

Cabinet BACKGROUND PAPERS

DATE: Thursday 15 June 2017

AGENDA - PART I

PEOPLE

KEY 11. REORGANISATION OF THE PUBLIC HEALTH SERVICE (Pages 3 - 54)

Background Paper to the Report of the Corporate Director of People.

AGENDA - PART II - Nil

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THIS AGREEMENT is made the day of 2013

BETWEEN:

- (1) **London Borough of Harrow** of Civic Centre, Harrow, HA1 2UH ("Harrow")
- (2) **London Borough of Barnet** of North London Business Park, Oakleigh Road South, London N11 1NP ("Barnet"),

together known as the parties ("The Parties").

WHEREAS:

- (A) The Parties have each decided that their respective strategies and objectives will be best achieved by arranging for the setting up of a shared local government public health service to be known as the Joint Public Health Service ("JPHS") which will manage the provision of Public Health services to the communities in the London Boroughs of Barnet and Harrow; and that whilst such shared service will be based at Harrow and will for legal purposes be provided by Harrow the Parties agree that it will be a genuine shared service for the duration of the Agreement. The name Harrow and Barnet Joint Public Health Service given to the JPHS shall fully reflect this Recital (A) and shall be agreed by the Parties.
- (B) The Parties agree that this arrangement will assist in achieving Best Value in Harrow and Barnet by maximising economies of scale and cost efficiencies for both councils; and so have agreed that in order to achieve this, the provision of the Service by and for the Parties and the costs of doing so will be directed through the JPHS.
- (C) Barnet has therefore resolved through resolution of its Cabinet and delegated decision as set out in Appendix 6 that Harrow should discharge Barnet's relevant functions through the Service under the provisions of Section 101 of the 1972 Act and of the Local Government (Arrangement for the Discharge of Functions) (England) Regulations 2000.
- (D) Harrow has resolved through resolution of its Cabinet and delegated decision as set out in Appendix 6 to agree to discharge the relevant functions through the Service in accordance with Section 101 of the 1972 Act and of the Local Government (Arrangement for the Discharge of Functions) (England) Regulations 2000.
- (E) This Agreement sets out the terms on which the relevant functions will be discharged.

IT IS HEREBY AGREED AS FOLLOWS:

1 Definitions

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

"1972 Act"
means the Local Government Act 1972;

"1999 Act"
means the Local Government Act 1999;

"Additional Clients"
are organisations other than Harrow and Barnet to whom the JPHS provides Public Health Services in accordance with Clause 22.1;

"Additional Expenditure"

means any Expenditure which is not included within the Core Public Health Budget, being directly attributable and commensurate to the Service and which has been agreed in advance by the PHGB or by Barnet;

"Agreed Variation Notice"

is a variation notice which has been agreed in accordance with Clause 21;

"Barnet Account"

means the London Borough of Barnet General Fund Account;

"Barnet Data"

means the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are:

- (a) supplied to the JPHS by or on behalf of Barnet; or
- (b) which the JPHS is required to generate, process, store or transmit pursuant to this agreement; or

"Best Value"

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

"CEDR"

means the Centre for Effective Dispute Resolution;

"Charges"

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

"Clients"

means persons who are resident or work or are otherwise in the Boroughs of Harrow or Barnet;

"Commencement Date"

means 1 April 2013;

"Consents"

means all permissions, consents, approvals, certificates, permits, licences and authorisations required for the performance of the Service in accordance with this Agreement and consents of Clients or as may be required to facilitate the delivery of the Service;

"Contract Manager"

means the Officer at Barnet appointed in accordance with Clause 3.10;

"Core Public Health Budget" means the annual amounts set out in accordance with Appendix 2, which includes direct costs and agreed central overheads of the JPHS together with grant income and other funding allocated to the Service by either Party;

"Data"

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

"Data Controller"

shall have the meaning set out in the Data Protection Act 1998;

"Data Processor"

shall have the meaning set out in the Data Protection Act 1998

"Day(s)"

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

"Data Protection Act"

means the Data Protection Act 1998;

"Default"

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

"Dispute Resolution"

means the dispute resolution process set out in Clause 20;

"Employees"

means the employees listed in Appendix 7;

"Employee Liability Information"

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

"Employment Claim"

has the meaning given in Clause 6.10;

"EI Regulations"

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

"Excluded Services"

means the services specified for the purposes of Appendix 1;

"Exit Plan"

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

"Expenditure"

means the sum of :

- (a) Programme costs supported by contracts
- (b) an equitable proportion of Harrow and Barnet's overheads attributable to such finance, human resources, administrative and corporate Staff who support the Service;
- (c) "Employee Costs" including monthly pay for Staff (basic); agreed overtime; pension contributions; training for professional qualifications; Staff travel expenses; costs of professional subscriptions; Staff car allowances/mileage costs; statutory notices; and
- (d) "Non-Employee Costs" comprising solely of Staff training; recruitment expenses; accommodation; building maintenance; contract hire and

operations; purchase and lease of equipment; case management and ICT systems and upgrades; knowledge management systems; depreciation on assets used by the JPHS; relevant insurance costs; catering costs and expenses; stationary; in-house printing; external printing; brochures; books and publications; postage; mobile phone charges; subsistence and conferences; hotel accommodation; conference fees; and miscellaneous supplies,

together with any additional items of Employee or Non-Employee costs which are reasonably required for the delivery of the Service and which have been agreed with the PHGB provided always that all Employee Costs and Non-Employee Costs have been incurred solely, directly, properly and reasonably in the provision of the Service by the JPHS to Clients and are consistent with the Parties' own policies in relation to incurring expenses in the relevant Financial Year.

"Expiry Date"

means 31 March 2018;

"Extension Period"

means an extension to the duration of the Agreement in accordance with Clause 2.3

"Financial Year"

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

"FOI Act"

means the Freedom of Information Act 2000;

"Force Majeure"

has the meaning given in Clause 17;

"Fundamental Breach"

means:

- a) a breach of Clause 12.1 or 12.2;
- b) three or more Defaults in a six month period;
- c) a default which is not capable of remedy in accordance with Clause 16 and which has or will have a material adverse impact on Barnet and/or Clients;

"Future Provider"

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

"Hosting Premises"

means Harrow Civic Centre, Station Road, Harrow, HA1 2UH;

"Income "

shall include but not be limited to fees (including the Parties Public Health budgets), grants, financial allocations, charges, virements, any interest accrued, revenues and royalties attributable to provision of the Service by the JPHS under this Agreement;

"Intellectual Property Rights"

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

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

"Joint Director of Public Health"

means the Officer appointed in accordance with Clause 3.9;

"JPHS"

means the Harrow and Barnet Joint Public Health Service which is not a separate legal entity in its own right and hence where any obligation in this Agreement is expressed to be an obligation of the JPHS, such obligation shall be deemed to be an obligation of Harrow;

"JPHS Account"

means the specific account held by Harrow for the purposes of the operation of the JPHS;

"Key Representatives" shall be the persons identified in Clause 3.10

"Losses"

has the meaning given in Clause 6.3 and 6.6;

"Material Breach"

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

"Mediator"

means a mediator appointed in accordance with Clause 20;

"Model Procedure"

has the meaning given in Clause 20.4;

"Notice of Termination"

means a notice served in accordance with Clause 16;

"Performance Standards"

means the standards to be applied at all times in the provision of the Service by JPHS, including the operational and performance service standards set out in Appendix 4,

"Personal Data"

shall have the meaning set out in the Data Protection Act 1998

"Potential Transferring Employees"

has the meaning given in Appendix 5

"Public Health Governance Board"

means the board established in accordance with Clause 3.5 and Appendix 3;

"Public Procurement Regulations"

means Directive 2004/18/EC and the Public Contracts Regulations 2006 and any regulations implemented thereunder and any future directive, enactment, order, regulation, or instrument as may amend, replace, consolidate or re-enact;

"Redundant"

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

"Relevant Transfer"

a transfer to which TUPE applies;

"Service"

means all public health services included at Appendix 1 except for any Excluded Services set out in Part B of Appendix 1;

"Section 151 Officer"

means the officer appointed in accordance with section 151 of the Local Government Act 1972 or his authorised representative.

"Staff"

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

"Surplus"

means the amount by which the Income of the JPHS exceeds the Expenditure as established through the preparation of an income and expenditure statement prepared in accordance with CIPFA'S Statement of Recommended Practice (SORP);

"Termination"

means termination of the Agreement in accordance with Clause 16;

"Transferring Employees"

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

"Transferring Services"

the Service or part thereof, or of services substantially the same as the Service or part thereof upon cessation of provision thereof by Harrow, which will continue to be provided by Barnet or a Future Provider

"TUPE"

the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246);

"Variation Notice"

means a notice served in accordance with Clause 21.2;

"Working Day(s)"

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

- 1.2 In this Agreement except where the context otherwise requires:
- 1.2.1 the masculine includes the feminine and vice-versa;
 - 1.2.2 the singular includes the plural and vice-versa;
 - 1.2.3 any reference to this Agreement or to any other document shall include any permitted variation, amendment or supplement to such document;
 - 1.2.4 any reference to any enactment, order, regulation, code, guidance or other similar instrument shall be construed as a reference to the enactment, order, regulation, code, guidance or instrument (including any EU instrument) as amended, replaced, consolidated or re-enacted;

- 1.2.5 headings are for convenience of reference only;
- 1.2.6 words preceding include, includes, including and included shall be construed without limitation by the words which follow those words; and
- 1.2.7 the Appendices to this Agreement form part of this Agreement.

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

2 **Start and duration of this Agreement**

2.1 Subject to Clause 2.2 this Agreement will start on the Commencement Date and will remain in force for a minimum period of five years until the Expiry Date unless terminated earlier in accordance with the provisions of this Agreement.

2.2 At the expiry of four years from the Commencement Date the Parties in the light of such review may agree to extend the terms of this Agreement for a further period of up to 2 years and if so either Party shall serve written notice on the other no later than six (6) months before the Expiry Date of any intention to extend the term by offering an Extension Period under this Clause 2.3.

2.3 Within one month of receiving an offer of an Extension Period the Party to whom the offer is made shall serve written notice on the other Party indicating whether that Party wishes to continue to agree to this Agreement continuing in operation during the proposed Extension Period.

2.4 If the other Party does not accept the offer of an Extension Period, this Agreement will terminate on the Expiry Date.

2.5 If the other Party accepts the offer of an Extension Period, this Agreement shall continue in force on the terms set out in this Agreement or on such varied terms as may be agreed in accordance with Clause 21 of this Agreement.

3 **Governance**

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

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

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

- 3.4 The Parties confirm that subject to the terms of this Agreement the delivery of the Service and the expenditure of the costs directed to the provision of the Service in accordance with Appendix 2 shall be the responsibility of the JPHS.
- 3.5 The Parties will establish a Public Health Governance Board with the overall purpose of monitoring, directing, advising and securing adherence to the effective performance of the Agreement and the delivery of the Service.
- 3.6 The Public Health Governance Board will have the membership and terms of reference as set out at Appendix 3 of this Agreement provided always that the Parties may agree at any time to amend the membership and/or the terms of reference of the Public Health Governance Board.
- 3.7 The Parties agree that they shall seek to operate this Agreement through consensus wherever possible and shall use the Public Health Governance Board as a forum for discussing and seeking to resolve any issues, concerns or complaints arising in relation to the operation of this Agreement.
- 3.8 The Parties agree that they will therefore use reasonable endeavours to seek to resolve any issues, concerns or complaints arising in relation to the operation of this Agreement through the Public Health Governance Board before seeking to invoke any of the provisions of this Agreement relating to Default, Termination or Dispute Resolution.
- 3.9 The Parties, with the engagement of the Public Health England will appoint a Joint Director of Public Health with responsibility for managing the JPHS for both Authorities in accordance with the requirements of legislation in particular but not restricted to the National Health Service Act 2006 and the Health and Social care Act 2012 together with associated sub-ordinate legislation and Statutory Guidance.
- 3.10 The operation of the shared service arrangement (including management of the Director of Public Health) will be under the direction of the Corporate Director of Community Health and Wellbeing of Harrow Council; Barnet Council will be represented by the Customer and Commercial Services Director as the Contract Manager in relation to the delivery of the Service to Barnet, jointly referred to in this Agreement as the Key Representatives. Each Authority may from time to time change the identity or designation of their Key Representative and give notice of such change to the other Party.
- 3.11 It is agreed and acknowledged that each Party shall be the contracting party for any contract for the provision of public health services within their respective Borough and that through the provisions of this Agreement Harrow shall be responsible for the management, operation and monitoring of all such contracts on behalf of both Parties. The procurement process to be applied shall be that which relates to the Borough in question, unless otherwise agreed between the two parties, save that if the contracted service is to be provided to both Boroughs they shall jointly agree the relevant procurement process

4 **The Agreement**

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

5 **Objectives and Partnership Working**

- 5.1 The Parties shall establish, develop and implement their collaborative relationship with the objectives of:
- 5.1.1 implementing the Service from the Commencement Date and within the budgets set out in Appendix 2;
 - 5.1.2 providing high quality Service;
 - 5.1.3 commitment to people including staff and Clients of the Service; and
 - 5.1.4 delivering long term savings and benefits to both Parties.
- 5.2 The objectives are to be kept under review through the operation of the Public Health Governance Board.
- 5.3 The Parties agree to adopt a systematic approach to partnership working and problem resolution which is based on:
- 5.3.1 achieving solutions for the benefit of Clients and to achieve Best Value for each Party;
 - 5.3.2 trust, fairness, mutual co-operation, dedication to agreed common goals and an understanding of each Party's expectations and values;
 - 5.3.3 seeking solutions without apportioning blame;
 - 5.3.4 mutually beneficial outcomes;
 - 5.3.5 treating the Parties as equals in the dispute resolution process;

5.3.6 a mutual acceptance that adversarial attitudes waste time and money; and

5.3.7 both Parties being equal stakeholders.

6 **Staffing**

6.1 The Parties acknowledge that the provision by Harrow of the Service to Barnet through JPHS from the Commencement Date shall, with respect to each of the Employees constitute a relevant transfer in accordance with a Transfer Order the details of which are set out in Appendix 7. The Parties further agree that as a consequence of that transfer the pre-existing contracts of employment of the Employees (save insofar as such contracts relate to benefits for old age, invalidity or survivors under any occupational pension scheme) shall have effect from and after the Commencement Date as if originally made between Harrow and the Employees.

6.2 The Employees shall be entitled to retain their existing pension entitlement prior to transfer or to join the London Borough of Harrow, Local Government Pension Scheme ("LGPS") after the relevant transfer referred to in Clause 6.1.

6.3 Harrow hereby indemnifies Barnet and/or any Future Provider and, where relevant, their sub-contractors from and against all costs, claims, liabilities and expenses (including reasonable legal expenses) ("Losses") suffered or incurred by it or them which arise from claims by Employees or Transferring Employees by any trade unions, elected employee representatives or staff associations in respect of all or any such Employees which losses relate to pension rights in respect of periods of employment on and after the Commencement Date until the date of termination or expiry of this Agreement or arise out of the failure of Harrow to comply with the provisions of Clauses 6.3, and 6.4 before the date of termination or expiry of this Agreement and the Parties agree that Clause 24 (Contracts (Rights Third Parties) Act 1999) of this Agreement shall not apply to this 6.3.

6.4 Harrow shall be responsible for all remuneration, benefits, entitlements and outgoings in respect of the Employees, including without limitation, all wages, holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions, pension contributions and otherwise, from the Commencement Date to the expiry or termination of this Agreement. For the avoidance of doubt, Harrow shall be responsible for all liabilities of any applicable pension scheme in respect of the current Employees from the Commencement Date up to and including the expiry or termination of this Agreement and any contributions required in accordance with the regulations supporting any such scheme. In the event that prior to, or on the termination of the Agreement, either some or all of the provision of the Service provided by Harrow to Barnet is provided by Barnet the Transferring Employees shall be entitled to join the London Borough of Barnet Local Government Pension Scheme (Barnet LGPS) after the transfer of their employment pursuant to TUPE.. Any pension deficit arising after the Commencement Date which is payable to the Barnet LGPS by Barnet in connection with the transfer of the Transferring Employees shall be paid by Barnet to the LGPS in periodic instalments ("Barnet Pension Deficit Payment"). Harrow shall reimburse Barnet for the cost of the Barnet Pension Deficit Payment through a lump sum payment of such amount as determined by the actuary to the Barnet LGPS by electronic transfer within (7) days of Harrow receiving written notification that such payment shall be made, which shall be deemed to cover the full Barnet Pension Deficit Payment.

- 6.5 Harrow agrees that if it seeks to vary the terms and conditions of employment of any Employee following the Commencement Date, it shall comply with its consultation obligations as the employer of the Employees and conduct all reasonable negotiations with any recognised trade unions. The Parties agree that Harrow may make such changes to the Employees' terms and conditions of employment as are reasonably necessary to effectively manage the organisational structure of its workforce.
- 6.6 Harrow shall indemnify Barnet against all Losses incurred by Barnet in connection with or as a result of any claim or demand by or on behalf of any of the Staff (whether in contract, tort, under statute, pursuant to European law or otherwise) including, without limitation, any Employment Claims in each case arising directly or indirectly from any act, fault or omission of Harrow in respect of any such employee for the period from the Commencement Date to expiry or termination of this Agreement, provided that such costs, claims, expenses and liabilities are not payable as a result of any act or omission of Barnet.
- 6.7 Barnet and Harrow will comply with their obligations under TUPE of any relevant transfer under TUPE pursuant to this Agreement (including without limitation the obligation under Regulation 13 of TUPE), save that the Parties agree that Barnet is not able to comply with the timetable required under TUPE Regulation 11(3) and will make no claim on Barnet in relation thereto and each party shall indemnify the other against all Losses incurred in connection with or as a result of any claim or demand (whether in contract, tort, under statute, pursuant to European law or otherwise) including, without limitation any Employment Claim, provided that such Losses are not payable to the extent that they are as a result of any act or omission of the party claiming under this Clause.
- 6.8 If the circumstances under which the Services are provided are such that Harrow's officers, employees, agents or sub-contractors are exempt from the provisions of Section 4(2) of the Rehabilitation of Offenders Act 1974 working on those Services (for the purposes of this sub-Clause the "Act"), by virtue of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (for the purposes of this sub-Clause the "Order"), then Harrow shall use reasonable endeavours to ensure that such officers, employees, agents or sub-contractors shall provide information in accordance with the Act and Order about convictions which would otherwise be spent under the provisions of the Act and shall undertake checks of the appropriate level with the Criminal Records Bureau, in respect of all such individuals ("CRB Checks").
- 6.9 Harrow shall disclose to Barnet the details of all convictions and CRB Checks of such officers, employees, agents or sub-contractors and in the event that such checks reveal that any of them have relevant convictions or other relevant Criminal Record(s), Harrow may direct that such persons should be removed from the provision of the services.
- 6.10 Barnet shall indemnify Harrow against all costs, claims, liabilities and expenses (including reasonable legal expenses) incurred by Harrow in connection with or as a result of any claim or demand (whether in contract, tort, under statute, pursuant to European law or otherwise) including, without limitation, any Employment Claims made at any time by or on behalf of any employee of Barnet other than the Employees who claim to have become an employee of or have rights against Harrow by virtue of TUPE.
- 6.11 On expiry or termination of this Agreement the Parties agree that it is their intention that TUPE shall apply in respect of the provision thereafter of any service equivalent to a

Service (including the Transferring Services) by Barnet or any Future Provider but the position shall be determined in accordance with the law at expiry or termination and this clause is without prejudice to such determination. The Parties agree that the provisions of Appendix 5 will apply.

7 Application of s 113 LGA 1972

Harrow and Barnet agree that where the employees of the JPHS are engaged on work for Barnet the provisions of section 113 of the 1972 Act will apply and that those employees will be placed by Harrow at the disposal of Barnet for the purposes of their functions, and such employees shall be treated at all times as an officer of Barnet whilst so engaged and Harrow undertakes that it shall have duly consulted such employees prior to placing them at Barnet's disposal and that Harrow shall continue to treat such employees as its own employees.

8 Accommodation

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

8.2 Barnet undertakes to Harrow to make available such reasonable use of accommodation, working space and associated facilities and services including telephone, IT systems and meeting rooms as shall from time to time be necessary to enable JPHS to deliver the Service to Barnet from time to time to the extent that it is agreed by Barnet and JPHS that such services are required to be provided from Barnet offices. Harrow shall ensure that employees of JPHS shall not use Barnet's accommodation, working space or associated facilities and services for any reason other than to perform the Service and where they are not reasonably able to do so from the Hosting Premises.

8.3 Barnet hereby licenses all appropriately authorised employees of Harrow engaged in the JPHS to enter its premises for the purposes of the performance of the Service and to utilise such associated services and facilities as shall be provided by Barnet to Harrow for the purposes of the JPHS from time to time.

8.4 The Parties shall use reasonable endeavours to avoid or minimise any disruption to the other Party's operations for the duration of the Agreement.

9 Equipment and Information Technology

9.1 Subject to any necessary Information Sharing Agreement Barnet undertakes to the JPHS to license free of charge (insofar as it is able to legally and contractually do so) the Staff as reasonably necessary in order to enable the JPHS and its staff to access its records, information technology systems, telephone and other systems as may be necessary from time to time to deliver the Service to Barnet; and to allow and facilitate free of charge (insofar as it is able to legally and contractually do so), the transfer of necessary data records and information as may be held by Barnet to the JPHS for the purposes of the delivery of the Service to Barnet.

- 9.2 In the event of Barnet levying a charge on the JPHS to access the systems and/or to transfer the Barnet Data, records and information referred to in Clause 9.1 such charge shall be treated as Expenditure.
- 9.3 No member of the JPHS staff shall access Barnet systems unless prior written approval is granted by Barnet at its absolute discretion, in order to preserve confidentiality or prevent and manage a potential or actual conflict of interest.
- 10 **Intellectual Property**
- 10.1 Nothing in this Agreement is intended to transfer to Harrow any Intellectual Property Rights owned by Barnet whether solely or jointly as at the Commencement Date.
- 10.2 Barnet hereby grants to Harrow for the purposes of the JPHS a non-exclusive, revocable, royalty-free licence to use and copy materials the Intellectual Property Rights in which vest solely in Barnet solely for the purpose of providing the Service through the JPHS to Barnet for the duration of this Agreement.
- 10.3 All and any Intellectual Property Rights in materials developed for or on behalf of the JPHS during the duration of this Agreement shall (as between the Parties) vest in equal shares between the Parties unless agreed otherwise.
- 10.4 Harrow shall on expiry or termination of this Agreement for any reason grant Barnet a non-exclusive, perpetual, irrevocable, royalty-free licence to use and copy materials the Intellectual Property Rights in which vest in Harrow for the purpose of providing or having provided the Service to Barnet through the JPHS.
- 10.5 Nothing in this Clause 10 shall require either Party to provide or disclose to the other Party any materials to the extent that they contain confidential information or attract legal professional privilege or Intellectual Property Rights by the JPHS where such provision or disclosure would amount to a waiver of privilege or put either Party or any employee in breach of any legal obligation or infringe any Intellectual Property Rights.
- 10.6 Where a claim or proceeding is made or brought against Barnet which arises out of the infringement of any Intellectual Property Rights or because the use of any materials, Data, plant, machinery or equipment in connection with the Service infringes any Intellectual Property Rights of a third party then, unless such infringement has arisen out of the use of any Intellectual Property by or on behalf of Barnet otherwise than in accordance with the terms of this Agreement, Harrow shall indemnify Barnet at all times from and against all direct losses directly arising as a result of any claim and proceeding.
- 10.7 Where a claim or proceeding is made or brought against Harrow which arises out of the infringement of any Intellectual Property Rights or because the use of any materials, data, plant, machinery or equipment in connection with the Service infringes any Intellectual Property Rights of a third party then, unless such infringement has arisen out of the use of any Intellectual Property by or on behalf of Harrow otherwise than in accordance with the terms of this Agreement, Barnet shall indemnify Harrow at all times from and against all direct losses arising directly as a result of any claim and proceeding.

11 **Financial provisions**

In return for Harrow carrying out its obligations under this Agreement Barnet shall make payments to Harrow relating to the Service in accordance with Appendix 2.

12 **The Service Standard and Adherence to Policies**

12.1 Harrow shall ensure that JPHS provides the Service substantially in accordance with its material obligations under this Agreement including the Operational Arrangements and Performance Standards (Appendix 4) and with all the skill, care and diligence to be expected of a competent local authority.

12.2 Failure to comply with Clause 12.1 shall constitute a Fundamental Breach of this Agreement.

12.3 In providing the Service Harrow shall ensure that the JPHS:

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

12.3.2 complies with any statutory or regulatory provisions and Statutory Guidance which apply to the Service;

12.3.3 obtains, maintains and complies with all Consents;

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

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

12.3.6 implements an effective risk management procedure in accordance with Appendix 4, and

12.3.7 provides the Service in accordance with any relevant Codes of Conduct.

12.4 Harrow shall notify Barnet forthwith where any Staff becomes subject to investigatory or disciplinary or criminal proceedings and so far as it is lawful to do shall ensure that such member of staff is not engaged in the provision of the Service.

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

12.6 In delivering the Service the JPHS shall comply with

12.6.1 those policies of Harrow listed in Appendix 8 Part 1 together with any additional Harrow policies relevant to the delivery of the Service which are introduced by Harrow during the operation of the Agreement.

12.6.2 those policies of Barnet listed in Appendix 8 Part 2, or where there are Harrow policies of at least an equivalent and equally comprehensive standard to Barnet policies, with such Harrow policies, or as agreed by the Public Health Governance Board during the operation of the Agreement.

12.7 Any costs of compliance with the policies in clause 12.6.2 which are additional to the cost of compliance with the equivalent Harrow policy or a new requirement not covered in Harrow policies shall constitute an agreed identified overhead as part of the Core Public Health Budget and be set out in Annex One of Appendix 2, and charged to Barnet.

13 **Insurance**

13.1 Barnet undertakes that it will maintain in full force and effect such insurance policies with Zurich Municipal or other provision which it has in place at the start of this Agreement in relation to the provision of any public health service by Barnet and that in addition Barnet undertakes that it will obtain and maintain in place such further professional indemnity (or equivalent) insurance from the start of this Agreement in relation to the provision of public health services in Barnet.

13.2 Harrow undertakes that it will maintain in full force and effect such other insurance policies, which shall include appropriate employer's liability insurance, or other provision which are required by applicable law in relation to the Service and this Agreement at all times during the term of this Agreement, including any extension thereof.

13.3 Each Party undertakes to the other that it shall provide to the other upon the Commencement Date and thereafter upon reasonable demand sight of all insurance documentation relevant to the Service and this Agreement including policies, cover notes, premium receipts and any other documents, provided that neither Party shall have to comply with this Clause if to do so would invalidate any terms of its insurance.

13.4 Each Party shall hold the other harmless for all actions, claims, demands, liabilities, damages, costs, losses or expenses resulting from any circumstances where an insurance claim can be made.

14 **Monitoring of the Service**

The Service will be monitored in accordance with the procedures and performance standards referred to in Appendix 2 (Charging Arrangements), Appendix 3 (Governance Arrangements) and Appendix 4 (Operational Arrangements and Performance Standards).

15 **Defaults**

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

- 15.2 If the Default has not been rectified within thirty (30) Working Days to the satisfaction of the other Party then the matter shall be referred to the Public Health Governance Board unless the Parties agree a longer period.
- 15.3 The Parties shall use reasonable endeavours to resolve the Default through the Public Health Governance Board in accordance with Clauses 3.7 and 3.8 of this Agreement.
- 15.4 If the Parties cannot resolve the Default through the Public Health Governance Board within a reasonable time either of the Parties can refer the matter for resolution, in accordance with Clause 20 (Dispute Resolution).

16 Termination

- 16.1 If Harrow,
- 16.1.1 commits or causes the commission of any criminal offence in providing the Service (except for any minor offence or minor traffic offence);
 - 16.1.2 or any person employed by it or acting on its behalf, in relation to this contract with Barnet, commit(s) an offence under the Bribery Act 2010, or shall have given any fee or reward the receipt of which is an offence under Section 117(2) of the 1972 Act;
 - 16.1.3 commits a Default which is identified by any term of this Agreement as being a Fundamental Breach or is otherwise a fundamental breach of its obligations under this Agreement, or
 - 16.1.4 invalidates the insurance referred to in Clause 13.2 and/or does not otherwise provide sufficient cover to Barnet against the risk of potential claims against Barnet from Clients, Additional Clients or third parties arising directly from provision or omission in the provision of the Service by JPMS.
- then Barnet will be entitled to give Harrow a Notice of Termination with immediate effect or upon a specified notice period at the discretion of Barnet.
- 16.2 If Barnet terminate this Agreement under Clause 16.1 then Harrow will continue to provide the Service during the period of notice unless Barnet request otherwise.
- 16.3 Barnet shall be entitled:
- 16.3.1 to retain any monies owed to Harrow under this Agreement until Harrow has paid any monies owed to Barnet under this Agreement; or
 - 16.3.2 to deduct any such monies owed to Barnet under this Agreement from the monies owed to Harrow under this Agreement.
- 16.4 If:
- 16.4.1 on three (3) separate occasions in any period of twelve (12) months (whether consecutive or not) Barnet has failed to pay Harrow the Charges on time; or
 - 16.4.2 Barnet has committed a default which is identified by any term of this Agreement as being a Fundamental Breach,

then Harrow may terminate this Agreement by giving Barnet not less than three (3) months written notice.

- 16.5 Subject to Clause 16.6 below, if this Agreement or its application to a particular Service is terminated, whether under Clause 15 (Defaults), this Clause 16 (Termination) or Clause 22 (Extending the Partnership) then Barnet shall continue to pay Harrow the Charges throughout the notice period (whether or not Barnet have requested Harrow to stop providing the Service during such period).
- 16.6 Nothing in Clause 16.5 shall entitle Harrow to receive the Charges for the notice period a second time if Harrow has already received the Charges for this period.
- 16.7 Any work in progress as at the termination of this Agreement which has not been paid for by Barnet through the specified Instalments shall be valued based on a pro-rata basis of the cost of the Service and Barnet shall pay this amount to Harrow.
- 16.8 It is also provided that either Party may terminate this Agreement by giving the other Party not less than one year's written notice by serving a Notice of Termination expiring on 31 March next such Notice not to be given prior to 1 April 2014.
- 16.9 The Parties shall comply with the exit arrangements set out in Appendix 5 and any current Exit Plan in the period leading up to Termination or the Expiry Date.

17 **Force Majeure and Non-Performance**

- 17.1 If Barnet believes that Harrow is failing to provide the requisite Service detailed in the Agreement, then the dispute resolution procedures outlined in Clause 20 will apply.
- 17.2 If an event of Force Majeure occurs then Barnet shall meet with Harrow to discuss how best Harrow can continue to provide the Service until the Force Majeure event ceases, which may include Barnet providing Harrow with assistance, where possible.
- 17.3 Clause 17 is subject to the proviso that whichever Party is affected shall have given the other notice that such failure is the result of Force Majeure within ten (10) Working Days of such failure occurring. If notice is not given in accordance with this Clause 17 then the failure may be regarded as a Default.
- 17.4 If either Party fails to carry out its respective obligations under this Agreement as a result of Force Majeure then whichever Party is affected shall not be liable under this Agreement for any such failure.
- 17.5 In this Clause Force Majeure means:
- 17.5.1 acts of war;
 - 17.5.2 acts of God;
 - 17.5.3 decrees of Government;
 - 17.5.4 riots; and
 - 17.5.5 civil commotion

- 17.5.6 and any event or circumstance which is both beyond the control of whichever party is affected and which could not have been prevented by acting prudently, diligently or with reasonable foresight.
- 17.6 Force Majeure shall not include any labour dispute between Harrow and Staff, any other staffing problem or the failure to provide the Service by any of Harrow's sub-contractors.
- 17.7 In the event that a Party is prevented from carrying out its obligations under the Agreement by any act of Force Majeure which continues for a period of thirty (30) days, the other Party may terminate the Agreement by notice in writing giving seven (7) days notice.
- 17.8 The Parties shall at all times following an act of Force Majeure use all reasonable endeavours to mitigate the effects of the event of Force Majeure and facilitate the continued performance of this Agreement.
- 17.9 If Harrow does not provide or only partially provides the Service for a period of at least thirty (30) days as a consequence of Force Majeure, the Public Health Governance Board shall consider whether and if so how the specified installments to be paid by Barnet shall be reduced in a proportion commensurate with the Service actually provided to Barnet and/or whether any and if so how much reimbursement shall be made by Harrow to Barnet in respect of any payments of the monthly installments made during the period of the event of Force Majeure, the consideration of the issue by the Public Health Governance Board to be based on the principle that the impact of the period of Force Majeure shall as far as reasonably possible be the same for both Parties.
- 18 **Consequences of Termination**
- 18.1 Following the service of a Notice of Termination for any reason, JPHS shall continue to provide the Service in accordance with this Agreement and shall ensure that there is no degradation and diminution in the Service between the date of the Notice of Termination and the date of termination.
- 18.2 Between the service of a Notice of Termination and the date of termination Harrow shall ensure that comprehensive handover and attendance notes are compiled, all correspondence, deeds, files, records, documents and other information in whatever format which are part of and connected with the provision the Service for Barnet shall be filed; either electronically or as paper documents as Barnet may reasonably require and JPHS shall put into good and proper order for handover to whichever officer or other agent Barnet shall notify to Harrow and such officer or agent shall make arrangements with JPHS for the collection of such files and documents.
- 18.3 Barnet hereby undertake that in the event of such termination and the return of such documents and files these same shall be stored in accordance with the Data Protection Act, whether by Barnet or by their agents and that Barnet shall allow Harrow reasonable access on demand free of charge to such documents records and files, however held and whether electronic or paper documents.
- 18.4 Barnet hereby undertakes to reimburse Harrow for any reasonable, proper and mitigated costs which may arise in respect of the transfer of electronic or other Data from the

JPHS which costs have arisen as a result of the early termination of the Agreement, other than where termination is due to a Fundamental Breach by Harrow.

18.5 In the event of Termination of this Agreement the Parties agree that unless such Termination follows a Fundamental Breach in which case Harrow shall bear its own costs and shall be liable for the entirety of Barnet's costs they will share in equal parts and in accordance with the provisions of Appendix 2, all of the financial liabilities (other than any liability owed to the other Party under the terms of this Agreement) which have arisen as a result of the Agreement save for any financial liabilities resulting from JPHS's fraudulent or negligent act or omission; which liabilities shall include, but not be confined to, the following:

18.5.1 leasehold or tenancy payments where the JPHS has by prior agreement between the Parties taken on additional premises outside the Hosting Premises and where a liability arises due to the early termination of the Agreement;

18.5.2 payments for the leasing of equipment for the JPHS where a liability arises due to the early termination of the Agreement.

18.6 The Parties shall both individually and collectively use reasonable endeavours to reduce and mitigate the amount of financial liabilities which may arise in the event of Termination

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

18.8 Clause 6 and Appendix Five shall apply in relation to the staffing consequences of the expiry or termination of the Agreement.

19 **Operational matters, Undertakings and Indemnities**

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

19.2 The Parties agree that:

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

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

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

where either Party fails to meet its responsibilities and liabilities under this Agreement at any time during the currency of this Agreement the cost of any resulting penalties losses

liabilities or loss or failure of the JPMS which is caused to the other Party shall be passed to the defaulting Party and shall be apportioned equitably .

20 **Dispute Resolution**

20.1 This Clause 20 is subject to Clauses 3.7 and 3.8 of this Agreement.

20.2 If there is a dispute between Harrow and Barnet concerning the interpretation or operation of this Agreement (including the performance of the Joint Director of Public Health), then either Party may notify the other in writing that it wishes the dispute to be referred to a meeting of the Key Representatives to resolve, negotiating on the basis of good faith.

20.3 If after twenty-eight (28) Working Days (or such longer period as both Parties may agree) of the date of the notice referred to in Clause 20.2, the dispute has not been resolved then either Party may notify the other that it wishes the dispute to be referred to a meeting of the Public Health Governance Board to resolve, negotiating on the basis of good faith.

20.4 If after twenty-eight (28) Working Days (or such longer period as both Parties may agree) of the date of the notice referred to in Clause 20.3, the dispute has not been resolved by the Public Health Governance Board then either Party may notify the other that it wishes to attempt to settle the dispute by mediation, in accordance with the CEDR Model Mediation Procedure 2001 (the "Model Procedure") or such later edition as may be in force from time to time.

20.5 If Barnet and Harrow do not agree on the identity of the mediator then either Party may request CEDR to appoint one.

20.6 The procedure in the Model Procedure will be amended to take account of:

20.6.1 any relevant provisions in this Agreement; or

20.6.2 any other agreement which Barnet and Harrow may enter into in relation to the conduct of the mediation.

20.7 Both Parties must:

20.7.1 use their reasonable endeavours to ensure that the mediation starts within twenty (20) Working Days of service of the notice referred to in Clause 20.3; and

20.7.2 pay the mediator's fee in equal shares.

20.8 Any agreement the Parties reach as a result of mediation shall be binding on both of them, as set out in the Model Procedure, but if the dispute has not been settled by mediation within ten (10) Working Days of the mediation starting then either Party may commence litigation proceedings (but not before then).

20.9 Neither Party shall be precluded by Clause 20.8 (above), from taking such steps in relation to court proceedings as either may deem necessary or desirable to protect their respective positions. This shall include:

20.9.1 issuing or otherwise pursuing proceedings to prevent limitation periods from expiring; and

20.9.2 applying for interim relief.

20.10 The use of the dispute resolution procedures set out in this Clause 20, (Dispute Resolution) shall not delay or take precedence over the provisions for termination set out in Clause 15 (Default) and Clause 16 (Termination).

21 Variations To The Agreement

21.1 A variation to this Agreement shall only be valid if it has been agreed in writing and executed as a deed by duly authorised representatives of both Parties.

21.2 If either Party wishes to vary this Agreement then it shall serve on the other a Variation Notice which shall set out the nature of the variation sought and the reasons for it.

21.3 If either Party receives a Variation Notice then within twenty-eight (28) Working Days of receipt it shall notify the other in writing whether or not it agrees to the variation and if not, the reasons.

21.4 If the variation is agreed it will be incorporated into the Agreement in accordance with Clause 21.1 above.

22 Additional Clients and Extending the Partnership

22.1 The JPMS shall be able to provide public health services to any organisation ("Additional Clients") in addition to Harrow and Barnet Clients subject to the provisions of this Clause 22 and provided that the engagement of Additional Clients shall not create any detriment to the cost and quality of services provided to Barnet or Harrow nor otherwise be injurious to Barnet's or Harrow's interests, including compliance with Public Procurement Regulations.

22.2 It is agreed by the Parties that requests from other Additional Clients to join the JPMS will be actively considered by the Public Health Governance Board. The Board will discuss any such requests taking into account:

22.2.1 whether the enlargement of the JPMS will improve the cost effectiveness and sustainability of the JPMS;

22.2.2 ensuring no detriment to the level and quality of service provided to Harrow and Barnet;

22.2.3 the implications of additional councils joining the JPMS in this Agreement;

22.2.4 ensuring that neither Harrow nor Barnet incur additional costs and/or Charges;

22.2.5 the anticipated relative proportion of the overall JPMS turnover likely to be attributable to any Additional Client during any Financial Year.

22.3 Discussions on this issue will be approached in the spirit of partnership and good faith and the Public Health Governance Board will seek to recommend an outcome which will

include measures to ensure that there is compliance with the Public Procurement Regulations and no detriment to the cost or quality of the Service provided to Barnet or Harrow by the JPHS.

22.4 Any decision whether to admit Additional Clients to the JPHS shall be made by each party in accordance with their respective corporate decision-making process.

23 **Waiver**

23.1 If either Party fails to exercise or delays in exercising any right or remedy to which it is entitled under this Agreement or at law then this shall not constitute a waiver of any such right or remedy.

23.2 If either Party waives a Default on the part of the other then this shall not constitute a waiver of any future Default.

23.3 No waiver shall be effective unless it is:

23.3.1 expressly stated to be a waiver;

23.3.2 in writing; and

23.3.3 signed by the Key Representatives.

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

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

25 **Best Value**

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

26 **Notices**

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

26.1.1 Pre paid 1st class post;

26.1.2 Recorded delivery post, or

26.1.3 Personal delivery.

26.1.4 No notices under this Agreement will accepted by email or fax..

- 26.2 For the purposes of sending notices by post or personal delivery or other communication by post, or personal delivery Barnet's address is North London Business Park, Oakleigh Road South, London N11 1NP provided that Barnet will notify Harrow within 7 days of any change of address all notices and communications must be sent to the Contract Manager.
- 26.3 For the purposes of sending notices by post or personal delivery or other communication by post, or personal delivery Harrow's address is Civic Centre, Harrow, HA1 2UH provided that Harrow will notify Barnet within 7 days of any change of address. All notices and communications must be sent to the Corporate Director Community, Health and Wellbeing.
- 26.4 If the address of either Harrow or Barnet changes, it must notify the other Party in accordance with this Clause 26.
- 26.5 Subject to Clauses 26.2 and 26.3, all notices and communications shall be deemed to have been served:
- 26.5.1 if posted, two (2) Working Days after the date when posted; or
- 26.5.2 if personally delivered, on the date of delivery.
- 26.6 Notwithstanding Clause 26.5, if by applying its provisions a notice is deemed to have been served on a day which is not a Working Day or it is not received between the hours of 9am to 5pm on a Working Day then it shall be deemed to have been served on the next immediately following Working Day.

27 **Confidentiality and Data**

- 27.1 Harrow undertakes that the JPMS will respect the confidentiality of information provided to it. Exceptionally the JPMS may need to disclose this information where required to do so by the Court or under FOI legislation in which case Harrow shall inform Barnet of such proposed disclosure as soon as reasonably practicable.
- 27.2 Harrow shall ensure that all Barnet Data (save for such information as may be returned to Barnet on Expiry or Termination) is retained for disclosure for at least six (6) years (from the date it is acquired) and shall permit Barnet to inspect such Data as requested from time to time.
- 27.3 Harrow shall permit all Data to be examined and copied from time to time by Barnet's auditors (whether internal or external) and their representatives upon reasonable notice.

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

- 28.1 Both Parties shall comply with the Data Protection Act, the FOI Act and the EI Regulations.
- 28.2 Barnet shall co-operate with and provide assistance to Harrow at its own cost to enable Harrow to comply with Clause 28.1 relating to disclosure of information arising from the performance of the Service by JPMS for Barnet.

- 28.3 Either Party on receipt of a request for information in relation to the FOI Act or the EI Regulations shall, if the request relates to the other Party, promptly refer the request to the other Party for comments before a decision whether to disclose is made.
- 28.4 The Party subject to any request for information in relation to the FOI Act or the EI Regulations will decide whether information should be disclosed and will make disclosure when that Party considers that such disclosure is proper and in accordance with this the FOI Act or the EI Regulations as appropriate.
- 28.5 Both Parties will use all reasonable endeavours to ensure that information requested and comments sought are supplied to the other Party within sufficient time to allow the requesting party to comply with the timescales for response set out in the FOI Act or the EI Regulations.
- 28.6 In relation to all Personal Data supplied or created under or in connection with this Agreement, each Party shall at all times comply with the Data Protection Act, as a Data Controller and/ or a Data Processor and/ or as Data Controllers in common with the other Party as the case may be which includes (but is not limited to) maintaining a valid and up to date registration or notification under the DPA covering the data processing activities to be performed by it in connection with this Agreement . The Parties may agree for any specific purpose which of them is Data Controller (or that they are both Data Controllers in common) but, in the absence of any such agreement, the Parties hereby agree that where both Parties are Data Controllers for the same Personal Data Harrow shall act as Data Controller in common with Barnet and where Barnet is not Data Controller for the relevant Personal Data as sole Data Controller and have primary control of all Personal Data processed by it for the purposes of or in connection with the provision of the Service (the Service Data) and that Harrow will be responsible for implementing appropriate technical and organisational measures to protect the security and integrity of the Service Data.
- 28.7 Each Party:
- 28.7.1 shall process Personal Data belonging to or supplied by the other Party, or Personal Data derived from or created using Personal Data belonging to or supplied by the other Party only on the instructions of that Party (subject to compliance with applicable law);and
- 28.7.2 shall only undertake processing of Personal Data reasonably required in connection with the JPHS for the operation of this Agreement and shall not transfer any Personal Data belonging to or supplied by the other Party (or derived from or created using Personal Data belonging to or supplied by the other Party) to any country or territory outside the European Economic Area without the other Party's prior written consent.
- 28.8 Neither Party shall disclose Personal Data supplied or created under or in connection with this Agreement to any third parties other than:
- 28.8.1 to its employees to whom such disclosure is reasonably necessary in order for that Party to carry out its obligations under this Agreement; or

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

provided that each Party shall give notice in writing to the other of any disclosure of Personal Data belonging to them which they have been required to disclose under Clause 28.8.2 immediately after becoming aware of such a requirement.

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

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

28.11 The Parties may agree such information protocol(s) as they think necessary from time to time in respect of the Data or Personal Data processed for the purposes of the JPHS and this Agreement.

29 **Audit and Provision of Information**

29.1 Except where an audit is imposed on Barnet by a regulatory body Barnet may on giving reasonable prior written notice, not more than once in any Financial Year and for a period of 12 months following the termination of this Agreement; conduct an audit for the following purposes unless otherwise agreed by the Public Health Governance Board:

29.1.1 to verify the accuracy of Expenditure (and proposed or actual variations to them in accordance with this Agreement) and any cost reduction and income generation initiatives carried out pursuant to clause 5.1;

29.1.2 to review the integrity, confidentiality and security of Barnet's Data;

29.1.3 to review JPHS compliance with the Data Protection Act 1998 (DPA), FOIA and any other legislation applicable to the Service;

29.1.4 to review JPHS compliance with its obligations in Appendix 4;

29.1.5 to review any records created during the provision of Service;

29.1.6 to review any books of account kept by the JPHS in connection with the provision of the Service;

29.1.7 to carry out the audit and certification of Barnet's accounts;

- 29.1.8 to carry out an examination of the economy, efficiency and effectiveness with which the JPMS has provided the Service;
- 29.1.9 to verify the accuracy and completeness of any management information delivered or required by this agreement;
- 29.2 Barnet shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the JPMS or delay the provision of the Service.
- 29.3 The JPMS shall on reasonable demand provide Barnet and any relevant regulatory body (and/or their agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including:
 - 29.3.1 all information requested by Barnet within the permitted scope of the audit;
 - 29.3.2 reasonable access to any premises controlled by Harrow and to any equipment used (whether exclusively or non-exclusively) in the performance of the Service and
 - 29.3.3 access to the Staff.
- 29.4 Barnet shall endeavour to provide at least 15 Working Days notice of its intention to conduct an audit;
- 29.5 Barnet shall reimburse the JPMS's reasonable costs and expenses incurred in respect of compliance with their obligations under this clause, unless the audit identifies a Material Breach of the terms of the Agreement by the JPMS in which case the JPMS shall reimburse Barnet for all Barnet's reasonable costs incurred in the course of the audit.
- 29.6 If an audit identifies that:
 - 29.6.1 the JPMS has failed to perform its obligations under this agreement in any material manner, the Parties shall agree and implement a remedial plan. If the JPMS' failure relates to a failure to provide any information to Barnet about the Charges, proposed Charges or the JPMS' costs, then the remedial plan shall include a requirement for the provision of all such information;
 - 29.6.2 Barnet has overpaid any Charges, the JPMS shall pay to Barnet the amount overpaid within 30 calendar days. Barnet may deduct the relevant amount from the Charges if the JPMS fails to make this payment; and
 - 29.6.3 Barnet has underpaid any Charges, Barnet shall pay to the JPMS the amount of the under-payment less the cost of audit incurred by Barnet if this was due to a Default by the JPMS in relation to invoicing within 30 calendar days.
- 29.7 The JPMS shall respond to any reasonable request by Barnet to provide information in relation to the operation of the JPMS in order to assist Barnet in responding to reasonable and legitimate inquiries about the operation of the JPMS provided that the collection and provision of such information by the JPMS does not unreasonably disrupt the JPMS or delay the provision of the Service and the costs of the collection and provision of information are reimbursed by Barnet to the JPMS if these are material.

30 **Communicating Information**

30.1 The Parties shall treat communications relating to public health matters as confidential and take reasonable endeavours to avoid disseminating them more widely than is necessary beyond the original recipient.

30.2 Harrow undertakes that the JPHS will only disclose privileged information to third parties in circumstances where JPHS is under a statutory obligation to do so or if ordered by a court or tribunal of competent jurisdiction and shall notify Barnet of the proposed disclosure unless to do so would contravene such obligation or order.

31 **Counterparts**

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

32 **Law and Jurisdiction**

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

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

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

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

Executed as a Deed by)

The Mayor and Burgess of)

The London Borough of Harrow)

By affixing its **Common Seal** hereunto)

In the presence of:)

Authorised Signatory

The Common Seal of)

The London Borough of Barnet)

was affixed to this Deed in the presence of:)

Authorised sealing officer

APPENDIX 1

DESCRIPTION OF THE SERVICE

PART A – GENERAL

1. This Appendix sets out the process to identify the Public Health services to be included within the Service to be provided by JPHS under this Agreement (and those that are specifically excluded) and shall be interpreted so that the descriptions shall be taken to include the provision of the public health services which are incidental to the description specified for this Appendix.
2. Each Council may, on giving 6 months notice in writing to the other, reallocate a specified service between the service categories in paragraph B4 below.

PART B – CATEGORIES OF SERVICE

1. The following areas of public health service shall annually constitute the Service (this shall not include any elements of the activities listed below that are currently undertaken by either Council's employees who are not engaged within the Public Health Service).
2. Each Council shall annually determine and specify the Public Health Services to be provided in their respective areas (the Commissioning Requirements) for the stated year taking account of the Public Health Outcomes Framework, guidance issued by the Department of Health, the Joint Strategic Needs Assessment for the area and population and the Joint Health and Wellbeing Strategy
3. The Commissioning Requirements for the shared public health service will be split into Barnet and Harrow to ensure transparency for each borough's public health budget.
4. The Commissioning Requirements shall specify and distinguish between the following categories :
 - a. mandatory services
 - b. additional services
 - c. excluded services
5. The annual Commissioning Requirements for each borough shall also specify the performance outcomes and targets to be achieved.
6. Staff costs for the shared public health service will be split between the Parties based on the annually agreed schedule of staffing costs submitted as part of the annual Commissioning Requirements in accordance with Appendix 2 of this Agreement.
7. The annual Commissioning Requirements shall include a projection of the related staffing costs, contract costs and overhead costs.
8. The draft Barnet Commissioning Requirements must be submitted to the Harrow at a time consistent with the overall budget and Council Tax setting arrangements of each Party.

9. Based on the draft Commissioning Requirements of both Councils the host borough will calculate the cost of hosting and delivering the service annually.
10. The annual total cost of delivering the public health service Commissioning Requirements for each Borough must cost no more than the allocated funding made available by the respective Borough.
11. During any financial year either Council may request the provision of additional Commissioning Requirements provided that adequate financial resources are identified within current budgetary provision or additional identified financial resources are made available.

PART C- OUTSOURCING

1. Barnet is undertaking an extensive programme of outsourcing which may have an impact on a number of categories of the Service specified. Harrow may undertake outsourcing activities in the future.
2. Each Party shall ensure that it keeps the other Party fully informed of the progress of any outsourcing project which will impact on the volume or nature of the Service in order that the Parties shall be able to assess the implications and consequences and make such changes and decisions as are needed to ensure the continuation of the delivery of the Service, provided always that neither Party shall be required to disclose information to the other which is of a commercially confidential nature or which, if disclosed, might prejudice the effective running of the procurement processes for the outsourcing(s).
3. Each Party shall use its reasonable endeavours to make the relevant service providers aware of the opportunity for the public health work generated by any service areas outsourced as a result of any outsourcing (including the One Barnet Programme or otherwise) to be provided by the JPHS and to encourage and enable them to do so in so far as this is consistent with all relevant legal provisions and the requirements of good procurement practice.
4. It is agreed that any time spent by the JPHS in dealing with the implications and consequences of any outsourcing project including managing staff and workloads, consultation on TUPE and redundancies and restructurings shall be charged to the Party undertaking the outsourcing as part of their required service.

APPENDIX 2

FINANCIAL PROVISIONS

1. Budget Management

Harrow shall not make a profit from hosting the shared service and each party will make a fair contribution to the support service costs of the service.

Harrow will review, monitor and report financial transactions related to the Service on a monthly basis in accordance with its financial regulations and governance arrangements. Additionally, it shall provide quarterly monitoring reports to the JPHGB in a manner consistent with the reporting requirements of both Parties.

2. Contributions to Shared Management Arrangements

As a general rule the total overhead costs (see Annex 1 to this Appendix) relating to the Service (including those incurred by Barnet) shall be divided on a 50/50 basis between the Parties. Staffing costs however shall be apportioned between the Parties in accordance with a schedule (Schedule of Staffing Costs) prepared and agreed annually between the Parties through the Public Health Governance Board in line with the following principles:

- i. Staff providing a dedicated service to one Borough only: 100% charged to that Borough.
- ii. Staff providing a shared function to both Boroughs; charged 50% to each Borough
- iii. Staff in the Commissioning Team; charged 60% to Barnet and 40% to Harrow.

Any costs related to redundancy will be allocated in accordance with the annual agreed schedule of staffing costs save in respect of any such costs relating to the Joint Director of Public Health which shall be divided equally between the Parties.

Pension costs and any additional staffing costs (not previously identified) shall be allocated in accordance with the annual agreed schedule of staffing costs.

Harrow will prepare an annual staffing budget for the proposed structure, detailing the costs of each post and their allocation between the Parties to be charged to the public health accounts for the identified Party

3. Financial Contributions

Each Party in liaison with the Joint Director of Public Health will prepare a draft budget by the end of October for the following Financial Year together with an indicative budget for the following two Financial Years.

The draft budget shall include the costs of the shared management arrangements commissioning requirement costs reflecting the prescribed service provision for the relevant financial year in accordance with Appendix 2. Harrow will then validate the related total costs.

Pay and price inflation will be built into future Financial Years budgets along with efficiency and other savings targets to be achieved by the JPHS.

The budgets for future financial Years will also need to take account of changes in service provision required by either party and changes in the annual grant funding which will be reflected in the agreed annual contribution together with other unavoidable changes such as those arising from new legislation and/or statutory guidance.

After the budgets have been finalized for each financial year Harrow will calculate each Party's contribution by reference to the ring-fenced grant allocation notified by the Department of Health together with the agreed cost for managing the shared public health service.

The Parties shall agree a final budget for the following financial year which shall incorporate an Appendix detailing the total financial contribution for the year analysed over staffing, contract and overhead costs and each Party's individual contribution by the end of February for approval by the Cabinet of each party. Each Party shall provide to the other a copy of that approval within 7 days of the decision having been made.

4. Payment of Financial Contributions

Harrow will invoice Barnet at the beginning of April each year for the agreed cost of the provision of Public Health Services for Barnet in accordance with the annual expenditure approved by each party as part of the budget setting process. The invoice will be due for payment quarterly in advance including contributions arising from Department of Health grants.

5. Joint Director of Public Health

The Joint Director of Public Health will be responsible for managing each Party's expenditure within approved levels for the relevant financial year, and for submitting to each Party Quarterly reports and a annual grant returns as notified by the Department for Health together with all other information reasonably required by each Party in order to effectively monitor the arrangements and the management of the service.

The Joint Director of Public Health shall inform Barnet or Harrow in the event of any anticipated over-expenditure arising in respect of their service requirements.

6. Administration and Expenditure of Ring Fenced Grants

The monies shall be spent in accordance with any restrictions agreed between the Parties on the establishment of the annual budgeted spend or as varied by agreement between the Partners from time to time.

Harrow will separately account for each Party's contributions and related expenditure to enable separate annual reporting to Barnet and Harrow through their respective Section 151 Officer and to Government for any expenditure charged against the ring-fenced grants.

7. General provisions on over-spends and under-spends

Harrow will use all reasonable endeavours to ensure that each Party's service requirements as funded from their annual contribution are carried out within the Party's financial contribution provided in each Financial Year.

Harrow will keep Barnet informed of any projection of over-spend or under-spend in relation to the annual contributions as soon as reasonably practicable and no later than within 30 days of such projection being made. Particular attention will be given those services in

respect of which expenditure is directly related to client demand and cannot be controlled or restricted by the related allocated funding. Any such projections should be verified and supported by detailed reasons for the variation and to include a recommended recovery plan to contain expenditure within the available resources. The application of such a plan requires the agreement of the relevant Party. Alternatively, the relevant Party must agree to provide additional funding.

It is agreed that any under-spend or over-spend will be allocated to the relevant Party and will be reported as required by any applicable grant conditions. Any over-spend or under-spend relating to a shared function will be applied equally between the Parties. Liability for any over-spends will be the responsibility of the party to which they relate.

In the case of a projected under-spend the Parties must agree either that this can be carried forward to the next Financial Year or they otherwise agree alternative proposals to deal with it subject to any relevant conditions associated with the ring fenced grant. It will be presumed unless otherwise determined that any under-spends can be carried forward as part of the relevant Party's a public health reserve.

The actual over-spend or under-spend must be attributed back to the Partners' for audit purposes in accordance with the approved contribution for the relevant Financial Year

8. Grants

The Public Health grant to local authorities will be made under Section 31 of the Local Government Act 2003.

Harrow will ensure that all expenditure received is applied in a proper manner and in accordance with all relevant grant conditions. In the event that a Party misapplies monies received from any such grant the Party in default shall reimburse the other Party, to the extent of any consequences arising from the monies being misapplied or withheld by the grant-making body, during the relevant Financial Year in which, such monies are withheld.

Any one-off grants whether they are capital or revenue in nature shall be managed within the specific grant conditions and Harrow's financial regulations.

9. VAT

The Partners shall agree the treatment of the arrangements and the schemes for VAT purposes in accordance with any directions and / or guidance from HM Customs and Excise.

Annex 1

Overhead Costs for joint public health service

Guiding principles

1. Overheads not to exceed 2% of the joint annual public health grant.
2. Overhead charge to be split 50/50 in line with guiding principles of IAA
3. Overhead charges to be reviewed based on evidence of operation of the Service and within the Councils as part of the budget setting process for future years.
4. Other overhead charges in addition to those listed below may be included as appropriate in providing the joint public health service as agreed between both parties on an annual basis.

Joint Public Health Overhead Costs

Harrow Overhead Charges	Basis of recharge
INTERNAL AUDIT	Estimated time to be spent on service
PUBLIC LIABILITY INSURANCE	Head count and prior claims history
HITS CLIENT - IT, DESKTOP & TELEPHONE	Number of PCs used by service
HUMAN RESOURCES	Head count
CAP/CAR - CREDITORS & INCOME	Number of debtor and creditor transactions by service
PAYROLL	Head count
CORPORATE FINANCE	Estimated time spent plus pro rata share of overheads
CIVIC CENTRE ACCOMODATION & SECURITY	Floor space
Barnet Overhead Charges	Basis of recharge
IT INFRASTRUCTURE, PRINTER & TELEPHONE	Costs associated with maintaining Wi-Fi connection, separate printer service & IP phone lines
ACCOMMODATION & FACILITIES	No of desks allocated to PH team

APPENDIX 3

GOVERNANCE

1. The Parties shall set up the Joint Public Health Governance Board (JPHGB) which will be accountable for monitoring, reviewing and resolving contractual issues relating to the delivery of the shared public health team.
2. The PHGB shall be a senior level forum for oversight, consultation, discussion, resolution of issues and recommendation back to the Parties on all aspects of the delivery of the Service including annually reviewing and agreeing the Management Agreement.
3. The PHGB shall have no decision making powers vested in it by either Party (except in relation to delivery of the Service).
4. The PHGB will have the following governance arrangements:

PURPOSE

Key Responsibilities and Terms of Reference

1. The Joint Public Health Governance Board will be accountable for monitoring, reviewing and resolving contractual issues relating to the delivery of the shared public health team.

Key responsibilities include:

- Annually review the Inter Authority Agreement
- Ratify any revisions to the Inter-Authority Agreement
- Annually review and agree the Management Agreement
- Monitor performance of the Management Agreement
- Resolve and negotiate the resolution of disputes
- Review the annual Business Plan
- Monitor significant risks and proposals for mitigation
- Identify future shared service opportunities
- Oversee the financial status of the Joint Public Health Service

* Final sign off of key documents such as the Inter Authority Agreement and the Management Agreement will be made through the individual Council decision making processes.

2. Key Inputs

To assist the Public Health Governance Board to carry out its responsibilities it shall receive reports dealing with the following matters:

Draft Report Required	Quarter required	Responsibility
Risk Report	Q1	Director of Customer & Commercial Services
Summary of Service Performance Report*	Q1	Joint Director of Public Health
Risk Report	Q2	Director of Customer & Commercial Services

Summary of Service Performance Report*	Q2	Joint Director of Public Health
Risk Report	Q3	Director of Customer & Commercial Services
Summary of Service Performance Report*	Q3	Joint Director of Public Health
Commissioning Priorities Report for 2015/16	Q3	Joint Director of Public Health
Management Agreement Review for 2015/16	Q4	Director of Customer & Commercial Services
Draft Service Plan for 2015/16	Q4	Joint Director of Public Health
Risk Report	Q4	Director of Customer & Commercial Services
Summary of Service Performance Report*	Q4	Joint Director of Public Health

*Summary of Service Performance Report includes;

- Summary of quarter performance
- Summary of performance against Core Offer
- Complaints / Members Enquiries
- Freedom of Information Requests
- Finance Summary
- Contract Issues
- Summary of workforce development
- Current Risks
- Note of completion of Annual Report [Q3 only]

Membership

1. Members of the board to include:

Name	Job Title
	Strategic Director of Commissioning and Deputy Chief Executive
	Corporate Director of Community Health and Wellbeing
	Director of Public Health
	Director of Commercial and Customer Services
	Section 151 Officer, The London Borough of Harrow [or suitable authorised representative]
	Section 151 Officer, The London Borough of Barnet [or suitable authorised representative]

2. Other membership may be agreed from time to time in accordance with Clause 3 of this Agreement.
3. Officers and health professionals will be invited to attend as and when required.

Frequency & Location of Meetings

1. The Board will meet quarterly (or otherwise as required to give effect to this Agreement)
2. Two meetings each year will be timetabled to correspond with the programme of meetings for each Borough as part of their annual budget setting arrangements.
3. Meetings will be alternated between Barnet Council and Harrow Council premises.

Chair

The Board will be chaired by the Strategic Director of Commissioning and Deputy Chief Executive of the non-host borough.

APPENDIX 4

OPERATIONAL ARRANGEMENTS AND PERFORMANCE STANDARDS

1. OPERATIONAL ARRANGEMENTS

- 1.1 The Joint Director of Public Health, as the statutory officer, shall be responsible for the management of the Public Health Service including the recruitment and deployment of the staff in the delivery of the public health service to both Harrow and Barnet Councils through the JPHS.
- 1.2 The Director of Community, Health and Wellbeing shall be responsible for the management of the Joint Director of Public Health.
- 1.3 For the purposes of performance management of the Joint Director of Public Health the Director of Community, Health and Wellbeing shall liaise with the Contract Manager in identifying and setting performance objectives and targets and in any related appraisal process.
- 1.4 The JPHS shall pay due regard to any comments of the PHGB and ensure any adverse issues are fully addressed or any stipulated actions are implemented within the timescales to be agreed between the Parties.
- 1.5 The Joint Director of Public Health shall attend relevant management meetings with client departments of Barnet and Harrow as and when required to ensure effective communication, accountability and feedback about the operation of the Service.
- 1.6 The Joint Director of Public Health shall have flexibility to deploy the staff employed in the Service to ensure delivery of the Service and to achieve relevant performance standards. It is agreed that the Director will seek to spend an equal amount of his time in the provision of the Service to each Borough and that staff with identifiable Borough roles will for the majority of their time be engaged in the provision of the Service to that identified Borough.
- 1.7 The Key Representatives shall meet on a quarterly basis to consider staff performance data and to agree any necessary people performance management priorities and performance measures.
- 1.8 Harrow shall consult with Barnet in respect of any proposals:
 - (i) to review the salary of the Director of Public Health or make any changes to his terms and conditions of employment
 - (ii) to make any material changes to the terms and conditions of employment of public health staff or other changes that will give rise to an increase in employment costs by 5% or more
 - (iii) relating to public health staff pay awards.

2. QUALITY AND STANDARDS

- 2.1 The JPHS shall comply with the performance standards and achieve the targets set out in the annual Commissioning Requirements of the Parties.
- 2.2 The performance standards to which the JPHS will perform in the provision of the Service may also be determined by the PHGB.
- 2.3 The JPHS shall provide training to all Staff.
- 2.4 Where negligence or misconduct by the JPHS results in an adverse claim being made against Barnet, the liability for meeting such costs shall be met by Harrow and shall not be included within the Charges.

3. KEY CONTACTS

- 3.2 The Key Representatives shall be the primary contact persons for each Party
- 3.3 The Key Representatives shall be responsible for the overall operation of this Agreement and the relationship between the Parties.
- 3.4 The JPHS shall keep updated full information as to its people and structure and the Service that the JPHS provides.

4. MANAGING THIS AGREEMENT

- 4.2 The JPHS welcome and shall actively seek feedback and comments from Barnet.
- 4.3 The Harrow Key Representative shall be responsible for dealing with any comments or complaints but the JPHS shall also have a formal complaints procedure, Where problems arise the JPHS shall review its working practices to reduce the risk of a reoccurrence.
- 4.4 The Key Representatives shall meet on a quarterly basis to review the operation of this arrangement and report to the PHGB. These meetings shall highlight any areas where performance has fallen outside the agreed Service criteria, agree any actions that are to be taken by either Party and highlight areas for service development.
- 4.5 The JPHS acknowledges that Barnet may establish at least every two years a task and Finish Group through its Health Overview and Scrutiny Committee involving elected members of both Authorities to scrutinise the performance of the JPHS and that it will report to the Overview and Scrutiny Committees of the respective authorities

5. DISPUTE RESOLUTION

If a dispute arises between the Parties the Key Representatives will normally be expected to resolve it. In the case of a serious complaint or any other special circumstances (such as the Key Representatives him or herself being involved in the dispute) then the matter will be resolved in accordance with Clause 20 (Dispute Resolution) of the Agreement.

6. RISK MANAGEMENT

Risk Overview

6.1.1 The JPHS will establish a risk register for the shared service which will be split into:

- a) risks specific to Barnet public health outcomes
- b) risks specific to Harrow public health outcomes
- c) shared service risks

6.1.2. The JPHS will appoint an officer to be the Risk Champion who will have responsibility to report corporate and operational risks to the Key Representatives for consideration for notification to Barnet and Harrow Council's risk management boards.

6.1.3 At their quarterly meetings the Key Representatives will meet regularly to discuss the risks associated with the work, including client satisfaction, information services, finance, performance, complaints and claims, insurance, staffing, recruitment and training, health and safety, filing and file procedures. This will include a review of any complaints or claims arising in the last six months and of any new areas of work which warrant additional or amended risk management procedures.

6.1.4 The Key Representatives will meet regularly, to consider internal procedures arising from any claims or complaints or potential claims/complaints and consider any amendment to the JPHS's risk management procedures where necessary. Should any complaint, claim or potential claim/complaint highlight a need to implement a revised procedure, the Key Representatives will consider the same and where necessary introduce a revised procedure after consultation with Barnet. The Key Representatives will report to the PHGB quarterly, detailing the progress on any existing or new complaints or claims.

6.1 5.The JPHS will consider all matters of risk, both external and internal, and agree and implement policies and procedures to deal with them where necessary. Any major risks will be referred to the PHGB.

Risk management communications

5.2.1 The JPHS will ensure that risk information is communicated to relevant Staff through team meetings or as appropriate.

6.2.2 Risk management training will be provided at regular intervals to all staff.

Risk review

6.3.1 All the risk assessment data produced by JPHS will be reviewed at least every six months by the PHGB.

6.3.2 The objective of the review is to analyse trends in the risk profile of the JPHS and to determine improvements which are deemed appropriate. Any report or changes to procedure will be referred to the PHGB.

6.3.3. The PHGB must be notified of all circumstances which could give rise to a claim in negligence or a complaint.

APPENDIX 5

EXIT ARRANGEMENTS

1 **Overriding objectives**

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

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

1.1.2 That each Party and the staff affected by the exit are fairly treated, receive adequate communication, are involved in the process and are not adversely affected.

2 **Procedure on termination or expiry**

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

2.1.1 Governance structure for the transition phase;

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

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

2.1.4 TUPE Lists, pension details (subject to data protection law);

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

2.1.6 Sub licence or sub lease to Barnet to make use of the premises as may be reasonably required.

3 **Review of Exit Plan**

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

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

4 **Partial termination**

In the event of partial termination of this Agreement, the provisions in this Appendix 5 shall apply to information, assets, software, and Staff as Barnet may elect in its sole discretion.

5 **Handover Period**

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

6 **Employment issues during exit period**

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

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

6.3 The Parties agree that during the exit period, the Exit Group shall work to identify those staff engaged by Harrow who would:

6.3.1 if they remained employed by Harrow at the end of the exit period, be the subject of a Relevant Transfer to Barnet or any Future Provider in respect of the Transferring Services for which Barnet or any Future Provider shall become responsible at the end of the exit period,

6.3.2 be offered employment pursuant to the provisions of clause 11.8 below,
together the Potential Transferring Employees.

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

i not be filled by Harrow during the exit period; or

- ii be filled by the engagement by Harrow of agency staff or staff engaged on fixed term contracts of employment; or
- iii Barnet or any third party shall instead recruit a suitable individual in relation to that vacancy and then second such individual to Harrow for the remainder of the exit period to deliver the Transferring Services with such secondment to end at the end of the exit period; or
- iv where Harrow recruits any suitable individuals in relation to that vacancy, such recruitment shall be on the basis that the individual will only be engaged in the delivery of the Transferring Services and it shall be made clear as part of such recruitment that the individual will be subject to a Relevant Transfer to Barnet or any third party at the end of the exit period.

- 6.5 At the start of the exit period, to the extent possible under TUPE and/or the applicable Law at the relevant time, the Exit Group shall use all reasonable endeavours to consult upon and agree a reorganisation process with the Potential Transferring Employees and/or their appointed employee representatives or trade unions, to confirm who will be the subject of a Relevant Transfer to Barnet or any Future Provider at the end of the exit period;
- 6.6 The Exit Group shall use all reasonable endeavours to agree and implement any other steps, measures, processes and/or procedures in order to minimise the potential for any Potential Transferring Employees not being the subject of a Relevant Transfer to Barnet or any Future Provider at the end of the exit period.
- 6.7 Where, despite the requirements of paragraph 6.4 – 6.6 having been complied with, there remain any Potential Transferring Employees who may not be the subject of a Relevant Transfer, the provisions of paragraphs 6.8 to 6.11 below shall apply.
- 6.8 If TUPE does not apply on the expiry or termination of this Agreement to any Potential Transferring Employees, Barnet shall or shall procure that each Future Provider shall as far as possible offer employment to the Potential Transferring Employees employed by Harrow in the provision of the Transferring Services immediately before the end of the exit period.
- 6.9 If an offer of employment is made in accordance with paragraph 6.8, the employment shall be on the same terms and conditions (except for entitlement to membership of an occupational pension scheme) as applied immediately before the expiry or earlier termination of this Agreement including full continuity of employment.
- 6.10 Where any such offer as referred to in paragraph 6.8 is accepted, Harrow shall indemnify and keep indemnified in full Barnet and/or any Future Provider on the same terms and conditions as those set out in paragraph 6.17 as if there had been a Relevant Transfer in respect of each and every employee who has accepted any such offer and for the purposes of paragraph 6.14 - 6.19 each and every such employee shall be treated as if they were a Transferring Employee.

6.11 Where Barnet or any Future Provider does not make any such offer or any such offer as referred to in paragraph 6.8 is not accepted and TUPE does not apply, the provision of paragraph 6.12 below shall apply regarding any redundancy or reorganisation costs incurred by Harrow.

Redundancy and Reorganisation Costs

6.12 Where Barnet or any Future Provider does not make any such offer or any such offer as referred to in paragraph 6.8 is not accepted and TUPE does not apply to any Potential Transferring Employee, then:

- (a) Harrow shall be entitled to dismiss any or all of the Potential Transferring Employees by reason of redundancy or for some other substantial reason provided that Harrow shall carry out in the required manner any obligation to consult with the Potential Transferring Employees or any of them, or their respective representatives, and shall use all reasonable endeavours to mitigate the amount of any costs payable in respect of the said employees or their dismissal; and
- (b) Barnet shall indemnify Harrow against the costs relating to the dismissals referred to in paragraph 6.12(a) above reasonably incurred by Harrow (including any additional costs incurred in relation to the Local Government Pension Scheme) in accordance with the staff budget ratio agreed and applicable to the financial year immediately preceding the termination of this Agreement.

6.13 Without prejudice to the provisions of clauses 6.1-6.12 above, and in any event,

6.13.1 during the twelve (12) months prior to the expiry of the Agreement or after Barnet has given notice to terminate the Agreement and within twenty one (21) calendar days of being requested to do so, Harrow shall fully and accurately disclose to Barnet any and all information in relation to all persons engaged in providing the Service including:

- (a) a list of employees employed by Harrow or any sub-contractor in the provision of the Services;
- (b) a list of agency workers, agents and independent contractors engaged by Harrow or any sub-contractor in the provision of the Services;
- (c) the total payroll bill (i.e. total taxable pay and allowances including employer's contributions to pension schemes) of those persons; and
- (d) the terms and conditions of employment or other contract with such persons

and shall notify Barnet as soon as reasonably practicable of any variation in the information provided under this clause 6.13 and shall provide Barnet with

the revised and accurate information. Harrow shall warrant that such information is complete and accurate as far as it is aware or should reasonably be aware as at the date it is provided.

6.13.2 during the twelve (12) months prior to expiry of the Agreement or where notice to terminate this Agreement for whatever reason has been given, save where it is as a result of a decision by the Exit Group, Harrow shall not and shall procure that any sub-contractor shall not without the prior written consent of Barnet (such consent not to be unreasonably withheld or delayed) unless in the ordinary course of business:

- (a) vary or purport or promise to vary the terms and conditions of employment of any employee employed in connection with the Services;
- (b) materially increase or decrease the number of employees employed in connection with the Services; or
- (c) assign or re-deploy any employee employed in connection with the Services to other duties unconnected with the Services or assign or re-deploy any employee employed to carry out duties unconnected with the Services to the duties connected with the Services.

6.14 Harrow shall be responsible for all remuneration, benefits, entitlements and outgoings in respect of the Transferring Employees, including without limitation, all wages, holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions, pension contributions and otherwise, up to the date of any Relevant Transfer in respect of such Transferring Employees on expiry or termination of this Agreement.

6.15 Barnet shall be responsible for all remuneration, benefits, entitlements and outgoings in respect of the Transferring Employees, including without limitation, all wages, holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions, pension contributions and otherwise, for the period on or after the date of any Relevant Transfer in respect of such Transferring Employees on expiry or termination of this Agreement.

6.16 Harrow shall indemnify and keep indemnified Barnet and any New Provider against any Losses caused to Barnet or any New Provider by any inaccuracy or incompleteness in such information as is provided under 6.13 above or by any changes in the information which have not been communicated to Barnet (whether relating to the number, identity or details of the Transferring Employees or otherwise) which occur prior to the Relevant Transfer Date.

6.17 Harrow shall indemnify Barnet and the Future Provider in full from and against all Losses and/or Employment Claims which Barnet and/or any Future Provider incurs arising from:

- (a) any act or omission of Harrow or any sub-contractor in relation to the Relevant Employees,

- (b) any claim by an employee or former employee of Harrow or any sub-contractor, and
- (c) any representations made by Harrow or any sub-contractor in relation to employment by Barnet and/or any Future Provider.

6.18 Barnet shall indemnify Harrow against all Losses and/or Employment Claims incurred by Harrow in connection with or as a result of any claim or demand

- (a) by an employee of Harrow who would, had it not been for the termination of that employee's employment pursuant to the provisions of TUPE Regulation 4(9), have been an employee with a right to transfer to Barnet under TUPE,
- (b) arising out of Barnet's failure to comply with its obligations under TUPE Regulation 13(4).

6.19 Barnet shall indemnify Harrow in full from and against all Losses and/or Employment Claims which Harrow incurs arising from any act or omission of Barnet and/or any Future Provider in relation to the Transferring Employees.

APPENDIX 6

DECISIONS OF BARNET AND HARROW TO ENTER IN TO THE SHARED PUBLIC HEALTH SERVICE

Decisions of both Barnet and Harrow Councils to enter in to this joint Public Health Service arrangement are annexed to this Appendix; Annex 'A' being the decisions of Barnet and Annex 'B' the decisions of Harrow.

Resolution of Barnet Council, Cabinet

25 February 2013

TRANSFER OF PUBLIC HEALTH FUNCTION

For the reasons set out in the Cabinet Member's report, Cabinet

RESOLVED

1. That Cabinet approve the delegation of authority to the Cabinet Member for Public Health in consultation with the Leader of the Council to sign-off by no later than the 1st of April 2013, the Inter-Authority Agreement for the shared Public Health service between the London Boroughs of Barnet and Harrow in line with the principles set out in Appendix One to the report;
2. That Cabinet approve the delegation for the formal signing off of the NHS Transfer Orders for Public Health functions to the Cabinet Member for Public Health and for the signing off of NHS Handover Certificates to the Director for People.
3. That Cabinet approve the plans for entering into contracts for the provision of Public Health functions as set out in Appendix Two to the report.
4. That Cabinet approve the initial 'Public Health Commissioning Intentions' document set out in Appendix Three to the report
5. That Cabinet note the progress on developing the Memorandum of Understanding between the London Borough of Barnet and Barnet Clinical Commissioning Group and delegate responsibility to sign off the Memorandum of Understanding to the Cabinet Member for Public Health.

Resolution of Harrow Council, Cabinet
13 December 2012

SHARED PUBLIC HEALTH TEAM- INTER AUTHORITY AGREEMENT PRINCIPLES

RESOLVED:

That

- (1) the principles for the Inter Authority Agreement, as outlined in the report, be endorsed;
- (2) the Corporate Director of Community, Health and Wellbeing, in consultation with the Portfolio Holder for Adult Social Care, Health and Wellbeing, be authorised to:
 - (a) agree the terms of and execute an Inter Authority Agreement which reflects the principles outlined in the officer report;
 - (b) implement a Shared Public Health team in accordance with that Agreement.

APPENDIX 7

TRANSFER ORDER AND EMPLOYEES

By virtue of a Staff Transfer Scheme (the Scheme) made under the provisions of section 300 of the Health and Social Care Act 2012 the employees listed below were transferred to the employment of Harrow in accordance with the terms of the Scheme.

Staff names redacted.

APPENDIX 8

POLICIES

In accordance with Clause 12.6 the JPHS will comply with the following Information Governance Policies and Procedures (as amended and updated from time to time) in the delivery of the Service.

Harrow Policies

- Health and Safety
- CRB checks
- Data protection
- Freedom of Information
- Equalities
- Prevention of Fraud
- Acceptable use of Information and Systems
- Information Security Policy
- Information Management Policy
- Management of Information Risk Policy
- Portable Equipment Policy
- Incident Reporting and Management Procedure

Harrow will also adopt a Paper Handling policy which will be applicable to the operation of the JPHS.

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