

Appendix 2 – Joint Committee and Delegation Agreement

Dated

(1) London Borough of Havering (LBH)

(2) London Borough of Newham (LBN)

Joint Committee and Delegation Agreement

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THIS AGREEMENT is made on

BETWEEN

- (1) London Borough of Havering, Town Hall, Main Road, Romford. RM1 3BD (“LBH”)
- (2) London Borough of Newham, Town Hall, East Ham, Barking Road London E6 2RP (“LBN”)

BACKGROUND

- (A) LBH and LBN 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.
- (B) The Councils have agreed to establish and to participate in a joint committee (the “Joint Committee”) to facilitate the joint delivery of certain of their functions (the “Delegated Functions”) with a view to their more economical, efficient and effective discharge. Initially these functions shall comprise those associated with the Shared Services as listed in Schedule 2. The Councils have agreed to delegate their Executive functions as set out in Schedule 2.
- (C) The Councils have entered into this Agreement in reliance on the exclusive rights given to local authorities to undertake administrative arrangements of this nature in sections 101, 102, 112 and 113 of the Local Government Act 1972, sections 9EA and 9EB of the Local Government Act 2000 and Section 1 of the Localism Act 2011 and the regulations made under these Acts; and the supporting provisions within section 111 Local Government Act 1972 and all other relevant powers.

OPERATIVE PROVISIONS

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement the following expressions have the following meanings unless inconsistent with the context:

“Assets”	all and any assets used in delivery of the Shared Services including all items of furniture, information technology (including Software), and all other equipment supplied by the Councils for use in the delivery of the Shared Services
“Asset Register”	a register of all the Assets used by the Councils in the delivery of the Shared Services
"Background IPR"	shall mean all intellectual property rights which are proprietary to a Council prior to the Commencement Date
“Business Day”	any day other than a Saturday or Sunday on which banks are open for domestic business in the City of London; and additionally excluding 25, 26, 27, 28, 29, 30, 31 December
“Chief Officer”	an officer who in the structure of the employing Council falls within that Council’s definition (consistent with the Local Authorities Standing Orders (England) Regulations 2001
“Commencement Date”	the date of this Agreement
“Commercially Sensitive Information”	any information in respect of which the Councils agree that disclosure would or would be likely to prejudice the commercial interests of any person
“Constitution of the Joint Committee”	the constitution set out at Schedule 1

“Councils”	London Borough of Havering and London Borough of Newham
“Council”	means singly the London Borough of Havering or the London Borough of Newham
“Delegated Functions”	those functions and responsibilities set out in Schedule 2 which have been delegated by the Councils to the Joint Committee in the manner described in Schedule 2;
“Delegated Powers”	those detailed decision making powers the Delegated Functions which have been delegated from time to time by the Councils to the Joint Committee
“Deputy Chief Officer”	an officer who in the structure of the employing Council falls within that Council’s definition (consistent with the Local Authorities Standing Orders (England) Regulations 2001)
“DPA”	Data Protection Act 1998
“Distribution Formula”	the formula and principles by which the percentage contributions of each of the Councils are determined in accordance with clause 11.9 and Schedule 4
“Exempt Information”	any information or class of information relating to this Agreement which may fall within an exemption to disclosure under FOI Legislation
“FOI Legislation”	the Freedom of Information Act 2000 (FOI) and subordinate legislation made under this and

the Environmental Information Regulations
2004 (EIR)

“Finance Officer to
the Joint Committee”

the officer designated as Finance Officer to the
Joint Committee by the Joint Committee from
time to time

“Head of Paid Service”

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

“Information Request”

a request for information under FOI Legislation

“Intellectual Property
Rights”

rights in patents, trade marks, service marks,
design rights (whether registrable or
otherwise), applications for any of the
foregoing, copyright (including rights in
software), database rights, knowhow, trade
secrets, confidential business information,
trade or business names and any similar or
analogous rights to any of the above, whether
arising or granted under the Laws of England
or of any other jurisdiction

“Key Decision”

is an Executive decision which is likely
(i) to result in the local authority incurring
expenditure which is, or the making of savings
which are, significant having regard to the local
authority’s budget for the service or function to
which the decision relates. For this purpose

“significant” is defined as in excess of £500,00; or

(ii) to be significant in terms of its effects on communities living or working in an area comprising two or more wards or electoral divisions in the area of the local authority.

In determining the meaning of “significant”, regard must be had to any guidance issued by the Secretary of State

“Lawyer to the Joint Committee”

the officer designated as Lawyer to the Joint Committee by the Councils or such other officer of the Councils as may be agreed by the Joint Committee from time to time

“Managing Director”

The officer appointed by the Joint Committee on behalf of the Councils with responsibility for managing the Shared Services.

“Political Group Leader”

a person designated as the leader of a political group in accordance with the Local Government (Committees and Political Groups) Regulations 1990

“Relevant Staff”

staff employed in carrying out the Shared Services

“Reserved Function(s)”

the functions and responsibilities (if any) described in Schedule 2 as reserved function(s) and which have been reserved to either of the Councils and therefore not

Delegated Functions and do not fall within the remit of the Shared Services described in Schedule 2

“Secretary to the Joint Committee”

the officer designated as Secretary to the Joint Committee by the Councils or such other officer of the Councils as may be agreed by the Joint Committee from time to time (also known as "Committee Secretary")

“Section 151 Officer”

the officer designated by a Council as the person responsible for the proper administration of its financial affairs, as required by section 151 of the Local Government Act 1972

“Service Director

an officer appointed by the Joint Committee reporting directly to the Managing Director and responsible for the management of one or more of the Shared Services

“Service Plan(s)”

plans prepared in a format to be agreed by the Joint Committee including planned service levels of the Shared Services for a defined period including financial and other related data

“Shared Service(s)”

those services detailed in Schedule 2 and which are associated with the performance of “Delegated Functions”; to include such additional services as are agreed by the Councils

“Shared Services Policies
and Procedures”

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

“Software”

any and all computer programs in both source
and object code form, including all modules,
routines and subroutines 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 services within each Council which may be
required to assist the Joint Committee in the
discharge of the Delegated Functions
including secretariat services to support the
administration of the Joint Committee itself

- 1.2 References to any statute or statutory provision (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 are inserted for convenience only and shall not affect the construction of this Agreement.
- 1.4 Words importing one gender include all other genders and words importing the singular include the plural and vice versa.
- 1.5 A reference in this Agreement to any clause, paragraph or Schedule is, except where it is expressly stated to the contrary, a reference to a clause or paragraph of or Schedule to this Agreement.
- 1.6 Any reference to this Agreement or to any other document unless otherwise specified shall include any variation, amendment or supplements to such document expressly permitted by this Agreement or otherwise agreed in writing between the relevant parties.
- 1.7 Words preceding “include”, “includes”, “including” and “included” shall be construed without limitation by the words which follow those words unless inconsistent with the context, and the rule of interpretation known as ejusdem generis shall not apply.

2 ESTABLISHMENT OF A JOINT COMMITTEE

- 2.1 In exercise of their powers under sections 101(5) and 102 of the Local Government Act 1972, sections 9EA and 9EB of the Local Government Act 2000 and all other enabling powers the Councils hereby agree the Constitution of the Joint Committee set out in Schedule 1 which shall govern the operation of the Joint Committee, established by the Councils, (and within this Agreement also referred to as “the Joint Committee”) with effect from the Commencement Date.

3. FUNCTIONS OF THE JOINT COMMITTEE

- 3.1 The Councils agree that the Joint Committee shall be constituted and shall operate and conduct its business in accordance with the terms of this Agreement including the Constitution of the Joint Committee as set out at Schedule 1.
- 3.2 The Councils hereby agree to delegate and empower the Joint Committee to discharge on their behalf the Delegated Functions and empower the Joint Committee to arrange for the discharge of the Delegated Functions and Delegated

Powers in the manner set out in this Agreement with effect from the 1st April 2014 save that the Joint Committee shall between the Commencement Date and the 1st April 2014 determine the senior management structure of the staff delivering the Delegated Functions.

- 3.3 The Councils will each directly appoint and employ suitably qualified officers as their s.151 Officer and Monitoring Officer who are intended to also be Relevant Staff. In relation to the former, this will not be delegated beneath “service director” level, and organisational structures should reflect this.

4. **SERVICE PLANS**

- 4.1 Each Council shall submit to the Finance Officer of the Joint Committee before the end of October each year, their estimate of the funding likely to be available to fund the Shared Services for the following three (3) financial years.
- 4.2 The Managing Director shall prepare and submit to the Joint Committee no later than the end of November each year an annual written Service Plan for the Shared Services for the next three financial years, encompassing Service Plans for each of the Shared Services. This shall take into account any constraints arising from clause 4.1 above and set out inter alia the outputs to be achieved by and the resources required for the relevant Shared Service.
- 4.3 On receipt of a Service Plan for a Shared Service, the Joint Committee shall by the end of the calendar year, review, make such amendments as it thinks fit and approve the Service Plan together with the relevant service level agreement(s).
- 4.4 The Joint Committee shall be responsible for reviewing actual performance of the Shared Services against the Service Plans and service level agreement(s).
- 4.5 The Managing Director shall submit to the Joint Committee no later than the last working day of May each year, an annual report on the activities of the Shared Services over the past financial year including an account of financial matters and explaining the main plans and activities for the coming year.

4.6 In the event that for whatever reason the Managing Director does not submit his/her report to the Joint Committee or the Joint Committee does not meet the Parties agree that the services envisaged by this agreement will continue using the previous financial year's reports with a provisional budget based on that of the previous year amended to incorporate the estimated funding proposed by the Councils under clause 4.1 above.

5. OFFICE ACCOMMODATION FOR SHARED SERVICES

5.1 Each Council shall provide suitable working accommodation for each of the Relevant Staff as may be determined by the structure from time to time established by the Joint Committee for the performance of each of the Shared Services.

5.2 It is intended that Relevant Staff will remain in their existing locations where feasible, although re-location of staff may take place where, in the opinion of the Managing Director, this will enhance the efficiency of the Shared Service. Any re-location of staff shall be undertaken in accordance with the employing Council's procedures in that regard.

5.3 At the 1st April 2014 each Council shall provide suitable working accommodation for those of its staff who are Relevant Staff to enable them to perform the Shared Services. If at any time the Managing Director decides that any Relevant Staff should relocate from one Council's accommodation to another Council's accommodation, the Council to which they relocate shall provide suitable working accommodation for the Relevant Staff.

6. SUPPORT SERVICES

6.1 If either Council believes that additional Support Services may be required for the effective management or performance of the Shared Services it shall consult the other Council to reach agreement as to the appropriate way of providing the additional Support Services. If the Councils are unable to agree the appropriate way of providing the additional Support Services the matter shall be dealt with in accordance with the dispute resolution procedure set out at clause 16.

7. ASSETS

- 7.1 The Councils agree that on Commencement they will draw up an inventory of Assets ('The Asset Register') which will be kept and regularly updated by the Secretary to the Joint Committee.

8. COSTS AND LIABILITIES IN RESPECT OF THE JOINT COMMITTEE

- 8.1 All losses, claims, expenses, actions, demands, costs and liabilities incurred by the Joint Committee in fulfilling obligations under this Agreement shall be shared by the Councils in accordance with the Distribution Formula or on such other terms as may be agreed between the Councils.
- 8.2 Each Council hereby agrees that it shall accept liability for all claims, costs and expenses incurred by it as a result of any decision, advice, action or omission of staff carrying out the Shared Services whether they are employed by that Council or the other Council.
- 8.3 For the avoidance of doubt, such costs shall include matters relating to the employment and transfer of staff, losses, costs, expenses or liabilities arising from contracts with third parties and in relation to assets, by way of illustration. For the further avoidance of doubt each Council shall be responsible for all actions and liabilities arising prior to the commencement of Shared Services.
- 8.4 This clause 8 shall survive the expiry or determination of this Agreement.

9. INSURANCE

- 9.1 Each Council shall ensure that:
- 9.1.1 it maintains throughout the duration of this Agreement (or procures the taking out and maintenance of) adequate insurance to the levels set out in clause 9.2 and any other such insurances which may be required by law ;
 - 9.1.2 the insurance obtained is effective no later than the date on which the relevant risk commences;

- 9.1.3 it is responsible for meeting and promptly pays all costs of all insurance premia for the insurances referred to in clause 9.2; and
- 9.1.4 upon written request it provides to the other Council making the written request:
 - 9.1.4.1 copies of all insurance policies required under this clause;
 - 9.1.4.2 evidence that all of the premia payable under such insurance policies have been paid in full; and
 - 9.1.4.3 evidence that the insurances remain in full force and effect.
- 9.2 Each Council shall ensure that at all times an adequate level of insurance is maintained by it in respect of the provision of the Shared Services.
- 9.3 Where either Council allows its premises to be used to allow Relevant Staff to work on matters relating to this Agreement that Council shall ensure that adequate insurance cover is effected and maintained to cover employee liability (including vicarious liability for Relevant Staff employed by the other Council), public liability and any other insurance requirements which may accord with good practice.
- 9.4 Each Council warrants to the other that as at the date of this Agreement:
 - 9.4.1 it has provided a copy of this Agreement to its insurer (in this clause 9, the “Insurer”); and,
 - 9.4.2 upon receipt of a notice from an Insurer to a Council that the terms of the insurances required under this clause 9 have changed or that the Insurer withdraws its insurance that Council shall promptly notify the other and use its best endeavours to forthwith obtain replacement insurance as required under this clause 9.

10. STAFFING

- 10.1 As from a date to be agreed by the Joint Committee the Relevant Staff shall be deployed in accordance with the organisational structure approved by the Joint Committee. The Relevant Staff shall not be transferred to another employer as a result of the employing Council entering into this agreement.
- 10.2 Where a Relevant Staff member ceases to be employed thereby creating a vacancy or a new post is created (unless it is a Chief Officer or Deputy Chief Officer post) the Managing Director or the Service Director of the Relevant Shared Service acting under their authority shall appoint to the post. Any newly appointed Relevant Staff member shall be employed by the Council which employed the former Relevant Staff member unless otherwise agreed by the Managing Director or by the Joint Committee, in consultation with the s151 Officers of both Councils taking account of factors including service and pension fund requirements and the personal circumstances of the prospective employee.
- 10.3 (a) In the event of the Managing Director post becoming vacant, candidates shall be interviewed by the Joint Committee, and their preferred candidate shall be recommended to the employing Council to appoint following its own procedural rules.
- (b) For statutory officers including the s 151 Officer and Monitoring Officer, candidates shall be interviewed by the Joint Committee together with the Managing Director and a selection panel (to be agreed for each appointment which may include representatives of the Joint Committee). The Joint Committee would then propose a shortlist of appointable candidates for subsequent interview and appointment by the employing Council in accordance with its procedural rules for such appointments.
- (c) For other Chief Officer or Deputy Chief Officer posts candidates for the vacancy shall be interviewed by the Joint Committee together with the Managing Director and the preferred candidate shall be recommended to the Councils for confirmation if required following the relevant procedural rules for appointment of Chief Officers and Deputy Chief Officers.

- 10.4 The Service Director of each Shared Service shall be responsible for the day to day management of the Relevant 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 any applicable terms and conditions of employment and Shared Services Policies and Procedures. For the avoidance of doubt this will include administering ill-health and disciplinary procedures, in respect of instances of long term sickness absence by a member of Relevant Staff and/or where formal disciplinary action may lead to dismissal of a member of Relevant Staff.
- 10.5 Each Council shall ensure that all Relevant Staff are provided with appropriate authorisation to perform the Shared Services.
- 10.6 The Councils each hereby agree to place their Relevant Staff at the disposal of the other, in accordance with Section 113 of the Local Government Act 1972 and any successor legislation, for the purposes of the efficient and effective provision, to the Councils, of the Shared Services.

11. FUNDING OF THE JOINT COMMITTEE

- 11.1 The Finance Officer to the Joint Committee shall prepare a base budget forecast for the Shared Services in respect of the next three financial years by reference to the resources approved within the Service Plans and the estimate of funding provided by the Councils under clause 4.1 above.
- 11.2 The Joint Committee shall, as soon as practicable within the overall budget cycle, but in any event no later than the 10th January of each year, submit to each Council its funding requirements for the following financial year.
- 11.3 If any Council disagrees with the amount of their contribution payable in accordance with this clause 11 then they may pursue the dispute resolution procedure set out in clause 16 or may terminate their involvement in the Joint Committee in accordance with clause 14. For the avoidance of doubt during the period of the dispute the financial arrangements then in place shall continue until the dispute is resolved by the Parties through the mechanisms of this Agreement

- 11.4 Subject to paragraph 11.3 above:
- a) The Councils agree that the annual funding requirement of the Joint Committee and its administration shall be shared between the Councils in accordance with the Distribution Formula set out in 11.8 below, and,
 - b) The Councils shall contribute funding in such sum as represents the proportion of the funding requirement for each financial year determined by the Distribution Formula
- 11.5 The Councils will annually by the 30th April calculate the total funding they have contributed on the Shared Services in accordance with clause 11.4 and Schedule 5 for the previous financial year and any balancing payment required between the Councils to achieve compliance with clause 11.4 shall be made within one month of the completion of the reconciliation.
- 11.6 The Councils' Section 151 Officers and other authorised officers shall have access at all reasonable times and with due notice to the relevant financial records of their Council and shall be entitled to seek explanations concerning queries relating thereto.
- 11.7 The staff carrying out internal audit functions and Councils' section 151 and Monitoring Officers shall have right of access to all records, assets, personnel and premises, including those of partner organisations and the authority to obtain such information and explanations as they consider necessary to fulfil their responsibilities.
- 11.8 The Distribution Formula shall be as set out in Schedule 4. Such proportion shall reduce or increase proportionately in the event that other Councils become parties to this Agreement, or any of the Councils withdraw.

12. DURATION OF AGREEMENT

- 12.1 This Agreement shall come into force on the Commencement Date and shall continue until terminated in accordance with the provisions of this Agreement.

13. VARIATION OF THIS AGREEMENT

- 13.1 Either of the Councils may request a variation to this Agreement by making such a request in writing to the Secretary to the Joint Committee.
- 13.2 The Secretary to the Joint Committee shall circulate the request to each of the Councils within 10 Business Days of receipt of the request for consideration and approval by the Councils. The Council who is requested to consider a variation to the Agreement shall respond within 20 business days of receipt or such other period as the Councils may agree.
- 13.3 If both of the Councils approve the variation then the Secretary to the Joint Committee shall arrange for the preparation of an appropriate Deed of Variation to this Agreement to be prepared for execution by both Councils and such change shall only take effect upon completion of that Deed and the costs associated with the preparation of such Deed of Variation shall be shared pro rata between the Councils on such terms as set out in Schedule 4.
- 13.4 If one of the Councils does not approve the change then the change to this Agreement shall not occur. If the Councils are unable to agree the variation the matter shall be dealt with in accordance with the dispute resolution procedure set out at clause 16.

14. **WITHDRAWAL FROM THE JOINT COMMITTEE**

- 14.1 Any Council may withdraw from the Joint Committee in accordance with the following procedure:
- 14.1.1 Any Council which wishes to withdraw from the Joint Committee shall give not less than 15 months' notice to the other Council and the Secretary to the Joint Committee of its intention to do. The Secretary to the Joint Committee shall consult the Council upon which such notice has been served giving due consideration to:
- 14.1.1.1 any loss of funding which may arise from such withdrawal to include any non-payment, clawback or repayment of such funding;
- 14.1.1.2 any other loss, liability, damage, claim or expense arising

directly from the withdrawal, but excluding any on-going increase in costs from the carrying out of functions within the Shared Services;

which would be incurred by the Council upon which notice has been served by reason of such withdrawal from the Joint Committee.

- 14.2 Any Council wishing to withdraw from the Joint Committee undertakes as a condition of such withdrawal to make within 3 months of the start of the notice period such reasonable payment or payments which fairly reflect the actual costs, claims, losses, liabilities or expenses caused by or anticipated as a result of the withdrawal as shall be determined jointly by the Councils pursuant to clauses 8, 11 and 14.1 above acting reasonably and no notice under this clause 14 shall take effect unless and until such payment has been made. Failure to make such reasonable payment within 3 months (unless such failure is as a result of mediation – see Clause 14.5) shall be treated as a withdrawal of that notice.
- 14.3 The Councils and the Joint Committee will work jointly to identify as soon as practicable, and in any event within 11 weeks of the start of the notice period, all the costs, claims, losses, liabilities or expenses caused by or anticipated as a result of the withdrawal so that the payment referred to in clause 14.2 can be made within 3 months of the start of the notice period. Any additional costs associated with the withdrawal identified after the payment has been made remain with whichever Council has legal liability for them.
- 14.4 The Council which has given notice to withdraw from the agreement can unilaterally withdraw the notice at any point prior to the payment of the additional costs referred to in clause 14.2, but can only withdraw it after the clause 14.2 payment has been made with the consent of the other Council.
- 14.5 For the avoidance of doubt, clause 17 (Mediation) shall apply in the event of agreement is not reached on the amount payable under this clause and in the event of the mediation process being invoked the timescales set out in clauses 14.2 and 14.3 shall be adjusted so that the Council that has given the notice has 2 weeks from the date of the conclusion of the mediation to make the payment or withdraw their

notice, and the notice period will end 12 months and 2 weeks after the conclusion of the mediation. .

14.6 Where one Council withdraws from this Agreement the Agreement shall terminate and the provisions of clause 15 shall apply.

15. **TERMINATION OF THIS AGREEMENT**

15.1 Without prejudice to Clause 14.1 the Councils agree that this Agreement may be determined upon terms agreed by both Councils subject to the terms of this Agreement.

15.2 In the event of termination of this Agreement:

15.2.1 Any party shall supply to any other party when requested any information which the other party requires for the continuing provision by that other party of any of the Shared Services.

15.2.2 Any Intellectual Property Rights created under this Agreement shall be owned by the then parties in equal proportions; and

15.2.3 Each of the parties shall undertake to pay such reasonable payment or payments which fairly reflect the obligations of that Council pursuant to this Agreement on the basis set out in clauses 8, 11 and 14.

15.3 In the event of termination of this Agreement, all Assets held by either of the Councils for the purposes of this Agreement shall:

15.3.1 Where reasonably practicable be divided between the Councils proportionate to the average cost of the relevant Shared Service over the previous year;

15.3.2 Be sold for the best consideration possible and the proceeds of sale divided between the Councils proportionate to the average cost of the Shared Services over the previous year, or where relevant;

15.3.3 Be retained by either Council for its own use and purposes subject to an equitable financial settlement to the other Council as agreed between the

Councils;

15.3.4 Be dealt with as otherwise agreed between the Councils; or

15.3.5 In the absence of agreement, in accordance with the dispute resolution procedure in clause 16.

15.4 It shall be the duty of all of the parties to try to minimise any losses arising from the determination of this Agreement. Amongst other issues the Councils shall use all reasonable endeavours to offer priority redeployment to any of their respective staff then employed in the provision of the Shared Services, whether by redeploying the staff to provide one or more of the Shared Service functions for the Council or to be redeployed more generally and/or by helping to seek alternative employment for them.

16. INTERNAL DISPUTE RESOLUTION

16.1 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 parties.

16.2 Any dispute or difference relating to this Agreement shall in the first instance be referred to the Service Director to resolve in liaison with the other Council. In the event that such matters cannot be resolved within 10 Business Days it shall be referred to the Managing Director and in default of agreement within a further 10 Business Days the matter shall be referred to the Heads of Paid Service. If the Heads of Paid Service are unable to resolve the matter then it shall be referred to the Joint Committee for determination.

16.3 In the event of any dispute or difference between the Councils relating to this Agreement which it has not been possible to resolve by the Joint Committee (whether this may be a matter of interpretation or otherwise) the matter shall be referred to mediation in accordance with clause 17.

17. **MEDIATION**

If at any time any dispute or difference shall arise between the Councils or any of them which they are not able to resolve in accordance with this Agreement the same shall be referred to and settled by a single mediator to be appointed by agreement by the Councils; or in default of agreement, nominated on the application of either of the Councils by the Secretary of State.

18. **NOTICES**

18.1 Form of notice

Any demand, notice or other communication given in connection with or required by this Agreement shall be made in writing and shall be delivered to, or sent by prepaid first class post to, the recipient at the address stated in Schedule 3 (or such other address as may be notified in writing from time to time) or sent by electronic mail to the electronic mail address of the recipient stated in Schedule 3 (or such other address as may be notified in writing from time to time).

18.2 Service.

Any such demand, notice or communication shall be deemed to have been duly served:

18.2.1 if delivered by hand, when left at the proper address for service;

18.2.2 if given or made by prepaid first class post, two Business Days after being posted; or

18.2.3 If sent by electronic mail at the time of transmission provided in each case that if the time of such deemed service is either after 4.00 pm on a Business Day or on a day other than a Business Day, service shall be deemed to occur instead at 10.00 am on the next following Business Day.

19. INFORMATION AND CONFIDENTIALITY

19.1 The Councils shall keep confidential any Commercially Sensitive Information relating to this Agreement or the Intellectual Property Rights of the parties and shall use all reasonable endeavours to prevent their employees and agents from making any disclosure to any person of any Commercially Sensitive Information relating to the Agreement or Intellectual Property Rights of the parties.

19.2 Clause 19.1 shall not apply to:

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

19.2.2 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;

19.2.3 Any disclosure to enable a determination to be made under clause 17 (Mediation);

19.2.4 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;

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

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

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

19.3 Where disclosure is permitted under clause 19.2, the recipient of the Commercially Sensitive Information shall be placed under the same obligation of confidentiality as that contained in this Agreement by the disclosing Council.

20. **DATA PROTECTION**

- 20.1 The Councils shall at all times comply with the DPA, including maintaining a valid and up to date registration or notification under the DPA, covering any data processing to be performed in connection with this Agreement and their responsibilities as data processors and/or data controllers.
- 20.2 The Councils shall only undertake processing of Personal Data reasonably required in connection with the operation of this Agreement and in accordance with this clause and any relevant legal requirements.
- 20.3 The Councils shall not transfer any Personal Data to any country or territory outside the European Economic Area.
- 20.4 The Councils shall not disclose Personal Data to any third parties other than:
- 20.4.1 in response to a data subject access request;
 - 20.4.2 to employees and contractors to whom such disclosure is necessary in order to comply with their obligations under this Agreement; or
 - 20.4.3 to the extent required to comply with the law.

21. **SCRUTINY AND AUDIT**

- 21.1 The Councils agree that scrutiny relating to this Agreement and the Agreed Functions shall be the responsibility of each Council.
- 21.2 The relevant committees/boards of each Council responsible for scrutiny and audit shall have the right to inspect any documents relating to this Agreement and to require the Joint Committee to answer any questions raised by them, in accordance with the Constitution and procedural rules of each Council.
- 21.3 The accounts of each council relating to the Shared Services and this Agreement shall be the subject of audit by any external auditor appointed by any of the Council.

22. **VAT**

- 22.1 The Councils agree that so far as permitted by law they shall not charge VAT on any

amounts payable under the terms of this Agreement as a non-business supply arising out of an administrative event.

23. INTELLECTUAL PROPERTY

23.1 All Intellectual Property Rights in material created by or on behalf the Councils during the provision of the Shared Services arising directly from the performance of this agreement and excluding Background IPR shall vest jointly in the Councils which will hold the Intellectual Property Rights and they shall be held on behalf of all of the parties to this agreement at the time the rights were created.

24. FREEDOM OF INFORMATION

24.1 The parties recognise that the Councils are public authorities as defined by FOI Legislation and therefore recognise that information relating to this Agreement may be the subject of an Information Request.

24.2 The parties 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.

24.3 Any Council shall be entitled to disclose any information relating to this Agreement and the Shared 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:

24.3.1 the Council which receives the Information Request shall circulate the Information Request and shall discuss it with the other Council

24.3.2 the Council which receives the Information Request shall in good faith consider any representations raised by the other Council when deciding whether to disclose Exempt Information; and

24.3.3 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.

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

25. **FORCE MAJEURE**

All parties shall be released from their respective obligations in the event that a Force Majeure Event renders the performance of this Agreement not reasonably practicable whereupon all money due to any party under this Agreement shall be paid immediately and clause 15 (Termination of this Agreement) shall apply, as if all Councils in membership of the Joint Committee had agreed to determine this Agreement.

26. **SEVERABILITY**

26.1 If at any time any clause or part of a clause or schedule or appendix or part of a schedule or appendix to this Agreement is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid or unenforceable in any respect:

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

26.1.2 the parties shall in good faith amend this Agreement to reflect as nearly as possible the spirit and intention behind that illegal, invalid or unenforceable provision to the extent that such spirit and intention is consistent with the laws of that jurisdiction and so that the amended Agreement complies with the laws of that jurisdiction.

27. **SUCCESSORS**

This Agreement shall be binding upon and shall enure to the benefit of each party's successors and permitted assigns.

28. RELATIONSHIP OF PARTIES

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

29. THIRD PARTY RIGHTS

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

30. ENTIRE AGREEMENT

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

31. LAW OF AGREEMENT OR JURISDICTION

This Agreement shall be governed by the laws of England and Wales and subject to clauses 16 and 17 (Internal Dispute Resolution and Mediation) the parties submit to the exclusive jurisdiction of the courts of England and Wales.

IN WITNESS whereof the parties have caused their respective Common Seals to be

hereunto affixed to this deed the day and year first before written

Sealed for and on behalf of)
London Borough of Havering)
in the presence of:)

Mayor/Authorised Officer

Sealed for and on behalf of)
London Borough of Newham)
in the presence of:)

SCHEDULE 1
Constitution of the Joint Committee

- 1 Each of the Councils shall appoint three Members (being elected members of the Executive of that Council) as its nominated Members of the Joint Committee. The Members appointed shall have full voting rights.

- 2 Each Council may nominate one or more substitute Members of its Executive to attend any meeting in place of an appointed Member from that Council, subject to notification being given to the Secretary to the Joint Committee before the start of the meeting. The Member appointed as a substitute shall have full voting rights where the member for whom they are substituting does not attend. If a Council's nominated Members attend a meeting of the Joint Committee, any named substitute may also attend as an observer but shall not be entitled to vote.

- 3 Each Member of the Joint Committee shall comply with the Code of Conduct of their Council when acting as a Member of the Joint Committee.

- 4 Each of the Councils may remove any of its nominated Members or substitute Members of the Joint Committee and appoint a different Member or substitute to the Joint Committee by giving written notice to the Secretary to the Joint Committee.

- 5 Each Council shall have three votes. These shall be exercised by the nominated Members who are elected members of the Council. In the absence of a Council's nominated Member, a vote may be exercised by the named substitute who is an elected member of the Council.

- 6 Each Member of the Joint Committee shall serve upon the Joint Committee for as long as he or she is appointed to the Joint Committee by the relevant Council but a Member shall cease to be a member of the Joint Committee if he or she ceases to be a Member of the Council appointing him or her or if the relevant Council removes him or her as a Member of the Joint Committee.

- 7 Any casual vacancies howsoever arising shall be filled by the Council from which the vacancy arises by notice in writing sent to the Secretary to the Joint Committee.
- 8 Meetings of the Joint Committee shall be held at the venue or venues as agreed by the Joint Committee.
- 9 The Council hosting the first meeting shall appoint one of its nominated members as Chairman and that member shall remain Chairman until the first meeting taking place after the elapse of one year from the time of his or her appointment unless he or she ceases to be a Member of the Joint Committee. On the expiry of the first Chairman's term of office as Chairman, the Council which did not appoint the first Chairman shall appoint one of its nominated members as Chairman for a period of one year from the time of his or her appointment. The same procedure shall be followed for the appointment of Chairman in subsequent years.
- 10 The Council which has not appointed the Chairman of the Joint Committee in any year shall appoint one of its nominated members as Vice Chairman.
11. The Joint Committee shall meet at least once every six months.
12. The Secretary to the Joint Committee may call additional meetings by providing at least five clear days' notice to Members of the Joint Committee, for the purposes of resolving urgent matters arising between the meetings of the Joint Committee. The Secretary to the Joint Committee must call a meeting of the Joint Committee if at least one Member of the Joint Committee from each Council requests it or the Head of Paid Service of both Councils requests it.
13. Meetings shall be notified to Members of the Joint Committee by the Secretary to the Joint Committee.
14. The Secretary to the Joint Committee shall send electronically to all members and relevant officers of each Council the agenda for each meeting of the Joint Committee no later than five clear Business Days before the date of the relevant meeting. The

Secretary to the Joint Committee shall send if requested to any Members of the Joint Committee, to the Political Group Leaders of each Council and relevant officers of each Council, printed copies of the agenda for each meeting of the Joint Committee no later than five clear Business Days before the date of the relevant meeting.

15. The Secretary to the Joint Committee shall arrange for written minutes to be taken of each meeting of the Joint Committee and shall present them to the Joint Committee at its next meeting for approval as a correct record. If the Joint Committee confirms that the minutes contain an accurate record of the previous meeting, those minutes shall be signed by the Chairman or Vice-Chairman.
16. Meetings of the Joint Committee will commence at a time to be agreed by the Joint Committee.
17. A meeting of the Joint Committee shall require a quorum of two Members of each Council who are entitled to attend and vote. If there is a quorum of members present but neither the Chairman nor the Vice Chairman is present, the Members present shall designate one Member to preside as Chairman for that meeting.
18. Subject to the provisions of any enactment, all questions coming or arising before the Joint Committee shall be decided by a majority of the Council Members of the Joint Committee immediately present and voting thereon. Subject to the provisions of any enactment, in the case of an equality of votes the Chairman shall have a second or casting vote but before exercising this, the Chairman shall consider whether it is appropriate to defer the matter to the next meeting of the Joint Committee.
19. Any Member of the Joint Committee may request the Joint Committee to record the votes of individual Members of the Joint Committee on a matter for decision.
20. A Member when speaking shall address the Chairman. If two or more Members wish to speak, the Chairman shall call on one to speak. While a Member is speaking other Members shall remain silent.

21. A Member shall direct his/her speech to the question under discussion or to a personal explanation or to a point of order.
22. Only one amendment to a proposal may be moved and discussed at a time and no further amendment shall be moved until the amendment under discussion has been disposed of, providing that the Chairman may permit two or more amendments to be discussed (but not voted on) together if circumstances suggest that this course would facilitate the proper conduct of the Joint Committee's business.
23. If an amendment be lost, other amendments may be moved on the original motion. If an amendment be carried, the motion as amended shall take the place of the original motion and shall become the motion upon which any further amendment may be moved.
24. The order of business shall be indicated in the agenda for the meeting.
25. When a motion is under debate by the Joint Committee no other motion shall be moved except the following:
 - 25.1 to amend the motion;
 - 25.2 to adjourn the meeting;
 - 25.3 to adjourn the debate;
 - 25.4 to proceed to the next business;
 - 25.5 that the question be now put;
 - 25.6 that a Member be not further heard;
 - 25.7 by the Chairman that a Member do leave the meeting;
 - 25.8 a motion under Section 100(A)(4) of the Local Government Act 1972 to exclude the public;
 - 25.9 to postpone consideration of the item.
26. A Member may move without comment at the conclusion of a speech of another Member, "That the Committee proceed to the next business", "That the question be now put", "That the debate be now adjourned", or "That the Committee do now adjourn", on the seconding of which the Chairman shall proceed as follows:

- 26.1 on a motion to proceed to next business; unless in his opinion the matter before the meeting has been insufficiently discussed put to the vote the motion to proceed to the next business
- 26.2 on a motion that the question be now put; unless in his opinion the matter before the meeting has been insufficiently discussed he shall first put to the vote the motion that the question be now put
- 26.3 on a motion to adjourn the debate or the meeting; if in his opinion the matter before the meeting has not been sufficiently discussed and cannot reasonably be sufficiently discussed on that occasion put the adjournment motion to the vote
- 26.4 the ruling of the Chairman shall not be open for discussion.
27. Any member of the Councils who is not a Member of the Joint Committee is entitled to attend the Joint Committee but he/she shall not be entitled to vote, shall not take part in the consideration or discussion of any business, save by leave of the Chairman and comments will be recorded only on the direction of the Chairman.
28. Meetings of the Joint Committee will be open to the public except to the extent that they are excluded under paragraph 30.
29. Any decision of the Joint Committee which is a Key Decision shall be published by the Joint Committee and the relevant Council(s) in accordance with the Local Government (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012
30. The public may be excluded from a meeting of the Joint Committee during an item of business whenever it is likely, in view of the nature of the business to be transacted or the nature of the proceedings, that, if members of the public were present during that item, confidential information as defined in section 100A(3) of the Local Government Act 1972 or exempt information as defined in section 100I of the Local Government Act 1972 would be disclosed to them.
31. Each Council may call in any decision of the Joint Committee in accordance with the overview and scrutiny provisions of that Council's constitution. If any decision of the

Joint Committee is subject to call in by a Council, the Joint Committee shall take no action to implement that decision until after the call in process is completed.

32. The Joint Committee may delegate a function to a Sub-Committee or an officer.
33. Any contractual arrangements that relate to a Shared Service will be undertaken by one of the Councils and that Council will apply its own financial regulations and contract procedure rules until such time as the Joint Committee adopts its own financial regulations and contract procedure rules. The Service Director of the relevant Shared Service that is incurring the expenditure will normally determine which of the Councils' financial regulations and contract procedure rules will apply and in the event of any dispute or uncertainty the matter should be referred to the Managing Director to whom all of the Service Directors report.
34. The Secretary to the Joint Committee shall provide governance and secretarial support services to the Joint Committee on such terms as may be agreed from time to time between the Councils.
35. The Lawyer to the Joint Committee shall provide legal advice and support services to the Joint Committee.
36. The Finance Officer to the Joint Committee shall provide financial support services to the Joint Committee.

SCHEDULE 2

Delegated Functions and Shared Services

London Borough of Havering	London Borough of Newham
Resources Directorate	Resources and Commercial Development Directorate
<p>Legal and Democratic Services</p> <ul style="list-style-type: none"> • Legal Services • Democratic Services • Electoral Services • Leader's and Mayor's Offices 	<p>Legal</p> <ul style="list-style-type: none"> • Legal Services • Democratic Services, Committees and Partnerships • Scrutiny • Electoral Services
<p>Internal Shared Services</p> <ul style="list-style-type: none"> • Operational Finance and HR • Operational Procurement • HR, Payroll Pensions and Finance Administration • Customer Relationship and Improvement 	<p>HR</p> <ul style="list-style-type: none"> • Shared Service Centre • Strategic HR • Employee Services • People, Projects and Participation • Talent • Leadership and Organisational Development • Health and Safety
<p>Strategic HR and OD</p> <ul style="list-style-type: none"> • HR Business Partners • Corporate HR and Change Strategy • Organisational Development 	<p>Finance</p> <ul style="list-style-type: none"> • Strategic Finance • Financial Control • Revenue and Exchequer Services • Finance Business Partnering • Internal Audit, Counter Fraud, Risk and Insurance • Procurement • NNDR • Council Tax • Council Tax and Housing Benefit
<p>Finance and Procurement</p> <ul style="list-style-type: none"> • Corporate Finance • Strategic Finance Business Partners • Internal Audit, Risk, Insurance and Fraud • Strategic Procurement Business Partner 	<p>Property and Commercial Development</p> <ul style="list-style-type: none"> • PMO and Business Improvement • Facilities Management • Strategic Property • Capital Strategy and School Organisation • Management of Schools Capital
<p>Exchequer Services</p> <ul style="list-style-type: none"> • Benefits • Council Tax and Business Rates • Corporate Debt Recovery 	<p>Business Systems</p> <ul style="list-style-type: none"> • Information Governance and Corporate Systems • Support Centre • Print Services • Unified Communications • Architectural Management • Contract and Supplier Management • Portfolio Management and Business Analysis • Printing Services
<p>Asset Management</p> <ul style="list-style-type: none"> • Corporate and School Premises Management • Transport and Fleet Services • Technical Services (Design and Maintenance) • Health and Safety 	
<p>Business Systems</p> <ul style="list-style-type: none"> • ICT Strategy and Operations • Support Centre • Information Governance • Print Unit 	

SCHEDULE 3
Notice Provisions

London Borough of Havering, Town Hall, Main Road, Romford. RM1 3BD

Tel: 01708 43248

Email: ian.burns@haverling.gov.uk

London Borough of Newham, Town Hall, East Ham, Barking Road, London.

E6 2RP

Telephone: 020 33739236

Email: helen.edwards@newham.gov.uk

SCHEDULE 4

Distribution Formula

General

- 1.1 The overriding principle is that the Councils will share costs, expenses and savings involved fairly, transparently and on an agreed share basis. There may need to be exceptions, recognising that there may be differences in relation to the historic and future usage of each of the Shared Services.
- 1.2 The Councils shall ensure that a separate account is kept in respect of all costs and expenses involved in supporting the Joint Committee and in the delivery of the Shared Services. Such account shall include the staff costs (including on costs) incurred by each of the parties, and non-staffing costs.
- 1.3 At end of the financial year the total costs incurred by each Council will be added together and the distribution formula applied to establish each Council's share. Where appropriate an equalisation payment between the councils may be required to adjust actual costs incurred to the level required under the formula. The amounts calculated by the Councils for the financial year 2013/14 shall form the initial Baseline Budget for the delivery of the Delegated Functions.

Savings From Discharging The Delegated Functions

- 2.1 The savings achieved from the discharge of the Delegated Functions by the Joint Committee shall be split between the Councils as follows:

Type of Savings	Calculation Basis
Senior Management	pro-rata to the respective relevant 2013/14 Baseline Budget
Duplication (9%)	50 : 50
Process Efficiency (11%)	pro-rata to the respective relevant 2013/14 Baseline Budget
LBN Oracle Implementation	Newham only
New External Customers	50 : 50

- 2.2 The estimated proportions of savings from the table in paragraph 2.1 are used to calculate the proportionate sharing of costs set out in the table at paragraph 3.1.

- 2.3 Any saving achieved as a result of joint working between the Councils on a service which is not included in the Delegated Functions or in respect of a service which is delegated by only one of the Councils is not covered by this Agreement.

Cost Sharing of Discharging the Delegated Functions

- 3.1 The total cost of discharging the Delegated Functions each financial year by the Joint Committee for the period 1st April 2014 to 31st March 2019 shall not exceed the amount (at 1st April 2014 values) shown in column B of the table below and the proportion of that total cost paid by LB Newham and LB Havering shall be as set out respectively in columns C & D of the table.

	B Total Cost £000	C Newham%	D Havering %
2014/15	53,128	64	36
2015/16	49,450	64	36
2016/17	48,296	63	37
2017/18	47,492	63	37
2018/19	46,628	63	37

- 3.2 The total cost of discharging the Delegated Functions for future financial years and the relative proportions of the cost to be paid by each Council shall be recalculated by the Joint Committee & Councils annually by mid-January preceding the start of the relevant financial year on the same basis as set out above unless otherwise agreed by the Councils.
- 1.3 The annual estimated cost of each Delegated Functions will be set and agreed by the Joint Committee and the two councils within their budget setting strategy, based on the Annual Service Plan and will then only be adjusted in the event of significant differences in the levels of service required by the Council's during the year. Significant for this purpose shall be more than 1% total annual revenue cost of the relevant Delegated Functions of each council.

4. Shared Services Implementation/Investment Costs

- 4.1 Each Council shall be responsible for the cost of any investment required for the Delegated Functions, except where only one Council participates in the Service, on the basis of the final calculation in the table in paragraph 3.1.
- 4.2 Investment shall include system changes, enhancements and service transformation costs, such as: the purchase of equipment or expenditure on enhancements to existing equipment; ICT software or hardware; expenditure on

installation of any new or enhanced equipment, and the cost of employees/consultants to introduce and operate new equipment and systems.

- 4.3 Where part of the investment involves staffing reductions with consequent severance costs then both Councils will share the costs on the same basis as identified in paragraph 3.1 above.