

Dated

2014

The Council of the City of Sunderland

The Borough Council of Gateshead

The Council of the City of Newcastle upon Tyne

The Council of the Borough of North Tyneside

The Council of the Borough of South Tyneside

Northumberland County Council

Durham County Council

Stockton on Tees Borough Council

Middlesbrough Borough Council

Redcar & Cleveland Council

Hartlepool Borough Council

Darlington Borough Council

&

The Association of North East Councils Limited

Collaborative Procurement Services Agreement

DRAFT @ 2 May 2014 (version 11 4 14)subject to Finance input

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This Agreement is made as a Deed on the day of 2014

Between

- (1) **The Council of the City of Sunderland** of Civic Centre, Burdon Road, Sunderland, SR2 7DN, (“Sunderland”)
- (2) **The Borough Council of Gateshead** of Civic Centre, Regent Street, Gateshead, Tyne & Wear NE8 1HH (“Gateshead”);
- (3) **The Council of the City of Newcastle upon Tyne** of Civic Centre, Barras Bridge, Newcastle upon Tyne, NE99 2BN (“Newcastle”);
- (4) **The Council of the Borough of North Tyneside** of 14 Northumberland Square, North Shields, NE30 1PZ (“North Tyneside”);
- (5) **The Council of the Borough of South Tyneside** of Town Hall and Civic Offices, Westoe Road, South Shields, NE33 2RL (“South Tyneside”);
- (6) **Northumberland County Council** of County Hall, Morpeth, NE61 2EF (“Northumberland”);
- (7) **Durham County Council** of County Hall, Durham, DH1 5UL (“Durham”);
- (8) **Stockton on Tees Borough Council** of Municipal Buildings Church Road Stockton on Tees TS18 1LD
- (9) **Middlesbrough Borough Council** of Town Hall Middlesbrough TS1 2QQ
- (10) **Redcar & Cleveland Borough Council** of [Redcar and Cleveland House, Kirkleatham Street, Redcar TS10 1RT](#)
- (11) **Hartlepool Borough Council** of Civic Centre Victoria Road Hartlepool Ts24 8AY
- (12) **Darlington Borough Council of Town Hall** Feethams Darlington DL1 5QT

(each separately a “Local Authority Party” and together the “Local Authority Parties”)

and

- (13) **The Association of North East Councils Limited** (company registration no 5014821) whose registered office is at Guildhall Quayside Newcastle upon Tyne, NE1 3AF (“ANEC”)

(together “the Parties”).

Whereas

- (A) By an arrangement dated 28th October 2010 (“the Arrangement”) the Local Authority Parties agreed to establish and participate in a joint committee to provide a procurement hub then known as the North Eastern Purchasing Organisation and now known as the North East Procurement Organisation (“NEPO”). The Local Authority Parties have now decided to terminate the Arrangement and that ANEC shall henceforward manage and administer the NEPO Service as hereinafter

defined and undertake other collaborative procurement services for the Local Authority Parties (“together the Collaborative Procurement Services”) on the terms set out herein

- (B) By virtue of section 1 of the Localism Act 2011 the Local Authority Parties have a general power of competence to do anything that individuals generally may do subject to the limitations referred to in that Act
- (C) The Local Authority Parties intend by this agreement (a) to formally terminate the Arrangement (b) to appoint ANEC to manage the Collaborative Procurement Services and (c) to transfer all assets, liabilities staff and all NEPO’s responsibilities to ANEC subject to the terms hereof
- (D) ANEC is a contracting authority within the meaning of sub-para (w) of Regulation 3(1) of the Public Contract Regulations 2006 as amended
- (E) The Local Authority Parties are committed to the broadest possible collaboration at a regional level save that nothing herein shall fetter their discretion to act independently or jointly in the conduct of procurement activity

NOW IT IS AGREED as follows

1. **Interpretation**

1.1. In this Agreement the following expressions shall have the meaning ascribed to them below.

Agreement	this agreement including all schedules and documents annexed hereto;
ANEC	means the Association of North East Councils Limited
Arrangement	the Arrangement dated 28 October 2010.
Association	means the Association of North East Councils
Best Value Obligation	the duty imposed on the Parties by Part 1 of the Local Government Act 1999 under which the Local Authority Parties are under a statutory duty to continuously improve the way their functions are exercised, having regard to a combination of economy, efficiency and effectiveness and to the guidance issued from time to time by the Secretary of State for Communities and Local Government;
Business Day	any day (other than a Saturday or Sunday or a bank or public holiday in England);
CEDR	Centre for Effective Dispute Resolution of International Dispute Resolution Centre, 70 Fleet Street, London EC4Y 1EU (www.cedr.co.uk);
Collaborative Procurement Sub-committee	shall mean the sub-committee established by the Association
Collaborative Procurement Sub-committee Member	a person who is appointed as a Member of the Collaborative Procurement Sub-committee in accordance with the terms of the Association's Constitution;

Collaborative Procurement Services those procurement services to be administered by ANEC set out or referred to in this Agreement and those services previously undertaken under the Arrangement and all of which shall be administered and/or branded as NEPO as the same shall be agreed from time to time by the Parties

Collaborative Procurement Budget

Commencement Date

Exiting Party as defined in clause 11.5

Financial Contributions An annual contribution to be paid in advance by each Local Authority Party in respect of each Financial Year as set out in Schedule 2 towards the Collaborative Procurement Budget;

Financial Year 1st April to 31st March in each year;

Force Majeure means circumstances beyond the reasonable control of a Party including, without limitation, acts of God, acts of the Government and supra national authority, war or national emergency, acts of terrorism, riots, civil commotion, fire, explosion, flood, epidemic, lock-outs (whether or not by that Party) strikes and other industrial disputes (in each case, whether or not relating to that Party's workforce), constraints or delays affecting carriers, inability or delay in obtaining supplies or adequate or suitable materials and currency restrictions.

Law any applicable Act of Parliament, sub-ordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, exercise of the Royal Prerogative, enforceable community right within the meaning of section 2 of the European Communities Act 1972, bye-law, regulatory policy, guidance or industry code, judgement of a relevant court of law, or directives or requirements of any regulatory body

Leaders and Mayors Group	Elected	The Leaders and Elected Mayors of the Local Authority Parties as the same forms part of the Association
Local Authority Parties	Party/	Gateshead, Newcastle, North Tyneside, South Tyneside, Sunderland, Darlington, Stockton on Tees, Middlesbrough, Hartlepool, Redcar & Cleveland Northumberland and Durham and individually each a "Local Authority Party"
Losses		means all costs, liabilities, losses, claims, demands, actions, damages and expenses (including reasonable legal expenses) as referred to in Schedule 2;
NEPO		The North East Procurement Organisation
NEPO Service		means the procurement activity undertaken under the terms of the Arrangement
Term		the period from the Commencement Date until the date of termination in accordance with clause 12 of this Agreement The Association of North East Councils as the same has been established as an unincorporated association under the terms of a Constitution dated XX by the Local Authority Parties
The Regional Directors of Resources Group		The Directors of Resources or equivalent officers from each of the Local Authority Parties
TUPE		the Transfer of Undertakings (Protection of Employment) Regulations 2006;

- 1.2. references to any statute or statutory provision include, unless otherwise stated, a reference to the statute or statutory provision as modified or re-enacted and in force from time to time prior to completion and any subordinate legislation made under the relevant statute or statutory provision in force prior to completion;
- 1.3. references to persons will be construed so as to include bodies corporate, unincorporated associations and partnerships;
- 1.4. references to clauses and schedules are to clauses of and schedules to this Agreement.
- 1.5. 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;

- 1.6. the headings to the clauses of this Agreement and to the paragraph of the schedules will not affect its construction;
- 1.7. references to singular in this Agreement include the plural and vice versa and references by way of male pronoun shall include references to female pronouns and vice versa.

2. **Termination of Arrangement, Commencement, Term Appointment and Key Commitments**

- 2.1 This Agreement shall govern the relationship of the Parties in relation to the Collaborative Procurement Services.
- 2.2 Notwithstanding the date of execution, this Agreement shall be deemed to take effect from the Commencement Date and shall continue in full force and effect until terminated in accordance with clause 12.
- 2.3 The Local Authority Parties hereby terminate the Arrangement and appoint ANEC to manage the Collaborative Procurement Services from the Commencement Date subject to the terms hereof
- 2.4 The Local Authority Parties hereby transfer the NEPO Service to ANEC subject to the terms hereof for an initial term of five years.
- 2.5 ANEC shall forthwith establish within the terms of the Constitution of the Association a Collaborative Procurement Sub-committee whose remit membership and procedures shall be as set out in Part 1 of Schedule 1.
- 2.6 Each Local Authority Party acting in accordance with section 111 of the Local Government Act 1972 shall appoint such elected members as it will be entitled to appoint as Collaborative Procurement Sub-committee Members in accordance with the applicable provisions of the Association's Constitution as set out in Part 1 of Schedule 1
- 2.7 Each Local Authority Party hereby affirms its commitment to the Collaborative Procurement Objectives and Local Authority Party roles as set out in Part 2 of Schedule 1 and to make the Financial Contributions referred to in Schedule 2

3. **Liability**

- 3.1. In consideration of the mutual agreements and undertakings set out in this Agreement the Parties have granted the respective rights and accepted the obligations and liabilities set out in this Agreement.
- 3.2. The Parties acknowledge and agree that the Collaborative Procurement Sub-committee Members shall not be personally liable for the acts and omissions of ANEC save insofar as it shall be unlawful to limit such liability and save in the case of negligence, wilful default or dishonesty.
- 3.3. Subject to clause 5.6, ANEC shall in undertaking the roles set out herein for the delivery of the Collaborative Procurement Services be indemnified by the Local Authority Parties to such extent and in such proportions as set out in Schedule 2 or as they shall otherwise agree acting reasonably for all and any Losses as therein defined arising from or incurred by ANEC in performing its roles pursuant to this Agreement.

- 3.4. Subject to clause 3.5 and 3.7 no Local Authority Party shall be required to make a contribution to Losses that was not anticipated by the Collaborative Procurement Budget set by the Leaders and Elected Mayors Group in accordance with clause 5.1 without their prior approval
- 3.5. Where a Local Authority Party (in this clause and subsequently referred to as "Lead Authority") leads a procurement exercise with the approval of ANEC as part of the Collaborative Procurement Services the following provisions shall apply:-
- 3.5.1 subject to sub-clause 3.7 the Lead Authority shall indemnify ANEC and each of the Local Authority Parties that has opted to take part in and benefit from that procurement exercise fully and effectively against Losses arising as a result of any act neglect or default on the part of the Lead Authority or any claims arising therefrom
- 3.5.2 any such procurement exercise shall be undertaken in accordance with any agreed protocols and in the name of and in all respects as part of the Collaborative Procurement Services as a NEPO procurement.
- 3.6 Each Local Authority Party shall be required expressly to decide prior to the commencement of a procurement exercise (that is to say prior to the publication of an OJEU Notice) whether it wishes to participate in that exercise to be undertaken as part of the Collaborative Procurement Services and in accordance with the terms of any agreed protocols that may apply
- 3.7 Subject to clause 3.5 where Losses arise as a result of some third party claim then the liability for those losses shall be shared equally amongst the Local Authority Parties or upon the basis of such proportions as they may agree acting reasonably notwithstanding that no provision or contingency has been made in the Collaborative Procurement Budget.
4. **Obligations of ANEC**
- 4.1. ANEC shall undertake the management and administration of the Collaborative Procurement Services and shall be accountable for any monies received in connection with their operation.
- 4.2. Subject to the terms of this Agreement ANEC will employ staff, hold relevant assets (including money), enter into contracts, loans, funding agreements, transactions, acquire and dispose of assets and investments in connection with the provision of the Collaborative Procurement Services.
- 4.3. All employees engaged by ANEC in respect of the Collaborative Procurement Services pursuant to clause 4.2 will be engaged solely on the delivery of those services and will be employed on ANEC's terms and conditions of employment and will act in accordance with its policies including, without prejudice to the generality of the foregoing, recruitment, selection, disciplinary and grievance procedures.
- 4.4. ANEC shall in administering the Collaborative Procurement Services act in accordance with any policy directions of the Leaders and Elected Mayors Group and the Collaborative Procurement Sub-committee save where such directions are contrary to the law, inconsistent with principles of probity or sound financial practice or may incur expenditure in excess of the Collaborative Procurement Budget subject to clause 5.4

- 4.5. Save as provided in clause 4.4, ANEC shall not do anything which is inconsistent with any policy recommendations of the Leaders and Elected Mayors Group or the Collaborative Procurement Sub-committee or which will obstruct the implementation of such recommendations unless such action is not in accordance with the proper exercise of its powers or the Law. Furthermore, ANEC shall not be obliged to act upon any decision or recommendation of the Leaders and Elected Mayors Group or the Collaborative Procurement Sub-committee not made in accordance with the Association's Constitution, or ANEC's memorandum and articles of association
- 4.6. ANEC will:
- 4.6.1. respond to requests it receives under Freedom of Information legislation in relation to the Collaborative Procurement Services , provided that a copy of any request is first provided to the ANEC's Chief Executive and the views of the relevant officer of each of the Local Authority Parties shall be taken into account prior to any disclosure of information being made;
 - 4.6.2. use reasonable endeavours to implement the recommendations of the Leaders and Elected Mayors Group and the Collaborative Procurement Sub-committee and demonstrate continuously that value for money and probity is achieved in the use of public funds ;
 - 4.6.3. during the subsistence of this Agreement and with the permission of the Local Authority Parties use the style and brand and associated logos of NEPO when delivering the Collaborative Procurement Services or any part of them; ANEC may in its discretion authorise the use of the same by a Local Authority Party acting as a Lead Authority.
- 4.7. ANEC will provide or otherwise procure support services to enable it to fulfil its roles as set out herein. Such services will include but are not limited to the following:
- 4.7.1. Accountancy;
 - 4.7.2. Human Resources payroll and pensions;
 - 4.7.3. Accounts payable;
 - 4.7.4. Risk management and insurance services;
 - 4.7.5. Internal audit services;
 - 4.7.6. Committee clerkship and secretarial services;
 - 4.7.7. Legal advice on a 'solicitor to client' basis to ANEC
 - 4.7.8. Procurement;
 - 4.7.9. ICT Services
 - 4.7.10. Technical or expert support services to assist planned procurements

- 4.8. There shall be prepared for submission to the Collaborative Procurement Sub-committee for its consideration such plans as it shall require to oversee the Collaborative Procurement Services its projects and programmes and in accordance with the remit for the Sub-committee set out in Part 1 of Schedule 1
- 4.9. ANEC will undertake all necessary administrative roles and duties in relation to fulfilling the functions of the Collaborative Procurement Services. These functions will include but are not limited to the following:
 - 4.9.1. development and maintenance of administrative systems to enable ANEC to fulfil their responsibilities;
 - 4.9.2. administering the conduct of procurement exercises

5. **Collaborative Procurement Budget**

- 5.1. The Collaborative Procurement Budget shall be set by the Leaders and Elected Mayors Group following receipt of recommendations from the Collaborative Procurement Sub- committee prior to the start of each Financial Year.
- 5.2. The Financial Contributions shall be unanimously agreed by the Local Authority Parties no later than 2 (two) calendar months before the commencement of each Financial Year.
- 5.3. Any Financial Contributions will be paid to ANEC by the Local Authority Parties within 30 days of receipt of the ANEC's invoice
- 5.4. ANEC shall not take any action, which will result in expenditure exceeding the Collaborative Procurement Budget for the year without the prior approval of the Leaders and Elected Mayors Group and the Collaborative Procurement Sub-committee. Any expenditure in excess of the Collaborative Procurement Budget shall be funded by additional contributions from the Local Authority Parties in the proportions as set out in Schedule 2.or otherwise as agreed
- 5.5. Subject to clause 5.6 below, all expenditure and liabilities in connection with the Collaborative Procurement Services shall be met from the Collaborative Procurement Budget in the first instance. Nothing in this Agreement shall oblige ANEC to spend any money or otherwise incur any liabilities whatsoever that are not fully recoverable through the Collaborative Procurement Budget.
- 5.6. Notwithstanding clause 3, where any Losses are incurred as a result of a negligent act or default of ANEC or an act of a Local Authority Party or which was not consistent with the policy directions of the Leaders and Elected Mayors Board or the Collaborative Procurement Sub-committee, ANEC or that Local Authority Party as the case may be shall indemnify the other Parties in respect of any such Losses arising.

6. **Employees**

- 6.1 In the event that the employment of any person (the "Claimant") is found to have transferred by virtue of TUPE to ANEC, the Local Authority Party who employed the Claimant immediately prior to the transfer (the "Transferor") shall subject to clause 6.2 indemnify ANEC in full from and against all Losses (including legal fees and any redundancy costs arising at the expiry or termination of the Agreement) in connection with, or as a result of, any claim whatsoever or demand by the

Claimant arising out of their employment or its termination whether such claim or claims arise before or after the date of expiry or termination of this Agreement and/or arising directly or indirectly from any act, default or omission of the Transferor during the period the Claimant was in the employment of the Transferor or incurred in connection with the transfer of the Claimant's employment to ANEC under TUPE.

- 6.2 Any costs of redundancy or claims of the kind referred to in clause 6.1 relating to employees of the NEPO Service (including pension liabilities), disposal of equipment or all other costs and liabilities arising as a result of this Agreement or on termination or expiry of this Agreement shall be met in the first instance by the Collaborative Procurement Budget and any remaining deficit shall thereafter be apportioned between and paid by the Local Authority Parties in such proportions as they shall agree acting reasonably. For the avoidance of doubt the Local Authority Party who employed the Claimant referred to in clause 6.1 shall be fully indemnified under this provision

7. **Collaborative Procurement Sub-committee**

The Leaders and Elected Mayors Group jointly with the Collaborative Procurement Sub-committee shall be responsible for keeping under review the overall strategic direction of the Collaborative Procurement Services. ANEC agrees, throughout the Term acting by its Chief Executive and officers and having regard to the advice of the Directors of Resources Group:

- 7.1.1. to keep projects supported by the Collaborative Procurement Services under review and promptly make and report all decisions relating to those projects to the Collaborative Procurement Sub-committee and to relevant Local Authority Parties and their officers;
- 7.1.2. to promptly approve or make and implement decisions relating to those projects and the allocation of resources;
- 7.1.3. to create and approve a plan or plans setting out the priorities and strategies for each project or programme supported by the Collaborative Procurement Services in accordance with recognised project management principles and practices.

8. **Financial Accountability**

- 8.1. ANEC will be responsible for the financial systems relating to the delivery of the Collaborative Procurement Services in respect of obligations undertaken in accordance with this Agreement.
- 8.2. ANEC will be responsible for the provision of financial monitoring statements including details of coordination costs and financial forecasts to the Collaborative Procurement Sub-committee in relation to the Collaborative Procurement Budget, which will cover both project costs and management and administration costs.

9. **Reporting and Accountability**

- 9.1. Officers employed in carrying out the Collaborative Procurement Services shall make all general day to day decisions as to the general management and operation of those services acting under the overall managerial control of ANEC's

Chief Executive and subject to the overarching strategic direction of the Leaders and Elected Mayors Group and the Collaborative Procurement Sub-committee

- 9.2. The Collaborative Procurement Sub-committee shall carry out the functions as set out in Schedule 1 Part 1 of this Agreement.
- 9.3. The Parties shall be responsible for ensuring that they have taken all reasonable steps to provide for the accuracy of all documentation and information supplied in connection with the provision of the Collaborative Procurement Services and, subject to ANEC having first applied a reasonable level of validation to the said documentation and information, shall fully indemnify ANEC for any reasonably foreseeable extra costs or expenses occasioned by any discrepancies, errors or omissions therein
- 9.4. In all of their proceedings the Parties will follow generally accepted principles of good governance and the broad attributes of openness, integrity and accountability.

10. **Termination of Agreement**

- 10.1. This Agreement shall continue in full force and effect from the Commencement date for a period of five years and thereafter unless or until:
 - 10.1.1. the Local Authority Parties agree unanimously in writing to its termination;
 - 10.1.2. a Local Authority Party gives not less than 12 (twelve) months' notice in writing to the other Parties in accordance with Clause 25 of this Agreement such notice to expire on 31st March of a Financial Year.
- 10.2. ANEC may give not less than twelve months' notice in writing (expiring on the 31st March in any year) of its withdrawal from its roles as set out herein at the expiry of which it shall cease to act in accordance with this Agreement. In such circumstances the Parties (acting reasonably) shall agree to appoint a new body from the Local Authority Parties or some other body as the Leaders and Elected Mayors Group may determine. The termination of the role of ANEC shall not terminate the rights of the remaining parties and this Agreement shall continue as between the Parties from the date of substitution of ANEC with that replacement Local Authority Party or other body. For the avoidance of doubt ANEC shall continue to benefit from the indemnity provided under clause 3.3.
- 10.3. In the event of termination of this Agreement in accordance with clause 10.2 all assets and resources held by ANEC in regard to the Collaborative Procurement Services and any other assets shall firstly be applied to discharge any outstanding obligations and/or liabilities and Losses incurred in the delivery of those services. Any remaining assets (if any) will be distributed as agreed between the Local Authority Parties in the proportions specified in Schedule 2 or as may otherwise be agreed.
- 10.4. In the event of a Local Authority Party (hereinafter referred to as "the Exiting Party") withdrawing from this Agreement in accordance with clause 10.1.2 the Exiting Party shall be liable in full for all Losses of whichever nature arising from or occasioned by the withdrawal of the Exiting Party and the Exiting Party shall indemnify the other Local Authority Parties and ANEC for all such Losses arising or incurred

- 10.5. The Exiting Party shall remain liable for its proportion of any Losses that relate to the period up to and including the date of withdrawal (whether or not those Losses have been incurred at the date of the withdrawal).
- 10.6. Termination of this Agreement shall be without prejudice to any accrued rights and liabilities of any of the Parties. For the avoidance of doubt and without prejudice to the generality of the foregoing, if any project being conducted as part of the Collaborative Procurement Services remains incomplete at the date of termination, the provisions of this Agreement relating to the sharing of risks and apportionment of liabilities in respect of those services shall remain in effect until such projects are completed.
- 10.7. Before the date of termination of this Agreement the Parties shall use their reasonable endeavours to agree in good faith a detailed exit strategy that addresses adequately all the consequences of termination. Thereafter the Parties shall implement and comply with the agreed exit strategy.
- 10.8. Any Losses arising by the withdrawal of a Local Authority Party or termination of this Agreement, including but not limited to redundancy of staff disposal of equipment or associated costs and all other liabilities arising, shall be met in the first instance by the Collaborative Procurement Budget and thereafter any remaining deficit shall be borne by the Local Authority Parties in the proportions as set out in Schedule 2 or as may otherwise be agreed.
- 10.9. On termination howsoever arising the Local Authority Parties will use their reasonable endeavours to minimise the liabilities arising out of the operation of the Collaborative Procurement Services including:
 - 10.9.1. where possible offering alternative employment to employees engaged in delivering the Collaborative Procurement Services who are not transferred to any other body.
 - 10.9.2. where possible taking over the interest of ANEC in any property used in connection with those services.

11. **Conflicts of Interest**

- 11.1. The Parties shall take appropriate steps to ensure that neither the Parties nor any employee, servant, agent, supplier or sub-contractor is placed in a position where in the reasonable opinion of ANEC's Chief Executive there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Parties or such persons and the duties owed to ANEC in carrying out the Collaborative Procurement Services under the provisions of this Agreement. The Parties will immediately disclose to the Collaborative Procurement Sub-committee full particulars of any such conflict of interest which may arise together with proposals as to the measures they will take to resolve that conflict.

12. **Best Value Obligation**

It is agreed and acknowledged that the Collaborative Procurement Services will be delivered in line with the Local Authority Parties' Best Value Duty and the Collaborative Procurement Sub-committee shall monitor arrangements to secure continuous improvement in the way in which the Collaborative Procurement Services are provided, having regard to a combination of economy, efficiency and effectiveness.

13. **Fairness**

In the event that any circumstance arises during the term of this Agreement which is not within the contemplation of the Parties at the date hereof and not provided for in this Agreement either expressly or impliedly then the Parties agree that such matter shall be resolved fairly and in a spirit of mutual cooperation consistent with furthering the Collaborative Procurement Objectives and, so far as is possible, without detriment to the interests of any of the Parties.

14. **Confidentiality**

None of the Parties shall disclose information which is expressly identified by a Party as being confidential and relating to any financial or other information in respect of any of the other Parties or the Collaborative Procurement Services or any matter in connection with this Agreement other than to its auditors and professional advisers or use any such information other than for any purpose anticipated by this Agreement without the consent of the other Parties. Nothing in this clause 14 shall prevent disclosure of information pursuant to the Law.

15. **Force Majeure**

15.1. The Parties to this Agreement shall not be deemed to be in breach of this Agreement or otherwise liable to any other Party in any manner whatsoever for any failure or delay in performing its obligations under this Agreement due to force majeure.

15.2. If a Party's performance of its obligations under this Agreement is affected by force majeure, then:

15.2.1. it shall give written notice to the other Parties, specifying the nature and extent of the force majeure, within 14 Business Days of becoming aware of the force majeure and will at all times use all reasonable endeavours to mitigate the severity of the force majeure;

15.2.2. subject to the provisions of clause 15.2 the date of performance of such unperformed obligation shall be deemed suspended only for a period equal to the delay caused by such event; and

15.2.3. it shall not be entitled to payment from the other Parties in respect of any extra costs and expenses incurred by virtue of a force majeure event;

15.2.4. if the force majeure in question prevails for a continuous period in excess of 6 months after the date on which the force majeure begins,

the other Parties will be entitled to give notice in writing to the Party which is the subject of the force majeure ("the Defaulting Party") requiring the removal of the Defaulting Party as a Party to this Agreement. The notice of removal must specify the date of the Defaulting Party's removal as a Party, which must be not less than 10 Business Days after the notice of removal is given. Such removal of the Defaulting Party as a Party shall be without prejudice to any accrued liabilities up to the date of such removal to which the Party is subject pursuant to this Agreement, or under any contract entered into by the Party pursuant to this Agreement, or the Party's obligations to make any Financial Contribution under clause 2.7 hereof.

16. **Observance of Statutory Requirements**

In carrying out their respective obligations under this Agreement, the Parties shall comply at all times with the Law.

17. **No Legal Partnership or Agency**

Nothing in this Agreement or in any document referred to in it shall constitute a legal partnership between the Parties hereto or constitute one the agent of another (unless otherwise agreed) and none of the Parties shall do or suffer anything to be done whereby it shall or may be represented that it is the partner or agent of a Party hereto (save as aforesaid) unless such Party is appointed partner or agent of that other Party with the consent in writing of that other Party.

18. **Waiver**

The waiver by any Party of any default by any Party in the performance of any obligation of such other Party under this Agreement shall not affect such first Party's rights in respect of any such default or of any subsequent default of the same or of a different kind, nor shall any delay or omission of any Party to exercise any right arising from any default affect or prejudice that Party's rights as to the same or any future default.

19. **Variation of Agreement**

Any variation of this Agreement shall be in writing duly signed by or on behalf of the Parties.

20. **Severance**

The illegality, validity or unenforceability of any clause or part of this Agreement will not affect the legality, validity or enforceability of the remainder. If any such clause or part is found by any competent court or authority to be illegal, invalid or unenforceable the Parties agree that they will substitute provisions in a form as similar to the provisions deemed illegal, invalid or unenforceable as possible, which reflect the intentions of the Parties.

21. **Entire Agreement**

This Agreement together with the Constitution of the Association amended as set out in Schedule 1 hereof constitute the entire agreement and governance structure between the Parties in relation thereto and there are no representations, promises,

terms, conditions or obligations between the Parties other than those contained or expressly referred to therein.

22. **Assignment**

No Party shall assign, transfer or novate any of its rights or obligations hereunder without the prior written consent of the other Parties.

23. **Contracts (Rights Of Third Parties) Act**

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

24. **Dispute Resolution**

24.1. Preliminary Dispute Resolution

24.2. The Parties agree that they will vigorously pursue necessary and appropriate dispute resolution in accordance with this clause where another Party notifies them of a dispute.

24.3. The Parties will use their best endeavours to resolve any dispute relating to this Agreement between themselves by negotiations in good faith, in the first instance through day to day consultation but if the Parties fail to resolve any dispute within 14 days the matter shall be escalated to the applicable Collaborative Procurement Sub-committee Members representing the Local Authority Parties and the Chairman of that Sub-committee.

24.4. In the event that a Local Authority Party and the Chairman of the Collaborative Procurement Sub-committee fail to resolve any dispute escalated to them as provided for in Clause 24.3 within 14 days then any of the Parties shall be entitled to request that the matter be referred to mediation in the first instance, or arbitration as provided for below.

24.5. Mediation

24.6. Any Party may following the exhaustion of the process in clauses 24.1 to 24.4 refer any dispute to mediation in accordance with the CEDR Model Mediation Procedure by giving notice in writing (the "Mediation Notice") to the other party in accordance with clause 25.

24.7. The Parties will seek to agree the appointment of a mediator but failing agreement within 14 days of service of the Mediation Notice, will ask CEDR to appoint a mediator. If either party refuses at any time to participate in the mediation procedure and if in any event the dispute is not resolved within 60 days of service of the Mediation Notice then either party may refer the dispute to arbitration proceedings.

25. **Notices (General)**

25.1. Except as otherwise expressly provided within the Agreement, no notice or other communication from one Party to another shall have any validity under the Agreement unless made in writing by or on behalf of the Party concerned.

- 25.2. Any notice or other communication which is to be given by a Party to another 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 Party in the manner referred to in clause 25.4.
- 25.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given 2 Working Days after the day on which the letter was posted, or four hours, in the case of electronic mail or facsimile transmission or sooner where the other Party acknowledges receipt of such letters or item of electronic mail.
- 25.4. For the purposes of clause 25.2, the address of each Party shall be the addresses of the Party as set out in the Parties clause at the head of this Agreement
- 25.5. Any Party may change its address for service by serving a notice in accordance with this clause.

26. **Jurisdiction**

This Agreement shall be governed by and construed in accordance with the laws of England and each of the Parties submits to the exclusive jurisdiction of the English Courts.

27. **Survival**

Those provisions of this Agreement that are capable of remaining in force shall survive termination of this Agreement for whatever reason.

28. **Counterparts**

This Agreement may be executed in any number of counterparts or duplicates, each of which shall be an original, and such counterparts or duplicates shall together constitute one and the same instrument. Any party to this Agreement may enter into this Agreement by executing any such counterpart.

IN WITNESS whereof the parties hereto have executed this Agreement as a Deed on the day and year first before written.

The Seal of **COUNCIL OF THE CITY OF SUNDERLAND** was hereunto affixed in the presence of:)
)
)

.....
Authorised Signatory

The Common Seal of the **BOROUGH COUNCIL of GATESHEAD** was hereunto affixed in the presence of:)
)
)

Mayor

.....
Solicitor

EXECUTED AS A DEED BY THE COUNCIL)

OF THE CITY OF NEWCASTLE UPON TYNE)

Whose Common Seal was hereunto affixed in the presence of)

)

EXECUTED AS A DEED BY)

EXECUTED AS A DEED BY)

NORTH TYNESIDE BOROUGH COUNCIL)

Whose Common Seal was hereunto affixed in the presence of)

EXECUTED AS A DEED BY)

**THE COUNCIL OF THE BOROUGH OF SOUTH
TYNESIDE)**

Whose Common Seal was hereunto affixed in the presence of)

EXECUTED AS A DEED BY)

NORTHUMBERLAND COUNTY COUNCIL)

Whose Common Seal was hereunto affixed in the presence of)

DURHAM COUNTY COUNCIL)

Whose Common Seal was hereunto affixed in the presence of)

)

)

)

)

EXECUTED AS A DEED BY)

STOCKTON ON TEES BOROUGH COUNCIL)

Whose Common Seal was hereunto affixed in the presence of)

EXECUTED AS A DEED BY)

)

Whose Common Seal was hereunto affixed in the presence of)

EXECUTED AS A DEED BY)

REDCAR & CLEVELAND COUNCIL)

Whose Common Seal was hereunto affixed in the presence of)

EXECUTED AS A DEED BY)

HARTLEPOOL BOROUGH COUNCIL)

Whose Common Seal was hereunto affixed in the presence of)

EXECUTED AS A DEED BY)

DARLINGTON BOROUGH COUNCIL)

Whose Common Seal was hereunto affixed in the presence of)

)

EXECUTED AS A DEED BY)

THE ASSOCIATION OF NORTH EAST COUNCILS LIMITED)

acting by [] in the presence of)

)

Schedule 1

Part 1

Amendments to the Constitution of the Association

1. The Constitution of the Association shall be revised as follows in the succeeding paragraphs of this part of Schedule 1
2. A paragraph shall be added at the end of Clause 10 of the Constitution headed

LEADERS AND ELECTED MAYORS GROUP in the following terms:-

“The Group shall have overarching strategic and policy responsibility for the Collaborative Procurement Services as the same are defined in an Agreement dated XX and made between the Association of North East Councils Limited (“the Company”) and the Constituent Authorities (“the Agreement”) and shall approve following receipt of recommendations from the Collaborative Procurement Sub-committee the Annual Business Plan, Annual Budget, Annual Report and Work Programme for the Collaborative Procurement Services.

The Group shall approve the senior management structure for the officers engaged in the delivery of the Collaborative Procurement Services.

The Group shall receive from the Collaborative Procurement Sub-committee regular updates at not less than six monthly intervals relating to the operation of the Collaborative Procurement Services and such other reports as may be necessary for formal decision.

3. There shall be added to the Constitution a new Clause 13 in substitution for the existing Clause 13 in the following terms:-

13. COLLABORATIVE PROCUREMENT SUB-COMMITTEE

“The Leaders and Elected Mayors Group shall establish a Collaborative Procurement Sub-committee of not more than 12 members of the Constituent Authorities. The membership of the Sub-committee shall include one member from each Constituent Authority.

The Collaborative Procurement Subcommittee shall be responsible for:-

1. Developing and keeping under review an Annual Business Plan and Work Programme for the Collaborative Procurement Services (including for the avoidance of doubt those services formerly undertaken by the North East Procurement Organisation) and in addition to the above to prepare and agree an Annual Budget and Annual Report for approval by the Leaders and Elected Mayor’s Group.
2. Monitoring and reviewing the performance of the Collaborative Procurement Services and its budget.

3. Monitoring the range and effectiveness of collaborative procurement activity generally.
4. Providing the Leaders and Elected Mayor's Group with assurance on all aspects of internal financial controls and risk management.
5. Keeping under review appropriate strategic plans, a Regional Procurement Strategy and an appropriate performance management framework.
6. Ensuring that there are appropriate and effective arrangements for stakeholder engagement in the delivery of the Collaborate Procurement Services, and
7. Ensuring that appropriate protocols and procedures are in place to secure the effective operation of the Collaborative Procurement Services

The Sub-committee shall have regard to reports from time to time from the Regional Directors of Resources Group representing relevant officers from each of the Constituent Authorities acting by two lead officers appointed from amongst them”.

4. Clause 13 to 17 of the Constitution shall be renumbered accordingly.

Part 2

Collaborative Procurement Objectives

The objectives are as follows:

- ensure that the region's views and needs are represented, in order to provide a regional voice in the development of national level policy, procurements and secure a return of rebate or commission on spend by the region;
- manage regional mini-competitions against national frameworks where authorities agree that the category lends itself to aggregated demand;
- procure regional frameworks and contracts through a category management based process;
- implement frameworks or contracts in the region where this is agreed to be necessary because of the complexity, risk or novelty of the solution;
- contract manage regional frameworks and contracts, where necessary, to manage supplier performance as distinct from local call off and management;
- provide support services for the operation, use and development of collaborative procurement across the region;
- support services for the implementation, development and use of the Strategic Analysis System or other tools which help identify spend and priorities for action;
- work with Stakeholders from the Business sector and with Local Authority business development and procurement teams to provide: strategic regional co-ordination and development of relevant procurement training/support for local suppliers;
- provide a regional voice to ensure inclusion of procurement activities in Strategic Economic Plans so that future funding opportunities are available within the region and sub regions

- devise, implement and refresh a performance management framework to ensure collaborative procurement is transparent, well managed and effective for all parties.

The Role of the Local Authority Parties

The Local Authority Parties shall in order to further the Collaborative Procurement Service Objectives:-

- undertake local contract management as and when required;
- act as regional lead or 'spokes' in particular categories (as agreed);
- resource local procurement solutions and remove duplication of resources where there are suitable national and regional solutions in place;
- resource and deliver lead authority or spoke roles for agreed categories and projects and support the collection and redistribution of resources where appropriate;
- undertake local call-off against regional or national frameworks and contracts as appropriate;
- provide input on requirements and forecasts of demand for regional and national procurements – including providing procurement and service experts to support elements of the procurement process;
- suggest new collaborative procurements where appropriate;
- implement agreed regional and national procurements to maximise benefits; and
- feed into the performance management arrangements for collaborative effort to ensure accountability and transparency.

Schedule 2

Financial Matters

Financial Contributions

[To Add]

Definition of Losses

[To Add]

Apportionment of Losses between the Local Authority Parties

<u>Local Authority Party</u>	<u>Relevant Proportion of Losses</u>
<u>Sunderland</u>	
<u>Gateshead</u>	
<u>Newcastle</u>	
<u>North Tyneside</u>	
<u>South Tyneside</u>	
<u>Northumberland</u>	
<u>Durham</u>	
<u>Stockton on Tees</u>	
<u>Hartlepool</u>	
<u>Middlesbrough</u>	
<u>Redcar & Cleveland</u>	
<u>Darlington</u>	