

FREETHS

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- (1) **GUILDFORD BOROUGH COUNCIL**
 - (2) **WAVERLEY BOROUGH COUNCIL**

**AGREEMENT PURSUANT TO SECTION 113
LOCAL GOVERNMENT ACT 1972**

Relating to

The provision of a joint senior management team

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THIS AGREEMENT is made on the 13th day of September

2022

BETWEEN

- (1) **GUILDFORD BOROUGH COUNCIL** of Millmead House, Millmead, Guildford, Surrey, GU2 4BB (“**Guildford**”).
 - (2) **WAVERLEY BOROUGH COUNCIL** of Council Offices, The Burys, Godalming, Surrey GU7 1HR (“**Waverley**”).
- (Each a “**Party**” and together the “**Parties**”).

BACKGROUND

- (A) The Parties to this Agreement wish to work together in relation to the appointment of a shared senior management team comprising of statutory officers: Head of Paid Service; Chief Finance Officer and Monitoring Officer, directors, and other heads of service for the purposes of working closely together in developing business cases for future collaboration.
- (B) At their respective Full Council meetings on 6 July 2021 each Party resolved to pursue the option of appointing a joint senior management team.
- (C) On 28 July 2021 (Guildford) and 3 August 2021 (Waverley) the Parties’ respective Full Councils resolved that a further report would be submitted to the Full Councils of the Parties to agree outline terms for an agreement between the authorities for the purposes set out in (A) above and to establish a joint senior management team.
- (D) On 22 April 2022 Full Council of Waverley resolved to enter into an agreement with Guildford on a jointly agreed set of terms for the purpose of establishing a joint senior management team.
- (E) On 5 April 2022 Full Council of Guildford resolved to enter into an agreement with Waverley on a jointly agreed set of terms for the purpose of establishing a joint senior management team.
- (F) Further to an agreement between the Parties to establish pursuant to section 102(1) of the Local Government Act 1972 a Joint Appointments Committee.
- (G) The Parties are empowered by section 113 of the Local Government Act 1972 to enter into an agreement with each other for the placing at the disposal of one another of their officers for the purposes of the performance of their respective functions.

OPERATIVE PROVISIONS

1. INTERPRETATION

1.1. The definitions and rules of interpretation in this clause apply in this Agreement.

Agreement	this Agreement and any schedules;
Business Day	a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business;
Commencement Date	has the meaning set out in clause 2.1;

Confidential Information	any information, however conveyed or presented, that relates to the business, affairs, operations, customers, processes, budgets, pricing policies, strategies, developments, trade secrets, know-how, personnel and suppliers of the disclosing Party, together with all information derived by the receiving Party from any such information and any other information clearly designated by a Party as being confidential to it (whether or not it is marked "confidential"), or which ought reasonably be considered to be confidential;
Conflicts Policy	The policy agreed by the Parties and set out at Schedule 6 to this Agreement for resolving actual or potential conflicts of interest;
Data Protection Legislation	all applicable data protection and privacy legislation in force from time to time in the UK including the UK General Data Protection Regulation the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003 No. 2426) as amended; any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a Party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications);
Dispute	any dispute under this Agreement;
Dispute Resolution Procedure	the dispute resolution procedure set out in Clause 35;
EIR	Environmental Information Regulations 2004 (SI 2004/3391) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations;

Force Majeure Event	any cause affecting the performance by a Party of its obligations under this Agreement arising from acts, events, omissions or non-events beyond its reasonable control, including acts of God, riots, war, acts of terrorism, fire, flood, storm or earthquake and any disaster, but excluding any industrial dispute relating to a Party;
FOIA	the Freedom of Information Act 2000;
Good Industry Practice	in relation to any undertaking and any circumstances, the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced operator engaged in the same type of undertaking under the same or similar circumstances.
Intellectual Property Rights	patents, rights to inventions, copyright and related rights, trademarks and service marks, business names and domain names, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;
Joint Appointments Committee	The joint committee established by the Parties to operate the JSMT Arrangements;
Joint Senior Management Team (JSMT)	a shared senior management team comprising of statutory officers: Head of Paid Service; Chief Finance Officer and Monitoring Officer and directors and other heads of service;

JSMT Arrangements	the administrative arrangement to implement and then subsequently manage the JSMT in accordance with the Principles;
Principles	the jointly agreed principles that underpin the Parties working together in respect of the JSMT Arrangements and which are set out in Schedule 1;

- 1.2. Clause, Schedule and paragraph headings shall not affect the interpretation of this Agreement.
- 1.3. The Schedule forms part of this Agreement and shall have effect as if set out in full in the body of this Agreement.
- 1.4. References to clauses and Schedules are to the clauses and Schedules of this Agreement and references to paragraphs are to paragraphs of the Schedule.
- 1.5. Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6. Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7. A reference to a statute or statutory provision is a reference to it as [amended, extended or re-enacted from time to time.
- 1.8. A reference to a statute or statutory provision shall include all subordinate legislation made from time to time.
- 1.9. A reference to **writing** or **written** includes email.
- 1.10. Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.11. Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.12. Where there is a conflict between the terms and conditions of this Agreement, and a Schedule, the terms and conditions shall prevail.
- 1.13. Any reference to this Agreement terminating shall, where the context requires, include a reference to this Agreement terminating by expiry.

2. COMMENCEMENT AND DURATION

- 2.1. This Agreement shall commence on the date when it has been signed by all the Parties.
- 2.2. This Agreement shall continue, unless terminated earlier in accordance with this Agreement.

3. EXISTING ARRANGEMENTS

3.1. Nothing in this Agreement shall restrict either Party's right to continue to conduct its business activities or arrangements that existed on the Commencement Date or that otherwise come into being outside the scope of this Agreement.

4. ROLES AND RESPONSIBILITIES

4.1. The Parties agree to work together in a spirit of mutual co-operation to fulfil their agreed roles and responsibilities in operating the JSMT Arrangements in accordance with the Principles.

4.2. Each Party shall in relation to any obligations for which it is responsible in relation to the JSMT Arrangement:

4.2.1. use reasonable care and skill in performing such obligations;

4.2.2. comply with Good Industry Practice;

4.2.3. comply with all laws applicable to it; and

4.2.4. obtain and maintain consents, licences and permissions (statutory, regulatory, contractual or otherwise) that are necessary to enable it to comply with such obligations;

4.3. Each Party shall ensure that it uses employees in performing its obligations who are suitably qualified and experienced.

5. GOVERNANCE AND DECISION-MAKING

5.1. The governance arrangements which apply to this Agreement shall be as set out in Schedule 2.

6. PROPERTY AND ASSETS

6.1. Property assets belonging to the Parties and deployed as part of the JSMT Arrangements will be managed by the Parties in accordance with Schedule 4

7. FINANCIAL ARRANGEMENTS

7.1. The financial arrangements which will apply to the JSMT Arrangements and the operation of this Agreement shall be as set out in Schedule 3.

8. STAFFING ARRANGEMENTS

8.1. The staffing arrangements which will apply to the JSMT Arrangements and the operation of this Agreement shall be as set out in Schedule 5.

9. RECORD KEEPING AND COMMUNICATIONS

9.1. Each Party shall ensure that a proper record is kept of the JSMT Arrangements and shall maintain all such records in accordance with Good Industry Practice and in a form capable of audit.

9.2. Each Party shall supply to the other Party information and assistance reasonably requested by it relating to the JSMT Arrangements as is necessary to enable that other Party to perform its own obligations in relation to the JSMT Arrangements.

10. FREEDOM OF INFORMATION

- 10.1. Each Party acknowledges that all Parties are subject to the requirements of the FOIA and the EIRs and accordingly each Party shall:
- 10.1.1. provide all necessary assistance and cooperation as reasonably requested by the other Party to enable the other Party to comply with its obligations under the FOIA and EIRs;
 - 10.1.2. transfer to the other Party as appropriate all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within 2 Business Days of receipt; and
 - 10.1.3. provide the other Party with a copy of all information belonging to that Party requested in the Request For Information which is in its possession or control in the form required within 5 Business Days (or such other period as the requesting Party may reasonably specify) of that Party's request for such information.

11. CONFIDENTIALITY

- 11.1. Except to the extent set out in this clause 9, or where disclosure is expressly permitted elsewhere in this Agreement, each Party shall:
- 11.1.1. treat the other Parties' Confidential Information as confidential; and
 - 11.1.2. not disclose the other Parties' Confidential Information to any other person without the owner's prior written consent.
- 11.2. Clause 9.1 shall not apply to the extent that:
- 11.2.1. such information was in the possession of the Party making the disclosure, without obligation of confidentiality, prior to its disclosure; or
 - 11.2.2. such information was obtained from a third party without obligation of confidentiality; or
 - 11.2.3. such information was already in the public domain at the time of disclosure otherwise than through a breach of this Agreement; or
 - 11.2.4. such information was independently developed without access to the other Parties' Confidential Information.

12. COPYRIGHT AND INTELLECTUAL PROPERTY

- 12.1. Intellectual Property Rights in any documents, reports, policies and procedures produced by an employee of one Party for the sole benefit of the other Party shall vest solely in the Party for whose benefit it was provided. Where any such documents, reports, policies and procedures are produced for the benefit of both Parties the Intellectual Property Rights shall vest in both Parties equally.

12.2. Each Party hereby grants to the extent permissible by law a licence to the other to use its Intellectual Property Rights solely and exclusively for the purposes of and in connection with this Agreement.

12.3. Any Intellectual Property Rights created through the establishment and running of shared services by the Parties shall vest in the Parties and be held jointly by them at the time they were created.

13. ANNOUNCEMENTS/PUBLICITY

No Party shall make, or permit any person to make, any public announcement, communication or circular concerning the existence, subject matter or terms of this Agreement, the wider transactions contemplated by it, or the relationship between the Parties, without the prior written consent of the other Party (such consent not to be unreasonably withheld or delayed).

14. DATA PROTECTION

14.1. Each Party shall, at its own expense, ensure that it complies with and assists the other Parties to comply with the requirements of all legislation and regulatory requirements in force from time to time relating to the use of personal data and the privacy of electronic communications, including (i) the Data Protection Act 2018 and any successor UK legislation, as well as (ii) the UK General Data Protection Regulation

14.2. To the extent that it is lawful to do so the Parties agree to share data in accordance with the provisions set out in Schedule 7.

15. ANTI-BRIBERY

15.1. Each Party shall in relation to this Agreement and the JSMT Arrangements:

15.1.1. comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (**Relevant Requirements**);

15.1.2. have and shall maintain in place throughout the term of this Agreement its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements and will enforce them where appropriate;

15.1.3. promptly report to the other Party any request or demand for any undue financial or other advantage of any kind received by it in connection with the performance of this Agreement.

15.2. Breach of this clause 15 shall be deemed a material breach under clause 21.2.

16. EQUALITY

16.1. The Parties shall perform their obligations under this Agreement in accordance with:

16.1.1. all applicable equality Law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);

- 16.1.2. any applicable equality and diversity policy of the Parties from time to time; and
- 16.1.3. take all necessary steps, and inform each other of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation).

17. WARRANTIES

- 17.1. Each Party warrants that:
 - 1.1.1. it has full power and authority to carry out the actions contemplated under this Agreement; and
 - 17.1.1. so far as it is aware, all information, data and materials provided by it under this Agreement will be accurate and complete in all material respects, and it is entitled to provide the same to the other without recourse to any third party;
- 17.2. Except as expressly provided in this Agreement, there are no conditions, warranties or other terms binding on the parties with respect to the actions contemplated by this Agreement. Any condition, warranty or other term in this regard that might otherwise be implied or incorporated into this Agreement, whether by statute, common law or otherwise, is, to the extent that it is lawful to do so, excluded by this Agreement.

18. CONFLICTS OF INTEREST

- 18.1. Subject to the Conflicts Policy referred to in clause 18.2 a Party shall notify the other Party immediately in the event that it becomes aware of any actual or potential conflict of interests between the notifying Party and any contractor or customer (or any prospective contractor or customer) arising in the context of establishing or operating the JSMT Arrangements. The notifying Party will as soon as possible either:
 - 18.1.1. withdrawn from any decision-making in relation to contractor or customer giving rise to the conflict (or potential conflict) of interests; or
 - 18.1.2. agree with the other Party:
 - 18.1.2.1. that no conflict of interest either has arisen or has the prospect of arising; or
 - 18.1.2.2. an acceptable means of dealing with or avoiding the conflict (or potential) conflict of interest.
- 18.2. The Parties agree that the Conflicts Policy set out in Schedule 6 shall be applied for the purposes of dealing with conflicts of interest as they arise in accordance with this Agreement.

19. INDEMNITY

- 19.1. Each Party (“**Indemnifying party**”) shall indemnify the other Party (“**Indemnified Party**”) against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Indemnified Party arising out of or in connection with the Indemnifying Party's performance of this Agreement.
- 19.2. This indemnity shall not cover the Indemnified Party to the extent that a claim under it results from the Indemnified Party's negligence or wilful misconduct.
- 19.3. Nothing in this clause shall restrict or limit the Indemnified Party's general obligation at law to mitigate a loss it may suffer or incur as a result of an event that may give rise to a claim under this indemnity.

20. INSURANCE AND LIMITATION OF LIABILITY

- 20.1. During the term of this Agreement each Party shall maintain in force, with a reputable insurance company, such policy or policies of insurance necessary to insure each Party against all risks required in relation to the JSMT Arrangements and the Agreement and any insurances as may be required by law.
- 20.2. Nothing in this Agreement shall limit or exclude a Party's liability:
 - 20.2.1. for death or personal injury caused by its negligence, or that of its employees, agents or sub-contractors;
 - 20.2.2. for fraud or fraudulent misrepresentation;
 - 20.2.3. for breach of any obligation as to title or quiet possession implied by statute; or
 - 20.2.4. for any other act, omission, or liability which may not be limited or excluded by law;
- 20.3. Subject to clause 20.2, no Party shall have any liability to the other Party, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or for any indirect or consequential loss arising under or in connection with the Agreement.

21. TERMINATION FOR CAUSE

- 21.1. Without affecting any other right or remedy available to it, any Party may terminate this Agreement with immediate effect by giving written notice to the other Party:
 - 21.1.1. if the other Party commits a material breach of any term of this Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of fourteen days after being notified in writing to do so;

- 21.1.2. if the other Party repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement;
- 21.2. For the purposes of clause 21.1.1 **material breach** means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the terminating Party would otherwise derive from a substantial portion of this Agreement.

22. TERMINATION WITHOUT CAUSE

- 22.1. A Party may terminate this Agreement by giving the other Party a minimum of twelve months' notice in writing.
- 22.2. A notice to terminate may only be served once in each calendar year and in any event no later than 30 September in each calendar year. In the event a notice is served after 30 September in a calendar it shall be deemed to be served on the 1 April in the following calendar year.

23. CONSEQUENCES OF TERMINATION

- 23.1. On termination of this Agreement, the following clauses shall continue in force:
 - 23.1.1. Clause 1 (Interpretation);
 - 23.1.2. Clause 11 (Confidentiality);
 - 23.1.3. Clause 14 (Data protection);
 - 23.1.4. Clause 18 (Indemnity);
 - 23.1.5. Clause 20 (Insurance and Limitation of Liability);
 - 23.1.6. Clause 23 (Consequences of termination);
 - 23.1.7. Clause 24 (Force majeure);
 - 23.1.8. Clause 27 (Notices);
 - 23.1.9. Clause 28 (Severance);
 - 23.1.10. Clause 29 (No partnership or agency);
 - 23.1.11. Clause 30 (Rights and remedies);
 - 23.1.12. Clause 31 (Waiver);
 - 23.1.13. Clause 32 (Third party rights);
 - 23.1.14. Clause 34 (Entire agreement);
 - 23.1.15. Clause 35 (Dispute Resolution Procedure);
 - 23.1.16. Clause 36 (Governing law); and
 - 23.1.17. Clause 37 (Jurisdiction).
- 23.2. Termination of this Agreement shall not affect any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination, including the

right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination.

23.3. For the avoidance of doubt further to the service of written notice to terminate this Agreement by either Party on the other in accordance with Clause 22 the Parties agree that any employees working as part of the JSMT shall for the balance of the twelve month notice period continue to provide services to the non-employing Party as if a notice of termination had not been served.

24. FORCE MAJEURE

Neither Party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed. If the period of delay or non-performance continues for two months the affected Parties may refer the matter for resolution in accordance with the Dispute Resolution Procedure set out at clause 35 and if a resolution cannot be reached in accordance with that procedure the Party not affected may terminate this Agreement by giving one month's written notice to the affected Party.

25. ASSIGNMENT AND OTHER DEALINGS

25.1. Neither Party shall assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights and obligations under this Agreement without the prior written consent of the other Party.

26. VARIATION

26.1. No variation of this Agreement shall be effective unless it is in writing and signed by the Parties (or their authorised representatives).

27. NOTICES

27.1. A notice given to a Party under or in connection with this Agreement shall be in writing and sent to the Party at the address or DX number or to the fax number given in this Agreement or as otherwise notified in writing to other Party.

27.2. The following table sets out methods by which a notice may be sent and, if sent by that method, the corresponding deemed delivery date and time:

Delivery method	Deemed delivery date and time
Delivery by hand.	On signature of a delivery receipt [or at the time the notice is left at the address].

Pre-paid first class post or other next working day delivery service providing proof of delivery.	9.00 am on the second Business Day after posting or at the time recorded by the delivery service.
Document exchange (DX).	9.00 am on the second Business Day after being put into the DX.

- 27.3. For the purpose of clause 27.2 and calculating deemed receipt:
- 27.3.1. all references to time are to local time in the place of deemed receipt; and
- 27.3.2. if deemed receipt would occur in the place of deemed receipt on a Saturday or Sunday or a public holiday when banks are not open for business, deemed receipt is deemed to take place at 9.00 am on the day when business next starts in the place of receipt.
- 27.4. This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- 27.5. A notice given under this Agreement is not valid if sent by email.

28. SEVERANCE

- 28.1. If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Agreement.
- 28.2. If any provision or part-provision of this Agreement is invalid, illegal or unenforceable, the Parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

29. NO PARTNERSHIP OR AGENCY

- 29.1. Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership between the Parties, constitute any party the agent of another Party, or authorise the other Party to make or enter into any commitments for or on behalf of the other Party.
- 29.2. Each Party confirms it is acting on its own behalf and not for the benefit of any other person.

30. RIGHTS AND REMEDIES

The rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

31. WAIVER

- 31.1. A waiver of any right or remedy under this Agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.
- 31.2. A failure or delay by a Party to exercise any right or remedy provided under this Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

32. THIRD PARTY RIGHTS

- 32.1. A person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.
- 32.2. The rights of a Party to rescind or vary this Agreement are not subject to the consent of any other person.

33. FURTHER ASSURANCE

Each Party shall and shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute and deliver such documents and perform such acts as may be required for the purpose of giving full effect to this Agreement.

34. ENTIRE AGREEMENT

- 34.1. This Agreement and its Schedules constitutes the entire agreement between the Parties and supersedes and extinguishes all previous drafts, agreements, arrangements and understandings between them, whether written or oral, relating to its subject matter.
- 34.2. Each Party agrees that it shall have no remedies in respect of any representation or warranty (whether made innocently or negligently) that is not set out in this Agreement. No Party shall have any claim for innocent or negligent misrepresentation based on any statement in this Agreement.

35. DISPUTE RESOLUTION PROCEDURE

- 35.1. The Parties shall attempt, in good faith, to resolve any Dispute promptly by negotiation which shall be conducted as follows:
- 35.1.1. the Dispute shall be referred by a Party, first to the authorised representatives of the Party for resolution;
- 35.1.2. if the Dispute cannot be resolved by the authorised representatives of the Party within 14 days after the Dispute has been referred to them, then the Party may give notice to the other Party in writing (Dispute Notice) that a Dispute has arisen; and
- 35.1.3. within seven days of the date of the Dispute Notice, each Party shall refer the Dispute to the Leader of the Council of each Party for resolution.

- 35.2. If the Leaders of the Parties are unable or fail to resolve the Dispute within 21 days of the date of the Dispute Notice the Parties may attempt to resolve the Dispute by mediation in accordance with clause 35.4.
- 35.3. If the Dispute is not resolved through negotiation within a further 10 Business Days the Parties will attempt in good faith to resolve the Dispute through mediation in accordance with the Centre for Effective Dispute Resolution (“CEDR”) Model Mediation Procedure. Unless otherwise agreed between the Parties, the mediator will be nominated by CEDR. To initiate the mediation a Party must give notice in writing (“ADR notice”) to the other Party to the dispute requesting a mediation. A copy of the request should be sent to CEDR.
- 35.4. The mediation will start not later than 14 days after the date of the ADR notice. The commencement of a mediation will not prevent the parties commencing or continuing court proceedings.

36. GOVERNING LAW

This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

37. JURISDICTION

Each Party irrevocably agrees that subject to Clause 35 the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

38. COUNTERPARTS

- 38.1. This Agreement may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.
- 38.2. No counterpart shall be effective until each Party has executed at least one counterpart.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

SCHEDULE 1 – THE PRINCIPLES

1. The sovereignty and identity of each Party will be preserved.
2. Councillor independence and leadership of each Party will be retained.
3. Each Party will retain clear accountability to the councillors and residents of their respective council.
4. Neither Party will take an overall lead and each Party is of equal status and has equality of influence in the JSMT Arrangements (although the Parties recognise that there may be a requirement for one Party to take a role as “employing Authority” or “contracting Authority” to facilitate the delivery of the JSMT Arrangements).
5. Accountability for services delivered through the JSMT Arrangements remains with the Party with whom the statutory responsibility lies.
6. The following general values will apply to both Parties in working together as part of the JSMT Arrangements:
 - 6.1. acting reasonably and in good faith at all times;
 - 6.2. providing information to each other as and when required to achieve the aims of the JSMT Arrangements (provided each Party is complying with the law);
 - 6.3. identifying issues and problems early and working constructively to achieve solutions;
 - 6.4. actively co-operating to ensure the smooth running of the JSMT Arrangements, for example, in payment of inter-authority invoices and recharges; and
 - 6.5. keeping all councillors, residents, staff and other stakeholders informed about the arrangements.

SCHEDULE 2 – GOVERNANCE ARRANGEMENTS

1. A joint committee has been established by the Parties in accordance with section 101(2) Local Government Act 1972 (“**the Joint Appointments Committee**”) this was originally established for the purposes of appointing a joint chief executive for the Parties and the same structure will be applied for the purposes of appointing the JSMT.
2. The terms of reference and governance arrangements of the Joint Appointments Committee are set out below in Part 1.
3. The Parties have also agreed to establish a Joint Governance Committee its terms of reference are set out in Part 2.

PART 1 – Joint Appointments Committee

GUILDFORD BOROUGH COUNCIL AND WAVERLEY BOROUGH COUNCIL

JOINT APPOINTMENTS COMMITTEE

COMPOSITION AND TERMS OF REFERENCE

This Joint Committee is to be established in accordance with section 102(1)(b) of the Local Government Act 1972 (Appointment of committees).

MEMBERS: 6

The Joint Appointments Committee shall comprise the respective Leaders of both councils plus two members appointed by Guildford and two members appointed by Waverley (one of whom will be the Leader of Waverley’s Principal Opposition Group).

Appointments shall be made in accordance with the Local Government (Committees and Political Groups) Regulations 1990.

QUORUM: 3 (subject to each council being represented at a meeting by at least 1 member).

PLACE OF MEETINGS: The venue for meetings of the Joint Appointments Committee shall normally alternate between the two councils with the host Leader chairing the meeting. The venue for the first meeting shall be at Waverley’s offices.

CHAIRMAN: The Joint Appointments Committee shall be chaired alternately between the councils by their respective Leaders.

GENERAL ROLE: Adopting and exercising such of the functions of Guildford and Waverley Council (“**the councils**”) as can be delegated by those councils in respect of the appointment of the councils’ Joint Chief Executive/Head of Paid Service and any Joint Statutory Officer and Director posts as are covered by the Local Authorities (Standing Orders) (England) Regulations 2001 (as amended) or any successor regulations.

FREQUENCY OF MEETINGS: As and when required.

SUBSTITUTES: Substitutes shall not be appointed.

ROLE AND FUNCTION:

Appointment of Joint Chief Executive/Head of Paid Service

- (i) Subject to (ii) below, to undertake and determine on behalf of the councils all aspects of the process for the recruitment and selection of the Joint Chief Executive/Head of Paid Service, including final approval of the terms and conditions of employment (based on current provisions) for that post
- (ii) The final decision as to the appointment of the joint Chief Executive/Head of Paid Service shall be reserved to full meetings of both councils, and subject to no material or well-founded objection to the making of an offer of appointment being received by either Leader on behalf of their respective executives
- (iii) To determine pension discretions relating to the Joint Chief Executive/ Head of Paid Service
- (iv) To consider any financial settlement of an affected employee who is unsuccessful in respect of the selection of the Joint Chief Executive/Head of Paid Service, and to make recommendations as appropriate for formal approval by each council
- (v) To confirm into post, or otherwise, the successful candidate following any probationary or trial period
- (vi) To be responsible for ad-hoc employment matters affecting the Joint Chief Executive/Head of Paid Service post, including consideration and determination of any 'cost of living' pay award

Appointment of any Joint Statutory Officer¹ posts

- (i) Subject to (ii) below, to undertake and determine on behalf of the councils all aspects of the process for the appointment of any Joint Statutory Officer posts
- (ii) The final decision as to the appointment of any Joint Statutory Officer posts shall be reserved to full meetings of both councils and, where the provisions of Part II of Schedule 2 to the Local Authorities (Standing Orders) (England) Regulations 2001 (as amended) apply to any such appointment, subject to no material or well-founded objection to the making of an offer of appointment being received by either Leader on behalf of their respective executives
- (iii) To determine pension discretions relating to any Joint Statutory Officer posts
- (iv) To consider any financial settlement of an affected employee who is unsuccessful in respect of the selection of any Joint Statutory Officer posts, and where necessary to make recommendations as appropriate for formal approval by each council
- (v) To be responsible for ad-hoc employment matters affecting any Joint Statutory Officer posts

¹ Section 151/Chief Finance Officer and Monitoring Officer

Appointment of any Joint Directors

- (i) Subject to (ii) below, to undertake and determine on behalf of the councils all aspects of the process for the appointment of any Joint Directors
- (ii) The appointment of any Joint Directors shall be subject to no material or well-founded objection to the making of an offer of appointment being received by either Leader on behalf of their respective executives
- (iii) To determine pension discretions relating to any Joint Directors
- (iv) To consider any financial settlement of an affected employee who is unsuccessful in respect of the selection and appointment of any Joint Directors, and where necessary to make recommendations as appropriate for formal approval by each council
- (vii) To be responsible for ad-hoc employment matters affecting any Joint Director posts

SERVICING THE JOINT APPOINTMENTS COMMITTEE: The Joint Appointments Committee shall be serviced by committee staff from the council hosting the relevant meeting.

MEETINGS OF THE JOINT APPOINTMENTS COMMITTEE SHALL BE CONDUCTED IN ACCORDANCE WITH THE FOLLOWING PROCEDURE:

1. A meeting of the Joint Appointments Committee shall be summoned by the relevant officer of the Council hosting the meeting who shall give a minimum of five clear working days' notice (or less in the case of urgency)
2. Meetings of the Joint Appointments Committee shall be held in public except in so far as the matters for decision relate to issues which can be dealt with in private in accordance with Section 100A (4) and (5) of the Local Government Act 1972 (as amended)
3. The Joint Appointments Committee shall have no function or power delegated to it in any circumstance where a majority decision cannot be made without the need for the chairman or person presiding having to exercise their second or casting vote
4. The order of business at meetings of the Joint Appointments Committee shall include the following:
 - (a) Apologies for Absence
 - (b) Disclosures of Interest
 - (c) Adoption of the Minutes of the previous meeting
 - (d) Matters set out in the agenda for the meeting
 - (e) Matters not set out in the agenda for the meeting but which the chairman agrees pursuant to Section 100B (4) (b) of the Local Government Act 1972 (as amended) should be considered at the meeting as a matter of urgency

5. Any matter will be decided by a simple majority of those members of the Joint Appointments Committee present and voting at the time the question was put. A vote shall be taken either by show of hands or, if there is no dissent, by the affirmation of the meeting

PART 2 – Joint Governance Committee
GUILDFORD BOROUGH COUNCIL AND WAVERLEY BOROUGH COUNCIL
JOINT GOVERNANCE COMMITTEE
COMPOSITION AND TERMS OF REFERENCE

1. This Joint Committee is to be established by Guildford Borough Council and Waverley Borough Council (“the councils”) in accordance with Section 102 (1) (b) of the Local Government Act 1972 (Appointment of committees)

MEMBERS: 12

2. The Joint Governance Committee shall comprise the respective Leaders of both councils, plus five members appointed by Guildford Borough Council and five members appointed by Waverley Borough Council
3. Appointments shall be made in accordance with the Local Government (Committees and Political Groups) Regulations 1990

QUORUM: 7 (subject to each council being represented at a meeting by at least three members)

CHAIRMAN: The Joint Governance Committee shall be chaired alternately between the councils by their respective Leaders.

PLACE OF MEETINGS: The venue for meetings of the Joint Governance Committee shall normally alternate between the two councils with the host Leader chairing the meeting. The venue for the first meeting shall be at Guildford Borough Council’s offices.

GENERAL ROLE: Adopting and exercising such of the functions of the councils as can be delegated by those councils in respect of the governance arrangements for inter-authority working

FREQUENCY OF MEETINGS: As and when required

SUBSTITUTES: Substitutes may be appointed. Any appointed member of the Joint Governance Committee may be substituted by any other member of their political group on the Council they represent.

ROLE AND FUNCTION:

- (i) To undertake periodically a formal review (at least once every 12 months) of the inter-authority agreement, ensuring it continues to be fit for purpose and recommending to both Full Councils any changes required.
- (ii) To undertake periodically a formal review (at least once every 6 months) of the collaboration risk assessment, reviewing current and target impact and likelihood scores and making any changes to the list of risks and mitigating actions.
- (iii) Notwithstanding (i) and (ii) above, to undertake a formal review of the inter-authority agreement or the collaboration risk assessment at such other time as may be determined by the Joint Committee.

- (iv) To discharge any other functions that relate to the governance of the inter-authority working arrangements that may from time to time be delegated to the Joint Committee.

SERVICING THE JOINT GOVERNANCE COMMITTEE: The servicing of the Joint Governance Committee shall be agreed between the Councils' Democratic Services Managers.

MEETINGS OF THE JOINT GOVERNANCE COMMITTEE SHALL BE CONDUCTED IN ACCORDANCE WITH THE FOLLOWING PROCEDURE:

1. A meeting of the Joint Governance Committee shall be summoned by the relevant Proper Officer of the Council who shall give a minimum of five clear working days' notice (or less in the case of urgency)
2. Meetings of the Joint Governance Committee shall be held in public except in so far as the matters for decision relate to issues which can be dealt with in private in accordance with Section 100A (4) and (5) of the Local Government Act 1972 (as amended)
3. The order of business at meetings of the Joint Governance Committee shall include the following:
 - (a) Apologies for Absence and notification of substitutes
 - (b) Disclosures of Interest
 - (c) Adoption of the Minutes of the previous meeting
 - (d) Matters set out in the agenda for the meeting
 - (e) Matters not set out in the agenda for the meeting but which the chairman agrees pursuant to Section 100B (4) (b) of the Local Government Act 1972 (as amended) should be considered at the meeting as a matter of urgency
4. Any matter will be decided by a simple majority of those members of the Joint Governance Committee present and voting at the time the question was put. A vote shall be taken either by show of hands or, if there is no dissent, by the affirmation of the meeting.
5. The Joint Governance Committee shall have no function or power delegated to it in any circumstance where a majority decision cannot be made without the need for the chairman or person presiding having to exercise their second or casting vote.

SCHEDULE 3 – FINANCIAL ARRANGEMENTS

1. Costs arising on the establishment of the JSMT Arrangements

The Parties agree that from the date of this Agreement that the costs associated with setting up the JSMT Arrangements including but not limited to the appointment of legal advisers, obtaining human resources advice and the advice of other professional disciplines shall be shared by the Parties on a 50:50 basis.

2. JSMT Arrangements operating costs

2.1. The Parties agree that as a default base position the costs associated with the operation and management of the JSMT Arrangements shall be shared on a 50:50 basis unless the Parties in their absolute discretion otherwise agree and subject to paragraph 2.3 and 2.4 below.

2.2. The cost sharing arrangements shall be jointly reviewed by the Parties on or about the first anniversary of the Agreement and thereafter on the third anniversary and then following every two years thereafter. The Parties agree that the purpose of any such review is to assess the suitability going forward of the appropriateness of the 50:50 default base cost sharing ratio.

2.3. As a matter of principle, the pension strain costs shall be retained by the employing Party.

2.4. Redundancy costs shall be treated by the Parties differently such that:

2.4.1. Waverley has a 1.5 x multiplier;

2.4.2. Guildford has a 2 x multiplier

2.5. The Parties agree that the cost of staff (employed by either Party) working on a joint or shared basis shall:

2.5.1. if employed by Waverley be shared on a 50:50 basis as between the Parties; and

2.5.2. if employed by Guildford, Waverley will pay a sum that is equivalent to the cost of employing that employee as if they were employed by Waverley and to the extent this is less than the cost to Guildford of employing that person Guildford shall meet any shortfall.

2.5.3. The employments costs reasonably associated with the employment of members of the JSMT shall include but is not limited to:

2.5.3.1. salary costs;

2.5.3.2. employers' national insurance contribution;

2.5.3.3. employer's pension costs;

2.5.3.4. recruitment costs;

2.5.3.5. advisors/consultancy costs; and

2.5.3.6. expenses

shall be borne by the Parties in the proportions set out in paragraphs 2.5.1 and 2.5.2.

3. Future Business Cases for share service models

- 3.1. The Parties agree that the default position relating to the cost of creating and operating any new shared services models shall be shared by the Parties on a 50:50 basis subject to such alternative sharing ratio as the Parties may agree.
- 3.2. The Parties agree that the implementation of any new shared service models will require the approval of the Executives of both Parties before they may be implemented.
- 3.3. The Parties will agree a standard business case template and consistent methodology for future shared service proposals.

SCHEDULE 4 – PROPERTY AND ASSETS

1. The ownership of each Party's property and assets shall continue to be retained by that Party. Exceptions to this shall require a business case and approval shall be in accordance with the appropriate approval process and each Party's Scheme of Delegation as set out in their Constitution at that time.
2. If any property or asset is sold, the proceeds will remain with the legal owner. All collaboration business cases will include an appropriate financing proposal and it will be each Party's prerogative on how it funds a business case, and approval shall be in accordance with the appropriate approval process and each Party's Scheme of Delegation as set out in their Constitution at that time.
3. Each Party will make its premises available (by way of licence) to the other for ad hoc meetings and working space by officers, councillors and contractors, subject to sufficient space being available to the host Party at no charge.
4. If either Party moves staff into the other Party's premises on more than an ad hoc basis, there will be agreement in place for the host Party to recover costs, agreed in advance of the arrangement coming into effect. An appropriate lease or licensing arrangement will be put into place if necessary. This will include mutual aid and business continuity purposes if one Party's premises becomes unavailable in part or in total.
5. Any shared facility will be subject to a business case and financing agreement. The mechanism for financing within each Party will be a matter for that Party. Costs will be agreed in advance.
6. Each Party will retain its own ICT facilities and make them available to officers in shared roles or directly supporting shared roles. Those officers will abide by the security policies of the council that is hosting the ICT facility being used.
7. If required to travel to the other Party's premises, employees will adhere to their employing Party's mileage and expense protocols. Parking may not be guaranteed.
8. The Parties will establish a protocol with each other and their insurance providers to support the principles in this Agreement. This will include consideration of use of assets and property by employees, councillors and contractors.
9. If any assets are proposed to be purchased, leased or invested in jointly, they will be subject to an approved business case, clear protocols for use of such assets, both during the collaboration in the event of the partnership's termination, and approval in accordance with the appropriate approval process and each Party's scheme of delegation.

SCHEDULE 5 – STAFFING

Staffing

1. The JSMT shall be employed by Waverley on new shared terms and conditions of employment. For the avoidance of doubt, the Parties acknowledge that this may not be the case in respect of staff employed on a joint or shared basis in future.
2. The Parties agree to work together to harmonise their employment policies.
3. Where there are proposals to move staff of either Party on to new shared terms and conditions of employment this will be carried out on a case-by-case basis following consultation with the staff affected and any trade unions to which they belong.
4. The Parties agree that any staff that are at the date of this agreement defined as shared staff, that is working for both Parties on a shared and joint basis will be moved onto the new shared terms and conditions of employment referred to in paragraph 1 above.
5. In circumstances where staff are at the date of this agreement are employed on a joint or shared basis the costs associated with their employment will be shared on an equal basis by the Parties

Principles

6. The Parties agree the following principles to be applied in the context of the following circumstances:
 - 6.1. Where new posts are created or post fall vacant at either Party the Parties agree that:
 - 6.1.1. The post or posts will be offered first to those within a suitable pool that are at risk of redundancy employed by either Party but if the post or posts are not filled by virtue of this process,
 - 6.1.2. then the selection process will be widened to allow applicants from either Party and if the post or posts remain unfilled,
 - 6.1.3. then the posts or posts will be advertised more widely and open to applicants that are not currently employed by the Parties.
 - 6.2. The use of objective selection criteria and independent specialist support in the selection process as necessary;
 - 6.3. Staff appointed are committed to representing the best interests of both Parties and are able to provide objective professional advice to both Parties irrespective of the Party they are employed by;
 - 6.4. Staff will be employed solely on the basis of merit and “best fit for the role” ignoring, for example, other factors including comparing the cost of redundancy dismissals for ‘at risk’ staff;
 - 6.5. The adoption of an approach of ‘slotting’ of staff or offering suitable alternative employment where service structure has changed but roles have not significantly altered;

- 6.6. Agreeing an approach to selection for redundancy such as a voluntary redundancy scheme or an agreed set of redundancy criteria;
- 6.7. Working positively and constructively in consultation with trade unions and staff to achieve the best outcome for the staff and the Parties and to maintain good employee/staff relations;
- 6.8. The adequate resourcing of the Human Resources teams at both Parties to ensure that they are able to provide the appropriate level of support to the restructuring and transformation process.

SCHEDULE 6 – CONFLICTS POLICY

Introduction

1. A conflict of interest is any situation in which a person's personal interests, or interests which they owe to another body or person, and those of the organisation arise simultaneously or appear to clash.
2. It is recognised that it is inevitable that conflicts of interest occur. The issue is not the integrity of the person concerned, but the management of any potential to profit from a person's position, or for the person to be influenced by conflicting loyalties. Even the appearance of a conflict of interest can damage the reputation of the Parties so any conflicts need to be managed carefully.
3. All employees need to be alert to possible conflicts of interest which might occur and how they can minimise the effects. A key aspect of minimising the effects of conflicts of interest is to be open and transparent about such situations when they arise.

What is a Conflict of Interest?

4. Defining what personal interest is can be a difficult area. However, the key to this is the size and nature of the proposed transaction/conflict in relation to the number of people who will benefit. Essentially, the question is whether the decision to be taken will confer a direct tangible benefit on a specific employee or associated person, which is exclusive to him/her/them and which is not shared with others.
5. An example of a likely scenario might be a situation that occurs when an employee's private interests may benefit from his or her public or work actions.
6. Conflicts of interest may come in a number of different forms:
 - 6.1. Direct financial gain or benefit, such as the award of a contract to another organisation in which the employee has an interest and from which they will receive a financial benefit;
 - 6.2. Indirect financial gain, such as employment by the charity of a spouse or partner of the employee, where their finances are interdependent;
 - 6.3. Conflict of loyalties, when an employee's loyalty to one or both of the Parties conflicts with a loyalty to the other Party or to another body or to a member of their family; for example where an employee is appointed by the Party, or where a friend or family member applies for a job.

Identifying and Reporting Conflict of Interests

7. It is essential that all employees are aware that conflicts of interests may exist and, if a situation arises where a conflict may develop, this must be disclosed to the Chief Executive immediately or in the absence of the Chief Executive, to the Monitoring Officer or Section 151 Officer immediately, and in turn a report to the Joint Senior Management Team, depending on the level of conflict and the potential gain to the person. In the case of the Chief Executive, Leader of each Party and in turn, to the respective Cabinets of each Party. When a conflict of interest is identified, the Chief Executive or relevant delegated officer will determine the best course of action. For example, it might be necessary for the person in question to remove themselves from the decision-making process when discussions concerning the interest in question occurs, or the person may no longer be able to work on a particular project if the conflict will remain.

Responsibilities

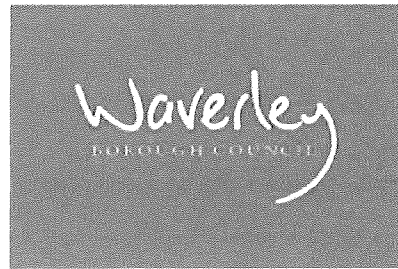
8. The Parties are committed to developing and maintaining a culture of openness, honesty and accountability, and as such all employees bear the responsibility of striving to be as transparent as possible. All employees have the responsibility to inform the Chief Executive or line manager as soon as a conflict of interest or loyalties is identified.
9. The management of conflicts of interest will ultimately lie with the Chief Executive, and all managers and staff (employees) also have a responsibility to inform the Chief Executive if a conflict of interest or loyalties arises or is disclosed to them by another member of staff, using the whistle blowing policy/procedures if necessary.

Protocol Revisions

10. This protocol will be reviewed every two years and amended as necessary, or earlier in accordance with any forthcoming legislation. All employees should pass suggestions or recommendations for the revision of any aspect of this protocol through normal channels to the Chief Executive.

SCHEDULE 7 – DATA SHARING

INFORMATION SHARING AGREEMENT



Information Sharing Agreement

1. Parties to the agreement

This information sharing agreement is drawn up between:

Organisation Full Name:	Guildford Borough Council (GBC)
Organisation Address:	Millmead House, Millmead, Guildford GU2 4BB

And:

Organisation Full Name:	Waverley Borough Council (WBC)
Organisation Address:	Council Offices, The Burys, Godalming, Surrey, GU7 1HR

This Agreement sets out the obligations of all appropriate staff, agency workers, consultants, volunteers and contractors working for and on behalf of the *organisations* signing up to it. By signing up to this Agreement all parties agree to accept and implement it and to adopt the statements and procedures contained within it.

2. Definitions and interpretation

In this Agreement, unless the context otherwise requires, the following words have the following meanings:

Agreed Purpose(s)	the purpose(s) for which the parties are entitled to use the Shared Personal Data in accordance with paragraph 4 (b).
Agreement	this data sharing agreement and its schedules;
Commencement Date	the date of this Agreement;
Data Recipient	the party receiving Shared Personal Data under this Agreement;
Data Protection Legislation	laws and regulations in any relevant jurisdiction that apply in relation to the Processing of Personal Data including (without limitation) the UK GDPR, the Data Protection Act 2018, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and any replacement or additional legislation coming into effect from time to time, together with any codes of practice or other guidance issued by a Regulatory Authority in any relevant jurisdiction;
Data Security Breach	a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to the Shared Personal Data;
Deletion Procedure	the deletion procedure agreed by the parties
GDPR	the General Data Protection Regulation
Permitted Recipient	a director, employee or professional advisor of each respective party or an agent or contractor used by that party in the fulfilment of the Agreed Purpose(s) who has a legitimate need to receive and Process Personal Data for the Agreed Purpose(s);
Regulatory Authority	any competent data protection or privacy authority by which either party is regulated;
Shared Personal Data	the Personal Data to be shared between the parties under this Agreement
Subject Access Request	a request from a Data Subject to exercise his or her right of access to Personal Data under the Data Protection Legislation; and

The terms **Data Controller**, **Data Subject**, **Process** and **Personal Data** shall each have the meaning given in the Data Protection Legislation.

3. Compliance with Data Protection Legislation

Each party must ensure compliance with all relevant Data Protection Legislation at all times during the term of this Agreement.

4. Information being shared

a. What is the nature of the information being shared?

Type of personal data being Processed under this Contract

- | |
|---|
| <ul style="list-style-type: none">• Staff personal data, including salary and pension data, email addresses (using shared address list)• Financial data (commercially sensitive, confidential)• Residents' personal data• Global Address Lists – to be visible to staff on clicking the "To" button in Outlook i.e. names, job titles, phone numbers - of all staff, contractors, plus any 3rd parties listed in GBC/WBC address books.• Shared Calendars free/busy information by default – would enable staff to see the busy times in each other's diaries, to schedule shared meetings. Free/busy info shows whether someone is free or not, it does not show meeting details including titles.• Instant Messaging capability – Guildford uses MS Teams, Waverley uses Skype for Business. It is theoretically possible to message between these platforms – this would enable staff to view presence information ('available', 'in a meeting', 'do not disturb' etc) and send instant messages between the organisations. |
|---|

b. Why is the information being shared? (Purpose of the information sharing)

Collaboration project between GBC and WBC for the purposes of cost saving and the appointment of a joint senior management team

c. What is the legal basis for information sharing?

The main legislation which underpins the sharing of information is: UK GDPR Article 6 1) e) Processing is necessary for the performance of a task carried out in the public interest. (See also Section 8 (d) DPA 2018))

UK GDPR Article 9 2) i) Processing is necessary for reasons of public interest in the area of public health (See also Schedule 1 Part 1 3 (a) DPA 2018)

Other lawful bases, under both Articles 6 and 9, such as consent, contract (for staff), vital interests, and re Article 9, possibly (2)(b) – employment, and others like (c) vital interests, (a) explicit consent may also be taken into consideration where appropriate.

d. How is the information to be shared?

Each party shall have and maintain in place throughout the term of this Agreement appropriate technical and organisational measures in order to:

- Prevent unauthorised or unlawful Processing of the Shared Personal Data; and
- Prevent the accidental loss or destruction of, or damage to, the Shared Personal Data; and

ensure a level of security appropriate to:

- the harm that might result from such unauthorised or unlawful Processing or accidental loss, destruction or damage; and
- the nature of the Shared Personal Data to be protected.

Each party shall ensure that its staff members are appropriately trained to handle and Process the Shared Personal Data in accordance with Data Protection Legislation.

Each party shall ensure that only Permitted Recipients have access to the Shared Personal Data and shall ensure the reliability of all such Permitted Recipients.

Data may be transferred in one or more of the following ways (method of transfer to be determined by the parties involved):

- Email
- Secure electronic transfers (Egress, etc)
- In the rare case of paper records being transferred over delivery will be via a reputable courier which must be approved by both councils

e. When will the information be shared?

2021/22 financial year and subsequent financial years

f. How will the information be stored (by the recipient(s))?

- Electronically (on various systems, including SharePoint, Iken, Egress, iTrent, Outlook, Microsoft Teams, etc)
- In the case of paper records, the information will be stored in securely locked cabinets

g. Who will have access to the information?

- Authorised staff within GBC and WBC – eg employees within HR, Finance, Council Tax, Legal, Business Rates, ICT, Housing, Community Services, Information Governance, Planning, Environmental Health, etc
- In certain cases Contractors and third party suppliers (subject to approval)

h. For how long will the information be kept?

Neither party shall retain or Process Shared Personal Data for longer than is necessary to carry out the Agreed Purpose(s).

Each party may continue to retain Shared Personal Data in accordance with any applicable statutory or professional retention periods.

Each party shall ensure that all Shared Personal Data is returned to the other party or destroyed in accordance with the agreed Deletion Procedure:

- on termination or expiry of this Agreement; or
- once Processing of the Shared Personal Data is no longer necessary for the Agreed Purpose(s).

Following the deletion of the Shared Personal Data each party shall notify the other that the Shared Personal Data in question has been deleted in accordance with the Deletion Procedure.

Deletion Procedure can be defined by reference to the respective data retention and destruction schedules of the two participating authorities – with uniform periods to be agreed on, in the event of any differences.

i. How will the information be destroyed?

Secure electronic destruction
Hard copy information to be securely shredded

j. Transparency

Each party shall ensure that it creates/updates and maintains relevant privacy notices for the sharing of information covered within this data sharing agreement.

5. Data Subjects' rights

Each party shall maintain a record of individual requests from Data Subjects to exercise their rights under the Data Protection Legislation, including Subject Access Requests, requests for deletion, restriction, rectification, portability, objections and rights in relation to automated decision making. Records kept should include, but shall not necessarily be limited to, the following:

- copies of the relevant request received;
- details of the data accessed and shared with the Data Subject, if any; and
- notes of any meetings, correspondence or phone calls relating to the request.

6. Complaints and Breaches

Each party shall notify any potential or actual losses of the Shared Personal Data, and any Data Security Breach, to the other party as soon as possible and in any event within 24 hours after becoming aware of the breach. Each party shall provide reasonable assistance as is necessary to the other to facilitate the handling by the other party of any Data Security Breach in an expeditious and compliant manner.

7. Freedom of Information

In the event of a Freedom of Information request being received by the recipient(s) which relates to an activity utilising the information of the data owner(s), the recipient(s) will notify the data owner(s) to allow it/them the opportunity to make representations on the potential impact of disclosure.

8. Agreement review

a. When will this agreement be reviewed and by whom?

This agreement will be reviewed every year with the commencement of the annual survey (or earlier if changes are required). The agreement will be reviewed by the contact point(s) identified in Appendix 2.

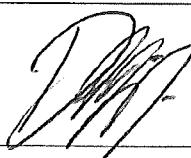
This agreement must be formally approved and signed by all parties before any information sharing takes place. Both parties will ensure that the agreement and any associated documentation is known and understood by all relevant individuals.

b. Under what circumstances would this agreement be terminated?

- Repealment of the legal bases under section 4(c) of this agreement; or, an amendment to the legal bases under section 4(c) of this agreement which materially affects the legality of sharing the data outlined under section 4(a) of this agreement.
- On reasonable notice at the reasonable discretion of any of the parties (but the agreement will remain in force between the remaining parties unless the Data Recipient is the terminating party, in which case this agreement shall terminate forthwith (and compliance with Data Protection Legislation (including but not limited to provisions relating to deletion and restrictions on access and purposes of the processing) shall survive any termination)

This agreement is dated the [] [20[]

Name of organisation:	Guildford Borough Council
Name:	
Position:	
Signature:	
Date:	

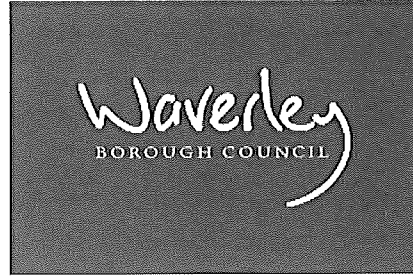
Name of organisation:	Waverley Borough Council
Name:	DANIEL BAINBRIDGE
Position:	SENIOR INFORMATION RISK OWNER / BOROUGH SOLICITOR
Signature:	
Date:	5th November 2021.

Appendix – Contact Points

Context	Name	Contact Details
Data Transfer/Security Issues	Linda Frame (IT Manager)	Linda.frame@waverley.gov.uk
	James Beach (Lead Specialist for ICT)	James.Beach@guildford.gov.uk
Data Protection	Ciaran Ward (Data Protection Officer)	Ciaran.Ward@Guildford.gov.uk
	Adrian Fennell (Data Protection Officer)	Adrian.fennell@waverley.gov.uk



GUILDFORD
B O R O U G H



Information Sharing Agreement

1. Parties to the agreement

This information sharing agreement is drawn up between:

Organisation Full Name:	Guildford Borough Council (GBC)
Organisation Address:	Millmead House, Millmead, Guildford GU2 4BB

And:

Organisation Full Name:	Waverley Borough Council (WBC)
Organisation Address:	Council Offices, The Burys, Godalming, Surrey, GU7 1HR

This Agreement sets out the obligations of all appropriate staff, agency workers, consultants, volunteers and contractors working for and on behalf of the *organisations* signing up to it. By signing up to this Agreement all parties agree to accept and implement it and to adopt the statements and procedures contained within it.

2. Definitions and interpretation

In this Agreement, unless the context otherwise requires, the following words have the following meanings:

Agreed Purpose(s)	the purpose(s) for which the parties are entitled to use the Shared Personal Data in accordance with paragraph 4 (b).
Agreement	this data sharing agreement and its schedules;
Commencement Date	the date of this Agreement;
Data Recipient	the party receiving Shared Personal Data under this Agreement;
Data Protection Legislation	laws and regulations in any relevant jurisdiction that apply in relation to the Processing of Personal Data including (without limitation) the UK GDPR, the Data Protection Act 2018, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and any replacement or additional legislation coming into effect from time to time, together with any codes of practice or other guidance issued by a Regulatory Authority in any relevant jurisdiction;
Data Security Breach	a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to the Shared Personal Data;
Deletion Procedure	the deletion procedure agreed by the parties
GDPR	the General Data Protection Regulation
Permitted Recipient	a director, employee or professional advisor of each respective party or an agent or contractor used by that party in the fulfilment of the Agreed Purpose(s) who has a legitimate need to receive and Process Personal Data for the Agreed Purpose(s);
Regulatory Authority	any competent data protection or privacy authority by which either party is regulated;
Shared Personal Data	the Personal Data to be shared between the parties under this Agreement
Subject Access Request	a request from a Data Subject to exercise his or her right of access to Personal Data under the Data Protection Legislation; and

The terms **Data Controller**, **Data Subject**, **Process** and **Personal Data** shall each have the meaning given in the Data Protection Legislation.

3. Compliance with Data Protection Legislation

Each party must ensure compliance with all relevant Data Protection Legislation at all times during the term of this Agreement.

4. Information being shared

a. What is the nature of the information being shared?

Type of personal data being Processed under this Contract
<ul style="list-style-type: none">• Staff personal data, including salary and pension data, email addresses (using shared address list)• Financial data (commercially sensitive, confidential)• Residents' personal data• Global Address Lists – to be visible to staff on clicking the "To" button in Outlook i.e. names, job titles, phone numbers - of all staff, contractors, plus any 3rd parties listed in GBC/WBC address books.• Shared Calendars free/busy information by default – would enable staff to see the busy times in each other's diaries, to schedule shared meetings. Free/busy info shows whether someone is free or not, it does not show meeting details including titles.• Instant Messaging capability – Guildford uses MS Teams, Waverley uses Skype for Business. It is theoretically possible to message between these platforms – this would enable staff to view presence information ('available', 'in a meeting', 'do not disturb' etc) and send instant messages between the organisations.

b. Why is the information being shared? (Purpose of the information sharing)

Collaboration project between GBC and WBC for the purposes of cost saving and the appointment of a joint senior management team

c. What is the legal basis for information sharing?

<p>The main legislation which underpins the sharing of information is:</p> <p>UK GDPR Article 6 1) e) Processing Is necessary for the performance of a task carried out in the public interest. (See also Section 8 (d) DPA 2018))</p> <p>UK GDPR Article 9 2) i) Processing Is necessary for reasons of public interest in the area of public health (See also Schedule 1 Part 1 3 (a) DPA 2018)</p>

Other lawful bases, under both Articles 6 and 9, such as consent, contract (for staff), vital interests, and re Article 9, possibly (2)(b) – employment, and others like (c) vital interests, (a) explicit consent may also be taken into consideration where appropriate.

d. How is the information to be shared?

Each party shall have and maintain in place throughout the term of this Agreement appropriate technical and organisational measures in order to:

- Prevent unauthorised or unlawful Processing of the Shared Personal Data; and
- Prevent the accidental loss or destruction of, or damage to, the Shared Personal Data; and

ensure a level of security appropriate to:

- the harm that might result from such unauthorised or unlawful Processing or accidental loss, destruction or damage; and
- the nature of the Shared Personal Data to be protected.

Each party shall ensure that its staff members are appropriately trained to handle and Process the Shared Personal Data in accordance with Data Protection Legislation.

Each party shall ensure that only Permitted Recipients have access to the Shared Personal Data and shall ensure the reliability of all such Permitted Recipients.

Data may be transferred in one or more of the following ways (method of transfer to be determined by the parties involved):

- Email
- Secure electronic transfers (Egress, etc)
- In the rare case of paper records being transferred over delivery will be via a reputable courier which must be approved by both councils

e. When will the information be shared?

2021/22 financial year and subsequent financial years

f. How will the information be stored (by the recipient(s))?

- Electronically (on various systems, including SharePoint, Iken, Egress, iTrent, Outlook, Microsoft Teams, etc)
- In the case of paper records, the information will be stored in securely locked cabinets

g. Who will have access to the information?

- Authorised staff within GBC and WBC – eg employees within HR, Finance, Council Tax, Legal, Business Rates, ICT, Housing, Community Services, Information Governance, Planning, Environmental Health, etc
- In certain cases Contractors and third party suppliers (subject to approval)

h. For how long will the information be kept?

Neither party shall retain or Process Shared Personal Data for longer than is necessary to carry out the Agreed Purpose(s).

Each party may continue to retain Shared Personal Data in accordance with any applicable statutory or professional retention periods.

Each party shall ensure that all Shared Personal Data is returned to the other party or destroyed in accordance with the agreed Deletion Procedure:

- on termination or expiry of this Agreement; or
- once Processing of the Shared Personal Data is no longer necessary for the Agreed Purpose(s).

Following the deletion of the Shared Personal Data each party shall notify the other that the Shared Personal Data in question has been deleted in accordance with the Deletion Procedure.

Deletion Procedure can be defined by reference to the respective data retention and destruction schedules of the two participating authorities – with uniform periods to be agreed on, in the event of any differences.

i. How will the information be destroyed?

Secure electronic destruction Hard copy information to be securely shredded
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j. Transparency

Each party shall ensure that it creates/updates and maintains relevant privacy notices for the sharing of information covered within this data sharing agreement.

5. Data Subjects' rights

Each party shall maintain a record of individual requests from Data Subjects to exercise their rights under the Data Protection Legislation, including Subject Access Requests, requests for deletion, restriction, rectification, portability, objections and rights in relation to automated decision making. Records kept should include, but shall not necessarily be limited to, the following:

- copies of the relevant request received;
- details of the data accessed and shared with the Data Subject, if any; and
- notes of any meetings, correspondence or phone calls relating to the request.

6. Complaints and Breaches

Each party shall notify any potential or actual losses of the Shared Personal Data, and any Data Security Breach, to the other party as soon as possible and in any event within 24 hours after becoming aware of the breach. Each party shall provide reasonable assistance as is necessary to the other to facilitate the handling by the other party of any Data Security Breach in an expeditious and compliant manner.

7. Freedom of Information

In the event of a Freedom of Information request being received by the recipient(s) which relates to an activity utilising the information of the data owner(s), the recipient(s) will notify the data owner(s) to allow it/them the opportunity to make representations on the potential impact of disclosure.

8. Agreement review

a. When will this agreement be reviewed and by whom?


This agreement will be reviewed every year with the commencement of the annual survey (or earlier if changes are required). The agreement will be reviewed by the contact point(s) identified in Appendix 2.

This agreement must be formally approved and signed by all parties before any information sharing takes place. Both parties will ensure that the agreement and any associated documentation is known and understood by all relevant individuals.

b. Under what circumstances would this agreement be terminated?

- Repealment of the legal bases under section 4(c) of this agreement; or, an amendment to the legal bases under section 4(c) of this agreement which materially affects the legality of sharing the data outlined under section 4(a) of this agreement.
- On reasonable notice at the reasonable discretion of any of the parties (but the agreement will remain in force between the remaining parties unless the Data Recipient is the terminating party, in which case this agreement shall terminate forthwith (and compliance with Data Protection Legislation (including but not limited to provisions relating to deletion and restrictions on access and purposes of the processing) shall survive any termination)

This agreement is dated the [] [20[]

Name of organisation:	Guildford Borough Council
Name:	Claire Morris
Position:	Director of Resources
Signature:	
Date:	08/11/2021

Name of organisation:	Waverley Borough Council
Name:	
Position:	
Signature:	
Date:	

Appendix – Contact Points

Context	Name	Contact Details
Data Transfer/Security Issues	Linda Frame (IT Manager)	Linda.frame@waverley.gov.uk
	James Beach (Lead Specialist for ICT)	James.Beach@guildford.gov.uk
Data Protection	Ciaran Ward (Data Protection Officer)	Ciaran.Ward@Guildford.gov.uk
	Adrian Fennell (Data Protection Officer)	Adrian.fennell@waverley.gov.uk

The Common Seal of **GUILDFORD BOROUGH COUNCIL**
was affixed in the presence of:



D. Jones

Authorised Signatory:

Print:

Delwyn Jones
Senior Specialist Lawyer
Planning Regeneration and Litigation
Guildford Borough Council
Millmead House, Millmead
Guildford GU2 4BB
AUTHORISED SIGNATORY

The Common Seal of **WAVERLEY BOROUGH COUNCIL**
was affixed in the presence of:



142048

Authorised Signatory: *I Hunt*

Print:

I Hunt
Interim Deputy
Borough Solicitor

Sealing Authority - Full Council
Minute Reference:- 05/04/22
CO114/22
No. of Seal 628 /2022