

DATED.....2015

BRIDGEND COUNTY BOROUGH COUNCIL

CAERPHILLY COUNTY BOROUGH COUNCIL

MERTHYR TYDFIL COUNTY BOROUGH COUNCIL

RHONDDA CYNON TAFF COUNTY BOROUGH COUNCIL

AGREEMENT

FOR THE PROVISION OF A JOINT SUPPLIES SERVICE

Schedule 6 - The Costs

1. AGREEMENT

- 1.1 This Agreement is made under the powers conferred by Section 101 and 111 of the Local Government Act 1972, Section 25 of the Local Government Wales Act 1994, the Local Authorities (Goods and Services) Act 1970, Sections 2, 19 and 20 of the Local Government Act 2000 and all other enabling powers now vested in the Councils.
- 1.2 This Agreement shall commence on the date stated above and shall expire after a period of five years ('the Initial Period'), unless terminated in accordance with clauses 1.4 or 2 of this agreement.
- 1.3 This Agreement may be extended for further periods of up to 12 months following the expiry of the Initial Period by prior recommendation of the Joint Committee and prior agreement of the Councils.
- 1.4 In the event that any Council disagrees with a recommendation of the Joint Committee to extend the Agreement for any period following the Initial Period, the Councils may:
- (i) Allow that/those Council(s) to withdraw from the Agreement and the Agreement shall then be extended in relation to the remaining Councils; or
 - (ii) Terminate the Agreement.
- 1.5 For the purposes of this Agreement, the 'Host Authority' shall mean Bridgend County Borough Council.
- 1.6 There shall be constituted:
- (i) A Joint Committee ("the Joint Committee") of the Councils whose powers and constitution are more particularly described in Schedule 4 hereto, and

(ii) An Officer Working Group (“the Group”) comprising staff from the Councils which Group and its powers and duties are more particularly described in Schedule 5 hereto

1.7 (i) The costs of the services (the “Costs”) to be calculated, discharged and paid by the Councils shall be those set out in Schedule 6 hereto.

(ii) At the commencement of this agreement, the JSS shall be accommodated in a suite of offices and stores at Waterton, Bridgend, CF 31 3YR (“the Accommodation”). The location of the JSS may vary and for the purposes of this Agreement the definition of Accommodation shall include any such future variation.

2. TERMINATION

2.1 Any Council proposing to withdraw from this Agreement must notify each of the other Councils by giving not less than 12 months notice in writing of its intention to withdraw expiring on 31st March in any given year.

2.2 No Council may assign transfer pledge or in any way pass to a third Council (of whatever nature) any of the benefits or obligations of this Agreement

2.3 In the event of a Council terminating its membership of the JSS in accordance with the terms above, that Council’s share of the stock value shall be determined and repaid to that Council in accordance with the principles set out in Schedule 6 of this Agreement, save that any outstanding liabilities at the date

of termination shall remain with the Council(s) and any successor body(ies) to the Council(s).

2.4 The individual Council(s) concerned agree to indemnify the Host Authority in relation to any liabilities (including Staff costs) arising from the termination by those Council(s) in accordance with clauses 1.4 (i) or 2.1 above.

2.5 All assets other than those constituting stock referred to in 2.3 above shall be determined and repaid to that Council in accordance with the principles set out in Schedule 6 hereto.

2.6 In the event of the JSS failing to attain financial viability in any trading year, the Joint Committee, at its discretion, may recommend, to participating Councils, the termination of the Agreement and the appropriate closure period.

2.6 In the event of such a decision as per clause 2.5 above, assets and liabilities shall be determined in accordance with the procedures set out in Schedule 6.

3. STAFFING

3.1 The Host Authority shall be the employing authority of the JSS and all staff ('Staff') shall be employed on the Host Authority's terms and conditions.

3.2 The recruitment of new employees to the JSS will be undertaken in accordance with the protocol set out at Schedule 2

3.3 It is accepted that the employees who were described in the 'Former Agreement' as 'Seconded Staff' have been transferred to the Host Authority and that they should be protected under the Transfer of Undertakings Protection of Employment Regulations 2006.

3.4 The Host Authority shall indemnify the other Councils in respect of any employment claims made by any of the Staff which arise as a result of any act or omission made by the Host Authority and for any liabilities which arise as a result of an Equal Pay settlement or claim.

3.5 The Councils agree that any other employment costs of the Staff, including, but not limited to, redundancy costs and employment claims will be shared between the Councils in accordance with Schedule 6, except for those liabilities which arise as a result of any Equal Pay settlement or claim.

4. VARIATION

4.1 Save as provided herein this Agreement cannot be varied without the approval of the Joint Committee and prior written consent of all Councils. Any variation is to be signed and sealed by an authorised representative of each Council and will be annexed to this Agreement.

5. COMMUNICATION

5.1 Any communication required to be in writing under the terms of this Agreement shall be sent to each Council at the addresses set out in Schedule One and marked for the attention of the person last notified in writing to the other Councils as being the person to receive communications for the purpose of this Agreement on behalf of that Council.

5.2 Any notice or communication to the relevant Council shall be deemed effectively served if sent by first class post or delivered by hand to the

addressee or such other addressee and address notified in writing from time to time: .

- 5.3 Any notice for service by hand delivery shall be deemed to have been served on the date it is delivered to the addressee. Where notice is posted it shall be sufficient to prove that the notice was properly addressed and posted and the addressee shall be deemed to have been served with the notice 48 hours after the time it was posted.

6. THIRD PARTY RIGHTS

- 6.1 Save as may be provided herein the Councils to this Agreement do not intend any provision of it to be enforceable by any other person pursuant to the Contract (Rights of Third Councils) Act 1999.

7. SEVERANCE

- 7.1 If at any time any provision of this Agreement is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal invalid or unenforceable in any respect provided that it would not affect or impair the legality, validity or enforceability of any other provision of this Agreement, this Agreement shall continue in full force and effect as if the Agreement had been executed with the invalid provision eliminated except where it deprives one of the Councils of a substantial part of the benefit to be derived by it from this Agreement without providing any corresponding benefit.
- 7.2 If Clause 7.1 shall apply the Councils shall in good faith amend and, if necessary, execute such further assurances in relation to this Agreement to reflect as nearly as possible the spirit and intention behind that illegal, invalid

or unenforceable provision to the extent that such spirit and intention is consistent with the laws of that jurisdiction and so that the amended clause complies with the laws of that jurisdiction but if the Councils cannot agree upon the terms of any amendment or assurance within six months of the date upon which the provision was determined to be wholly or partly illegal or unenforceable by any court, tribunal administrative body then the dispute will be determined in accordance with Clause 8 hereof.

8. DISPUTE RESOLUTION

8.1 If there is a dispute between the Councils concerning the interpretation or operation of this Agreement then any Council may notify the others in writing that it wishes the dispute to be referred to a meeting of the Joint Committee to resolve, all Councils negotiating on the basis of good faith.

8.2 If after the meeting of the Joint Committee the dispute has not been resolved, any Council may refer the dispute to the Councils Chief Executives for resolution. If the Chief Executives are unable to resolve the dispute by unanimous agreement within a period of 28 days of the matter being referred to them any Council may give notice that it wishes to attempt to settle the dispute by mediation in accordance with the Centre for Effective Dispute Resolution (“CEDR”) Model Procedure 2014 (“the Model Procedure”) or such later edition as may be in force from time to time.

8.3 The Councils shall use their best endeavours to ensure that
The mediation starts within twenty working days of the notice of mediation. If the Councils do not agree on the identity of the Mediator then any Council may

request that CEDR appoint one. The Councils shall share the Mediators costs and expenses in equal shares.

8.4 Any agreement reached by the Councils as a result of mediation shall be binding on the Councils, as set out in the Model Procedure, but if the dispute has not been settled by mediation within 28(?) days of the mediation starting then any Council may refer the matter to arbitration on the following basis:

8.4.1 Referral shall be to a single Arbitrator selected by the Joint Committee or, in the absence of agreement, to be nominated by the President of the Chartered Institute of Arbitration.

8.4.2 Such arbitration shall be conducted in accordance with the provisions of the Arbitration Act 1996 and the Arbitrator appointed shall have the power to order and direct what he or she shall think to be done by any of the Councils respectively in relation to the matters in dispute.

8.4.3 The decision of the Arbitrator shall be final and binding on all the Councils.

8.4.4 Unless otherwise agreed or specified in the arbitration terms each Council shall bear its own costs incurred in the arbitration and the Councils shall share equally the Arbitrator's costs and expenses.

9. WAIVER

9.1 No term or provision of this Agreement shall be considered as waived by any Council unless a waiver is given in writing by the Council and any failure by any of the Councils at any time to enforce any provision of this Agreement or to require performance by any of the other Councils of any of the provisions of this Agreement shall not be construed as a waiver of any such provision and shall not affect the validity of this Agreement or any part thereof or the right of any Councils to enforce any provision in accordance with its terms.

9.2 No waiver under Clause 9.1 shall be a waiver of a past or future default or breach, nor shall it amend delete or add to the terms conditions or provisions of this Agreement unless (and then only to the extent) expressly stated in the waiver.

10. FREEDOM OF INFORMATION

10.1 The Councils agree that they will each co-operate with one another to enable any Council receiving a request for information under the Freedom of Information Act 2000 and/or Environmental Information Regulations 2004 to respond to that request promptly and within the statutory timescales. This co-operation shall include but not be limited to finding, retrieving and supplying information held, and directing requests to other Councils as appropriate and responding to any requests by any Council receiving a request for comments or other assistance.

11. PRIOR AGREEMENT

11.1 This Agreement supersedes and replaces any and all previous agreements between the Councils in respect of the Joint Supplies Service.

12. GOVERNING LAW AND JURISDICTION

12.1 This Agreement shall be governed by and construed in all respects in accordance with the laws of England and Wales.

The **COMMON SEAL** of the respective Councils were affixed the day and year first before written:

The **COMMON SEAL** of **BRIDGEND**)
COUNTY BOROUGH COUNCIL)
was affixed in the presence of:)

Mayor / Leader.....
Authorised Signatory.....

The **COMMON SEAL** of **CAERPHILLY**)
COUNTY BOROUGH COUNCIL)
Was affixed in the presence of:)

Authorised Signatory.....

The COMMON SEAL of **MERTHYR TYDFIL**)

COUNTY BOROUGH COUNCIL)

Was affixed in the presence of:)

Authorised Signatory.....

The COMMON SEAL of **RHONDDA CYNON**)

TAFF COUNTY BOROUGH COUNCIL)

Was hereunto affixed in the presence of:)

Authorised Signatory.....

SCHEDULE 1

THE COUNCILS

Bridgend County Borough Council

Caerphilly County Borough Council

Merthyr Tydfil County Borough Council

Rhondda Cynon Taff County Borough Council

SCHEDULE 2

JSS STAFF

Post/Officer

Business Operations Manager (Principal Officer)

Materials and Sourcing Manager (Principal Officer)

Senior Marketing Officer

Marketing Assistant

Sales Assistant

Customer Services Group Leader

Customer Services Assistants (x3)

Senior Administrative Officer

Administrative Officer

Purchase Ledger Assistants (x2)

Sales ledger Assistants (x2)

Senior Buyer

Buyer

Purchasing Assistant

General Assistant

Senior Stores Supervisor

Senior Stores Assistant Transport

Stores Receipt Assistant

Stores Assistants (x5)

Driver Picker

Drivers above 3.5 tonne (x2)

Drivers up to 3.5 tonne (x2)

Protocol for New Posts

1. The Host Authority's recruitment and selection procedures shall be utilised for all new JSS Posts below Principal Officer level.
2. Any such appointments in clause 1, above, shall be notified to the next available meetings of the Officer Working Group and the Joint Committee.
3. Any new posts at Principal Officer level and above shall be subject to the Host Authority's recruitment and selection procedures, save that any appointment to such posts shall only be made by prior approval of the Joint Committee.

SCHEDULE 3

THE SERVICES

The JSS shall:

1. Produce a catalogue of products (“the Catalogue”) and services which will be available either from stock held by the JSS or from nominated suppliers at prices negotiated by the JSS. This will contain products required by the Service Departments of the Councils (the range of products to be agreed between the Councils and the JSS) and be published in the name of the Councils
2. Provide a service level and conditions of sale to be published in the Catalogue as agreed by the Councils;
3. Provide a catalogue operation directly accessible by individual customers (from the Councils) and other recognised public bodies/organisations (as permitted by statute). The provision of services to other than the existing client portfolio to be by prior agreement of the Officer Working Group
4. Liaise with potential partner organisations with a view to providing maximum savings to Councils and recovering operational costs.

SCHEDULE 4

JOINT COMMITTEE

Definitions

‘The Treasurer’ – shall be the s151 Officer of the Host Authority or such other Officer nominated to act on behalf of the s151 Officer

‘Estimates’ – shall be the financial estimates relating to the future operating costs of the JSS.

‘The Secretary’ shall be such Officer of the Host Authority who has been appointed to undertake secretarial functions on behalf of the Joint Committee.

Membership

1. The Joint Committee of the Councils, known as the JSS Committee shall consist of 8 members. Each Council shall appoint 2 Members. Upon appointment, the Members concerned shall serve until the expiry of the Agreement or until removed from nomination by his or her respective Council
2. Any Member may be accompanied by a Senior Officer who may attend meetings of the Joint Committee but may not vote
3. Any of the Councils may nominate a deputy for any Member appointed by them to attend and vote at any meeting of the Joint Committee in place of the Member so elected who is unable to attend that meeting.

Chair/Vice-Chair

4. The appointment of Chair and Vice-Chair shall be made on an annual basis by agreement.

Meetings

5. The Joint Committee shall hold three general business meetings per year, but may hold additional meetings as necessary.
6. Three Members shall form a quorum. Each Council shall have one vote and in the case of an equality of votes the Chairman shall have an additional casting vote.
7. The Chairman of the Joint Committee may call a special meeting at any time and shall do so within seven days of receipt of any requisition signed by any Member of the Joint Committee, which shall state the reasons for such a meeting. The same reasons shall be specified in the invitation to members to attend such special meeting.

Powers

8. The Councils have delegated to the Joint Committee all the powers of managing the Services, including the power to incur capital expenditure to a value in any one purchase of up to £100,000, provided that such expenditure is met from within existing reserves.
9. For the avoidance of doubt, the following powers have **not** been delegated, the power to:
 - (a) borrow money
 - (b) incur revenue or capital expenditure not provided for in Estimates approved by the Councils
 - (c) incur capital expenditure above the value of £100,000 in any one purchase. Any such expenditure above this level will require prior approval of the Councils.
10. The Treasurer and Secretary of the Joint Committee shall be appropriately qualified and nominated by the Director of Resources for the host Authority

Estimates

11. Not later than 30th January in every year the Joint Committee shall determine its Estimates for the forthcoming financial year and shall forward them to each of the Councils (where relevant)
12. The Estimates shall be deemed to have been approved by each of the Councils unless notification to the contrary is received by the treasurer of the Joint Committee before the commencement of the financial year.

Accounts

13. The Treasurer shall as soon as possible after the conclusion of every financial year send to the Councils a copy of the Final Accounts of the Joint Committee for that financial year.

Convening of Meetings

14. The meetings of the Joint Committee shall be convened by notice in writing by the Secretary and delivered to each member of the Joint Committee or sent by post to or delivered at his residence or place of business and to the Chief Executive or each of the Councils at least seven days before the day of the meeting.

SCHEDULE 5

OFFICER WORKING GROUP

1. Each of the Councils has nominated an officer representative (“the Officers”), which at the commencement of this Agreement shall be as follows:

Bridgend County Borough Council – Corporate Procurement Manager

Caerphilly County Borough Council – - Head of Procurement

Merthyr Tydfil County Borough Council – Procurement Manager

Rhondda Cynon Taff County Borough Council – Service Director, Procurement

Each of the Officers shall serve on the Officer Working Group (“The Group”) The Chairman shall be the Corporate Procurement Manager of the Host Authority

2. In the event of an Officer ceasing to be employed by his respective Council, he shall automatically cease to be a member of the Group and his Council shall immediately provide a replacement representative.
3. The Officers shall observe and if required sign a confidentiality undertaking in respect of matters which may come to their knowledge as a result of membership of the Group.
4. The Quorum shall be three and each Council shall be entitled to one vote. Decisions shall be made by unanimous vote.
5. The Group shall meet at least four times a year.

6. Not later than 30th November in each year, the Group shall report to the Joint Committee to enable the Joint Committee to determine its Estimates for the following financial year.

7. The function of the Group shall be to deal with issues arising from the provision of the Services referred to in this Agreement and to advise and to report to the Joint Committee.

SCHEDULE 6

THE COSTS

1. The Costs of operating the JSS (determined in accordance with proper practices) will be recovered from the prices paid by customers for goods and services provided by the JSS. Any surplus income/profit accrued at the end of this Agreement or any other relevant operating period(s) will be shared by the Councils on a pro-rata basis to the recorded business turnover of the Councils within the JSS during the relevant period. Any losses/trading deficit arising during the currency of this Agreement or any other relevant operating period will be shared on a population basis of the local authority areas of the Councils*

2. In the event of any participating Council terminating their membership of the JSS in accordance with the provisions of this Agreement, the stock value entitlement of the Council on the 31st March in the year of termination shall be repaid to that Council over the following three years or whenever this Agreement ceases. The stock value share shall be calculated on a population basis of the local authority areas of the Councils*

3. In the event of the termination of the Agreement, any consequential liabilities will be paid by the Host Authority from any accrued surpluses or residual stock balances prior to any apportioned disbursement of monies/stock amongst the Councils on a population basis of the local authority areas of the Councils*. Following disbursement of any monies/stock, any remaining liabilities (including those relating to Staff) shall be apportioned amongst the Councils on a population basis of the local authority areas of the Councils*

* The method for calculating population shall be based on the latest mid-year estimates of population produced by Welsh Government. (ref: <http://wales.gov.uk/statistics-and-research/mid-year-estimates-population/?lang=en>), provided that for the first year of this Agreement, the following Baseline Table shall apply:

Baseline table - 2013 Mid-Year Estimate of Population

Area	Population	%
RCT	236,100	38.40
Caerphilly	179,200	29.15
Bridgend	140,500	22.85
Merthyr	59,000	9.60
Total	614,800	61.60