

BABERGH DISTRICT COUNCIL

AND

MID SUFFOLK DISTRICT COUNCIL

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2<sup>nd</sup> Inter Authority Agreement

FOR THE INTEGRATION OF COUNCIL STAFF AND SERVICES

THIS AGREEMENT is made the                      day of                      2021

BETWEEN

- (1) BABERGH DISTRICT COUNCIL of Endeavour House, Ipswich
  - (2) MID SUFFOLK DISTRICT COUNCIL of Endeavour House, Ipswich
- (Together “the Local Authorities”)

WHEREAS

- (A) The Local Authorities entered into an Inter Authority Agreement on 18<sup>th</sup> January 2012 to integrate the management, staffing structures and services of the respective Authorities in the best interests of both Local Authorities and their communities in terms of economy, efficiency and effectiveness (the First Inter Authority Agreement).
- (B) Since 2011, the Local Authorities have answered the challenges facing local government by developing a new way of delivering council services; ‘Working Together’. Since that time in excess of £13m cumulative savings have been achieved by delivering services with a joint Chief Executive and a fully integrated staff structure.
- (C) The Local Authorities have delivered all the intentions of the First Inter Authority Agreement and continue to further integrate delivery of services.
- (D) In 2017 both Local Authorities adopted the Leader and Cabinet model of Executive governance in accordance with the Local Government Act 2000. Following an electoral review and District Council elections in May 2019, both Local Authorities are now represented by fewer Councillors: 32 for Babergh District Council and 34 for Mid Suffolk District Council. The partnership governance framework adopted in the first Inter Authority Agreement therefore requires revision. This second Inter Authority Agreement wholly replaces the first Inter Authority Agreement.
- (E) In 2018 the Local Authorities developed a draft business case and undertook a public consultation with regard to the dissolution of both Local Authorities and creation of a new district council. This draft business case included a draft memorandum of understanding as to how the Local Authorities would work together towards this aim. This work was then paused during 2018 and forms no part of this Agreement. The draft principles for further collaboration, alignment and desire to strengthen future working together have however informed this Agreement.
- (F) It remains a principle of this Agreement that the Local Authorities work in partnership to achieve their aims and objectives on the basis of mutual benefit and contribution.

IT IS HEREBY agreed as follows –

## 1. INTERPRETATION

- a. In this Agreement unless the context otherwise requires the following expressions have the following meanings –

“Agreement” means this agreement being the second inter authority agreement and comprising the terms and conditions together with the Schedules attached hereto

“Assets” means any property (excluding real property) jointly acquired by the Local Authorities

“Chief Executive” means the joint head of paid service for the Local Authorities

“Commencement Date” means the date of which this Agreement is executed by the Local Authorities

“Data Protection Laws” means the General Data Protection Regulation and the Data Protection Act 2018 and any secondary legislation arising from them

“Dispute” is as defined in Clause 15

“EIR” means the Environment Information Regulations 2004

“FoIA” means the Freedom of Information Act 2000

“Local Authorities” means Babergh District Council and Mid Suffolk District Council

“Loss” includes any loss and liability directly suffered by the Local Authorities together or by any one Local Authority with any damage, expense, liability or costs reasonably incurred in contesting any claim to liability and quantifying such loss and liability

“Members” means the elected councillors of the Local Authorities, and “Member”, shall mean a member of either Local Authority as the context provides

“Monitoring Officer” means the officer designated by the Local Authorities as its monitoring officer pursuant to section 5 of the Local Government and Housing Act 1989

“Officers” mean the Local Authorities’ staff

“Section 151 Officer” has the meaning ascribed to it in the Local Government Act 1972

“Working Day” means any day on which the Local Authorities’ offices are normally open for business

- b. Reference to any statute or statutory provision includes a reference to that statute or statutory provision as from time to time amended, extended or re-enacted.
- c. Words importing the singular include the plural words; importing and gender include every gender; importing persons include bodies corporate and unincorporated; and (in each case) vice versa.
- d. Reference to Clauses and Schedules are references to clauses and schedules of this Agreement and any reference to a sub provision is unless otherwise stated a reference to a sub provision in which the reference appears.
- e. The Clause and Paragraph headings and titles appearing in this Agreement are for reference only and shall not affect its construction or interpretation.

## 2. TERM

2.1 This Agreement shall come into effect on the Commencement Date and shall continue in force until the date it is terminated in accordance with clause 12.2.

2.2 The First Inter Authority Agreement shall terminate upon the date this Agreement shall come into effect.

## 3. GENERAL PRINCIPLES

3.1 This Agreement has been entered into by the Local Authorities to establish and effect provisions for management of joint staff and services and

to clarify the Local Authorities' responsibilities in respect thereof and to each other.

3.2 The Local Authorities will continue to work together in partnership and in an open, cooperative collaborative manner for the duration of this Agreement. The Local Authorities' members and officers will work together in order to secure the successful implementation of this Agreement and will respond in a timely manner to all relevant requests from the other Local Authority.

3.3 The Local Authorities commit to share data and knowledge relevant to this Agreement where appropriate and in accordance with their duties under the Data Protection Laws.

3.4 The Chief Executive, Monitoring Officer and Section 151 Officer shall review the terms of this Agreement annually. Any recommended changes to the terms of the Agreement shall only be made by both Local Authority Cabinets and shall be recorded in writing and signed by both Leaders of the Local Authorities. Changes shall take effect upon signing and continue in force until termination or any further changes agreed in accordance with this Clause or other part of this Agreement.

#### 4. STATUS OF AGREEMENT

4.1 The Local Authorities agree that this Agreement shall take the form of a legally binding relationship and all mutual commitments between them created by this Agreement shall from the Commencement Date be construed accordingly.

#### 5. AUTHORITIES' OBJECTIVES

5.1 The Local Authorities remain committed to continuing the integration of management, staff and services across the Local Authorities.

#### 6. COSTS AND EXPENSES

6.1 Neither Local Authority is permitted by this Agreement, or in law, to subsidise the activities of the other Local Authority.

6.2 Any exceptions to a principle of equal shares, based upon the reality of differential service delivery in each Authority, must be agreed by the Section 151 Officer in consultation with the Finance Cabinet Members and Leaders of both Authorities.

6.3 The Section 151 Officer will review the Authorities' share of costs and savings on an annual basis.

6.4 Any equalisation or re-balancing payments shall be made within 28 days of being agreed and signed off by the Section 151 officer in consultation with the Finance Cabinet Members and Leaders of the Local Authorities.

## 7. SINGLE JOINT WORKFORCE

7.1 All Officers employed by one Local Authority are permanently available to the other in accordance with the provisions of s.113 of the Local Government Act 1972 under harmonised terms and conditions of employment. Officers will report to each Local Authority as and when required and shall comply with the policies and procedures of that Local Authority even if that Local Authority is not their employing Local Authority.

## 8. POLICIES, PROCEDURES, PROTOCOLS AND MEETINGS

8.1 The Local Authorities agree to align policies and procedures as far as is practicable.

8.2 In developing new policies, the Local Authorities agree to consult one another and to develop an agreed policy to be adopted by both Local Authorities wherever possible.

8.3 The Local Authorities will adopt aligned, joint and simultaneous committee system arrangements, including for Cabinet meetings, wherever possible.

## 9. MAJOR PROJECTS AND CONTRACTS

9.1 The Local Authorities agree to notify one another of any:

9.1.1 projects; expenditure

9.1.2 and/or liabilities

9.1.3 with a value in excess of £50,000.

9.2 The Local Authorities agree to jointly commission such projects wherever possible.

## 10. MEMBER AND OFFICER LIABILITY

### 10.1 Member and Officer liability

10.1.1 When working as a Member of a Joint Committee, the Members shall be deemed to be working on behalf of the Local Authority to which they are elected even where the particular matter under consideration relates to or also relates to the other Local Authority.

10.1.2 When working on any matter Officers shall be and made available and work on behalf of the non-employing Local Authority in accordance with the provisions of Section 113 of the Local Government Act 1972 as though it were their employing Local Authority.

10.1.3 In consequence of the above, both Members and Officers shall be treated as falling within the statutory immunity provided by Section 265 of the Public Health Act 1875 as amended, in respect of their actions or omissions.

### 10.2 Losses to each Authority

10.2.1 Neither Local Authority shall have any liability to the other Local Authority unless specifically provided for under this Agreement in respect of any loss which that other Local Authority may suffer as a consequence of any action or omission by any Officer or Member.

## 11. INSURANCE

11.1 Each Local Authority shall obtain and maintain throughout the term of this Agreement insurance sufficient to cover all of their obligations under this Agreement. Each Local Authority shall indemnify the other against loss sustained as a result of a breach of this Agreement.

## 12. WITHDRAWAL AND CONSEQUENCES

12.1 Where one Local Authority ("the Withdrawing Authority") wishes to withdraw from this Agreement: -

12.1.1 Subject to the remaining provisions of this Clause the obligations of the Withdrawing Authority under this Agreement shall cease on such withdrawal.

12.1.2 This Agreement shall continue in force in respect of any financial liabilities which have arisen out of the performance of this Agreement up to the date of the Withdrawing Authority's withdrawal.

12.1.3 The Withdrawing Authority shall not be entitled to a reimbursement of any costs incurred by it or contributions made prior to the date of withdrawal other than in accordance with Clause 6 of this Agreement.

12.1.4 The Withdrawing Authority shall become immediately liable to pay any sums due from it to the other Local Authority under this Agreement.

12.1.5 The Disputes Procedure set out in Clause 20 of this Agreement shall remain in force in respect of any of the matters arising from the performance of or withdrawal of a Local Authority under this Agreement.

12.2 A Withdrawing Authority shall give at least twelve months written notice to the other Local Authority, such notice to take effect on 31 March in any year.

12.3 A Withdrawing Authority exercising their right to withdraw under Clause 12.2 above shall indemnify the other Local Authority for all and any Loss suffered by them as a consequence of the withdrawal of the Withdrawing Authority.

### 13. PREMISES

13.1 The Local Authorities share a principal place of work and headquarters at Endeavour House, Ipswich, which is jointly leased from Suffolk County Council.

13.2 The Local Authorities agree that they will continue to make premises available in accordance with the requirements of this Agreement in order to efficiently deliver services to both Local Authorities.

### 14. ASSETS AND INTELLECTUAL PROPERTY

14.1 All Assets and intellectual property and material created under this Agreement shall be owned jointly by the Local Authorities and shall be available equally to each Local Authority subject to any terms with third parties under which the intellectual property and material was commissioned. The Local Authorities shall use their best endeavours to reflect the intention of the Local Authorities to jointly own these items in any terms used when commissioning third party work under this Agreement.

14.2 Each Local Authority warrants that any intellectual property created by its Officers for the purposes of this Agreement will not infringe any third party's intellectual property rights.



14.3 Each Local Authority shall indemnify the other Local Authority against any Loss arising out of any dispute or proceedings brought by a third-party alleging infringement of its intellectual property rights by use of the first Local Authority's Intellectual property for the purpose of this Agreement.

14.4 Each Local Authority hereby authorises the other Local Authority to use its logo on documents and signage for such period as this Agreement remains in force save that this provision shall not apply after a Local Authority has withdrawn.

## 15. RESOLUTION OF BREACHES AND DISPUTES

15.1 In the event of a dispute concerning the construction or effect of this Agreement or that a Local Authority has failed to comply with any obligation under this Agreement the matter will be raised with the Monitoring Officer unless the matter concerns the Monitoring Officer in which case the matter will be raised with the Chief Executive.

15.2 If the matter cannot be resolved to the satisfaction of the Local Authorities by the Monitoring Officer (or Chief Executive) within 14 days the matter will be referred to an independent arbitrator from a professional body appropriate to the matter in dispute.

15.4 The arbitrator shall be appointed with the agreement of the Local Authorities or in the event that agreement cannot be reached, by the President or chief officer of the appropriate profession.

15.5 For the avoidance of doubt this Clause remains in place after the termination of this Agreement to confer powers on the Local Authorities to resolve matters in dispute.

## 16. VARIATION

16.1 The Local Authorities may vary the terms of this Agreement from time to time, such variations to be agreed by the Local Authorities' Cabinets and recorded in writing, signed and appended to this Agreement.

## 17. CONFIDENTIAL INFORMATION AND PUBLICITY

17.1 The Local Authorities shall at all times use their reasonable endeavours to keep confidential (and to procure that their respective employees, agents, consultants and sub-contractors shall keep confidential) all Confidential

Information concerning the business and affairs of the other Local Authority which may now or at any time hereafter be in its possession and shall not disclose it except with the consent of the other Local Authority, such consent not to be unreasonably withheld.

17.2 For the purpose of this Agreement “Confidential Information” means any information imparted to any Local Authority or their employees, agents, consultants and sub-contractors (“the Receiving Party”) which was imparted to the Receiving Party on the basis that it is to be kept confidential or would by its nature normally be regarded as being confidential or which to the knowledge of the Receiving Party was obtained by the other Local Authority on the basis that it was to be kept confidential or is of commercial value but shall not include any information which is for the time being in the public domain otherwise than by reason of its wrongful disclosure by the Receiving Party.

17.3 This Clause 17 shall continue without limit and shall survive the termination of this Agreement.

17.4 This Clause 17 shall not prevent the disclosure of any Confidential Information relating to any matters under this Agreement which are reasonably disclosed for furtherance of or the promotion of such matters provided that the Local Authority or person disclosing the information takes all steps that are commercially practicable to preserve the confidentiality of the information and shall not prevent the disclosure of any Confidential Information where required by law.

17.5 Neither Local Authority shall issue any media release publicity concerning or affecting matters under this Agreement unless previously agreed in advance with the other Local Authority at Strategic Director level or above.

17.6 Subject to clause 17.7 any formal statements or communications to Officers and/or Members concerning matters under this Agreement shall be agreed between the Local Authorities in advance, agreement to be sought at Strategic Director level or above.

17.7 Clause 17.6 does not apply to the circulation of minutes, the routine reporting of decisions or requests for information or action to be taken.

## 18. COMPLIANCE WITH LAWS

18.1 The Local Authorities shall at all times comply with all laws including but not limited to the Data Protection Laws, the Health and Safety at Work, etc Act 1974 and the Equality Act 2010 and will, where appropriate maintain a valid and up to date registration or notification under such laws.

18.2 Each Local Authority shall indemnify and keep indemnified the other Local Authority against all losses, claims, damages, liabilities, costs and expense (including reasonable legal costs) incurred by the other Local Authority in respect of any breach of this Clause by the Local Authority and/or any act or omission of any sub-contractor.

18.3 Each Local Authority shall grant to the other Local Authority the right of reasonable access to all records of Personal Data relevant to matters under this Agreement, as defined and as permitted in the Data Protection Laws and shall provide assistance at all times to ensure the quality and security of data collected.

## 19. FREEDOM OF INFORMATION

19.1 Each Local Authority acknowledges that the other Local Authority is subject to the requirements of the FoIA and the EIR and each Local Authority shall where reasonable assist and cooperate with the other Local Authority (at their own expense) to enable the other Local Authority to comply with these information disclosure obligations.

19.2 Where a Local Authority receives a request for information under either the FoIA or the EIR in relation to information which it is holding on behalf of the other Local Authority in relation to matters under this Agreement, it shall;

19.2.1 transfer the request for information to the other Local Authority as soon as practicable after receipt and in any event within two Working Days of receiving a request for information;

19.2.2 provide the other Local Authority with a copy of all information in its possession or power in the form that the Local Authority requires within ten Working Days (or such longer period as the Local Authority may specify) of the Local Authority requesting that information; and

19.2.3 provide all necessary assistance as reasonably requested by the other Local Authority to enable that Local Authority to respond to a request for information within the time for compliance set out in the FoIA or the EIR.

19.3 Where a Local Authority receives a request under FoIA or EIR which relates to matters under this Agreement it shall notify the other Local Authority and afford them an opportunity to make any comments or representations in respect of the information sought. The other Local Authority shall respond within five working days or receipt of this notification. The Local Authority responding to the request shall take into account any such comments or

representations in so doing and shall not respond to the request until the five-day response period referred to above has passed.

## 20. ENQUIRIES, HEARINGS, PROCEEDINGS AND INVESTIGATIONS

20.1 The Local Authorities 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 Local Authority's records for this purpose. Each Local Authority shall permit and ensure the full co-operation of his Officers in any hearing, proceedings, enquiry or investigation.

20.2 The Local Authorities shall co-operate fully with:

20.2.1 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, and

20.2.2 all enquiries and investigations initiated by the other Local Authority's internal or external auditors.

## 21. CONFLICTS

21.1 If any situation arises where there is a potential or actual conflict of interest between the Local Authorities, the Chief Executive shall:

21.1.1 Draw such conflict to the notice of the Monitoring Officer in writing;

21.1.2 Remove themselves from all aspects of the decision-making process in relation to the situation;

21.1.3 Provide the Monitoring Officer with such resources as they require to ensure that the interests of each Local Authority are appropriately represented including taking independent professional advice or seeking independent third-party support if appropriate.

21.2 On receipt of notice under clause 21.1 the Monitoring Officer shall immediately:

21.2.1 Notify the Section 151 Officer of the circumstances of the conflict;

21.2.2 Ensure that Officers instructed to provide them with support are clearly informed that a conflict between the Local Authorities may or does exist and are notified to which Local Authority the Monitoring Officer is reporting; and

21.2.3 Ensure that Officers are not or might not be compromised in any way in performing their duties on behalf of either or both of the Local Authorities;

21.3 If it becomes apparent to the Monitoring Officer acting on receipt of a notice under clause 21.1 that the interests of a Local Authority or the position of any Officer supporting the Monitoring Officer will or might be compromised, the Monitoring Officer shall immediately make arrangements for independent professional advice or independent third-party support.

21.4 The Local Authorities shall ensure that procedures and safeguards are in place to identify such conflicts at an early stage.

21.5 The Local Authorities shall keep a written record of any such conflicts which have been identified and how such conflicts have been resolved.

## 22. SEVERANCE

22.1 If any condition, provision or Clause of this Agreement shall become or shall be declared by any court of competent jurisdiction to be void, invalid, illegal or unenforceable in any way, such invalidity or unenforceability shall in no way impair or affect any other provision all of which shall remain in full force and effect.

## 23. ENTIRE AGREEMENT

23.1 This Agreement constitutes the entire agreement and understanding of the Local Authorities and supersedes any previous agreement between the Local Authorities relating to the subject matter of this Agreement.

## 24. WAIVER

24.1 The failure to exercise or delay in exercising a right or remedy provided by this Agreement or by law does not constitute a waiver of the right or remedy or waiver of other rights or remedies.

24.2 A waiver of a breach of any of the terms of this Agreement or of a default under this Agreement does not constitute a waiver of any other breach or default and shall not affect the other terms of this Agreement.

24.3 A waiver of a breach of any of the terms of this Agreement or of a default under this Agreement will not prevent an Authority from subsequently requiring compliance with the waived obligation.

## 25. GENERAL

25.1 Nothing contained or implied herein shall prejudice or affect the Local Authorities' rights and powers duties and obligations in the exercise of their functions as Local Authorities and/or in any of the other capacity and all rights, powers, discretions, duties and obligations of the Local Authorities under all Laws may at all times be fully and effectually exercised as if the Local Authorities were not party to this Agreement and as if this Agreement had not been made.

25.2 The Local Authorities shall only represent themselves as being an agent, partner or employee of any other Local Authority to the extent specified by this Agreement and shall not hold themselves out as such nor as having any power or authority to incur any obligation of any nature express or implied on behalf of any other Local Authority except to the extent specified in the Agreement.

25.3 This Agreement shall be governed by and construed in accordance with English Law and shall be subject to the jurisdiction of the Courts of England.

25.4 This Agreement is personal to the Local Authorities and neither Local Authority shall assign transfer or purport to assign or transfer to any other persons any of its rights or sub-contract any of its obligations under this Agreement.

25.5 No person other than the Local Authorities shall be entitled to enforce any of its terms Under the Contracts (Rights of Third Parties) Act 1999.

25.6 Any notice required or permitted to be given by a Local Authority to the other Local Authority under this Agreement shall be in writing and addressed to the Leader of the other Local Authority at its principal office.

25.7 The Local Authorities shall at all times deal with one another and their respective rights and responsibilities in good faith including in respect of any disputes between them.

IN WITNESS hereof the parties hereto have executed this Agreement as a Deed the day and year

The Common Seal of Babergh District Council  
was affixed hereto in the presence of

The Common Seal of Mid Suffolk District Council  
was affixed hereto in the presence of

## Schedule 1

### Data Protection

- 1.1 The terms of this Clause prevail over all other conditions or terms of this Agreement, whether express or implied.
- 1.2 The terms of this Clause shall not be interpreted as allowing a Local Authority to do anything which it is precluded from doing by other contractual terms, apart from things which a Local Authority must do in order to comply with these terms.
- 1.3 Each Local Authority shall ensure that in carrying out their respective obligations under this Agreement it and its respective Officers:
  - 1.3.1 do not access or carry out any action to the other Local Authority's Data except in accordance with the terms of this Agreement or instructions given by that Local Authority.
  - 1.3.2 complies with any instruction given by the other Local Authority with respect to that Local Authority's Data.
  - 1.3.3 does not allow any of the other Local Authority's Data or any copy of it to leave EU without the that Local Authority's prior written permission.
  - 1.3.4 does not disclose any of the other Local Authority's Data to any other person without that Local Authority's prior written permission (this subparagraph does not prevent the first Local Authority from disclosing to its Officers and others who have a need to access the Data in order to perform the first Local Authority's obligations under this Agreement).
- 1.4 Where Officers of a Local Authority are accessing any of the other Local Authority's Data then they shall not be permitted to access it or share it with any other person except in accordance with instructions agreed by the other Local Authority and they shall keep a record of each time the Data is accessed and/or shared and shall ensure that passwords and telephone numbers are not disclosed to any other person (whether or not employed by either Local Authority).
- 1.5 The record maintained under Clause 1.4 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 each Local Authority on request.
- 1.6 Where an item of equipment is able to access any of the Local Authorities' Data without Officers entering a security code or password (for example because the password is recorded on that Local Authority's equipment) then the Local Authorities shall ensure that this equipment is kept physically secure so as to comply with the Data Protection Laws.



- 1.7 Employees shall ensure that all passwords and security codes are kept securely.
- 1.8 Employees shall comply with any codes of practice or guidance issued by the Information Commissioner concerning security of data.
- 1.9 When any Party terminates its involvement in this Agreement (for whatever reason and this term shall survive the termination of the Agreement or any Parties' involvement in this Agreement), each Party shall within 14 days give the other Parties a list of all Data it possesses which has been disclosed to the first Party by another Party. Each Party shall destroy this data 14 days after the other Party has received the list unless before that time the other Party has served a notice on the first Party requiring it to deliver all or part of that data to the other Party as relevant.
- 1.10 If any Party serves a notice on another Party in accordance with Clause 7.9 then the other 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