

SCHEDULE 2

EMPLOYMENT & PENSIONS

Preamble

The Councils agree that

(a) the Employment and Exit Provisions set out in clause 3 of Schedule 2 of the Collaboration Agreement commencing 1 April 2016 made between Brent and Lewisham Councils (“the 2016 Collaboration Agreement”) shall no longer apply and are superseded by the terms of clause 3 of this Schedule 2; and

(b) to the extent that it is not superseded by this Agreement, the other terms of Schedule 2 of the 2016 Collaboration Agreement shall continue to apply to those employees of Lewisham’s previous contractor who transferred to Brent for the purpose of Shared Technology Services under a Relevant Transfer prior to the Commencement Date under this Agreement; and

(c) in the event of any inconsistency between the terms of Schedule 2 of this Agreement and the terms of Schedule 2 of the 2016 Collaboration Agreement, the terms of Schedule 2 of this Agreement shall prevail.

1. Interpretation & Definitions

1.1. The following additional definitions shall apply in this schedule and where used in the Agreement, in addition to the definitions contained in clause 1 of the Agreement:

Actuarial Guidance: actuarial guidance issued by the Secretary of State in accordance with regulation 2 (3) of the LGPS Regulations

Allocation Agreement: the agreement in clause 3.3 between the three Councils for the allocation of Shared Technology Services Staff to each of them and or their Replacement Contractors on the withdrawal of a Council(s) or termination of this Agreement .

Appropriate Pension Provision:

in respect of Eligible Employees, either:

- (i) membership, continued membership or continued eligibility for membership of the pension scheme of which they were members, or were eligible to be members, or were in a waiting period to become a member of, prior to the Relevant Transfer; or
- (ii) membership or eligibility for membership of a pension scheme, which is certified by the Government Actuary's Department (GAD) as being broadly comparable to the terms of the pension scheme of which they were, or were eligible to be, members.

Brent's Final Staff List: The list of Brent's and any of Brent's Sub-Contractor's personnel engaged in, or wholly or mainly assigned to, the provision of Shared Technology Services or any part of Shared Technology Services, and which identifies the Returning Relevant Employees and Returning Agreed Employees, at the Service Transfer Date.

Brent's Provisional Staff List:

The list prepared by Brent of all Brent's and any of Brent's Sub-Contractor's personnel engaged in, or wholly or mainly assigned to, the provision of Shared Technology Services or any part of Shared Technology Services and which identifies the

Potential Returning Relevant Employees and Potential Returning Agreed Employees .

Brent Sub-Contractor: The contractor(s) engaged by Brent to provide goods, services or works to, for or on behalf of Brent as the Host Council in respect of Shared Technology Services.

Brent Pension Fund: The London Borough of Brent Pension Fund maintained by Brent in accordance with the LGPS Regulations.

Eligible Employees: The Transferring Employees who are active members of (or are eligible to join) the LGPS on the date of a Relevant Transfer including the Transfer Date.

Employee Liability Information:

The information that a transferor is obliged to notify to a transferee under Regulation 11(2) of TUPE:

the identity and age of the employee; and

the employee's written statement of employment particulars (as required under section 1 of the Employment Rights Act 1996); and

information about any disciplinary action taken against the employee and any grievances raised by the employee, where the Employment Act 2002 (Dispute Resolution) Regulations 2004 (SI 2004/752) and/or a Code of Practice issued under Part IV of the Trade Union and Labour Relations (Consolidation) Act 1992 relating exclusively or primarily to the resolution of disputes applied, within the previous two years; and

information about any court or tribunal case, claim or action either brought by the employee against the transferor within the previous two years or where the transferor has reasonable grounds to believe that such action may be brought against Brent arising out of the employee's employment with the Previous Contractor; and

information about any collective agreement that will have effect after the Transfer Date in relation to the employee under regulation 5(a) of TUPE.

Employment Liabilities: All claims, including claims for redundancy payments, unlawful deduction of wages, unfair, wrongful or constructive dismissal compensation, compensation for sex, race or disability discrimination, claims for equal pay, compensation for less favourable treatment of part-time workers, and any claims (whether in tort, contract, statute or otherwise), demands, actions, proceedings and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs including and expenses reasonably incurred in connection with a claim or investigation (including any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body), and of implementing any requirements which may arise from such investigation, and any legal costs and expenses.

Lewisham Entry Pension Deficit Payment:

Has the meaning given in clause 5.7

Lewisham Exit Pension Deficit Payment:

Has the meaning given in clause 5.12

Lewisham Pension Fund:

The London Borough of Lewisham Pension Fund maintained by Lewisham in accordance with the LGPS Regulations.

LGPS:

Local Government Pension Scheme.

LGPS Capital Cost:

The sum representing the additional identifiable cost to the Brent Pension Fund, as certified by an actuary appointed by Brent where Brent:

- (a) terminates the employment contract of a Shared Technology Services Eligible Employee who is aged 55 or over at the time by reason of redundancy or in the interests of efficiency (or otherwise allows such employee to retire on those grounds); or
- (b) grants an early retirement request in relation to a Shared Technology Services Eligible Employee (including where such Shared Technology Services Eligible Employee is a deferred member of the LGPS); or
- (c) terminates the employment contract of a Shared Technology Services Eligible Employee on the grounds of permanent ill health or infirmity of mind or body; or
- (d) brings the deferred or active benefit of a Shared Technology Services Eligible Employee into

payment through consent to retiring voluntarily on or after age 55; or

- (e) brings the deferred or active benefit of a Shared Technology Services Eligible Employee into payment on the grounds of permanent ill health or infirmity of mind or body; or
- (f) grants an augmentation of benefits in relation to a Shared Technology Services Eligible Employee which is in addition to any augmentation that an Eligible Employee is entitled to as of right under the LGPS; or
- (g) reduces or waives any contributions due from any Shared Technology Services Eligible Employee; or
- (h) awards pay increases to Shared Technology Services Eligible Employees the average percentage increase of which exceeds the rate for pay increases in the last valuation of the LGPS prior to the award of the pay increase in question; or
- (j) exercises a discretion under the LGPS Regulations in relation to a Shared Technology Services Eligible Employee.

LGPS Regulations: the Local Government Pension Scheme Regulations 2013 (SI 2013/2356).

Potential Remaining Brent Employees:

has the meaning given in clause 3.4.3

Potential Returning Agreed Employees:

Has the meaning given in clause 3.4.2

Potential Returning Employees:

Potential Returning Relevant Employees and
Potential Returning Agreed Employees:

Potential Returning Relevant Employees:

Has the meaning given in clause 3.4.1

Previous Lewisham Contractor:

The contractor with whom Lewisham contracted for the provision of services before the Transfer Date that are the same as or substantially similar to Shared Technology Services (or of each relevant part of thereof).

Previous Southwark Contractor:

The contractor with whom Southwark previously contracted for the provision of services before the Transfer Date that are the same as or substantially similar to Shared Technology Services or of each relevant part of thereof.

Redundant Shared Technology Services Staff:

Shared Technology Services Staff whom Brent dismisses within six (6) months of the Transfer Date by way of redundancy following a lawful procedure as part of a restructuring or reorganisation of the workforce engaged in connection with the provision of the Shared Technology Service.

Relevant Transfer: A relevant transfer for the purposes of TUPE.

Remaining Council: A Council which is not a Withdrawing Council.

Replacement Contractor:

Any third party at any time appointed by Brent,

Lewisham or Southwark to provide Replacement Services including where relevant the Councils themselves and any subcontractor of the third party.

Replacement Services: A service that is the same or substantially the same as Shared Technology Services or any part thereof in succession to or in substitution for Shared Technology Services or any part thereof.

Returning Council: Means the Council which is obliged to take the Returning Employees.

Returning Agreed Employees:

Has the meaning given in clause 3.10

Returning Employees: Returning Relevant Employees and Returning Agreed Employees.

Returning Relevant Employees:

Those employees whose contracts of employment transfer with effect from the Service Transfer Date to a Returning Council or a Replacement Contractor by virtue of the application of TUPE.

Service Transfer Date: The date at the end of the Exit Period on which Shared Technology Services (or the relevant part of the Shared Technology Service) transfers to the Returning Council(s) or to its/their Replacement Contractor(s).

Shared Technology Services Eligible Employee:

A member of the Shared ICT Staff who is an active member of or who has the right to acquire benefits under the LGPS.

Southwark Entry Pension Deficit Payment

has the meaning given in clause 5.9

Southwark Exit Pension Deficit Payment:

has the meaning given in clause 5.13

Southwark Pension Fund:

The London Borough of Southwark Pension Fund maintained by Southwark in accordance with the LGPS Regulations.

Staffing Information:

In relation to all persons detailed on Brent's Provisional Staff List, in an anonymised format, such information as Lewisham and/or Southwark may reasonably request including the Employee Liability Information and details of whether the personnel are employees, workers, self-employed, contractors or consultants, agency workers or otherwise, and the amount of time spent on the provision of Shared Technology Services or part thereof.

Transfer Date:

The transfer on such dates on or after the Commencement Date agreed by the Councils (each a Transfer Date) to Brent of responsibility for provision of (or procuring the provision by a Brent Sub-Contractor of) Shared Technology Services or of each relevant part of thereof in accordance with this Agreement.

Transferring Employees:

The Transferring Lewisham Employees and Transferring Previous Lewisham Contractor Employees and the Transferring Southwark Employees and the Transferring Previous Southwark Contractor Employees.

Transferring Lewisham Employees:

Employees of Lewisham, whose contracts of employment transfer with effect from the Transfer Date to Brent by virtue of the application of TUPE.

Transferring Previous Lewisham Contractor Employees:

Employees of the Lewisham Previous Contractor, or any of its sub-contractors, whose contracts of employment transfer with effect from the Transfer Date to Brent by virtue of the application of TUPE.

Transferring Southwark Employees:

Employees of Southwark, whose contracts of employment transfer with effect from the Transfer Date to Brent by virtue of the application of TUPE.

Transferring Previous Southwark Contractor Employees:

Employees of the Southwark Previous Contractor, or any of its sub-contractors, whose contracts of employment transfer with effect from the Transfer Date to Brent by virtue of the application of TUPE.

Transferor Employer: The respective employer of the Transferring Employees prior to the Transfer Date.

Transfer Value Payment: The payment of an amount in respect of the relevant Eligible Employee's service in their LGPS Pension Fund before the Relevant Transfer.

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

2. Transfer of employees to Brent on the Transfer Date

2.1. The Councils agree that each Transfer Date will be a Relevant Transfer in relation to the applicable Transferring Employees and the contracts of employment of those Transferring Employees shall transfer to Brent on the

Transfer Date and take effect (subject to Regulation 10 of TUPE) thereafter as if originally made between Brent and the Transferring Employees. The first Transfer Date, shall occur on the Commencement Date. For the avoidance of doubt, no Transferring Lewisham Employees or Transferring Previous Lewisham Contractor Employees will transfer to Brent on the first Transfer Date.

- 2.2. On the occasion of a Relevant Transfer, pursuant to the Agreement Brent shall comply and shall procure that each Brent Sub-Contractor shall comply with their respective obligations under TUPE, the Directive and the Pensions Act 2004 and the Pensions Act 2008 as amended, and any regulations made thereunder.
- 2.3. Lewisham shall, and shall procure that each Previous Lewisham Contractor shall, comply with their respective obligations under TUPE and the Directive with regard to a Relevant Transfer pursuant to this Agreement.
- 2.4. Southwark shall, and shall procure that each Previous Southwark Contractor shall, comply with their respective obligations under TUPE and the Directive with regard to a Relevant Transfer pursuant to this Agreement.
- 2.5. Lewisham shall, and shall procure that the Previous Lewisham Contractor shall, be responsible for all remuneration, benefits, entitlements and outgoings including without limitation all wages, holiday pay, bonuses, commission, payment of PAYE, national insurance contributions, pension contributions and otherwise, up to (but not including) the Transfer Date in respect of the Transferring Lewisham Employees and Transferring Previous Lewisham Contractor Employees respectively.
- 2.6. Southwark shall, and shall procure that the Southwark Previous Contractor shall, be responsible for all remuneration, benefits, entitlements and outgoings including without limitation all wages, holiday pay, bonuses, commission, payment of PAYE, national insurance contributions, pension contributions and otherwise, up to (but not including) the Transfer Date in respect of the Transferring Southwark Employees and Transferring Previous Southwark Contractor Employees respectively.

- 2.7. Lewisham shall, and shall procure that the Lewisham Previous Contractor shall provide and, where necessary, update the Employee Liability Information for the Transferring Lewisham Employees and Transferring Previous Lewisham Contractor Employees respectively to Brent, as required by TUPE. Lewisham shall warrant that Employee Liability Information for the Transferring Lewisham Employees is complete and accurate as it is aware or should reasonably be aware as at the date it is disclosed. Lewisham shall not warrant that the Employee Liability Information for the Transferring Previous Lewisham Contractor Employees is complete and accurate at any time and reserves the right to advise Brent up to the Transfer Date of any changes to that Employee Liability Information but again will not warrant the accuracy or completeness of such changed information.
- 2.8. Southwark shall, and shall procure that the Southwark Previous Contractor shall provide and, where necessary, update the Employee Liability Information for the Transferring Southwark Employees and Transferring Previous Southwark Contractor Employees respectively to Brent, as required by TUPE. Southwark shall warrant that Employee Liability Information for the Transferring Southwark Employees is complete and accurate as it is aware or should reasonably be aware as at the date it is disclosed. Southwark shall not warrant that the Employee Liability Information for the Transferring Previous Southwark Contractor Employees is complete and accurate at any time and reserves the right to advise Brent up to the Transfer Date of any changes to that Employee Liability Information but again will not warrant the accuracy or completeness of such changed information.
- 2.9. Subject to the Agreement provisions on cost recovery, cost apportionment and financial principles set out in Schedule 8 of the Agreement Brent shall be responsible for all remuneration, benefits, entitlements and outgoings in respect of the Transferring Employees and any other person who is or will be employed or engaged by Brent in connection with its agreed role as Host Council for Shared Technology Services, including without limitation all wages, holiday pay, bonuses, commission, payment of PAYE, national

insurance contributions, pension contributions and otherwise, from and including the Transfer Date.

2.10. Brent agrees to keep Lewisham, the Previous Lewisham Contractor, Southwark and the Southwark Previous Contractor fully and effectively indemnified against:

2.10.1. any failure to meet all emoluments and outgoings in respect of the Transferring Employees and any other person who is or will be employed or engaged by Brent in connection with its agreed role as Host Council for Shared Technology Services, including (without limitation) all wages, contractual bonuses, contractual commission, PAYE, national insurance contributions and pensions contributions or otherwise from and including the Transfer Date;

2.10.2. all and any costs, claims, liabilities and expenses (including reasonable legal expenses) arising due to or in connection with the termination or purported termination of the employment of any of the Transferring Employees and any other person who is or will be employed or engaged by Brent in connection with its agreed role as Host Council for Shared Technology Services, and any other person who is or will be employed or engaged by Brent in connection with its agreed role as Host Council for Shared Technology Services, from and including the Transfer Date and against all direct, reasonable and proper costs, damages, fines, judgements, expenses and liability whatsoever reasonably incurred in relation to any such claim;

2.10.3. all actions, proceedings, costs, claims, demands, awards, fines, orders and liabilities whatsoever the cause of action which arise as a result of the acts or omissions of Brent on or after the Transfer Date in relation to the employment of the Transferring Employees and any other person who is or will be employed or engaged by Brent in connection with its agreed role as Host Council for Shared Technology Services;

2.10.4. all and any costs, claims, liabilities and expenses (including reasonable legal expenses) arising due to or in connection with any action or claim by any of the Transferring Employees and any other person who is or will be employed or engaged by Brent relating to any act or omission of Brent in relation to its obligations under Regulations 13 and 14 of TUPE; and

2.10.5. against all and any Employment Liabilities arising as a direct result of :

a. any proposed changes to terms and conditions of employment of the Transferring Employees ; and

b. any of the Transferring Employees informing their respective Transferor Employer before the Transfer Date that they object to being employed by Brent

c. any change in identity of the Transferring Employees' employer as a result of the operation of TUPE on the Transfer Date.

2.11. The indemnities contained in the provisions of clause 2.10 above

2.11.1. shall not apply where or to the extent that the Employment Liabilities arise or are attributable to an act or omission of the Transferor Employer whether occurring or having its origin before the Transfer Date or thereafter including, without limitation, any Employment Liabilities or any matters arising from the Transferor Employer's failure, act or omission to comply with its or their obligations under TUPE; and

2.11.2. shall be subject in any and all cases to the cost recovery and cost apportionment provisions and financial principles set out in Schedule 8 of the Agreement.

2.12. Transferor Employer's Indemnities

- 2.12.1. Lewisham shall and shall procure that the Previous Lewisham Contractor shall fully and effectively indemnify Brent from and against any Employment Liabilities in respect of any Transferring Lewisham Employees and any Transferring Previous Lewisham Contractor Employees (or, where applicable any employee representative as defined in under TUPE) arising from or as a result of:
- a. any act or omission by Lewisham or the Previous Lewisham Contractor arising before the Transfer Date;
 - b. the breach or non-observance by Lewisham or the Previous Lewisham Contractor arising before the Transfer Date of:
 - i. any collective agreement applicable to the Transferring Lewisham Employees or the Previous Lewisham Contractor Employees; and/or
 - ii. any custom or practice in respect of any Transferring Lewisham Employees or the Previous Lewisham Contractor Employees which Lewisham or the Previous Lewisham Contractor is contractually bound to honour;
 - c. any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - i. in relation to any Transferring Lewisham Employee or the Previous Lewisham Contractor Employees, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before the Transfer Date; and
 - ii. in relation to any employee who is not a Transferring Lewisham Employee or Previous Lewisham Contractor

Employee and in respect of whom it is later alleged or determined that TUPE applied so as to transfer his employment from Lewisham or from the Previous Lewisham Contractor to Brent (and/or any notified Brent Sub-Contractor as appropriate), to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations in respect of the period to (but excluding) the Transfer Date;

- d. a failure of Lewisham or the Previous Lewisham Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to their respective Transferring Employees in respect of the period to (but excluding) the Transfer Date;
- e. any claim made by or in respect of any person employed or formerly employed by Lewisham or the Previous Lewisham Contractor (other than a Transferring Lewisham Employee or Transferring Previous Lewisham Contractor Employee) for whom it is alleged Brent and/or any notified Brent Sub-Contractor as appropriate may be liable by virtue of the IAA and/or the TUPE Regulations and/or the Directive.
- f. any claim made by or in respect of a Transferring Lewisham Employee or Transferring Previous Lewisham Contractor Employee or any appropriate employee representative (as defined in the TUPE Regulations) of any Transferring Lewisham Employee or Transferring Previous Lewisham Contractor Employee relating to any act or omission of Lewisham or Previous Lewisham Contractor in relation to its or their obligations under regulation 13 of TUPE, except to the extent that the liability arises from the failure by Brent or any Brent Sub-Contractor to comply with regulation 13(4) of TUPE.

- 2.12.2. Southwark shall and shall procure that the Previous Southwark Contractor shall fully and effectively indemnify Brent against any Employment Liabilities in respect of any Transferring Southwark Employees and any Transferring Previous Southwark Contractor Employees respectively (or, where applicable any employee representative as defined in TUPE) arising from or as a result of:
- a. any act or omission by Southwark or the Previous Southwark Contractor arising before the Transfer Date;
 - b. the breach or non-observance by Southwark or the Previous Southwark Contractor arising before the Transfer Date of:
 - i. any collective agreement applicable to the Transferring Southwark Employees or Transferring Previous Southwark Contractor Employees; and/or
 - ii. any custom or practice in respect of any Transferring Southwark Employees or Transferring Previous Southwark Contractor Employees which Southwark or the Previous Southwark Contractor is contractually bound to honour;
 - c. any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - i. in relation to any Transferring Southwark Employee or Transferring Previous Southwark Contractor Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before the Transfer Date; and
 - ii. in relation to any employee who is not a Transferring Southwark Employee or Transferring Previous Southwark Contractor Employee and in respect of whom it is later

alleged or determined that TUPE applied so as to transfer his employment from Southwark or a Previous Southwark Contractor to Brent and/or any notified Brent Sub-Contractor as appropriate, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations in respect of the period to (but excluding) the Transfer Date;

- d. a failure of Southwark or Previous Southwark Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to their respective Transferring Employees in respect of the period to (but excluding) the Transfer Date;
- e. any claim made by or in respect of any person employed or formerly employed by Southwark or Previous Southwark Contractor other than a Transferring Southwark Employee or Transferring Previous Southwark Contractor Employee for whom it is alleged Brent and/or any notified Brent Sub-Contractor as appropriate may be liable by virtue of this Agreement and/or the TUPE Regulations and/or the Directive; and
- f. any claim made by or in respect of a Transferring Southwark Employee or Previous Southwark Contractor Employees or any appropriate employee representative (as defined in the TUPE Regulations) of any Transferring Southwark Employee or Previous Southwark Contractor Employees relating to any act or omission of Southwark or Previous Southwark Contractor in relation to their obligations under regulation 13 of TUPE, except to the extent that the liability arises from the failure by the Brent or any Brent Sub-Contractor to comply with regulation 13(4) of TUPE.

3. Employment exit provisions

- 3.1. Upon the termination of Shared Technology Services under clause 15 of the Agreement or the withdrawal of a Council from the Agreement under clause

14 or for any reason whatsoever, in whole or in part, the Councils acknowledge and agree that it is their mutual intention that TUPE shall apply or be deemed to apply in respect of the provision thereafter of any Replacement Services by any of the Councils or their Replacement Contractors respectively but the position shall be determined in accordance with the law during the Exit Period and this clause 3.1 is without prejudice to such determination.

- 3.2. The Councils agree that the provisions of the Exit Management Protocol in Schedule 5 shall apply.
- 3.3. As soon as practicable and in any event within ninety (90) days of the start of the Exit Period, the Councils shall come together for consultation and co-operation on the prospective matters which need to be discussed to the extent possible regarding a prospective Relevant Transfer at the end of the Exit Period; and the arrangements the Councils wish to consider or propose with regard to staffing and service requirements projected prospectively to apply after the end of the Exit Period with a view to reaching an Allocation Agreement.
- 3.4. The Allocation Agreement shall identify those Shared Technology Services Staff who would
 - 3.4.1. if they remained employed by Brent at the end of the Exit Period, be the subject of a Relevant Transfer to a Returning Council or any Replacement Contractor(s) respectively (“Potential Returning Relevant Employees”); or
 - 3.4.2. otherwise be eligible for return or re-allocation to one of the Councils and be offered employment pursuant to the provisions of clause 3.9 below (“Potential Returning Agreed Employees”);(together referred to as “the Potential Returning Employees”); or

- 3.4.3. otherwise remain employed by Brent after the end of the Exit Period (“ the Potential Remaining Brent Employees”).
- 3.5. The Councils shall, having consulted with and (subject to the agreement of the Joint Management Board), 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 becoming the subject of a Relevant Transfer to the Returning Council(s) or any Replacement Contractor(s) at the end of the Exit Period.
- 3.6. During the Exit Period, to the extent that any employees within Shared Technology Services Staff resign or have their employment lawfully terminated by Brent, the Joint Management Board shall agree that in the event that this creates any vacancies within Shared Technology Services Staff, such vacancy shall to the extent possible in light of service delivery requirements in relation to Shared Technology Services either:
- 3.6.1. not to be filled by Brent during the Exit Period; or
- 3.6.2. be filled by the engagement by Brent of agency staff or staff engaged on fixed term contracts of employment; or
- 3.6.3. where Brent recruit or redeploy any suitable individuals to the vacancy, such recruitment shall be on the basis that the individual will only be engaged in the delivery of Shared Technology Services and where the vacancy has arisen in respect of a Potential Returning Employee it should be made clear as part of such agreement that the individual will be subject to a Relevant Transfer to or be offered employment by the Returning Council or Replacement Contractor at the end of the Exit Period; or
- 3.6.4. where the vacancy has arisen in respect of a Potential Returning Employee: the Returning Council or Replacement Contractor shall instead recruit a suitable individual in relation to the vacancy and then second such individual to Brent for the remainder of the Exit

Period to deliver Shared Technology Services with such secondment to end at the end of the Exit Period;

- 3.7. The Councils shall consult with one another and, by means of the Joint Management Board, the Councils agree to use all reasonable endeavors 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 subject to a Relevant Transfer to the Returning Council(s) or any Replacement Contractor(s) at the end of the Exit Period (dependent on the circumstances of the exit).
- 3.8. Where the requirements of clauses 3.2 to 3.7 having been complied with, there are or remain any Potential Returning Employees who may not be Potential Returning Relevant Employees, the provisions of clause 3.9 to 3.11 below shall apply.
- 3.9. If TUPE does not apply at the end of an Exit Period the Councils shall and shall each procure that each of their respective Replacement Contractors shall as far as possible offer employment to the Potential Returning Agreed Employees employed in Shared Technology Services in the provision of the Returning Services immediately before the end of the Exit Period. This shall not detract from or override the commitment of the Councils in clauses 3.1, and 3.5.above.
- 3.10. If an offer of employment made in accordance with clause 3.9 is accepted by a Potential Returning Agreed Employee they shall be deemed a Returning Agreed Employee.
- 3.11. Where the Returning Council or any Replacement Contractor does not make any such offer or any such offer as referred to in clause 3.9 is not accepted and TUPE does not apply, the provision of clause 3.12 below shall apply regarding any redundancy or reorganisation costs incurred by Brent.

Exit Redundancy and reorganisation costs

- 3.12. Where the Returning Council or any Replacement Contractor does not make any such offer or any such offer as referred to in clause 3.9 is not accepted and the Councils acting via the Joint Management Board agree that TUPE does not apply to any Potential Returning Employees at the End of any Exit Period ;
- 3.12.1. subject always to the agreement of the Councils acting via the Joint Management Board, Brent 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 Brent shall follow a lawful dismissal procedure (and 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);
- 3.12.2. The Returning Council shall indemnify Brent in accordance with the cost apportionment and financial principles as set out in Schedule 8 of the Agreement against all Employment Liabilities relating to the dismissal and redundancy costs as referred to in clause 3.12.1 above reasonably incurred by Brent (including any LGPS Capital Costs).

Exit Information

- 3.13. At any time during the Exit Period:
- 3.13.1. Brent shall and shall procure that any Brent Sub-Contractor shall on request from the Returning Council, provide in respect of any person engaged or employed by Brent or any Brent Sub-Contractor in the provision of Shared Technology Services, Brent's Provisional Staff List and the Staffing Information together with any additional information reasonably requested by Lewisham and/or Southwark (as appropriate) including information as to the potential application of TUPE to the employees. Brent shall notify Lewisham and/or Southwark (as appropriate) via the Joint

Management Board of any material changes to this information periodically during the Exit Period and shall within 14 days of each and every request from Lewisham and/or Southwark (as appropriate) provide an updated Brent's Provisional Staff List and Staffing Information; and

- 3.13.2. Brent shall be entitled to have information provided by Lewisham or Southwark via the Joint Management Board (and other agreed means) as to their intentions and plans for Replacement Services and this information shall also be updated periodically during the Exit Period.
- 3.14. Not less than twenty eight (28) days prior to the Service Transfer Date, Brent shall and shall procure that any Brent Sub-Contractor shall prepare and provide to Lewisham and/or Southwark and (as appropriate) at the direction of Lewisham and/or Southwark (as appropriate), to the their Replacement Contractor, Brent's Final Staff List, which shall be complete and accurate in all material respects.
- 3.15. Brent, Lewisham and Southwark shall each be permitted to use and disclose Brent's Provisional Staff List and Brent's Final Staff List and the Staffing Information for informing any tenderer or other prospective Replacement Contractor for any Replacement Services or services that are a similar type of services as Shared Technology Services or any part of.
- 3.16. Brent warrants that Brent's Provisional Staff List and Brent's Final Staff List and the Staffing Information (the TUPE Information) will be true and accurate in all material respects and that no persons are employed or engaged in the provision of Shared Technology Services other than those included on Brent's Final Staff List.
- 3.17. Brent shall and shall procure that any Brent Sub-Contractor shall ensure at all times that it has the right to provide the TUPE Information under Data Protection Legislation.

3.18. From the start of and for the duration of the Exit Period Brent shall and shall procure that any Brent Sub-Contractor shall not materially increase or decrease the total number of staff listed on Brent's Provisional Staff List, their remuneration, or make any other material change in the terms and conditions of those employees without Lewisham and Southwark's prior written consent (which shall not be unreasonably withheld or delayed).

3.19. From the start of and for the duration of the Exit Period Brent shall and shall procure that any Brent Sub-contractor shall not employ more staff than are reasonably required for the continued provision of Shared Technology Services ("Excess Staff"). Brent shall obtain the written consent of the Joint Management Board prior to taking on any necessary Excess Staff for the provision of the Shared Technology Services, such consent not to be unreasonably withheld or delayed.

3.20. Subject to clause 3.22 Brent shall fully and effectively indemnify and keep indemnified in full and effectively the Returning Council against all Employment Liabilities relating to:

3.20.1. any person who is or has been employed or engaged by Brent or any Brent Sub-Contractor in connection with the hosting of the Shared Technology Services ; or

3.20.2. any trade union or staff association or employee representative of Shared Technology Services Staff (where such Employment Liabilities arise as a result of any act, fault or omission of Brent and/or any Brent Sub-Contractor),

arising from or connected with any failure by Brent and/or any Brent Sub-Contractor to comply with any legal obligation, whether under regulation 13 or 14 of TUPE or any award of compensation under regulation 15 of TUPE or under the Directive or otherwise, and whether any such claim arises or has its origin before on or after the Service Transfer Date;

3.21. Subject to clause 3.22 Brent shall fully and effectively indemnify and keep indemnified in full and effectively the Returning Council against all Employment Liabilities relating to:

3.21.1. any person employed or engaged by Brent or any Brent's Replacement Contractor in connection with the provision of Brent's Replacement Services; or

3.21.2. any trade union or staff association or employee representative of such persons in 3.21.1 (where such claim arises as a result of any act, fault or omission of Brent and/or any Brent Replacement Contractor),

whether any such claim arises or has its origin before on or after the Service Transfer Date.

3.22. The indemnities in clauses 3.20 and 3.21:

3.22.1. shall not apply to the extent that the Employment Liabilities arise or are attributable to an act or omission of the Returning Council or their respective Replacement Contractor/s whether occurring or having its origin before on or after the Service Transfer Date; and

3.22.2. shall be subject to clause 3.12.2.

3.23. Subject to clause 3.24 the Returning Council shall indemnify and hold Brent harmless from and against all Employment Liabilities relating to:

3.23.1. any act or omission by the Returning Council or their respective Replacement Contractor/s relating to a Returning Relevant Employee occurring on or after the Service Transfer Date;

3.23.2. all and any claims in respect of all emoluments and outgoings in relation to the Returning Relevant Employees (including without limitation all wages, bonuses, PAYE, National Insurance

contributions, pension contributions and otherwise) accrued and payable after the Service Transfer Date ; and

- 3.23.3. any act or omission by the Returning Council or their respective Replacement Contractor/s relating to a Returning Agreed Employee occurring after the date of commencement of the Returning Agreed Employee's employment with the Returning Council or their respective Replacement Contractor/s;
 - 3.23.4. all and any claims in respect of all emoluments and outgoings in relation to the Returning Agreed Employees (including without limitation all wages, bonuses, PAYE, National Insurance contributions, pension contributions and otherwise) accrued and payable after the date of commencement of the Returning Agreed Employee's employment with the Returning Council or their respective Replacement Contractor/s.
- 3.24. The indemnities in clause 3.23 shall not apply to the extent that the Employment Liabilities arise or are attributable to an act or omission of the Remaining Council/s or their Contractor/s whether occurring or having its origin before on or after the Service Transfer Date.
- 3.25. The parties shall co-operate to ensure that any requirement to inform and consult with the employees and or employee representatives in relation to any Relevant Transfer as a consequence of a Relevant Transfer will be fulfilled.
- 3.26. The parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply to clause 3.13 to clause 3.25 to the extent necessary to ensure that any Replacement Contractor shall have the right to enforce the obligations owed to, and indemnities given to, the Replacement Contractor by any of the Councils in its own right under section 1(1) of the Contracts (Rights of Third Parties) Act 1999.
- 3.27. Despite clause 3.26 it is expressly agreed that the parties may by agreement rescind or vary any terms of this Agreement without the consent of any other

person who has the right to enforce its terms or the term in question despite that such rescission or variation may extinguish or alter that person's entitlement under that right.

4. Pensions

- 4.1. The Transferring Employees shall be entitled to join the Brent Pension Fund from the Transfer Date.
- 4.2. Brent shall or shall procure that any relevant Brent Sub-Contractor shall ensure that all Eligible Employees are offered Appropriate Pension Provision with effect from the Transfer Date and shall comply with its obligations under the Pensions Act 2004 and the Pensions Act 2008 as amended, and any regulations made thereunder.
- 4.3. The provisions of clause 4 shall be directly enforceable by an Eligible Employee against Brent or any relevant Brent Sub-Contractor and the Councils agree that the Contracts (Rights of Third Parties) Act 1999 shall apply to the extent necessary to ensure that any affected employee shall have the right to enforce any obligation owed to such employee by Brent or Brent Sub-Contractor under that clause in his own right under section 1(1) of the Contracts Rights of Third Parties Act 1999.
- 4.4. Brent hereby indemnifies Lewisham and Southwark and/or any Replacement Contractor and, in each case, their sub-contractors from and against all Employment Liabilities suffered or incurred by it or them which arise from claims by Eligible Employees or by any trade unions, elected employee representatives or staff associations in respect of all or any such Eligible Employees which losses:
 - 4.4.1. relate to pension rights in respect of periods of employment on or after the Transfer Date or other subsequent Relevant Transfer Date until the date of the end of the Exit Period or the Service Transfer Date; or

4.4.2. arise out of the failure of Brent and/or any relevant Brent Sub-Contractor to comply with the provisions of this clause 4 before the date of termination or expiry of the Agreement,

save to the extent that such losses have been caused or contributed to by any act and/or omission of Southwark or any Previous Southwark Contractor or Lewisham or any Previous Lewisham Contractor.

4.5. Lewisham hereby indemnifies (and shall procure that the Previous Lewisham Contractor indemnifies) Brent from and against all Employment Liabilities suffered or incurred by Brent which arise from claims by Lewisham Eligible Employees or by any trade unions, elected employee representatives or staff associations in respect of all or any such Lewisham Eligible Employees which losses relate to pension rights in respect of periods of employment before the Transfer Date save to the extent that such losses have been caused or contributed to by any act and/or omission of Brent or any Brent Sub-Contractor.

4.6. Southwark hereby indemnifies Brent from and against all Employment Liabilities suffered or incurred by Brent which arise from claims by Southwark Eligible Employees or by any trade unions, elected employee representatives or staff associations in respect of all or any such Southwark Eligible Employees which losses relate to pension rights in respect of periods of employment before Transfer Date save to the extent that such losses have been caused or contributed to by any act and/or omission of Brent or any Brent Sub- Contractor.

4.7. Save on termination of this Agreement, if the employment of any Eligible Employee transfers to another employer (by way of a transfer under TUPE or the Directive), Brent shall and shall procure that any relevant Brent Sub-Contractor shall:

4.7.1. Consult with and inform those Eligible Employees of the pension provisions relating to that transfer;

- 4.7.2. Procure that the employer to which the Eligible Employees are transferred (“the New Employer”) complies with the provisions of clauses 4.2 and 4.3 of this Schedule provided that references to “Brent Sub-Contractor” will become references to the New Employer, and the Transfer Date will be the date of the transfer to the New Employer and references to “Eligible Employees” will become references to the Eligible Employees so transferred to the New Employer.
- 4.8. On termination of this Agreement Brent shall and shall procure that any Brent Sub-Contractor shall:
- 4.8.1. maintain such documents and information as will be reasonably required to manage the pension aspects of any onward transfer of any person engaged or employed by Brent or any Brent Sub-Contractor in the provision of Shared Technology Services on the termination of this Agreement.
- 4.8.2. promptly provide to the Returning Council such documents and information mentioned in clause 4.8.1 which the Returning Council may reasonably request in advance of the termination of this Agreement, and
- 4.8.3. co-operate fully with the reasonable requests of the Returning Council relating to any administrative tasks necessary to deal with the pension aspects of any onward transfer of any person engaged or employed by Brent or any Sub-Contractor in the provision of Shared Technology Services on the termination of this Agreement.

5. LGPS

- 5.1. Brent shall not take any action in respect of any Shared ICT Staff which may incur a LGPS Capital Cost without first notifying the Joint Management Board

of the proposed action and the potential costs including the LGPS Capital Costs involved.

- 5.2. Where the action or proposed action referred to in clause 5.1 is the exercise of discretion under the LGPS Regulations Brent shall not take that action without the prior agreement of the Joint Management Board, such agreement not to be unreasonably withheld. Where Brent take any action referred to in this clause 5.2 without the agreement of the Joint Management Board the LGPS Capital Costs arising from that action will be borne solely by Brent.
- 5.3. Brent shall ,on each occasion that it proposes to take or takes any action referred to in clause 5.1, comply with the LGPS Regulations and Brent's applicable policies and procedures current at the date of Brent's proposed action.
- 5.4. The apportionment and financial principles as set out in Schedule 8 shall apply to LGPS Capital Costs.
- 5.5. Eligible Employees who are current members of the Southwark Pension Fund or Lewisham Pension Fund as at the Transfer Date, shall also have the right to transfer their benefits under the Lewisham Pension Fund and/or Southwark Pension Fund as accrued up to the Transfer Date into the Brent Pension Fund. Where an Eligible Employee chooses not transfer their benefits, Brent will have no liability to Lewisham or Southwark in relation to any accrued pension deficit relating to that Eligible Employee.
- 5.6. Where any Eligible Employee transfers their accrued membership of the Lewisham Pension Fund into the Brent Pension Fund, regulation 103 (2) of the LGPS Regulations shall apply and Lewisham shall make an individual Transfer Value Payment to Brent in respect of each such Eligible Employee in accordance with the Actuarial Guidance.
- 5.7. If under the LGPS Regulations the transfer values attributable to the Eligible Employees should be calculated on an aggregate basis (a bulk transfer) rather than individual basis then the Transfer Value Payment will be on a fully

funded basis and Brent and Lewisham will arrange for their actuarial advisors to calculate and agree a lump sum amount that fully meets the pension deficit resulting from the Eligible Employees transferring their accrued Lewisham pension benefits into the Brent Pension Fund (the "Lewisham Entry Pension Deficit Payment"). Lewisham shall pay Brent for the amount of their respective Lewisham Entry Pension Deficit Payment through a single lump sum payment by electronic transfer within twenty eight (28) days of Lewisham receiving written notification from Brent that such payment shall be made and the amount of such payment which shall be deemed to cover in full the Lewisham Entry Pension Deficit Payment. Brent shall pay the Lewisham Entry Pension Deficit Payment once received from Lewisham to the credit of the Brent Pension Fund.

- 5.8. Where any Eligible Employee transfers their accrued membership of the Southwark Pension Fund as appropriate into the Brent Pension Fund, regulation 103 (2) of the LGPS Regulations shall apply and Southwark shall make an individual Transfer Value Payment to Brent in respect of each such Eligible Employees in accordance with the Actuarial Guidance.
- 5.9. If under the LGPS Regulations the transfer values attributable to the Eligible Employees should be calculated on an aggregate basis (a bulk transfer) rather than individual basis then the Transfer Value Payment will be on a fully funded basis and Brent and Southwark will arrange for their actuarial advisors to calculate and agree a lump sum amount that fully meets the pension deficit resulting from the Eligible Employees transferring their accrued Southwark pension benefits respectively into the Brent Pension Fund (the "Southwark Entry Pension Deficit Payment"). Southwark shall pay Brent for the amount of the Southwark Entry Pension Deficit Payment through a single lump sum payment by electronic transfer within twenty eight (28) days of Southwark receiving written notification from Brent that such payment shall be made and the amount of such payment which shall be deemed to cover in full the Southwark Entry Pension Deficit Payment. Brent shall pay the Southwark Entry Pension Deficit Payment once received from Southwark to the credit of the Brent Pension Fund.

- 5.10. For the avoidance of doubt, all liabilities of the Brent Pension Fund (including any liabilities attributable to past service pension deficit) in respect of the Eligible Employees from the Transfer Date up to and including the expiry or termination of this Agreement and any contributions required in accordance with the LGPS Regulations are the responsibility of Brent.
- 5.11. In the event that prior to, or on the termination of the Agreement, some or all of the provision of the Service provided by Brent as Host Council to Lewisham and Southwark is to be provided by Lewisham or Southwark or a Replacement Contractor, the Returning Employees may be entitled to join or, in the case of Returning Employees who are employed by a Replacement Contractor, may be offered membership of, the Lewisham Pension Fund or Southwark Pension Fund on transfer of their employment pursuant to TUPE (though where the Returning Relevant Employees are to be employed by a Replacement Contractor the offer of membership of the Lewisham Pension Fund or Southwark Pension Fund will only be with the Replacement Contractor's consent).
- 5.12. Where any Returning Employee transfers their accrued membership of the Brent Pension Fund into the Lewisham Pension Fund as on an individual basis as described in clause 5.2, the Transfer Value Payments will be calculated in accordance with the LGPS Regulations (or such replacement regulations as are from time to time in force). If under those regulations the transfer values attributable to the Returning Employees should be calculated on an aggregate basis (a bulk transfer) rather than individual basis then the Transfer Value Payment will be on a fully funded basis and Brent and Lewisham will arrange for their actuarial advisors to calculate and agree a lump sum amount that fully meets the pension deficit resulting from the Returning Employees transferring their accrued Brent pension benefits into the Lewisham Pension Fund (the "Lewisham Exit Pension Deficit Payment"). Brent shall pay Lewisham for the amount of the Lewisham Exit Pension Deficit Payment through a single lump sum payment by electronic transfer within twenty eight (28) days of Brent receiving written notification from Lewisham that such payment shall be made and the amount of such payment

which shall be deemed to cover in full the Lewisham Exit Pension Deficit Payment. Lewisham shall pay the Lewisham Exit Pension Deficit Payment once received from Brent to the credit of the Lewisham Pension Fund.

- 5.13. Where any Returning Employee transfers their accrued membership of the Brent Pension Fund into the Southwark Pension Fund as on an individual basis as described in clause 5.4, the Transfer Value Payments will be calculated in accordance with the LGPS Regulations (or such replacement regulations as are from time to time in force). If under those regulations the transfer values attributable to the Returning Employees should be calculated on an aggregate basis (a bulk transfer) rather than individual basis then the Transfer Value Payment will be on a fully funded basis and Brent and Southwark will arrange for their actuarial advisors to calculate and agree a lump sum amount that fully meets the pension deficit resulting from the Returning Employees transferring their accrued Brent pension benefits into the Southwark Pension Fund (the "Southwark Exit Pension Deficit Payment"). Brent shall pay Southwark for the amount of the Southwark Exit Pension Deficit Payment through a single lump sum payment by electronic transfer within twenty eight (28) days of Brent receiving written notification from Southwark that such payment shall be made and the amount of such payment which shall be deemed to cover in full the Southwark Exit Pension Deficit Payment. Southwark shall pay the Southwark Exit Pension Deficit Payment once received from Brent to the credit of the Southwark Pension Fund.