

DATED

2024

MAIDSTONE BOROUGH COUNCIL

and

TONBRIDGE & MALLING BOROUGH COUNCIL

and

TUNBRIDGE WELLS BOROUGH COUNCIL

PROCUREMENT PARTNERSHIP AGREEMENT

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THIS AGREEMENT is made on the _____ day of _____ 2024

BETWEEN:

- (1) **MAIDSTONE BOROUGH COUNCIL** of Maidstone House, King Street, Maidstone, Kent ME15 6JQ (“MBC”); and
- (2) **TONBRIDGE & MALLING BOROUGH COUNCIL** of Gibson Building, Gibson Drive, Kings Hill, West Malling, Kent ME19 4LZ (“TMBC”); and
- (3) **TUNBRIDGE WELLS BOROUGH COUNCIL** of the Town Hall Royal Tunbridge Wells, Kent TN1 1RS (“TWBC”) (together “the Authorities”).

WHEREAS:

- (A) The Authorities have reached agreement with regard to the creation of a single combined Procurement Service (“the Service”).
- (B) In this Partnership Agreement, TWBC shall employ and manage, and MBC, TMBC and TWBC shall supply strategic input by setting annual objectives and KPI’s for, the Relevant Employees for the operation and delivery of the Service (“the Procurement Partnership”).
- (C) The Authorities now wish to record their agreement as to the terms of this Partnership Agreement.

IT IS HEREBY AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

In this Agreement:

- 1.1** the following expressions have the following meanings unless inconsistent with the context:

"Commencement Date"		means 1 April 2024;
"DPA"		means the Data Protection Act 2018;
"Exempt Information"		means any information or class of information relating to this Agreement which may fall within an exemption to disclosure under FOI Legislation;
"FOIA"		means both the Freedom of Information Act 2000 and subordinate legislation made under this Act and the Environmental Information Regulations 2004;
"Intellectual Property Rights"	Property	means all rights in patents, trademarks, service marks, design rights (whether registerable or otherwise), applications for any of the foregoing copyright (including rights in Software), database rights, know-how, trade secrets, confidential business information, trade or business names and any similar or analogous rights to any of the above whether arising or granted under the Laws of England or of any other jurisdiction;
"Law"		any statute statutory instrument subordinate legislation standard law proclamation order resolution notice rule of court bye-law directive code of conduct or other instrument or requirement having the force of Law within any

national or local jurisdiction issued declared passed or given effect to in any manner by HM Parliament;

"Personal Data"

means personal data and sensitive personal data as defined in the DPA which is disclosed by an Authority to enable another Authority to comply with its obligations under this Agreement;

"Relevant Employee"

means all employees of the shared Procurement Partnership at TWBC whose roles are detailed in Schedule 3;

"Request"

means a request for information made under the FOIA.

"Service"

means the Procurement Service to be provided to the Authorities at Schedule 2

1.2 References to any statute or statutory provision (including any EU Instrument) shall unless the context otherwise requires be construed as including references to any earlier statute or the corresponding provisions of any earlier statute whether repealed or not directly or indirectly amended consolidated extended or replaced by such statute or provision or re-enacted in any such statute or provision and to any subsequent statute or the corresponding provisions of any subsequent statute directly or indirectly amending consolidating extending replacing or re-enacting the same and will include any orders regulations instruments or other subordinate legislation made under the relevant statute or statutory provision;

- 1.3** The headings are inserted for convenience only and shall not affect the construction of this Agreement;
- 1.4** Words importing one gender include all other genders and words importing the singular include the plural and vice versa;
- 1.5** A reference in this Agreement to any clause paragraph or Schedule is except where it is expressly stated to the contrary a reference to a clause or paragraph of or Schedule to this Agreement;
- 1.6** Any reference to this Agreement or to any other document unless otherwise specified shall include any variation, amendment or supplement to such document expressly permitted by this Agreement or otherwise agreed in writing between the relevant parties;
- 1.7** Words preceding “include” “includes” “including” and “included” shall be construed without limitation by the words which follow those words unless inconsistent with the context and the rule of interpretation known as *eiusdem generis* shall not apply;
- 1.8** The Schedules form part of this Agreement and will have the same force and effect as if expressly set out in the body of this Agreement and any reference to this Agreement includes the Schedules; and
- 1.9** The following order of precedence shall apply:
- 1.9.1 the terms and conditions of this Partnership Agreement; and
 - 1.9.2 the Schedules to this Partnership Agreement.

2. COMMENCEMENT AND DURATION

- 2.1** This Agreement shall commence on 1 April 2024 for an initial term of 4 years unless it is terminated by mutual agreement of all the Authorities or upon notice given under clauses 12 and 20. The Authorities may agree further 4 year extensions which shall include partnership reviews.

3. RELATIONSHIP BETWEEN THE AUTHORITIES

- 3.1** Each of the Authorities confirms that it is not and shall not hold itself out as being the servant or agent of the other for any purpose connected with the subject matter of this Agreement other than as expressly conferred by this Agreement.

3.2 The intention of the Authorities is that they will work together on a non-commercial basis and will attempt to resolve problems amicably and in a spirit of co-operation.

3.3 Without prejudice to the requirements of this Agreement, the Authorities will act in good faith towards each other and act reasonably at all times in relation to all matters arising under this Agreement.

4. PROVISION OF THE SERVICE

4.1 The Authorities agree that:

4.1.1 Relevant Employees can be required to undertake work for any of the Authorities; and

4.1.2 the Service shall be delivered in accordance with the Key Parameters at Schedule 1 (as may be amended from time to time with the agreement of the Authorities).

4.2 The Authorities acknowledge and agree that:

4.2.1 TWBC shall be responsible for the administration, management, operation and delivery of the Procurement Service;

4.2.2 TWBC accepts no liability whatsoever (including but not limited to, liability for loss, damage, costs or interest) which MBC and/or TMBC have incurred or might incur) howsoever caused or incurred arising under or in connection with revenue or capital budgets which are not within TWBC's control; and

4.2.3 in respect of liabilities incurred prior to the Commencement Date or during the Term of this Agreement where a material breach of this Agreement or default by MBC and/or TMBC causes an adverse impact on the provision of the Service, TWBC shall not be responsible for those liabilities or any costs of or in connection with them, which shall be liabilities of MBC and/or TMBC.

4.2.4 in respect of liabilities incurred prior to the Commencement Date or during the Term of this Agreement where a material breach of this Agreement or default by TWBC causes an adverse impact on the provision of the

Service, MBC and/or TMBC shall not be responsible for those liabilities or any costs of or in connection with them, which shall be liabilities of TWBC.

4.4 The Service shall be delivered in accordance with the following key controls:

4.4.1 the TWBC Head of Finance, Procurement and Parking, the MBC Head of Finance; and the TMBC Director of Street Scene, Leisure & Technical Services (the “Partnership Leads”) shall have direct access to all information that may be required for the delivery of the Service; and

4.4.2 each Authority shall comply with all applicable laws, regulations and codes of practice; and

4.4.3 an equal split of the total partnership costs has been agreed, and will be discussed at the Partnership Review as detailed in Clause 12.3.

5. SUPPORT SERVICES

5.1 Each of the Authorities shall provide appropriate accommodation and facilities for the provision of any part of the Service that reasonably requires the visiting of (or working at) their offices by Relevant Employees.

5.2 The Procurement Manager shall be entitled to procure such support services or other resources as they consider may be necessary to deliver the Service detailed in Schedule 2, the costs of which shall be treated as costs of the Procurement Partnership.

5.3 Clause 5.2 does not authorise the Procurement Manager to procure additional support services without the prior consent of the Partnership Leads where the effect would be to either increase the relevant financial contribution payable by an Authority in the Budget at Schedule 4 or incur actual or potential liabilities to third parties.

5.4 Nothing in this Agreement shall prevent the Procurement Manager from obtaining (at the written request of one of the Authorities) any additional external resources required for that Authority to be paid out of a different budget unconnected with the Procurement Partnership budget.

6. PROCUREMENT MANAGER

6.1 The Procurement Manager shall report to the TWBC Head of Finance, Procurement and Parking. The Partnership Leads shall give the Procurement Manager specific instructions in respect of the strategic direction, objectives and KPIs of the Procurement Partnership.

6.2 The Procurement Manager shall have the authority and rights to:

6.2.1 access each Authority's premises at reasonable times;

6.2.2 receive any information and explanation considered necessary for the running of the Service;

6.2.3 commit and authorise expenditure in connection with the Service;

6.2.4 recruit, employ and direct Employees; and

6.2.5 perform annual and Partnership Reviews.

provided that nothing in this Agreement will authorise the Procurement Manager to incur expenditure over and above the budgets approved by the Authorities.

6.3 In the event that any Authority fails or refuses to comply with any of the matters outlined in Clause 4.4.1 or 4.4.2, the Procurement Manager shall be entitled to withhold or suspend performance of the Service (insofar as they relate to the matter in relation to which that Authority has failed to comply) until such time as that Authority provides written assurance that it accepts all liability arising from such failure or refusal and confirms that it will comply with its obligations.

6.4 In the medium to long term, the Procurement Manager is likely to undertake a review to produce a set of recommendations to align the Authority's procurement processes. This would require strategic input from the Partnership Leads, and is reliant upon managerial and political buy in from each Authority.

7. PROCUREMENT PARTNERSHIP SERVICE STRUCTURE

The structure of the Service is set out in Schedule 5 and may be revised by the agreement of the Authorities from time to time.

8. SERVICE PLAN AND BUDGET

8.1 The Service Plan is at Schedule 2 and is operational from 1 April 2024.

8.2 An annual performance report will be produced by the Procurement Manager. This should be used, in conjunction with other reports throughout the year, by the Procurement Partnership Leads in order to assess the performance of the Procurement Partnership. It will also be referred to in the annual appraisal of the Partnership Procurement Manager in order to ensure that the leadership of the team has been effective.

8.3 The costs of the partnership are met equally by all partner authorities.

This assessment is inclusive of Relevant Employee training but if other methods of funding can be found for this (e.g. Apprenticeship Levee) then they will be utilised.

The Authorities shall budget for one third of an estimated salary increase of £2,500 per grade for the career graded posts (as officers achieve the requirements to move up through the grades) and the results of any pay review will be notified to all partners so that budgets can be adjusted accordingly.

8.4 For the avoidance of doubt, the Authorities agree that there shall be no pooled budget. A new budget will be agreed annually and no underspends or overspends will be carried into the new budget year.

8.5 TWBC shall invoice MBC and TMBC for one third of the total partnership costs each, plus VAT, on 1 March annually and MBC and TMBC shall pay the invoice by 31 March of the same year.

8.6 The Procurement Manager will monitor the levels of resource utilised at each of the Authority sites, with a review to be undertaken every 12 months.

9. RELEVANT EMPLOYEES

9.1 The Authorities acknowledge and agree that in relation to Relevant Employees;

9.1.1 they are employed by TWBC;

9.1.2 they may be required to work on matters for any of the Authorities in pursuance of the activities of the Service.

9.2 The Procurement Manager will take on the operational management of a joint procurement team, with all of the team being directly employed by TWBC. There will be a direct reporting line to the TWBC Head of Finance

9.3 The Procurement Manager will be responsible for writing the Job Descriptions and Person Specifications for each of the roles, in communication with the Partnership Leads for the approval of recruitment documentation. The interview panel should consist of the Procurement Manager, Partnership Lead(s), and a member of the Human Resources Department.

9.5 **Redundancy**

If at any stage the Service is jointly restructured, the Authorities will be jointly liable for any costs involved. If redundancies are requested/required by any of the Authorities individually and without the support of the others, the requesting party will be liable for all costs involved.

10. LIABILITIES AND INDEMNITIES

10.1 The Service is being provided on a collaborative and not for profit basis with the intention that (save as otherwise provided for in this Agreement) each Authority shall bear the risks of any losses caused to itself or any of its staff by the provision of the Service under this Agreement and each Authority shall indemnify the other against claims and/or liabilities in respect thereof except if and to the extent that these are caused by fraud or bad faith on the part of the other Authorities and/or someone acting for that other Authority.

10.2 If one Authority (“the First Authority”) requires a reduction in the level of the Service, then that Authority shall indemnify the other Authority in respect of all reasonable losses, costs or expenses (including for the avoidance of doubt any redundancy costs or any other costs related to employees’ and their legal entitlements) incurred as a consequence of that reduction of the Service.

10.3 Any costs arising as a result of legislative change shall be shared by the Authorities in accordance with clause 10.4 of this Agreement.

10.4 Each of the Authorities shall at all times take all reasonable steps within its powers to minimise and mitigate any loss for which it is seeking re-imbursement from any of the other Authorities.

10.5 Each Authority shall retain responsibility (the “Responsible Authority”) for meeting all the costs of and in connection with the conduct of any proceedings including settlement of any action or claim relating to the provision of legal shared services where responsibility therefore arises directly or indirectly from any act, omission or default of the Responsible Authority whether:

10.5.1 prior to the Commencement Date of this Agreement; or

10.5.2 during the Term of this Agreement where the provisions of clause 10 shall apply.

10.6 TWBC, in its dealings with Relevant Employees, agrees to comply with all relevant employment legislation and best employment practice, and to indemnify MBC and TMBC in respect of all losses, costs or expenses incurred as a consequence of a failure to do so.

10.7 Clause 10 shall survive the termination or expiry of this Agreement.

11. INSURANCE

Each Authority shall ensure that adequate insurance cover is taken out and maintained and notified annually to the Procurement Manager in respect of:

11.1.1 any property held by it for the purposes of this Agreement; and

11.1.2 Employers liability, Public liability and including liability for secondees working from the other Authorities’ premises.

12. TERMINATION AND MID-TERM REVIEW

12.1 The Authorities agree that this Agreement shall be terminated or varied upon the terms set out below.

12.2 A regular 24 month review of the Service (the “**Partnership Review**”) will be carried out by the Authorities jointly, with the first to be conducted in March 2026. Any Partner Authority may terminate this agreement by giving at least twelve (12) months prior written notice (the “**Termination Notice**”) on or before the 31 March in any year with termination then occurring on 1 April the following year.

12.3 If the Procurement Partnership is dissolved for any external administrative reason then this Agreement shall be terminated and the Authorities agree to work together in good faith to separate the Service and re-employ the Relevant Employees at the most appropriate work places.

12.4 The Partnership Review shall include the following;

Development of relevant KPIs that are aligned to the Authorities' desired strategic outcomes to ensure that charging reflects resourcing of the Service, reports on which are to produced at agreed intervals; and

The charging mechanism; and

Division of Procurement Partnership costs.

13. EFFECTS OF TERMINATION

Upon the termination or expiry of this Agreement:

13.1 the Authorities shall cease to provide the Service jointly.

13.2 The Authorities will proceed as set out in Clause 9 with regard to the employment and/or transfer of Relevant Employees.

14. DISPUTE RESOLUTION

14.1 Any dispute arising under this Agreement shall be referred initially to the Partnership Leads .

14.2 In the event of any dispute that cannot be resolved by the Partnership Leads, the matter will be escalated to the Finance Directors of the Partner Authorities. The decision of the Directors will be final, and the Partners will be required to comply with the direction provided.

15. DATA PROTECTION

15.1 The Authorities shall at all times comply with the DPA including but not restricted to any data processing to be performed in connection with this Agreement.

16. FREEDOM OF INFORMATION

16.1 The Authorities are public authorities as defined within the FOIA and therefore recognise that information relating to this Agreement may be the subject of a Request

16.2 Each of the Authorities shall assist one another in complying with their obligations under the FOIA including but not limited to assistance without charge in gathering information to respond to a Request

16.3 Each of the Authorities shall be entitled to disclose any information relating to this Agreement and the Service in response to a Request save that in respect of any Request which is in whole or part a request for Exempt Information:

16.3.1 the Authority which receives the Request shall circulate the Request and shall discuss it with the other Authority; and

16.3.2 the Authority which receives the Request shall in good faith consider any representations raised by the other Authority when deciding whether to disclose Exempt Information save that the Authority which receives the Request shall retain the right to determine at their absolute discretion how to respond to the Request; and

16.3.3 the Authority which receives the Request shall not disclose any Exempt Information beyond the disclosure required by FOIA without the consent of the other Authority.

16.4 The Authorities acknowledge and agree that any decision made by an Authority which receives a Request as to whether to disclose information relating to this Agreement pursuant to FOIA is solely the decision of that Authority

16.5 An Authority will not be liable to any party to this Agreement for any loss damage harm or detrimental effect arising from or in connection with the disclosure of information in response to an Information Request.

17. CONFIDENTIALITY

17.1 The Authorities shall keep confidential all matters relating to this Agreement unless it is already in the public domain or the parties agree that it may be disclosed and shall use all reasonable endeavours to prevent their employees and agents from making any disclosure to any person of any matter relating to this Agreement

17.2 Clause 17.1 shall not apply to:

17.2.1 Any disclosure of information that is reasonably required by persons engaged in the performance of their obligations under this Agreement;

17.2.2 Any matter which a party can demonstrate is already generally available and in the public domain otherwise than as a result of a breach of this clause 17;

17.2.3 Any disclosure which is required by any Law (including any order of a court of competent jurisdiction) any Parliamentary obligation or the rules of any stock exchange or governmental or regulatory authority having the force of Law;

17.2.5 Any disclosure of information which is already lawfully in the possession of the receiving party prior to its disclosure by the disclosing party;

17.2.6 Any disclosure by a party to this Agreement to a department office or agency of the Government; or

17.2.7 Any disclosure for the purpose of the examination and certification of the accounts of a Party to this Agreement.

17.3 Where disclosure is permitted under Clause 17.2 the disclosing party shall ensure where practicable that the recipient of the information shall be subject to the same obligation of confidentiality as that contained in this Agreement.

18. SCRUTINY

Scrutiny will be the responsibility of each individual Authority. Each Authority (and the relevant committee charged with audit) shall have the right to inspect any documents relating to that Authority and to require the Procurement Manager to answer any questions raised by them.

19. ROUTINE COMMUNICATIONS

Except in respect of routine communication between the Authorities in connection with the day to day performance of this Agreement, no communication from one Authority to another shall have any validity unless made in writing by or on behalf of that Authority.

20. NOTICES

20.1 No notice or other communication from one Authority to the other shall have any validity under this Agreement unless made in writing by or on behalf of the Authority sending the communication.

20.2 Any notice or other communication which is to be given by one Authority to the other shall be given by letter (sent by hand, post, registered post or by the recorded delivery service) or electronic mail. Such letters shall be addressed to the other Authority at their normal business addresses. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given two business days after the day on which the letter was posted, or eight hours, in the case of electronic mail or sooner where the other Authority acknowledges receipt of such letters or electronic mail.

20.3 Any Authority may change its address for service by serving a notice in accordance with this clause 20.

21. ASSIGNMENT

This Agreement is personal to the Authorities and not capable of assignment, novation or transfers by any of them save to their lawful successors.

22. VARIATION

Any variation to this Agreement must be in writing and agreed by the Partnership Leads, in consultation with the Procurement Manager.

23. WAIVER

23.1 The failure of the Authorities to insist upon strict performance of any provision of this Agreement or the failure of another Party to exercise any right or remedy to which it is entitled shall not constitute a waiver thereof and shall not cause any diminution of the obligations established by this Agreement.

23.2 A waiver of any default shall not constitute a waiver of any subsequent default whether or not of a similar or identical nature.

24. SEVERANCE

24.1 If any provision of this Agreement is held invalid, illegal or unenforceable for any reason, such provision shall be severed and the remainder of the provisions hereof shall continue

in full force and effect as if the Agreement had been executed with the invalid, illegal or unenforceable provision eliminated.

24.2 In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Agreement, the Authorities shall immediately commence good faith negotiations to remedy such invalidity.

25. THIRD PARTIES

The Authorities do not intend that any of this Agreement's terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

26. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the Authorities with respect to its subject matter. Each Authority acknowledges that it has not relied on any undertaking, promise, assurance, statement, proposal, representation, warranty or understanding (whether or not in writing) relating to the subject matter of this Agreement except those expressly incorporated in this Agreement.

27. LAW AND JURISDICTION

This Agreement shall be governed by the Laws of England and the Authorities hereby submit to the non-exclusive jurisdiction of the courts of England.

IN WITNESS whereof the parties hereto have caused this Agreement to be executed as a Deed delivered the day and year first above written

The **COMMON SEAL** of)
MAIDSTONE BOROUGH)
COUNCIL was hereunto)
affixed in the presence of:

.....
Authorised Signatory

The **COMMON SEAL** of)
TONBRIDGE & MALLING)
BOROUGH COUNCIL)
was hereunto affixed in
the presence of:

.....
Authorised Signatory

The **COMMON SEAL** of)
TUNBRIDGE WELLS)
BOROUGH COUNCIL)
was hereunto affixed in
the presence of:

.....
Authorised Signatory

SCHEDULE 1 – KEY PARAMETERS

Key parameters of the Procurement Partnership Agreement between Maidstone Borough Council (MBC), Tunbridge Wells Borough Council (TWBC) and Tonbridge & Malling Borough Council (TMBC). The partnership was proposed as a potential option with the following strategic goals:

- i. To provide TMBC with managerial level Procurement support and guidance, as well as ensuring compliance with all current legislation – provided by Dan Hutchins, Partnership Procurement Manager, who is MCIPS accredited
- ii. To improve the resilience of the partnership, working cross functionally to identify synergies
- iii. To develop the members of the procurement team to CIPS qualified and accredited status – with additional coaching and development internally
- iv. To explore a closer link between the processes and procedures of the three authorities – with the potential for an aligned set of CSO's subject to political agreement
- v. To ensure that all strategies, policies and constitutional rules are regularly reviewed and updated in line with current legislation and best practice
- vi. To explore the benefits of Social Value when contracting at all partner authorities
- vii. To ensure that all required information, data and notices are published in accordance with the transparency regulations and the Procurement Act (2022).

The proposed new reporting structures will come into effect from 1 April 2024.

SCHEDULE 2
SERVICE

SCHEDULE 3

ROLES AND RESPONSIBILITIES

SCHEDULE 4

BUDGET

SCHEDULE 5 STRUCTURE

The proposed operational reporting structure for the Partnership will be as follows: