsible for the day to day management of the Shared ICT Service within the terms of the Service Plan approved and adopted by the Shared ICT Service Management Board;
- 8.1.2 perform such other duties as may be delegated to the Joint Head of ICT from time to time by the Shared ICT Service Management Board;
- 8.1.3 report to the Shared ICT Service Management Board with such frequency and in such manner as may be required by the Shared ICT Service Management Board;
- 8.1.4 comply with the decisions and directions of the Shared ICT Service Management Board;
- 8.1.5 comply with the rules, regulations and policies of the Host Council;
- 8.1.6 be responsible for the leadership and management of such other services within the Councils as the Shared ICT Service Management Board may determine (where possible, failing which he/she shall take on a monitoring role for the Shared ICT Service to manage any impact on service delivery), where such services relate to the effective delivery of the Shared ICT Service;
- 8.1.7 perform all his or her duties in accordance with the priorities and Annual Plan approved by the Shared ICT Service Management Board;
- 8.1.8 prepare a risk register for all aspects of the Shared ICT Service operations;
- 8.1.9 Should there be a conflict between any of the provisions of this clause 8.1 the Joint Head of ICT will report such conflict to the Shared ICT Services Management Board for resolution in accordance with the Conflicts Protocol which is detailed in Schedule 3.

8.1.10 The Joint Head of ICT will be the employee of the Host Council. The Councils will take all reasonable steps to ensure that the Joint Head of ICT would have no legal rights of employment in respect of their role other than with its employer the Host Council and to the extent any exist and arise at any point any liabilities will be mitigated as far as possible by all Councils and met jointly by them as Shared ICT Service Costs.

9. ASSETS

- 9.1 The Councils each undertake and agree that they will draw up an inventory of Assets (the “Asset Register”) to be made available and recorded by the Shared ICT Management Board at its initial meeting from the Commencement Date of this Deed; which will be kept and regularly updated by the Joint Head of ICT thereafter.
- 9.2 The Councils agree that the Asset Register will detail which Council or other party holds title to such Assets, and to the extent that new Assets are acquired during the continuance of the Shared ICT Service for the purpose of delivering the Shared ICT Service such assets will be owned jointly by the Councils, unless otherwise agreed by the Councils, or in shares equal to each Council’s contribution and depreciation and residual values apportioned accordingly.
- 9.3 Nothing in this Deed shall be deemed to pass title of any assets from one Council to another unless all the relevant Councils agree otherwise in writing.
- 9.4 The Shared ICT Service Management Board may agree a maintenance programme and cost on an annual basis and these will be included in the annual revenue and/or capital budgets agreed pursuant to clause 12.

- 9.5 The Shared ICT Service Management Board may agree a replacement and/or modification programme for assets, the costs of such programme will be agreed pursuant to clause 12.

9.6. Contracts

- 9.6.1 If the benefit of any of the Contracts cannot be assigned to the Host Council except with the agreement or consent of a third party or that third party entering into a novation agreement then the transferor Council will use its best endeavours to procure the agreement, consent, or novation with the co-operation of the Host Council.

- 9.6.2 Unless and until the benefit of the contract are assigned or novated, or where any of the contracts are incapable of transfer by assignment to the Host Council:

- 9.6.2.1 The transferor Council will continue its corporate existence and will hold the benefit of those contract upon trust for the Host Council absolutely and account to the Host Council without any deduction for all sums and other benefits derived from those contracts;

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

- 9.6.2.3 The transferor Council will give all reasonable assistance to the Host Council to enable it to enforce the rights of the transferor Council under those contract(s) and at all times act in accordance with the Host Council's reasonable instructions; and

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

10. INSURANCE

- 10.1 The Host Council and Delegating Council shall ensure that cover for the Required Insurances are obtained and maintained by them respectively, for the Shared ICT Service. The Councils shall each bear its own costs incurred by taking out the policies and maintaining the Required Insurances for the duration of the Shared ICT Service.
- 10.2 On request, each Council shall provide to the other, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the Required Insurances are in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 10.3 The Councils shall hold and maintain the Required Insurances for a minimum period of six (6) years following the expiration or earlier termination of this Deed.

11. COSTS AND LIABILITIES IN RESPECT OF THE SHARED ICT SERVICE

- 11.1 Each Council shall indemnify and keep indemnified the other against all actions, proceedings, costs, claims, demands, liabilities, losses and expenses whatsoever whether arising in tort (including negligence) default or breach of this Deed, to the extent that any such loss or claim is due to the breach of contract, negligence, willful default or fraud of itself or of its employees or of any of its sub-contractors save to the extent that the same is directly caused by or directly arises from the negligence, breach of this Deed or applicable law by the indemnified party/defaulting party.

- 11.2 Neither party shall be liable to the other party (as far as permitted by law) for indirect special or consequential loss or damage in connection with the agreement which shall include, without limitation, any loss of or damage to profit, revenue, contracts, anticipated savings, goodwill or business opportunities whether direct or indirect.
- 11.3 Each party shall at all times take all reasonable steps to minimise and mitigate any loss or damage for which the relevant party is entitled to bring a claim against the other party pursuant to this agreement.
- 11.4 Subject to clause 11.2, either Council's total aggregate liability:
- 11.4.1 in respect of a party's willful default will be as determined by a competent court in England and Wales presiding over any claim lodged in respect of the provision of the Shared ICT Service ;
 - 11.4.2 in respect of clause 24.2 (Intellectual Property) costs will be split equally between the Councils;
- 11.5 Notwithstanding any other provision of this Deed neither party limits or excludes its liability for:
- 11.5.1 fraud or fraudulent misrepresentation;
 - 11.5.2 death or personal injury caused by its negligence;
 - 11.5.3 breach of any obligation as to title implied by statute; or
 - 11.5.4 any other act or omission, liability for which may not be limited under any applicable law.

12. FUNDING OF THE SHARED ICT SERVICE

- 12.1 For the purposes of this Deed the definition of Shared ICT Service Costs shall mean:

All costs of the Shared ICT Service, save as may be agreed between the Councils from time to time, which for the avoidance of doubt shall include employee costs, overhead costs of accommodation and support services and all costs which the Councils agree acting reasonably to be costs of the Shared ICT Service.

- 12.2 Unless otherwise agreed by the Shared ICT Services Management Board all costs associated with the implementation of the Shared ICT Service will be agreed between Brent and Lewisham. Fixed Costs and Income shall be split equally between the Councils. Variable Costs shall be split on the basis of the levels of commissioned service as set out in the Service Plan. Consumables shall be paid for by the Council that the consumables are intended for.
- 12.3 The Shared ICT Service Management Board shall agree the mechanism by which the costs, income and savings shall be fairly apportioned between the Councils.
- 12.4 The method of payment will be agreed by the Shared ICT Services Management Board.
- 12.5 Any changes to the level of service commissioned during the year, or in the associated costs, will be agreed by the Shared ICT Service Management Board, along with the appropriate allocation of costs between the Councils. The principle being that where the purposes of a change do not relate to the delivery of the Shared ICT Service as a whole, the authority instigating the change bears the direct costs thereof and any associated costs.
- 12.6 Any costs incurred by Brent as a result of a reorganisation of the Shared ICT Service Staff ("Redundancy Costs"), which shall be carried out within 3 months of the Commencement Date, shall be split between Lewisham and



Brent in accordance with the revenue benefits each Council expect to receive in the first year of the Shared ICT Service, in particular:

- (a) Brent shall pay 30% of the Redundancy Costs; and
- (b) Lewisham shall pay 70% of the Redundancy Costs.

- 12.7 The Councils agree that each Council will be responsible for its own Support Service costs (as defined in section 7) except where there is an incremental increase or decrease due to the Shared ICT Service, in which case the incremental increase or decrease will be shared equally between the Councils (and will be a Shared ICT Service Cost). The appropriate charging and recharging of Support Service Costs will be reviewed on an annual basis.
- 12.8 An account detailing the expenditure and income of the Shared ICT Service in each Financial Year shall be prepared by the Finance Officer to the Shared ICT Service with support from the Joint Head of ICT and delivered to the Councils by [] or as soon thereafter as is reasonably practicable. Such accounts will be prepared on the basis of the Host Council's usual accounting principles (the "Annual Accounts").
- 12.9 Lewisham shall within 10 Business Days of the delivery of the Annual Accounts either confirm their agreement to the figures set out or give written notice to Brent of where they disagree. The provisions of clause 17 will apply to the resolution of any dispute over Annual Accounts.
- 12.10 Upon agreement or determination of the Annual Accounts the Councils agree that any surplus of the Shared ICT Service arises that it be distributed proportionately between the Councils and any deficit between the Shared ICT Service Costs will be met proportionately by the Councils (in accordance with clause 12.3). All payments due under this clause will be made within 10 Business Days.

12.11 The Auditors, Section 151 Officers and other authorised officers of the Councils shall have access at all reasonable times and with due notice to the relevant financial records of the Shared ICT Service and shall be entitled to seek explanations concerning queries relating thereto.

12.12 Invoices shall be issued by the Host Council for the Agreed Services delivered by the Shared ICT Service on the [] of each month (or such alternative date or frequency as is mutually agreed) and shall be payable by the Councils within 10 Business Days of the date of invoice.

13. AUDIT, AUDITORS AND OTHER FINANCIAL MATTERS

13.1 Should any Council wish to review any financial matters relating to the Shared ICT Service using an external audit function the Shared ICT Service Management Board shall authorise such a review and provide reasonable assistance to any such audit function at the cost of the requesting Council.

13.2 In the event of Clause 13.1 being agreed, the Host Council shall provide all reasonable assistance to the Auditor which shall include access to their systems, documents, accounting records and transactions as when required.

13.3 The Finance Officer to the Shared ICT Service shall in good time each year prepare a draft financial outturn report; this shall be provided to the Shared ICT Service who shall consider it and subject to such reasonable amendments as they wish to make, approve it for inclusion in the Annual Report.

14. WITHDRAWAL FROM THE SHARED ICT SERVICE

14.1 Any Council may serve notice and withdraw from the Shared ICT Service by giving not less than 18 months written notice to the other Council, then a member of the Shared ICT Service, of its intention to do so.

- 14.2 Upon receipt of a notice of withdrawal an extraordinary meeting of the Shared ICT Service Management Board shall be convened at which the withdrawing member shall be required to send its Appointed Director. The meeting shall consider the implication of such withdrawal and endeavour to agree any immediate steps. Immediately following that meeting or within 10 Business Days of receipt of termination notice the Councils shall comply with their obligations in Schedule 4. Failure to agree an exit management plan will be referred to the dispute resolution procedure set out in clause 17.
- 14.3 All Councils agree that they will provide all reasonable assistance to one another to allow the exit of any Council. .
- 14.4 Costs resulting from the withdrawal of one Council from this Deed shall be determined in accordance with the Exit Management Plan.
- 14.5 The exiting Council will remain liable for its share (as calculated in accordance with the terms of this Deed) of any costs properly incurred by the Shared ICT Service during its time as a member up to and including the date upon which its membership terminates even if such costs do not become apparent or become due for payment until after the date of such termination.
- 14.6 Immediately prior to withdrawal from the Shared ICT Service the Councils agree and shall ensure that:
- 14.6.1 the Host Council will pass an appropriate resolution in accordance with section 101(1)(b) and 101(5) of the Local Government Act 1972 or sections 19-20 of the Local Government Act 2000 (as appropriate) removing any delegations or obligation to discharge duties on behalf of the exiting Council and any existing Council(s) will pass a similar resolution acknowledging the withdrawal and copies of such resolutions will be provided on request;

14.6.2 the exiting Council agrees to waive any right of claim against the Joint Head of ICT personally in relation to any claim which may be made against him or her for services provided and for the avoidance of doubt the provisions of clause 12 will apply.

14.7 For the avoidance of doubt the Joint Head of ICT will continue to be the employee of the Host Council notwithstanding the exit of any other Council.

15. TERMINATION OF THIS DEED

15.1 In addition to the provisions of clause 14.1, the Councils agree that this Deed may be determined upon terms agreed by the Councils.

15.2 In the event of termination of this Deed the provisions set out in Schedule 4 (Exit Management Plan) shall apply and the Councils shall comply with their obligations set out therein.

15.3 It shall be the duty of all of the Councils to try to minimise any losses arising from the determination of this Deed and the withdrawal of a Council from the Shared ICT Service. Amongst other issues the Councils shall use their best endeavours to offer priority redeployment to any Shared ICT Service staff then employed in the provision of the Shared ICT Services by the Host Council, by taking a transfer of any of the staff to provide the Shared ICT Service or to be redeployed more generally and/or by helping to seek alternative employment for them for the avoidance of doubt this cause shall not affect the requirements of TUPE.

15.4 The Clauses in this Deed which expressly or impliedly have effect after termination will continue to be enforceable notwithstanding termination which without limitation shall include **Clauses 1, 2, 10, 11, 12, 13, 17, 18, 20, 21, 22, 23, 27, 36, 37, and 38.**

16. MATTERS REQUIRING UNANIMOUS APPROVAL

- 16.1 Notwithstanding any other provisions of this Deed, any matter of the Shared ICT Service which exclusively affects any Council's ability to attain or fulfil its public interest objectives in full at all times shall require the consent in writing of such Council.
- 16.2 Unless otherwise agreed by the Councils in writing the Shared ICT Service will not undertake those matters that are Reserved Decisions and the Councils will exercise their respective powers under this Deed, and otherwise, to ensure that the Shared ICT Service will not undertake or carry out the Reserved Decisions without such agreements.

16.3 Meaning of Deadlock

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

- 16.3.1 a matter constituting a Reserved Decision has been considered by the Councils; and
- 16.3.2 no resolution has been carried by the Councils in relation to the matter because of a failure of any Council to consent to such resolution; and
- 16.3.3 the matter is not resolved within 10 Business Days or such longer periods as agreed by the Councils from the date of the referral to the Councils for consent (as appropriate).

16.4 Council's Obligations

In any case of Deadlock each of the Councils shall (at the request of any Council) within 15 Business Days of Deadlock having arisen or become apparent, cause its appointees on the Shared ICT Service Management Board to prepare and circulate to the Councils a memorandum or other form of statement setting out its position on the matter in respect of which the

Deadlock has arisen and its reasons for adopting that position, but on the basis that such memorandum or statement shall always be prepared and delivered on a “without prejudice” basis. Each Council shall then refer the Deadlock to dispute resolution provisions of clause 17 of the Deed.

16.5 Failure to resolve Deadlock or Dispute

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

16.5.1 There will be no change to existing arrangements; or

16.5.2 If this cannot be unanimously agreed between the Councils the Council who has failed to agree the motion in question will be deemed to have issued notice to withdraw its membership of the Shared ICT Service and the provisions of clause 14 of the Deed will apply.

17. INTERNAL DISPUTE RESOLUTION

17.1 The Councils (and where the context requires, the Heads of Paid Service of the Councils) undertake and agree to pursue a positive approach towards dispute resolution which seeks (in the context of this joint working arrangement) to identify a solution at the lowest operational level that is appropriate to the subject of the dispute and which avoids legal proceedings and maintains a strong working relationship between the Councils.

17.2 Any dispute or difference shall in the first instance be discussed at the Shared ICT Service Management Board. Thereafter it shall be referred to the Head of Paid Service of each Council to resolve.

17.3 In the event of any dispute or difference between the Councils relating to this Deed which it has not been possible to resolve through the decision making

processes of the Shared ICT Service (whether this may be a matter of interpretation or otherwise) due to their being a Deadlock or a Council otherwise elects to refer a matter to dispute resolution the matter shall be dealt with in accordance with clause 17.

18. EXTERNAL DISPUTE RESOLUTION

- 18.1 In the event of a dispute between the Councils which has not been resolved pursuant to clause 17 (that is, the Shared ICT Service has failed to resolve the dispute) or there is a “Deadlock” in accordance with Clause 16 the Councils will attempt to settle it by mediation in accordance with the model mediation procedures (“the Procedures”) published by the Centre for Effective Dispute Resolution, Solve (“the Service Provider”) at the time of the dispute is referred to mediation. To initiate mediation, a Council must give notice in writing (the “Mediation Notice”) to the other Councils.
- 18.2 The Councils will seek to agree the appointment of a mediator but, failing agreement within 28 days of the service of the Mediation Notice, the Host Council shall appoint a mediator.
- 18.3 In the event that there are no procedures available and/or the Host Council is unable or unwilling to appoint a mediator, any Council may ask the President of the Law Society of England & Wales (or its successor body) to appoint a mediator and to recommend a mediation procedure which the Councils shall adopt.

19. NOTICES

- 19.1 All notices under this Deed shall be in writing and all certificates, notices or written instructions to be given under the terms of this Deed shall be served



by sending the same by first class post, email, facsimile or by hand, leaving the same at:

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

If to Lewisham:

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

20. INFORMATION AND CONFIDENTIALITY

- 20.1 The Councils shall keep confidential any Commercially Sensitive Information relating to this Deed or the Intellectual Property Rights of the Councils and shall use all reasonable endeavours to prevent their employees and agents



from making any disclosure to any person of any Commercially Sensitive Information relating to the Deed or Intellectual Property Rights of the Councils.

20.2 Clause 20 shall not apply to:

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

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

20.2.3 Any disclosure to enable a determination to be made under clause 18 (External Dispute Resolution);

20.2.4 Any disclosure which is required by any law (including any order of a court of competent jurisdiction), any Parliamentary obligation or the rules of any stock exchange or governmental or regulatory authority having the force of law, however where a disclosure is to be made pursuant to FOI Legislation the Councils agree that the provisions of clause 20.3 shall apply to any disclosure;

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

20.2.6 Any disclosure by a party to a department, office or agency of the Government; or

20.2.7 Any disclosure for the purpose of the examination and certification of a party's accounts.

20.3 Where disclosure is permitted under clause 20.1, the Councils shall endeavour to ensure that the recipients of the information shall be placed under the same obligation of confidentiality as that contained in this Deed by the disclosing Council although the Councils acknowledge that this may not always be possible.

20.4 Freedom of Information:

- 20.4.1 The Councils recognise that the Councils are public authorities as defined by FOI Legislation and therefore recognise that information relating to this Deed may be the subject of an Information Request.
- 20.4.2 The Councils shall assist each other in complying with their obligations under FOI Legislation, including but not limited to assistance without charge, in gathering information to respond to an Information Request.
- 20.4.3 Any Council shall be entitled to disclose any information relating to this Deed and the Shared ICT Services in response to an Information Request, save that in respect of any Information Request which is in whole or part a request for Exempt Information in such circumstances the following procedure shall apply:

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

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

21. DATA PROTECTION

21.1 For the purposes of this clause 21 the following expressions have the following meanings unless in consistent with the context:

21.1.1 Data Controller: Shall have the meaning as set out in the Data Protection Act 1998

21.1.2 Data Processor: Shall have the same meaning as set out in the Data Protection Act 1998

21.1.3 Personal Data: Shall have the same meaning as set out in the Data Protection Act 1998

21.1.4 Sensitive Personal Data: Shall have the same meaning as set out in the Data Protection Act 1998

21.1.5 Process: Has the meaning given to it under the Data Protection Legislation but, for the purposes of this agreement, it shall include both manual and automatic processing.

For the purposes of this clause 21 and for the avoidance of doubt, references to Personal Data shall be deemed to include Sensitive Personal Data.

21.2 The Councils shall at all times comply with the DPA, including maintaining a valid and up to date registration or notification under the DPA, covering any data processing to be performed in connection with this Deed and their responsibilities as Data Processors and/or data controllers.

21.3 Where one Council is acting as a Data Processor, the processor shall only undertake processing of Personal Data reasonably required in connection with the operation of this Deed or the operation of the Shared ICT Service, or in accordance with clause 21.4.

21.4 Unless agreed otherwise in writing by the Councils the Data Processor shall process the Personal Data only in accordance with the Data Controller's

instructions from time to time and shall not process the Personal Data for any purpose other than those expressly authorised by the Data Controller.

21.5 Notwithstanding the general obligation in Clause 21.3 the Data Processor shall ensure that it has in place appropriate technical, organisational and contractual measures to ensure the security of the Personal Data (and to guard against unauthorised or unlawful processing of the Personal Data and against accidental loss, disclosure or destruction of, or damage to, the Personal Data), these measures shall be appropriate to the harm which might result from unauthorised or unlawful processing of the Personal Data, accidental loss, disclosure or destruction of, or damage to, the Personal Data having regard to the nature of the personal data which is to be protected; and

21.5.1 take reasonable steps to ensure the reliability of any Shared ICT Service Staff who have access to the personal data;

21.5.2 ensure that all Shared ICT Service Staff required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this Deed;

21.5.3 take reasonable steps to ensure that none of the Shared ICT Service Staff publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Data Controller;

21.5.4 provide the Data Controller with such information as the Data Controller may reasonably require to satisfy itself that the Data Processor is complying with its obligations under the Data Protection Act;

21.5.5 promptly notify the Data Controller of any breach of the security measures required to be put in place pursuant to this clause 21.5;

21.5.6 ensure it does not knowingly or negligently do or omit to do anything which places the Data Controller in breach of the Data Controller's obligations under the Data Protection Act;

21.5.7 notify the Data Controller (within five Working Days), if it receives:

(a) a request from a Data Subject to have access to that person's
Personal Data;

(b) or a complaint or request relating to the Data Controller's
obligations under the Data Protection Legislation; and

21.5.8 provide the Data Controller with full co-operation and assistance in
relation to any complaint or request made, including by:

- (a) providing the Data Controller with full details of the complaint or request;
- (b) complying with a data access request within the relevant timescales set out in the Data Protection Legislation and in accordance with the Data Controller instructions;
- (c) providing the Data Controller with any Personal Data it holds in relation to a Data Subject (within the timescales required by the Council); and
- (d) providing the Data Controller with any relevant information requested by the Data Controller;

21.6 The Data Processor shall not transfer any Personal Data to any country or territory outside the European Economic Area unless in accordance with the 8th Data Protection Principle as set out in the DPA.

21.7 The Data Processor may authorise a third party (a "Subcontractor") to process the Personal Data provided that the Subcontractor's contract:

- 21.7.1 includes terms which are substantially the same as this Clause 21;
and
- 21.7.2 will terminate automatically on termination of this Deed for any reason.

21.8 The Data Processor shall not disclose Personal Data to any third parties other than:

- 21.8.1 in response to a data subject access request;
- 21.8.2 to employees and contractors to whom such disclosure is necessary in order to comply with their obligations under this Deed;
- 21.8.3 to the extent required to comply with a legal obligation;
- 21.8.4 to the extent necessary for the performance of functions of the Shared ICT Service/the Agreed Services; or
- 21.8.5 in accordance with written instructions from the Data Controller.

21.9 The Data Processor shall permit the Data Controller or the Data Controller's representative (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit , pursuant to this clause and clause 36, the Data Processor's data processing activities (and/or those of its agents, subsidiaries and Sub-contractors) and comply withal reasonable requests or directions by the Data Controller to enable the Data Controller to verify and/or procure that the Data Processor is in full compliance with its obligations under this agreement and Provide a written description of the technical and organisational methods employed by the Data Processor for processing Personal Data (within the timescales required by the Data Controller).

22. SCRUTINY AND AUDIT

22.1 The Councils agree that scrutiny relating to this Deed and the provision of the Agreed Services shall be the responsibility of each Council in line with the existing constitutional provisions of each Council.

22.2 The relevant committees of each Council responsible for scrutiny and audit shall have the right to inspect any documents relating to this Deed and to require either the Joint Committee, the Shared ICT Service Management Board or the Shared ICT Service to answer any questions raised by them.

- 22.3 The accounts relating to the Shared ICT Service and this Deed shall be the subject of audit by any external auditor appointed by any of the Council or the Joint Committee (as the case may be) and shall be open to inspection by any external auditor appointed by the district auditor or the Host Council.

23. VAT AND TAX

- 23.1 Any amounts payable pursuant to the provisions of this Deed shall be exclusive of VAT, which if properly due shall be payable by the paying party against production of a valid invoice from the Council making the relevant supply of goods and/or services.
- 23.2 The Host Council will not assume or be responsible for any liability for or in respect of tax including (without limitation) PAYE and/or national insurance contributions in relation to any of the Shared ICT Service Staff being transferred to the Host Council pursuant to the provisions of Schedule 1, where such liability has been incurred in any period ending on or before, or as a result of any event whatsoever occurring on or before, the Commencement Date of this Agreement.

24. INTELLECTUAL PROPERTY

- 24.1 Any intellectual Property Rights created during the provision of the Shared ICT Service shall vest jointly in the Councils however the Host Council will hold the Intellectual Property Rights on behalf of all of the Councils who were parties to this Deed at the time such Intellectual Property Rights are created.
- 24.2 Each Council hereby grants to the other for the purposes of the Shared ICT Service a non-exclusive, revocable, royalty-free licence to use and copy materials the Intellectual Property Rights in which vest in the other Council



solely for the purpose of effective delivery of the Shared ICT Service for the duration of this Deed ("the Background IPR").

- 24.3 Brent shall on expiry or termination of this Deed, if required, grant Lewisham a non-exclusive, perpetual, irrevocable, royalty-free licence to use and copy materials of the Intellectual Property Rights which, vest in Brent for the purpose of providing or having provided an ICT Service.
- 24.4 Nothing in this Clause 24 shall require either Council to provide or disclose to the other Council any materials to the extent that they contain confidential information or attract legal professional privilege or Intellectual Property Rights where such provision or disclosure would amount to a waiver of privilege or put either Party or any employee in breach of any legal obligation or Codes of Conduct or infringe any Intellectual Property Rights.
- 24.5 Where a claim or proceeding is made or brought against either Council or the Host Council which, arises out of the infringement or alleged infringement of any Intellectual Property Rights or because the use of any materials, Data, plant, machinery or equipment in connection with the Shared ICT Service infringes any Intellectual Property Rights of a third party then, unless such infringement has arisen due to either Council's or its Staff's actions, any resulting costs and/or expenses liable for payment by the Shared ICT Service shall be apportioned equally between the Councils.

25. FORCE MAJEURE

- 25.1 The Councils shall not be relieved from their obligations under this Deed to the extent that by reason of an event of Force Majeure it is not able to perform its obligations under this Deed. However, during the continuance of and event of Force Majeure neither Council shall be entitled to any compensation or other payment by reason of the occurrence or the continuance of an event of Force Majeure.

- 25.2 Should an event of Force Majeure continue for more than 10 Business Days the Deed may be terminated by either Council on the giving of 5 Business Days notice and the provisions of clause 14.2 shall apply (and a reasonable time passed for exit shall be agreed between the Councils).

26. SEVERABILITY

- 26.1 If at any time any clause or part of a clause or schedule or appendix or part of a schedule or appendix to this Deed is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid or unenforceable in any respect;
- 26.1.1 that shall not affect or impair the legality, validity or enforceability of any other provision of this Deed.
- 26.1.2 the Councils shall in good faith amend this Deed to reflect as nearly as possible the spirit and intention behind that illegal, invalid or unenforceable provision to the extent that such spirit and intention is consistent with the laws of that jurisdiction and so that the amended Deed complies with the laws of that jurisdiction.

27. SUCCESSOR AND ASSIGNMENT

- 27.1 This Deed shall be binding upon and shall endure to the benefit of each Council's successors and permitted assigns.
- 27.2 Save as set out in clause 27.1 no Council shall assign, sub-contract or in any way dispose of the Deed or any part of it without the prior written approval of the Shared ICT Service Management Board.

28. WAIVER

- 28.1 No forbearance or delay by any Council in enforcing its respective rights will prejudice or restrict the rights of that Council and no waiver of any such rights

or of any breach of any contractual terms will be deemed to be a waiver of any other right or of any later breach.

29. STATUTORY DUTY

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

30. RELATIONSHIP OF PARTIES

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

31. REVIEW, VARIATION AND FAIR DEALINGS

- 31.1 The Councils are committed to ensuring on-going efficiency improvements from the Shared ICT Service and agree to review the operation of this Deed in all its aspects at appropriate intervals, but not less than annually, to ensure that this Deed is operating in the most satisfactory manner and that the Shared OCT Service is being delivered to the standards set out in this Deed. The Councils may review the governance arrangements and change the governance arrangements in the context of any other shared services which may currently exist between the Councils or may come to exist in the future.
- 31.2 The Councils recognise that it is impracticable to make provision for every contingency which may arise during the course of this Deed and they declare it to be their intention that this Deed shall operate between them with fairness and without detriment to the interests of either of them and that if, in the

course of the performance of this Deed, unfairness to either of them does or may result then the other shall use it is reasonable endeavours to agree upon such action as to be necessary to remove the cause or causes of such unfairness.

- 31.3 Where either Council requests a change to the Schedules to this Deed, excluding where it is a Reserved Decision, the Shared ICT Services Management Board shall discuss the change which shall result in any one of the following:
- a) the change is not agreed and no further action is taken; or
 - b) a change is agreed by unanimous decision of the Shared ICT Services Management Board and the change is implemented.
- 31.4 Where a change is agreed in accordance with clause 31.3(b), the change shall be recorded in writing and signed by both Appointed Directors. Any cost implications as a result of the change shall be dealt with in accordance with clause 12.

32. THIRD PARTY RIGHTS

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

33. ENTIRE AGREEMENT

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

Deed and that its only remedies for breach of this Deed, provided that this shall not exclude any liability which either party would otherwise have to the other in respect of any statements made fraudulently by or on behalf of it prior to the Date of this Deed.

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

34. WHISTLEBLOWING

- 34.1 The Councils shall ensure that staff employed by them in connection with this Deed (including sub contractor staff where appropriate) are aware of their and the other Council's whistle blowing policy, and the arrangements to be followed in the event of them having any concerns and wishing to make a disclosure pursuant to the policy.
- 34.2 The Councils shall assist each other without charge in dealing with, and fulfilling any responsibilities relating to, any protected disclosure relating to the Shared ICT Service made in accordance with ss. 43A – 43L of the Employment Rights Act 1996 as amended by the Public Interest Disclosure Act 1998 (a "Protected Disclosure").
- 34.3 Upon receiving notification of such Protected Disclosure the Council to which the Protected Disclosure relates shall disclose the Protected Disclosure to the other Council and shall discuss any issues which arise with the other Council.
- 34.4 Each Council shall in good faith consider representations of the other Council in deciding how to deal with any Protected Disclosure.
- 34.5 The Councils to this Deed acknowledge and agree that any decision made, or any action taken by, a Council in relation to a Protected Disclosure is solely

the decision of that Council. A Council will not be liable to the other Council for any loss, damage, harm or detrimental effect arising from or in connection with the Council's actions in dealing with any Protected Disclosure received.

35. FURTHER ASSISTANCE

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

36. RECORD AND ACCESS

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

37. JURISDICTION

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

38. CIVIL CONTINGENCY AND BUSINESS CONTINUITY

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

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

38.2 The Councils shall each make available, on request, its emergency contingency plans and business continuity management arrangements available for inspection by the other upon reasonable notice.

38.3 In the event of an Emergency the Host Council shall make every effort to continue the provision of the Shared ICT Services under this Agreement. Depending upon the nature of the Emergency however, should the Host Council be unable to continue the provision of Shared ICT Services, in consultation with the Delegating Council, should act in accordance with the provisions of Clause 26 (Force Majeure).

38.4 The Host Council shall have business contingency plans to cover situations that might reasonably arise that may affect the delivery of the Shared ICT Service; which shall be tested and reviewed periodically in accordance with good industry practice.

SCHEDULE 1

TUPE

SCHEDULE 2

AGREED SERVICE

SCHEDULE 3

CONFLICTS PROTOCOL

SCHEDULE 4

EXIT MANAGEMENT PROTOCOL

SCHEDULE 5

PROCUREMENT PROTOCOL

1. General Principles

- 1.1 Where purchases are below £50,000 the Joint Head of ICT can approve the spend on behalf of both Councils. The Joint Head of ICT must comply with Brent Council's Contract Standing Orders when procuring goods or services for £50,000 or below. Award of a contract under £50,000 can be approved by the Joint Head of ICT.
- 1.2 Where the estimated value of the contract is above £50,000, authority to go out to tender must first be sought from the Management Board through the Executive Director for each Council. The Management Board shall determine whether the contract shall be procured jointly and each Council enter into its own contract with the provider following award, or for Brent to procure the goods or services on behalf of the Shared ICT Service. Brent will then enter into the contract on behalf of both Councils.
- 1.3 Where the Councils are procuring jointly, both Councils shall comply with their respective Contract Standing Orders and the Public Contract Regulations 2015, where applicable. Where Brent are procuring on behalf of both Councils, Brent shall follow their own Contract Standing Orders and the Public Contracts Regulations 2015.
- 1.4 Procurement of Goods or Services above £50,000 shall comply with the following rules:

- The final version of the tender documents shall be approved by the Management Board upon the advice of the Councils legal and procurement teams;
 - The evaluation criteria shall be agreed by Management Board;
 - Where requested by Lewisham, an officer from Lewisham shall be entitled to be a member of the evaluation panel;
- 1.5 The general principles set out in paragraph 1.4 above shall apply to all procurements that are above £50,000.
- 2. Award of Contract where spend is less than £500,000 for each Council**
- 2.1 An award report shall be drafted by the Joint Head of ICT and presented to the Executive Director on the Management Board of Each Council for their approval. Where the decision is a Key Decision the decision shall be subject to the scrutiny process of both Councils. Where a decision is subject to scrutiny, the Joint Head of ICT shall be responsible for putting the decision on each Councils Key Decision Plan within the required timescales.
- 3. Award of Contract where the spend to one or both Councils is above £500,000**
- 3.1 An award report shall be drafted by the Joint Head of ICT for both Councils to be presented to Mayor & Cabinet (Contracts) for Lewisham and to [] for Brent in accordance with the timescales required. Each report shall be subject to the respective Council's scrutiny process. Where a decision is subject to scrutiny, the Joint Head of ICT shall be responsible for putting the decision on each Councils Key Decision Plan within the required timescales.

SCHEDULE 6

JOINT COMMITTEE – TERMS OF REFERENCE

SCHEDULE 7

FUNDING OF THE SHARED SERVICE