

AGREEMENT

Between

SUFFOLK COUNTY COUNCIL

**BABERGH and MID SUFFOLK
DISTRICT COUNCIL**

IPSWICH BOROUGH COUNCIL

EAST SUFFOLK COUNCIL

WEST SUFFOLK COUNCIL

for

Suffolk Flexible Warrant Scheme

Updated November 2020:

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INTRODUCTION

- a. This Agreement is made pursuant to sections 101, 111 and 113 of the Local Government Act 1972, Section 1 of the Local Authority Goods and Services Act 1970 and all other enabling powers to further the Parties' powers and duties under the legislation set out in paragraph 5 of the Service Specification, and such other legislation as may be agreed between the Parties from time to time.
- b. Each of the Parties confirms that it has appropriate authority to enter into this agreement.

1. DEFINITIONS AND INTERPRETATION

In this Agreement, the following words shall have the meanings given to them:

- a. **'Authorised Officer'** An officer employed by an Employing Authority who is authorised to carry out specified Services for a Requesting Authority.
- b. **'Commencement Date'** The date of this agreement.
- c. **'Data'** As defined in the Data Protection Act 2018.
- d. **'Employing Authority'** A party whose Authorised Officers are providing services for a requesting authority.
- e. **'Fees'** Fees to be paid from one party to another in accordance with the terms of this agreement.
- f. **'Month'** A calendar month.
- g. **'Parties'** Suffolk County Council, Babergh and Mid Suffolk District Council, Ipswich Borough Council, West Suffolk Council, East Suffolk Council. This shall also include Parties' statutory successor in appropriate cases.
- h. **'Representative'** The Head of Environmental Health (or equivalent) of each Party other than Suffolk County Council, and the Head of Trading Standards and the Director of Public Health in the case of Suffolk County Council, or an officer duly authorised to act on the above individuals' behalf with regard to the management and administration of this Agreement.
- i. **'Requesting Authority'** A Party who has requested any of the Services from an Employing Authority.
- j. **'Scheme'** The Suffolk Flexible Warrant Scheme as described in the Service Specification attached hereto at Schedule 1.

- k. **'Service Specification'** Attached hereto at Schedule 1.
- l. **'Services'** The Services described in the Service Specification to be provided by any of the Parties to any of the other Parties in accordance with the terms of this Agreement.
- m. **'Territory'** The respective statutory areas of each of the Parties.
- n. **'Working Day'** 09:00 to 17.00 Monday to Friday inclusive, excluding English bank and public holidays.

In this Agreement, the following shall apply:

- o. Words importing one gender include any other gender.
- p. Words in the singular include the plural and vice versa.
- q. References to Appendices are references to the Appendices to this Agreement.
- r. References to time shall be construed during the period of summertime to be British Summer Time or its authorised replacement, and otherwise to mean Greenwich Mean Time.
- s. The clause headings shall not affect the interpretation thereof.
- t. Any reference in any part of this Agreement to any Act of Parliament, Statutory Instrument, Order, Regulation or other subordinate legislation, or to any European Union Directive or other European Union legislation, shall be deemed to include reference to any Act of Parliament, Statutory Instrument, Order, Regulation or other subordinate legislation or to any European Union Directive or other European Union legislation amending or replacing the same whether enacted, made or coming into effect before or after the date of this Agreement. It shall also apply to any relevant legislation imposed following the cessation of the transitional arrangements on 31st December 2020, following England's departure from the European Union.

2. COMMENCEMENT, REVIEW AND TERMINATION

- a. This Agreement shall commence on the Commencement Date and shall continue unless and until terminated in accordance with this clause.
- b. The Representatives of each of the Parties shall meet at least once in every 12- month period during the subsistence of this Agreement to review the progress of this Agreement, the Services and any matters arising.

- c. Subject to Clause 13(d) below, any of the Parties may terminate its participation in this Agreement at any time by giving to each of the other Parties three months' prior notice in writing.
- d. Any of the Parties may terminate its participation in this Agreement with immediate effect on written notice to each of the other Parties where any of the other Parties is in material breach of this Agreement and, where such breach is capable of remedy, the Party in breach has failed to remedy the breach within a reasonable time of being notified thereof. Any of the Parties may terminate its participation in this Agreement by notice in writing to each of the other Parties and recover from the offending Party any damage caused thereby if:
 - i. The offending Party has offered, or given, or agreed to give to any person any gift, consideration, inducement or reward of any kind, for doing or not doing any action in relation to this Agreement or any other contract with the first Party.
 - ii. Similar acts have been done by an Authorised Officer of the offending Party acting on its behalf (whether the offending Party knew about this or not), or
 - iii. in relation to any contract with the first Party, the offending Party or an Authorised Officer of the offending Party has committed any offence under the Bribery Act 2010 or given any fee or reward the receipt of which is an offence under s.117(2) of the Local Government Act 1972 or elsewhere.

3. OBLIGATIONS OF THE PARTIES

- a. In consideration of the Fees and subject to the terms of this Agreement, an Employing Authority will provide the Services to a Requesting Authority.

In the provision of the Services, each of the Parties will comply, at all times, with:

- i. The requirements of the Health and Safety at Work Act 1974 and any other Acts, Regulations or Orders pertaining to health and safety of Authorised Officers.
- ii. The requirements of the Public Health (Control of Disease Act) 1984 and regulations made thereunder.
- iii. With the provisions of the Equality Act 2010 together with any regulations and codes of practice issued thereunder; and shall use all reasonable endeavours to comply with any Code of Practice issued thereunder by the Equality and Human Rights Commission or any successor body thereto.
- iv. With the requirements of all statutes, orders, statutory instruments, regulations, official guidance and codes of practice relevant to the provision of the Services and each part of the Services.

- b. In the event that any of the Parties or an Authorised Officer of any of the Parties become aware of a conflict of interest or potential conflict of interest arising from the operation of this Agreement or the performance of the Services, that Party or Authorised Officer shall report such conflict or potential conflict immediately to the Employing Authority's Representative and Monitoring Officer. Representatives of both the Employing Authority and the Requesting Authority shall meet as soon as practicable thereafter to decide upon the best approach to be taken in the best interests of any, some or all the Parties.

4. FEES

- a. Fees shall be calculated, charged and paid in accordance with paragraph 4 of the Service Specification.
- b. Each Employing Authority shall submit to the Requesting Authority by the 15th of each Month a VAT invoice for Services provided by Authorised Officers in the preceding Month.
- c. Fees shall be paid by the Requesting Authority within 28 days of receipt of a correct invoice.
- d. Value Added Tax shall be included on invoices at the appropriate rate.
- e. The Parties shall meet from time to time to agree any changes to the fees and the effective date of any such change, but any increase may not be backdated to before the date the increase comes into effect.

5. AUTHORISED OFFICERS

- a. Each of the Parties shall ensure that only reliable, competent and trustworthy Authorised Officers are permitted to carry out the Services, including but not limited to Services which may give Authorised Officers access to any other Party's Data.
- b. Each of the Parties shall comply with the requirements of any notice given to them by any other Party requiring the first Party, on reasonable grounds, not to permit any person (whether employed by him or not) to carry out any of his obligations under this Agreement.
- e. Should a situation arise where an Authorised Officer of any of the Parties involved in the provision of the Services may be affected by redundancy or the requirements of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended), the Requesting Authority shall, at the request of the Employing Authority, assist with good faith negotiations to minimise, so far as the law allows, the effect any such redundancy or transfer may have on the affected Authorised Officer.

- f. Authorised Officers working on or in the premises of a Requesting Authority shall, at the commencement of their deployment, be advised of all health, safety and security policies relevant to the Requesting Authority's premises.
- g. In the absence of any negligence or other breach of duty by a Requesting Authority or its servants or agents, no Requesting Authority shall be responsible for any loss of, theft from, or injury or damage to Authorised Officers' vehicles, their contents, fittings or accessories, or to their personal possessions and effects of any kind.
- h. Each of the Parties confirms that:
- i. it will continue to be responsible for payment in respect of each Authorised Officer employed by the Employing Authority of full salary, NI, tax, pension, subscriptions to professional bodies, etc, in accordance with the contractual or other legal entitlements of each Authorised Officer;
 - ii. it will send or deliver a communication to each of its Authorised Officers who may be involved in the provision of the Services for a Requesting Authority containing the following information:
 - confirmation that the Authorised Officer has been consulted in accordance with s.113(1) Local Government Act 1972.
 - Notifying the Authorised Officer of Services to be provided to the Requesting Authority.
 - Requesting the Authorised Officer to declare any personal or prejudicial interest (including but not limited to such interests in contracts) they may have with regard to the Requesting Authority, and
 - advising the Authorised Officer to seek advice before standing for election to the Council of the Requesting Authority.
- i. Each Requesting Authority shall ensure that requisite authorities are in place to enable an Authorised Officer to carry out the Services on their behalf.

6. ASSIGNMENT

- a. Services requested by a Requesting Authority may not be assigned in whole or in part by an Employing Authority without the prior written consent of the Requesting Authority, such consent not to be unreasonably withheld or delayed, subject always to the Requesting Authority ensuring that requisite authorities are in place.

7. DATA PROTECTION

- a. The terms of this Clause prevail over all other conditions or terms of this Agreement, whether express or implied.
- b. The terms of this Clause shall not be interpreted as allowing a Party to do anything which it is precluded from doing by other contractual terms, apart from things which a Party must do in order to comply with these terms.
- c. Each of the Parties shall ensure that in carrying out their respective obligations under this Agreement it and its respective Authorised Officers:
 - i. Do not access or carry out any action in respect of any other Party's Data except in accordance with the terms of this Agreement or instructions given by that Party.
 - ii. Complies with any instruction given by any Party with respect to that Party's data.
 - iii. Does not allow any Party's data or any copy of it to leave the jurisdiction without the appropriate Party's prior written permission.
 - iv. Does not disclose any Party's data to any other person without the relevant Party's prior written permission (this sub-paragraph does not prevent Authorised Officers having access to the Data in order to perform the Employing Authority's obligations under this Agreement).
- d. Where Authorised Officers are able to access any of the Requesting Authority's data without being present on the Requesting Authority's premises, they shall not be permitted to access it except in accordance with instructions given by the Requesting Authority. Authorised Officers shall keep a record of each time the Requesting Authority's data is accessed and shall ensure that passwords and telephone numbers are not disclosed to any other person (whether employed by any of the Parties) who does not have a need to know them.
- e. The record maintained under Clause 7(d) above shall include the time, date and description of Data accessed and the reason for accessing the Data, and the record shall be produced to the other Party on demand.
- f. Where an item of equipment is able to access any Party's Data without Authorised Officers entering a security code or password (for example because the password is recorded on that Party's equipment) then the relevant Party shall ensure that this equipment is kept physically secure so as to comply with the Data Protection Act 2018.
- g. Employing Parties shall ensure that all passwords and security codes are kept securely.
- h. Employing Parties shall ensure that Authorised Officers comply with any codes of practice or

guidance issued by the Information Commissioner concerning security of data.

- i. If any of the Parties terminates its involvement in this Agreement (for whatever reason and this term shall survive the termination of this Agreement or the terminating Party's involvement in this Agreement), the terminating Party shall within 14 days give the Party that is a Data Controller a list of all Data it possesses which has been disclosed to the terminating Party by the Data Controlling Party. The terminating Party shall destroy the Data Controlling Party's Data 14 days after the Data Controlling Party has received the list unless before that time the Data Controlling Party has served a notice on the terminating Party requiring it to deliver all or part of that data to the Data Controlling Party as relevant.
- j. If any of the Parties serves a notice on a terminating Party in accordance with Clause 7(i) then the terminating Party shall within 14 days of receipt hand over to the first Party the data specified in the notice (in such format as the first Party shall reasonably require) and destroy the rest of the data.

8. INDEMNITY

- a. Each of the Parties shall indemnify and keep indemnified the other Parties from and against any and all loss damage or liability suffered by any of the other Parties resulting from a breach of their respective obligations under this Agreement.
 - a. Prior to commencement of the Services, each of the Parties will inform the other Parties that it either proposes to self-insure themselves and their Authorised Officers, or has taken out insurance cover, against its liability in Clause 8(a) above. Should any Party take out insurance cover, it shall notify the other Parties if it ceases to maintain such insurance.
 - b. Each of the Parties shall maintain insurance cover of a minimum of £5 million Public Liability Insurance.
 - c. Before providing any of the Services, the Employing Authority shall confirm to the Requesting Authority that the Authorised Officer is covered by Professional Indemnity insurance of a minimum of £1 million. The Requesting Authority shall, upon request, reimburse the Employing Authority the costs of the provision of Professional Indemnity insurance.

9. DISPUTE RESOLUTION AND ARBITRATION

- a. Any disputes between any of the Parties arising from this Agreement shall be resolved in accordance with the following clauses.
- b. Disputes concerning the construction, interpretation or application of any of the provisions of

this Agreement (to be applied in the order given):

- i. Referral to the Representative of each of the Parties
- ii. Referral to the Monitoring Officers of the Parties in dispute
- iii. Referral to the arbitration of a single arbiter to be appointed by the President for the time being of the Law Society of England and Wales, and the Parties agree to be bound by the terms of such arbitration. The costs of such arbitration may be awarded at the discretion of the arbitrator.

c. Disputes concerning any Authorised Officer (to be applied in the order given):

- i. Referral to the Representative of the Employing Authority - in consultation, where appropriate, with the relevant Authorised Officer's Human Resources team and Unison branch
- ii. Referral to a Strategic Director of the Employing Authority - in consultation, where appropriate, with the relevant Authorised Officer's Head of Human Resources and Unison branch
- iii. Mediation and resolution in accordance with the grievance or disciplinary procedure of the Employing Authority

d. Each of the Parties shall co-operate in attempts to resolve disputes whether any such dispute arises during the continuance of this Agreement or after the termination thereof for whatever cause.

10. CONFIDENTIALITY

- a. Except as required by law or as regards information already in the public domain prior to the date hereof or as authorised by the Head of Legal and Democratic Services of the Requesting Authority, the Employing Authority shall regard as confidential and shall not disclose to any person any information acquired by the Employing Authority in or in connection with the provision of the Services.
- b. Each of the Parties shall ensure that their Authorised Officers, agents and sub-contractors shall comply with the requirements of the preceding clause. Each of the Parties shall use the same standard of care in dealing with the information as if it were confidential information of its own.

11. CONTRACTS (RIGHTS OF THIRD PARTIES)

- a. Notwithstanding any other provision of this Agreement nothing in this Agreement confers or purports to confer any right to enforce any of its terms on any person or party who is not a party to it.

12. COPYRIGHT AND INTELLECTUAL PROPERTY

- a. Copyright and intellectual property in any documents, reports, policies and procedures produced by Authorised Officers of the Employing Authority for the sole benefit of the Requesting Authority shall vest solely in the Requesting Authority. Where any such documents, reports, policies and procedures are produced for the benefit of two or more of the Parties, copyright and intellectual property in them shall vest in the commissioning Parties equally.

13. ENQUIRIES, HEARINGS, PROCEEDINGS AND INVESTIGATIONS

- a. Each of the Parties shall co-operate fully with and at all hearings, proceedings, enquiries and investigations relating to the provision of the Services and shall permit access to each Party's records for this purpose. Employing Parties shall permit and ensure the full co-operation of their Authorised Officers in any hearing, proceedings, enquiry or investigation.
- b. Each of the Parties shall co-operate fully with:
 - i. any investigation by a Local Commissioner following a complaint by or on behalf of a member of the public in accordance with the provisions of s.26 Local Government Act 1974.
 - ii. All enquiries and investigations initiated by any Party's internal or external auditors.
 - iii. Any requests affecting the Services under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004.
 - iv. Any requests affecting the services under Subject Access Requests, General Data Protection Regulations and Data Protection Act 2018.
 - v. Any court or tribunal hearings arising from the provision of the Services, and
 - vi. any judicial review proceedings that may be brought in connection with the Services.
- c. The Requesting Authority shall bear the Employing Authority's costs of compliance with this clause.
- d. The provisions of this clause shall survive termination by any Employing Party of its participation in this Agreement.

14. LAW

- a. The formation of this Agreement and all matters or disputes arising under or in connection with it shall be governed by English law and (without prejudice to the provisions relating to Arbitration in Clause 9 above) subject to the jurisdiction of the English Courts.

15. NOTICES

- a. Any Notices required to be delivered under this Agreement shall be in writing signed by a duly authorised officer of the relevant Party and delivered or sent by pre-paid post to each of the other Parties at its address given above. When delivered during a Working Day, the notice shall be deemed to be delivered on the day of delivery. When posted, the notice shall be deemed to be delivered on the second Working Day following posting. E-mail may be used for ease of administration but communications by such means shall not be contractually binding unless confirmed by letter or fax or some other means creating a proper and permanent record of dispatch.

16. RIGHTS RESERVED

- a. All rights, powers, duties and functions which any of the Parties has as a local authority or which any of the Parties officers have as Local Authority Officers are expressly reserved.

17. SEVERABILITY

- a. If any provision of this Agreement is held to be invalid, illegal or unenforceable for any reason, the remainder of the provisions hereof will continue in full force and effect as if this Agreement had been executed with the invalid portion eliminated.

18. VARIATION

- a. No variation, addition, deleting or modification to this Agreement shall be valid unless agreed in writing between the Parties.

19. WAIVER

- a. Failure by any of the Parties at any time to enforce the provisions of this Agreement or to require performance by any of the other Parties of any of the provisions of the Agreement shall not be construed as a waiver of any such provision and shall not affect the validity of the Agreement or any part thereof nor the right of any of the Parties to enforce any provision in accordance with its terms.

20. WHISTLEBLOWING POLICY

a. Each of the Parties operates a "whistleblowing" policy which allows employees to raise concerns without fear of reprisals or victimisation. Such concerns may be for any number of reasons, including but not limited to something that might be:

- unlawful
- contrary to the relevant Party's Constitution, procedure rules or policies
- below standards dictated by any approved code of practice, or
- tantamount to improper conduct.

b. Each of the Parties accepts that an Authorised Officer may act in accordance with the Whistleblowing Policy of either the Employing Authority or the Requesting Authority.

21. ENVIRONMENTAL INFORMATION

a. Each of the parties will ensure that Authorised Officers maintain and provide evidence upon request of environmental information relevant to the Services including but not necessarily limited to:

- i. Vehicles used in the provision of the Services (including car make, model, year of registration and engine size).
- ii. Car mileage undertaken in the performance of the Services (including mileage between the principal offices of the Parties).

22. EXISTING JOINT WORKING ARRANGEMENTS

a. In the event of conflict between the terms of this Agreement and the terms of joint working arrangements adopted prior to or at the Commencement Date or coming into force during the term of this Agreement between any two or more of the Parties, the terms of any such joint working arrangements shall prevail over the terms of this Agreement.

Suffolk County Council

Signed:

Date:

Ipswich Borough Council

Signed:

Date:

Babergh and Mid Suffolk Borough Council

Signed:

Date:

East Suffolk Council

Signed:

Date:

West Suffolk Council

Signed:

Date:

