

DATED

[] 2013

EASTERN SHIRES PURCHASING ORGANISATION (ESPO)

CONSORTIUM AGREEMENT

THE PARTIES:

1. CAMBRIDGESHIRE COUNTY COUNCIL
2. LEICESTER CITY COUNCIL
3. LEICESTERSHIRE COUNTY COUNCIL
4. LINCOLNSHIRE COUNTY COUNCIL
5. NORFOLK COUNTY COUNCIL
6. PETERBOROUGH CITY COUNCIL
7. WARWICKSHIRE COUNTY COUNCIL

TABLE OF CONTENTS

Clause	Description
1	Definitions
2	Interpretation
3	Purpose of Agreement
4	Functions of ESPO
5	Membership
6	Constitution of the ESPO Management Committee
7	Status of Agreement
8	Member Authority Obligations
9	Assets
10	Financial Arrangements
11	Appointment and Resignation of Servicing Authority
12	Dissolution of ESPO
13	Contributions to Loans and Costs Associated with Assets
14	Liabilities, Indemnities, Claims and Proceedings
15	Termination of Membership
16	Effects of Termination
17	No Agency or Partnership
18	Dispute Resolution
19	Confidentiality and Information Management
20	Publicity
21	Notices
22	Waiver
23	Prevention of Corruption and Bribery
24	Variation
25	Governing Law and Jurisdiction
26	Rights of Third Parties
27	Severance
28	Review
29	Assignment
30	Health and Safety
31	Costs of Preparing Agreement

32	No Fettering
Schedule 1	<p>Constitution of the ESPO Management Committee comprising:</p> <p>Appendix 1: Terms of Reference of the ESPO Finance and Audit Committee</p> <p>Appendix 2: Terms of Reference of the ESPO Chief Officers' Group</p> <p>Appendix 3: Delegations to the ESPO Consortium Secretary and ESPO Consortium Treasurer</p> <p>Appendix 4: Functions of, and Delegations to, the Director of ESPO</p> <p>Appendix 5: Procedural Standing Orders of the ESPO Management Committee</p> <p>Appendix 6: Financial Regulations of the ESPO Management Committee (including the Standard Financial Instructions)</p> <p>Appendix 7: Contract Procedure Rules of the ESPO Management Committee</p>
Schedule 2	ESPO Services
Schedule 3	Functions of the Servicing Authority

THIS AGREEMENT is made the day of 2013

BETWEEN:

- (1) **CAMBRIDGESHIRE COUNTY COUNCIL** of Shire Hall, Castle Hill, Cambridge CB3 0AP;
- (2) **LEICESTER CITY COUNCIL** of New Walk Centre, Welford Place, Leicester LE1 6ZG;
- (3) **LEICESTERSHIRE COUNTY COUNCIL** of County Hall, Glenfield, Leicester LE3 8RA;
- (4) **LINCOLNSHIRE COUNTY COUNCIL** of County Offices, Newland, Lincoln LN1 1BR;
- (5) **NORFOLK COUNTY COUNCIL** of County Hall, Martineau Lane, Norwich NR1 2DH;
- (6) **PETERBOROUGH CITY COUNCIL** of Town Hall, Bridge Street, Peterborough PE1 1HF; and
- (7) **WARWICKSHIRE COUNTY COUNCIL** of Shire Hall, Warwick CV34 4RL

(the 'Member Authorities' or 'Parties').

WHEREAS:

- A. The Member Authorities hereby agree to enter into a new consortium agreement ('the Agreement') in connection with the consortium known as the Eastern Shires Purchasing Organisation ('ESPO') which was originally established by Agreement dated 25 February 1988.
- B. The Member Authorities agree that this Agreement shall supersede all Previous Agreements between some or all of the Member Authorities relating to ESPO provided that the rights, obligations and liabilities of the Member Authorities under those Previous Agreements shall remain in full force and effect only to the extent necessary to enforce those rights and obligations and discharge liabilities under those Previous Agreements.
- C. **Openness and Trust:** The Member Authorities agree to be open and trusting in their dealings with each other, making information and analysis available to each other including the sharing of procurement strategies, discussing and developing ideas openly and contributing fully to maximise the effectiveness of joint working in relation to ESPO.
- D. **Commitment and Drive:** The Member Authorities agree to remain fully committed to joint working in relation to ESPO and to motivate all those engaged in the delivery

of ESPO's objectives to do so with drive, enthusiasm and a determination to succeed in delivering the ESPO Services in a manner which demonstrates Best Value.

- E. **Skills and Creativity:** The Member Authorities recognise the complementary skills and knowledge that each Member Authority brings to ESPO and agree to apply creatively such skills and knowledge to ensure the delivery of the Member Authorities' objectives in relation to ESPO and to resolve any disputes and differences should they arise.
- F. **Effective Roles, Responsibilities and Relationships:** The Member Authorities agree to develop clear roles and responsibilities to be delivered at appropriate levels within the organisational structure of each Member Authority to ensure effective working relationships in relation to ESPO, including facilitating easy access to their respective members, officers and personnel.
- G. **Developing and Adapting:** The Member Authorities recognise that they are engaged in what could be a long-term arrangement in relation to ESPO which may need to develop and adapt over time, and agree that they will use all reasonable endeavours to develop and maintain effective processes and practices that are in the best interests of themselves and ESPO.
- H. **Reputation and Standing:** The Member Authorities agree that in relation to this Agreement and to ESPO generally they shall pay due regard to the reputation and standing of one another and shall not do or fail to do anything which may bring the reputation or standing of it and any other Member Authority into disrepute or attract adverse publicity to it or another Member Authority.
- I. **Reasonableness of Decision Making:** All decisions made by any Member Authority pursuant to this Agreement and in relation to ESPO generally shall be made reasonably and in good faith.
- J. **Members, Officers and Personnel:** Each Member Authority shall use all reasonable endeavours to procure that their respective members, officers and personnel who are involved in delivering services or functions pursuant to this Agreement shall at all times act in the best interests of that Member Authority, the Member Authorities and ESPO.
- K. **Necessary Consents:** Each Member Authority has obtained all necessary consents sufficient to ensure the delegation of functions and responsibilities provided for in this Agreement.
- L. **Resolving Disputes:** The Member Authorities will pursue a positive approach towards dispute resolution in relation to ESPO to identify solutions, avoid legal proceedings where at all possible and maintain a strong working relationship between the Member Authorities.

AND IT IS AGREED as follows:

1. DEFINITIONS

In this Agreement and accompanying Schedules and Appendices, the terms below shall have the following meanings:

- 1.1 **Agreement** - This agreement comprising the terms and conditions together with the attached schedules and appendices.
- 1.2 **Annual Report** - The report containing the activities and financial performance of ESPO for the preceding Financial Year presented by the Director of ESPO to the Management Committee each Financial Year for its approval and, once approved, provided by the Director of ESPO to each Member Authority.
- 1.3 **Assets** - Those assets, or interests in assets, listed in the Assets Register (including for the avoidance of doubt property, trading surpluses, Intellectual Property and the ESPO HQ building at Grove Park Commercial Centre, Leicester) held by the Servicing Authority on trust for the Member Authorities in equal shares.
- 1.4 **Assets Register** - A comprehensive list of all Assets (which shall be kept up to date by the Servicing Authority). The Financial Regulations and Financial Instructions of the Management Committee in **Schedule 1, Appendix 6** to this Agreement sets out the requirements for information to be included in the Assets Register.
- 1.5 **Best Value** - As described in Section 3 of the Local Government Act 1999 namely arrangements to secure the continuous improvement in the way in which functions are exercised having regard to a combination of economy, efficiency and effectiveness.
- 1.6 **Chief Officers' Group ('COG')** - The group comprising of a chief officer of each Member Authority so designated by that Member Authority the membership and terms of reference for which are set out in **Schedule 1, Appendix 2** to this Agreement.
- 1.7 **Commencement Date** - The date of this Agreement.
- 1.8 **Confidential Information** - Any information which has been designated as confidential by any Member Authority in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any Member Authority, trade secrets, Intellectual Property rights and know-how of any Member Authority and all personal data and sensitive personal data within the meaning of the Data Protection Act 1998. Confidential Information shall not include information which:

- i. was public knowledge at the time of disclosure (otherwise than by breach of clause 19 of this Agreement);
- ii. was in the possession of the receiving Member Authority, without restriction as to its disclosure, before receiving it from the disclosing Member Authority;
- iii. is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or
- iv. is independently developed without access to the Confidential Information.

- 1.9 **Constitution** - The document in **Schedule 1** to this Agreement which sets out the governance structure, scheme of delegation, Financial Regulations and Instructions, procedural standing orders and contract procedure rules of the Management Committee.
- 1.10 **Customer** - A public body (or school or Academy) receiving goods and/or services from ESPO.
- 1.11 **Director of ESPO** – The individual approved by the Management Committee to act as Director of ESPO.
- 1.12 **ESPO** - The Eastern Shires Purchasing Organisation being the trading name of the consortium of Member Authorities the functions of which are set out in clause 4 of this Agreement. For the avoidance of doubt the term “ESPO” is used in this Agreement to describe the functions, purposes and objectives of the consortium of the Member Authorities.
- 1.13 **ESPO Services** - The services that are to be provided through ESPO to Member Authorities (and Customers where applicable) based on their requirements comprising of (1) ‘**Existing ESPO Core Services**’ that from the date of this Agreement are *guaranteed* to be provided to Member Authorities (and Customers through subscription); (2) ‘**Additional ESPO Services**’ that from the date of this Agreement *may be* provided through ESPO to a Member Authority (or Authorities) (or Customers); and (3) ‘**Developing ESPO Services**’ that are not currently available to Member Authorities (or Customers) but are recognised as being desirable to be provided through ESPO to them at a later date (subject to agreement on funding and delivery timescales). The ESPO Services are detailed in **Schedule 2** to this Agreement.
- 1.14 **Financial Year** - A period of 12 months from 1 April in one year to 31 March in the next.
- 1.15 **Financial Regulations and Financial Instructions** – Those Financial Regulations and Instructions of the Management Committee which appear at **Appendix 6** of the Constitution.
- 1.16 **Implementation Plan** – A plan and timetable for addressing the consequences of the Member Authorities unanimously agreeing to discontinue the Management

Committee and operation of ESPO pursuant to clause 12.1 of this Agreement, or for addressing the consequences of any Member Authority (or group of Member Authorities) terminating its membership of the Management Committee pursuant to clause 15.1 of this Agreement.

- 1.17 **Intellectual Property**– All patents, inventions, trademarks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off.
- 1.18 **Management Committee** - The joint committee already established by the Member Authorities pursuant to Sections 101(5) and 102 of the Local Government Act 1972 Section 9EB of the Local Government Act 2000 and Section 1 of the Local Authorities (Goods and Services) Act 1970 to act as a central purchasing body for the purposes of the Public Contracts Regulations 2006 and continuing under this Agreement and bearing the trading name “ESPO”. For the avoidance of doubt all references to the Management Committee in this Agreement shall (unless the context otherwise indicates) refer to the joint committee bearing that name.
- 1.19 **Member Authorities** - The parties to this Agreement being Cambridgeshire County Council, Leicester City Council, Leicestershire County Council, Lincolnshire County Council, Norfolk County Council, Peterborough City Council and Warwickshire County Council each known for the purposes of this Agreement as a ‘Member Authority’ and collectively as ‘Member Authorities’.
- 1.20 **Parties** – The Member Authorities.
- 1.21 **Previous Agreements** – All previous written agreements relating to ESPO entered into by some or all of the Member Authorities including those agreements dated 25/2/1988, 16/12/1991, 17/3/1998, 1/4/1998, 21/4/1999 and 27/4/2005.
- 1.22 **Prohibited Acts** – As defined in clause 23.1 of this Agreement.
- 1.23 **Request for Information** - A request for information or data under the Freedom of Information Act 2000, the Environmental Information Regulations 2004 or the Data Protection Act 1998.
- 1.24 **Senior Officers’ Group (‘SOG’)** – The group comprising senior officers of each Member Authority.
- 1.25 **Servicing Authority** - The Member Authority appointed by the Management Committee from time to time to fulfil the role of Servicing Authority in accordance with clause 11 of this Agreement and to undertake the functions set out in **Schedule 3** to this Agreement.

- 1.26 **Term** – The term of this Agreement commencing on the Commencement Date and continuing until such time as the Member Authorities agree to terminate this Agreement.
- 1.27 **Working Day** - Any days on which the banks are normally open for business (excluding Saturdays, Sundays and Bank Holidays).

2. INTERPRETATION

In this Agreement unless where otherwise specified:

- 2.1 Reference to the singular shall include the plural and vice versa and reference to one gender includes references to all genders.
- 2.2 References to a clause, sub-clause, paragraph, schedule or appendix are to a clause, sub-clause, paragraph, schedule or appendix within this Agreement unless otherwise stated.
- 2.3 The headings are for convenience only and shall not affect its interpretation.
- 2.4 The schedules and appendices to this Agreement form part of this Agreement and shall have effect as if set out in the body of this Agreement and any reference to this Agreement includes the schedules and appendices.
- 2.5 Any phrase introduced by the term “including”, “include”, “in particular” or any similar expression shall be construed as illustrative and the words following any of those terms shall not limit the sense of the words preceding those terms.
- 2.6 The words “in writing” and “written” mean “in documented form” whether electronic or hard copy unless otherwise stated.
- 2.7 Any reference to a person shall be to a legal person of whatever kind whether incorporated or unincorporated and to its successors, admitted assigns and transferees.
- 2.8 Words shall not be given any restrictive interpretation by reason only of their being preceded or followed by words indicating a particular class of acts matters or things.

- 2.9 Any reference to a decision, notice, consent, approval, agreement and/or permission being required under this Agreement shall unless expressed to the contrary in this Agreement be given in writing.
- 2.10 Any reference to a statute shall include references to such statute as it may have been, or may from time to time be amended, consolidated or re-enacted and to any regulation or subordinate legislation made under it (or under such an amendment, consolidation or re-enactment).
- 2.11 In the event of any ambiguities or discrepancies in this Agreement then the documents that make up this Agreement are deemed to be mutually explanatory and except as otherwise expressly provided are to be read as a whole.
- 2.12 Any item in this Agreement requiring the majority or unanimous decision of all Member Authorities shall not be put on any Management Committee agenda otherwise than with the full notice to each Member Authority provided for under the Access to Information provisions in the Local Government Act 1972.

3. PURPOSE OF AGREEMENT

- 3.1 By this AGREEMENT the Member Authorities agree to continue to constitute the joint committee (known as the 'Management Committee') having previously been constituted under Previous Agreements (which this Agreement now supersedes) in accordance with Sections 101(5) and 102 of the Local Government Act 1972, Section 9EB of the Local Government Act 2000 and Section 1 of the Local Authorities (Goods and Services) Act 1970 to act as a central purchasing body for the purposes of the Public Contracts Regulations 2006 with effect from the Commencement Date for the Term on all the terms and conditions set out in this Agreement.

4. FUNCTIONS OF ESPO

- 4.1 The Member Authorities agree to continue to operate ESPO on the terms and conditions set out in this Agreement and shall undertake the following functions on the terms set out in this Agreement:
- 4.1.1 to provide a comprehensive cost effective professional purchasing service to the Member Authorities (and available to Customers on a subscription basis);

4.1.2 to maintain effective efficient and economical arrangements for the supply of goods and/or services by:

4.1.2.1 negotiating terms for the supply of goods and/or services;

4.1.2.2 purchasing, storing and distributing items in common use where it is practical and economical to do so;

4.1.2.3 advising on standards and specifications;

4.1.2.4 providing professional and technical expertise;

4.1.2.5 providing specialist goods and/or services, and

4.1.2.6 investigating areas of joint purchasing;

based on the overall requirements of the Member Authorities (and Customers where applicable);

4.1.3 to achieve overall cost savings and efficiencies for the Member Authorities by providing them with a simple effective system for the supply of goods and/or services;

4.1.4 to provide timely and relevant information to the Member Authorities based on their requirements; and

4.1.5 to provide the ESPO Services to the Member Authorities (and Customers where applicable) based on their requirements.

4.2 The Management Committee shall ensure that the ESPO Services are delivered to the Member Authorities (and Customers where applicable) through ESPO.

5. MEMBERSHIP OF THE ESPO MANAGEMENT COMMITTEE

5.1 From the Commencement Date each Member Authority shall continue to be a member of the Management Committee.

6. CONSTITUTION

6.1 The Constitution of the Management Committee is set out in **Schedule 1** to this Agreement. Each Member Authority (including, for the avoidance of doubt, the Servicing Authority acting in that capacity) agrees to be bound by the decision making structures, scheme of delegation, standing orders, Financial Regulations and Instructions, procedural standing orders and contract procedure rules of the Management Committee.

6.2 In accordance with the Procedural Standing Orders attached at **Schedule 2, Appendix 5** to this Agreement, all decisions of the Management Committee shall be decided by majority of the Members unless where this Agreement specifies otherwise.

7. STATUS OF AGREEMENT

7.1 Each Member Authority agrees that this Agreement shall be fully legally binding between the Parties.

7.2 This Agreement sets out the entire agreement between the Member Authorities and supersedes all Previous Agreements PROVIDED THAT all rights, obligations and liabilities of the Member Authorities under the Previous Agreements shall remain in full force and effect to the extent necessary to enforce those rights and obligations and discharge liabilities under the Previous Agreements.

8. MEMBER AUTHORITY OBLIGATIONS

8.1 Each Member Authority shall regularly review its purchasing policies and practices to ensure that the ESPO Services are effectively utilised on an appropriate basis by that Member Authority.

8.2 Notwithstanding clause 8.1, the Management Committee shall ensure that the Director of ESPO produce an Annual Report in relation to ESPO for the preceding Financial Year no later than at the end of the second financial quarter in each Financial Year which is presented to the Management Committee for its approval. Member Authorities shall have the power to request (in writing) that the Director of ESPO add further relevant information to the Annual Report prior to its presentation to the Management Committee.

8.3 Each Member Authority (including for the avoidance of doubt that Member Authority acting as the Servicing Authority at any time) shall be responsible for ensuring that the relevant provisions and obligations of this Agreement are properly drawn to the attention of their members, officers and personnel.

8.4 The Management Committee shall require that the Director of ESPO shall be responsible for ensuring that the relevant provisions and obligations of this Agreement are properly drawn to the attention of members of personnel under their direction and control.

9. ASSETS

9.1 All Assets required for delivering the functions of the Management Committee in relation to ESPO (including, for the avoidance of doubt, the ESPO HQ building at Grove Park Commercial Centre, Leicester) shall be held by the Servicing Authority on trust for the Member Authorities in equal shares.

9.2 The Servicing Authority shall compile maintain and make available to the Management Committee on an annual basis (or at any other time as directed by the Management Committee providing reasonable notice to the Servicing Authority) a comprehensive and up to date list of all Assets (which shall include their latest audited value) held by the Servicing Authority on trust for the Member Authorities in the form of an Assets Register.

9.3 The Servicing Authority shall make available an up to date version of the Assets Register to any Member Authority upon the provision of reasonable notice.

9.4 In the event of a change in the Servicing Authority and, in any event, on every fifth (5th) anniversary of the Commencement Date (or any other time as directed by the Management Committee) an independent valuation of the Assets shall take place. This valuation shall be carried out as directed by the Management Committee and the costs of it shall be borne by ESPO.

9.5 The Member Authorities agree that subject to the terms of this Agreement any liabilities, claims and costs incurred by the Management Committee shall be repaid in the first instance (and where applicable) from the application of any insurance compensation received by the Servicing Authority on behalf of the Member

Authorities, and only then from the Assets held by the Servicing Authority on trust for the Member Authorities.

10. FINANCIAL ARRANGEMENTS

- 10.1 The current Financial Regulations and Financial Instructions of the Management Committee are set out in Schedule 1, Appendix 6 of this Agreement.
- 10.2 The Member Authorities agree that ESPO shall be self-financing and that save as provided for in this Agreement no capital contribution shall be demanded from the Member Authorities.
- 10.3 At the end of each Financial Year the Management Committee shall both determine and approve a distributable trading surplus (after meeting approved operational costs and deficits from previous Financial Years) which shall be distributed between the Member Authorities in proportion to their level of purchasing through ESPO in that Financial Year.

11. APPOINTMENT AND RESIGNATION OF SERVICING AUTHORITY

- 11.1 From the Commencement Date Leicestershire County Council shall continue to be appointed and to act as the Servicing Authority to ESPO on behalf of the Member Authorities and shall perform the functions set out in Schedule 3 of this Agreement.
- 11.2 The Management Committee may at any time unanimously agree to appoint another Member Authority to act as Servicing Authority giving such notice to that Member Authority currently performing the role as may be agreed by the Management Committee. That Member Authority must resign if given notice to do so by the Management Committee and in the manner reasonably required by the Management Committee.
- 11.3 The Member Authorities through the Management Committee may at any time require that the Member Authority currently acting as Servicing Authority resign from that role where the Management Committee has clear evidence that there has been negligence, misconduct or a persistent breach of the law on the part of that Member Authority in the performance of its Servicing Authority functions set out in Schedule 3 of this Agreement giving such notice to that Member Authority currently performing the role as may be agreed by the Management Committee. That Member Authority

must resign as Servicing Authority if given notice to do so by the Management Committee and in a manner reasonably required by the Management Committee.

- 11.4 The Member Authority acting as Servicing Authority at any time may resign from the role by giving at least 12 months' notice (or other period as may be agreed by majority of the Management Committee) to the Management Committee (c/o the Director of ESPO) expiring at the end of any Financial Year (or other period as may be agreed by majority of the Member Authorities).
- 11.5 Where a Member Authority resigns as the Servicing Authority pursuant to this clause 11 an extraordinary meeting of the Management Committee shall be convened and the Member Authorities (including, for the avoidance of doubt, the outgoing Servicing Authority) shall by majority agreement to appoint another Member Authority to act as Servicing Authority provided that no Member Authority shall be required to act as Servicing Authority without first giving its consent so to act.
- 11.6 In circumstances whereby the Member Authorities cannot appoint a replacement for the Servicing Authority from its membership, then at that extraordinary meeting (or a subsequent meeting of the Management Committee (either ordinary or extraordinary)) the Management Committee shall agree an appropriate strategy forward.
- 11.7 Up to the expiry of the agreed notice period under this clause 11, the outgoing Servicing Authority shall:
- 11.7.1 discharge its functions as set out in Schedule 3 of this Agreement; and
 - 11.7.2 co-operate fully with the Member Authority assuming the role of Servicing Authority (or any other individual or organisation appointed by the Management Committee under any new arrangement intended to replace the Servicing Authority as the case may be) to develop a handover strategy which will include (but shall not be limited to) transferring:
 - 11.7.2.1 all Assets, contractual rights, obligations, leases, licences, liabilities, claims, costs, relevant records and documents held by the outgoing Servicing Authority in relation to ESPO; and
 - 11.7.2.2 all staff employed by the Servicing Authority in relation to ESPO including their employment rights, pensions and employment

information subject to the provisions of the Transfer of Undertaking (Protection of Employment) Regulations (2006) or other relevant personnel engaged in relation to ESPO including pension strain.

The Management Committee shall require the prior consideration and approval of any handover strategy.

11.8 The cost consequences of the Servicing Authority resigning shall be as follows:

11.8.1 where the Servicing Authority resigns pursuant to clause 11.2 or 11.4 of this Agreement the costs directly attributable to the Servicing Authority resigning but remaining a Member Authority shall be borne by the Member Authorities in equal shares; and

11.8.2 where the Servicing Authority resigns pursuant to clause 11.3 of this Agreement, the costs directly attributable to the Servicing Authority resigning but remaining a Member Authority shall be borne solely by the Servicing Authority. The Management Committee shall agree by majority the manner in which these costs calculated and are repaid by the Servicing Authority.

12. DISSOLUTION OF ESPO

12.1 The Member Authorities may agree at any time by unanimous agreement to discontinue the operation of ESPO. In such circumstances the Management Committee shall draw up an Implementation Plan for dissolution.

12.2 Upon dissolution of ESPO the Assets held by the Servicing Authority on trust for the Member Authorities shall be used firstly to defray all liabilities claims costs and expenses properly incurred on behalf of the Member Authorities outstanding at the date of dissolution (insofar as any liability claim cost and/or expenditure cannot be first met through the application of any insurance compensation). This shall be the subject of prior agreement of the Management Committee within the Implementation Plan. The Management Committee shall then agree (with the assistance of the Servicing Authority, the ESPO Consortium Treasurer, the Director of ESPO and any other party as the Management Committee may direct) a final reconciliation account up to the date of dissolution (including payment (if any) of the Servicing Authority's costs in carrying out its functions under Schedule 3 to this Agreement).

12.3 Any Assets on the dissolution of ESPO (after the discharge of all liabilities, claims and costs properly authorised by the Management Committee (where these are not met in the first instance from the application of any insurance compensation where applicable) shall be distributed between the Member Authorities in equal shares (or such other apportionment as the Management Committee may resolve in writing by unanimous agreement). Any deficit at the date of dissolution of ESPO shall also be borne by the Member Authorities in equal shares (or, again, in such other apportionment as the Management Committee may resolve in writing by unanimous agreement).

13. CONTRIBUTION TO LOANS AND COSTS ASSOCIATED WITH ASSETS

13.1 Each Member Authority shall (insofar as these are not first met through the application of any insurance compensation, secondly by any Assets held by the Servicing Authority on trust of the Member Authorities, or thirdly have not been reimbursed from income generated through the activities of ESPO) be liable for and when so required pay an equal share (or such other apportionment as the Management Committee may resolve by unanimous agreement) of any loan, cost or expense incurred by the Servicing Authority (even if such loan, cost or expense was incurred or taken out prior to the date of this Agreement and which shall include, for the avoidance of doubt, the loan from the Public Works Loan Board for the purchase of the freehold land at Grove Park Commercial Centre, Leicester and construction of the ESPO HQ building subject to the restriction set out in clause 14.1.1) provided that such loan, cost or expense falls within the remit of this Agreement and has been properly authorised by the Management Committee either before or subsequent to the date of this Agreement.

13.2 The Member Authority acting as Servicing Authority alone shall be solely liable under clause 13.1 if any claim or demand arising or loan cost or expense incurred was by reason of or in consequence of any of the following on the part of the Member Authority acting as Servicing Authority at the relevant time - negligence, gross misconduct, persistent breach of law or duty (this is to say persisted after having been brought to the attention of the Servicing Authority which shall have (where reasonably practicable) sufficient time to remedy any such breach) or any act or omission known or reasonably ought to have been known to the Servicing Authority to be contrary to any authorisation given by the Management Committee or proper local government practice or local government law. In such circumstances the Servicing Authority hereby indemnifies the remaining Member Authorities against any claims demand costs or expenses.

14. LIABILITIES, INDEMNITIES, CLAIMS AND PROCEEDINGS

Liabilities and Indemnities

14.1 Each Member Authority (including for the avoidance of doubt that Member Authority acting as Servicing Authority at any time) hereby indemnifies the Servicing Authority and in doing so shall pay an equal share (or such apportionment as the Management Committee may resolve by unanimous agreement) of all or any liabilities claims costs and/or expenses of or incurred by the Servicing Authority in carrying out its functions as Servicing Authority under Schedule 3 of this Agreement (insofar as any liability claim cost and/or expenditure cannot be first met through the application of any insurance compensation and thereafter from any property or other Assets held on trust for the Member Authorities to defray such expenditure) provided that such liability claim cost and/or expenditure has arisen as a result of the Servicing Authority exercising due skill and care and properly performing or discharging its functions under Schedule 3 of this Agreement PROVIDED ALWAYS that such indemnity shall:

14.1.1 in the case of the loan from the Public Works Loan Board for the purchase of the freehold of land at Grove Park Commercial Centre, Leicester and construction of the ESPO HQ building be limited to a total liability not exceeding £12,620,000 (Twelve Million Six Hundred and Twenty Thousand Pounds); and

14.1.2 not extend to any liability claim cost and/or expenditure incurred by reason or in consequence of any of the following on the part of the Servicing Authority - negligence, gross misconduct, persistent breach of law or duty (this is to say persisted in after the same shall have been brought to the attention of the Servicing Authority who shall have been given (where possible and reasonably practicable) sufficient time to remedy any such breach) or any act or omission known or which reasonably ought to have been known to the Servicing Authority to be contrary to any direction or authorisation given by the Management Committee or proper local government practice or local government law and in such circumstances such liability claim cost and/or expense shall be borne by the Servicing Authority alone who shall indemnify the remaining Member Authorities against any liability, claim, cost or expense.

- 14.2 Where any claim or demand is issued by a third party on any Member Authority (or group of Member Authorities) which should have been correctly directed to the Servicing Authority to deal with on behalf of the Management Committee collectively (in accordance with clause 14.6.3 of this Agreement) as it relates to ESPO each Member Authority hereby indemnifies that Member Authority (or group of Member Authorities) and in doing so shall pay an equal share (or such apportionment as the Management Committee may resolve by unanimous agreement) of all or any costs and/or expenses of or incurred by that Member Authority (or group of Member Authorities) which relate to or arise in connection with the misdirection of that claim or demand (insofar as any liability claim cost and/or expenditure cannot be first met through the application of any insurance compensation and thereafter from any property or Assets held on trust for the Member Authorities to defray such expenditure).
- 14.3 In circumstances where a Member Authority (or group of Member Authorities) reasonably considers that it has suffered loss and/or damage as a direct consequence of any act or omission on the part of ESPO (which has acted otherwise than in accordance with the Member Authority's instructions) it shall refer the matter for resolution under clause 18 of this Agreement (Dispute Resolution).
- 14.4 The Servicing Authority may only use Assets that it holds on behalf of the Member Authorities to meet any liabilities claims costs and expenditure pursuant to this clause 14 where this use shall not materially prejudice the activities of ESPO. Where the activities of ESPO were to be materially prejudiced, the Servicing Authority shall first obtain the majority agreement of the Management Committee to decide how such expenditure is met.
- 14.5 In respect of the indemnities given under this Agreement, any indemnified Member Authority (or group of Member Authorities) shall:
- 14.5.1 be under a duty to mitigate any costs and expenses so far as is practical:
 - 14.5.2 give written notice to the remaining Member Authorities as soon as is practical of the details of any claim or proceedings brought or threatened against it by a third party in respect of which a claim will or may be made under the relevant indemnity; and
 - 14.5.3 provide all reasonable assistance and documentation to the Servicing Authority and as may be required by the Member Authorities in connection with the claim or proceedings.

Claims and Proceedings

14.6 The Servicing Authority shall be responsible for the following:

- 14.6.1 responding to claims or demands served by a third party on the Servicing Authority in respect of its functions exercised and/or activities undertaken under Schedule 3 to this Agreement;
- 14.6.2 responding to claims or demands served by a third party in the name of 'ESPO';
- 14.6.3 responding to claims or demands incorrectly issued by a third party on any individual Member Authority (or group of Member Authorities) which should have been correctly directed to the Servicing Authority to deal with on behalf of the Management Committee as it relates to ESPO (and for the avoidance of doubt in such circumstances that Member Authority (or Member Authorities) originally incorrectly receiving the claim or demand shall be fully indemnified by the Member Authorities in the proportion set out at clause 14.2);
- 14.6.4 where notified by a Member Authority (or group of Member Authorities) that it has been issued with a claim or demand by a third party which should have been correctly directed to the Servicing Authority to deal with on behalf of ESPO, the Servicing Authority shall notify that third party that it is the proper entity against which the claim ought to be made and shall (if the claim is one which has been issued in court) apply to the court to be substituted as a party in place of that Member Authority (or group of Member Authorities) and in either case shall take over the conduct of the claim. Where the court does not accept the substitution of the Servicing Authority then for the avoidance of doubt the Member Authority (or group of Member Authorities) shall continue with the conduct of the claim without prejudice to clause 14.2.
- 14.6.5 handling any claim that the Management Committee may resolve to bring against third parties;

unless where otherwise instructed by the Management Committee or save where in the reasonable opinion of the Servicing Authority (or the Management Committee) it has a conflict of interest, in which case the Management Committee shall appoint another Member Authority or other party who shall act as if it were the Servicing Authority for the purposes of bringing a claim to its conclusion.

- 14.7 Where the Servicing Authority provides written notice to the Management Committee that it needs to incur expenditure to handle or respond to a claim pursuant to this clause 14 (which cannot be met through the application of any insurance compensation and then from any property or other Assets held on behalf of the Member Authorities to defray such expenditure) then the Member Authorities (including for the avoidance of doubt the Servicing Authority itself) shall reimburse as soon as is reasonably practical the Servicing Authority for such expenditure in equal shares (or such other apportionment as the Management Committee may resolve by unanimous agreement).
- 14.8 Where the Servicing Authority succeeds in pursuing or resisting any claim pursuant to this clause 14 resulting in the recovery of damages and/or costs then as soon as is reasonably practical it shall first repay to the Member Authorities in full any contributions made by them under clause 14.7 and thereafter (assuming that there are remaining funds) reimburse the accounts of ESPO.

15. TERMINATION OF MEMBERSHIP

- 15.1 Any Member Authority may terminate its membership of the Management Committee by giving at least 12 months' prior written notice to the Chief Executive of the Servicing Authority expiring at the end of a Financial Year (or other such period as the Management Committee may resolve by majority agreement). Notice should be given in accordance with the notice provisions set out in clause 21 of this Agreement.
- 15.2 Upon service of notice given pursuant to clause 15.1, Clause 16 of this Agreement shall have effect.

16. EFFECTS OF TERMINATION

- 16.1 Where any one or more Member Authority serves notice to terminate this Agreement in accordance with clause 15 of this Agreement then the procedure shall be as follows:
- 16.1.1 The Management Committee shall call an extraordinary meeting within one (1) month of the service of the notice by a Member Authority (or Member Authorities) for the purpose of preparing the Implementation Plan for dealing with the consequences of such notice which may include the dissolution of the Management Committee PROVIDED ALWAYS THAT the Management

Committee shall continue where there are a minimum of two Member Authorities who wish to continue with the operation of the Management Committee.

16.1.2 Each Member Authority shall act reasonably and in good faith in co-operating with each other to facilitate the preparation and carrying forward of the Implementation Plan and in such a manner (including entering into any transitional arrangements as may be required) as to (but not limited to):

- 16.1.2.1 cause the least disruption to the Member Authorities (and Customers where applicable) and to maintain normal levels of service in relation to ESPO insofar as possible;
- 16.1.2.2 agree arrangements for the transfer of staff under the Transfer of Undertakings (Protection of Employment) Regulations 2006 and avoid redundancies wherever possible;
- 16.1.2.3 facilitate the transfer of data and records; and
- 16.1.2.4 cover any other matters needing to be determined in relation to the Member Authority (or group of Member Authorities) serving notice.

16.1.3 In the event that the Implementation Plan involves the dissolution of the Management Committee the Implementation Plan shall (subject to clause 16.4 below) cover (but not be limited to):

- 16.1.3.1 the allocation or realisation of Assets;
- 16.1.3.2 the redundancy of employees or redeployment of employees and/or staff engaged on ESPO and pension issues;
- 16.1.3.3 the assignment or extinguishment of contractual rights and liabilities, claims or costs; and
- 16.1.3.4 the division of surpluses on dissolution; and
- 16.1.3.5 any other matters needing to be determined in order to achieve a fair and efficient winding up of the affairs of the Management Committee and ESPO.

16.2 Save as specifically mentioned in this Agreement, the Member Authority giving notice of termination (or if there is more than one such Member Authority then each of them in equal shares or such other apportionment as the Management Committee may decide by unanimous agreement) shall be liable to the other Member Authorities for all directly attributable costs arising during their membership of the Management

Committee and out of or in connection with their termination and shall indemnify the remaining Member Authorities in equal shares against all such costs incurred or to be incurred which may include (but not limited to) the costs of:

- 16.2.1 redundancy or re-deployment of any staff engaged on ESPO;
- 16.2.2 termination of any lease or licence for the occupation of any premises or use of any equipment including ICT hardware or software agreements;
- 16.2.3 procurement of any alternative accommodation or relocation of any services or staff;
- 16.2.4 procurement implementation or reconfiguration of any equipment, ICT hardware or software reasonably required for the provision of the on-going ESPO Services to those Member Authorities other than those that have given notice to terminate;
- 16.2.5 preparation, disaggregation and transfer of any data and records; and
- 16.2.6 staff and administrative overheads including pension strain in connection with any of the above; and
- 16.2.7 claims, costs, expenses and charges correctly incurred by the Management Committee whilst that Member Authority was part of the Management Committee.

Any increased costs in relation to ESPO to the remaining Member Authorities after the expiry of the notice of termination of one or more Member Authorities due to diseconomies of scale shall not be borne by the Member Authority (or Authorities) which has (have) left ESPO.

- 16.3 The Member Authorities shall act in good faith and in a reasonable manner to mitigate any costs arising out of or in connection with termination under clause 16.1 and 16.2 so far as is practical.
- 16.4 A schedule of the costs arising out of or in connection with termination under clause 16.1 and 16.2 shall be prepared as part of the Implementation Plan and agreed by majority of the Management Committee. Under clause 16.2 the costs shall be paid by the Member Authority giving notice to terminate (or if there is more than one, shall be paid in equal shares by each terminating Member Authority or other such apportionment as agreed unanimously by the Management Committee) upon invoice to the ESPO Consortium Treasurer within three (3) months of the issue of the schedule (or any other such period as the Management Committee may so determine).

16.5 In circumstances where:

16.5.1 all Member Authorities agree to discontinue the operation of the Management Committee; and

16.5.2 notice of termination has been given in accordance with clause 15 of this Agreement and where there are not (at least) two Member Authorities who want to continue with the operation of the Management Committee,

then all costs as mentioned in clause 16.2 above shall be deemed to be costs of the Management Committee and apportioned between all the Member Authorities in accordance with clause 12.2 and 12.3 of this Agreement.

16.6 For the avoidance of doubt, reference to Member Authorities in this clause 16 shall include that Member Authority (or if more than one, Member Authorities) who has given notice to terminate its membership of the Management Committee PROVIDED THAT any Member Authority which has previously given notice to terminate its membership of the Management Committee shall in respect of any resolution as to whether the Management Committee should be discontinued shall be deemed to have voted in favour of dissolution.

16.7 Subject to the provisions in this clause 16 where a Member Authority (or if more than one, Member Authorities) has given notice to terminate its membership of the Management Committee and that notice has expired, then that Member Authority will no longer have any rights or obligations under this Agreement.

17. NO AGENCY OR PARTNERSHIP

17.1 Each Member Authority is an independent body and nothing contained in this Agreement shall be construed as creating an agency or legal partnership (within the meaning of the Partnership Act 1890 or any other legislation concerning partnerships or limited liability partnerships) or relationship of contractor or employer/employee between the Member Authorities.

17.2 Save as where expressly provided for in this Agreement no Member Authority shall:

17.2.1 make any representations or give any warranties to third parties on behalf of or in respect of the other Member Authorities; nor

17.2.2 bind or hold itself out as having the power to bind the other Member Authorities.

18. DISPUTE RESOLUTION

18.1 The Member Authorities must attempt to resolve any dispute or disagreement arising out of or relating to this Agreement promptly and in good faith through negotiations between their respective officers who have the requisite authority to settle the same.

18.2 If the dispute or disagreement is not resolved successfully by the means referred to in clause 18.1 it shall be referred by the Member Authorities to the Director of ESPO who shall attempt in good faith to resolve the dispute or disagreement by obtaining, from each party to the dispute, a statement of their position within seven (7) Working Days of this request being made. The Director of ESPO shall decide whether to refer the dispute or disagreement to the SOG (if the dispute or disagreement is of a technical or procurement nature) or to the COG (if the dispute or disagreement is of a governance or legal nature) for advice on a way forward. The Director of ESPO will then meet with the relevant parties to discuss with them the advice in an attempt to resolve the dispute or disagreement.

18.3 If the dispute or disagreement cannot then be resolved under clauses 18.1 or 18.2 within a 28 day period from receipt of the COG/SOG advice then a report shall be prepared by the Director of ESPO to the Management Committee which will include the COG/SOG advice provided pursuant to clause 18.2 and the views of the Director of ESPO and the Management Committee shall meet to make a decision as to how the dispute or disagreement shall be resolved.

18.4 If the meeting(s) referred to in Clause 18.2 and 18.3 do(es) not resolve the dispute or disagreement the parties will attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution ('CEDR') Model Mediation Procedure ('the Procedure') or any other model mediation procedure as agreed by the Member Authorities. To initiate mediation, any Member Authority or the Director of ESPO may give notice in writing (a 'Mediation Notice') to all Member Authorities requesting mediation of the dispute or disagreement and shall send a copy thereof to CEDR (or an equivalent mediation organisation as agreed by the Management Committee)

asking them to nominate a mediator. The mediation shall commence within twenty eight (28) Working Days of the Mediation Notice being served. The termination procedures contained in this Agreement cannot be operated once mediation has commenced and until each party has made its opening presentation and the mediator has met each party separately for at least one hour. Thereafter paragraph 14 of the Procedure will apply (or the equivalent paragraph of any other model mediation procedure agreed by the Member Authorities). No party to the mediation will commence legal proceedings against the other until thirty (30) Working Days after such mediation of the dispute in question has failed to resolve the dispute. The Member Authorities will co-operate with any person appointed as mediator providing him or her with such information and other assistance as the mediator shall require and any Member Authority (or Member Authorities) agree to pay any costs as the mediator shall determine. Any agreement in principle reached at the conclusion of the mediation process must be recorded in writing at such conclusion and shall thereafter be referred to the Director of ESPO for presentation to the Management Committee for its approval.

- 18.5 Only in circumstances where the dispute or disagreement cannot be first resolved through the procedures outlined in clauses 18.1 to 18.4 of this Agreement shall the dispute or disagreement proceed to litigation through the court system.

19. CONFIDENTIALITY AND INFORMATION MANAGEMENT

- 19.1 Subject to the remaining provisions of this clause 19, each Member Authority shall not disclose Confidential Information and shall procure that its members, officers, personnel, agents and contractors will not disclose any Confidential Information obtained by them by reason of this Agreement.
- 19.2 In the event of a Member Authority (or Member Authorities) needing to make disclosures of Confidential Information each shall liaise with the other as to the extent and timing of the disclosure, prior to any disclosure, provided always that such obligation to liaise shall not breach any legal or regulatory requirement.
- 19.3 Notwithstanding the above, any Member Authority may disclose Confidential Information of another Member Authority to its insurers and legal advisers.
- 19.4 Clause 19.1 shall not apply where a Member Authority has obtained the written consent of the other Member Authorities (such consent not to be unreasonably withheld) to divulge or use any Confidential Information or where Confidential

Information is required to be disclosed by any law or statutory or regulatory obligation including (without limitation) the Freedom of Information Act 2000 ('FOIA'), the Environmental Information Regulations 2004 ('EIR') or the Data Protection Act 1998 ('DPA') (but only to the extent of such law or statutory or regulatory obligation).

- 19.5 Each Member Authority acknowledges that it and the other Member Authorities are subject to the requirements of the FOIA, the EIR and the DPA and each Member Authority shall assist and cooperate with the others (at their own expense) to enable the other Member Authorities to comply with these requirements.
- 19.6 Where a Member Authority receives a Request for Information relating to Confidential Information which it is holding on behalf of another Member Authority it shall -
- 19.6.1 transfer the Request for Information to the other Member Authority as soon as practicable after receipt and in any event within five (5) Working Days of receiving a Request for Information;
 - 19.6.2 provide the other Member Authority with a copy of all Confidential Information in its possession or power in the form that the other Member Authority requires within (5) five Working Days (or such other period as the other Member Authority may specify) of a request from the other Member Authority; and
 - 19.6.3 provide all necessary assistance as reasonably requested by the other Member Authority to enable that Member Authority to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the EIR.
- 19.7 Where a Member Authority receives a Request for Information which relates to Confidential Information, it shall inform the other Member Authorities of the Request for Information as soon as practicable after receipt and in any event within five (5) Working Days of receiving a Request for Information.
- 19.8 If a Member Authority determines that Information (as defined under Section 84 of the FOIA including Confidential Information) must be disclosed under the FOIA, it shall notify the other Member Authorities of that decision at least two (2) Working Days before disclosure.
- 19.9 Each Member Authority shall be responsible for determining at its absolute discretion whether the Confidential Information and/or any other information:

19.9.1 is exempt from disclosure under the FOIA, the EIR or the DPA, and

19.9.2 is to be disclosed in response to a Request for Information.

19.10 Each Member Authority acknowledges that any other Member Authority may, acting in accordance with the Department for Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under Part I of the Freedom of Information Act 2000, be obliged under the FOIA, the EIR or the DPA to disclose information:

19.10.1 without consulting with the other Member Authorities, or

19.10.2 following consultation with the other Member Authorities and having taken their views into account.

20. PUBLICITY

20.1 Any publicity in relation to ESPO in the form of leaflets, press releases, public statements and any other forms of information may be produced by each Member Authority subject to such publicity material carrying the branding of ESPO in a form agreed by the Management Committee.

20.2 In the event that a Member Authority wishes to issue a press release or make a public statement in connection with or arising from the activities of ESPO or this Agreement, that Member Authority shall obtain the prior approval of the Management Committee (or such individual or group as the Management Committee may delegate this function to) as to its contents, manner and timing of its presentation and publication.

20.3 A marketing strategy shall be produced by the Director of ESPO and reviewed each Financial Year by the Management Committee which shall address all media issues including the ESPO website.

21. NOTICES

21.1 All notices served under this Agreement must be in writing.

21.2 Except where this Agreement specifies otherwise any notice must be served by leaving it with or sending it by pre-paid first class post addressed to the Chief

Executive (or in the absence of a Chief Executive, then the chief legal officer) of the Member Authority at their address set out in this Agreement (or to such addresses as shall have been duly notified in accordance with this clause) and copied to the other Member Authorities.

- 21.3 Notices delivered by hand shall be deemed to have been delivered when handed over provided the date of delivery is a Working Day and if it is not a Working Day it will be deemed to be delivered the next Working Day. Notices sent by post shall be deemed to have been delivered on the second Working Day after posting.

22. WAIVER

- 22.1 Where a Member Authority fails to enforce or delays in enforcing any obligation of any other Member Authority or fails to exercise or delays in exercising a right under this Agreement, such failure or delay will not affect its right to enforce that obligation or constitute a waiver of that right. Any waiver by a Member Authority of any provision of this Agreement will not, unless expressly stated to the contrary, constitute a waiver of that provision on future occasion.

23. PREVENTION OF CORRUPTION AND BRIBERY

- 23.1 The Member Authorities agree that they will not commit, any of the following acts (hereinafter referred to as 'Prohibited Acts'):

23.1.1 offer, give or agree to give to another Member Authority, or any related party or any other person any gift or consideration of any kind as an inducement or reward:

23.1.1.1 for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Agreement or any other contract with another Member Authority; or

23.1.1.2 for showing or not showing favour or disfavour to any person in relation to this Agreement or any other contract with another Member Authority;

23.1.2 enter into this Agreement or any other contract with another Member Authority or relevant party in connection with which commission has been paid or has been agreed to be paid by a Member Authority (or anyone acting on its behalf

or to its knowledge) unless before such contract is made, particulars of any such commission and the terms and conditions of any such agreement for the payment thereof have been disclosed in writing to all other Member Authorities;

23.1.3 any offence under the Bribery Act 2010, or Section 117(2) and (3) of the Local Government Act 1972 or under legislation creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to this Agreement or any other contract with another Member Authority; or

23.1.4 defraud or attempt to defraud or conspire to defraud another Member Authority.

23.2 If a Member Authority (or the Member Authority's personnel or anyone acting on its behalf or to its knowledge) commits any Prohibited Act, then the matter shall be reported to the Management Committee who shall be entitled to:

23.2.1 require the relevant Member Authority to deal with the matter through its relevant disciplinary procedures and advise the other Member Authorities of the outcome; and/or

23.2.2 recover from the relevant Member Authority any loss sustained in consequence of any breach of Clause 23.1 by the relevant Member Authority.

23.3 Any Member Authority believing itself to be in breach of this clause shall as soon as it becomes aware of such breach inform the other Member Authorities in writing of the occurrence of any Prohibited Act of which it becomes aware.

24. VARIATION

24.1 This Agreement may be varied or appended to by the Member Authorities at any time and due to any circumstances by the unanimous agreement of the Member Authorities other than where this Agreement provides otherwise. For the avoidance of doubt, variation of the overarching Consortium Agreement and Constitution of the Management Committee require unanimous agreement of the Member Authorities. Variation of the following documentation appended to the Constitution may be varied at any time by the majority agreement of the Management Agreement:

- 24.1.1 Appendix 1: Terms of Reference of the ESPO Finance and Audit Committee
- 24.1.2 Appendix 2: Terms of Reference of the ESPO Chief Officers' Group
- 24.1.3 Appendix 3: Delegations to the ESPO Consortium Secretary and ESPO Consortium Treasurer
- 24.1.4 Appendix 4: Functions of, and Delegations to, the Director of ESPO
- 24.1.4
- 24.1.5 Appendix 5: Procedural Standing Orders of the ESPO Management Committee
- 24.1.6 Appendix 6: Financial Regulations of the ESPO Management Committee (including the Standard Financial Instructions)
- 24.1.7 Appendix 7: Contract Procedure Rules of the ESPO Management Committee
- 24.2 Without prejudice to any other provision in this Agreement no variation of this Agreement (including any change in the membership of the Management Committee) shall be valid unless it is in writing and executed as a deed between the Member Authorities.
- 24.3 If any Member Authority or the Director of ESPO finds any discrepancy or ambiguity in this Agreement or wishes to make a change request relating to it then this shall be reported by that party to the COG and legal advice sought in the first instance from the Servicing Authority. In the event that COG agrees that a variation is needed, then it shall prepare a report to the Management Committee recommending that variation. Any report (whether to the COG (in its advisory capacity in the first instance) or to the Management Committee for decision making purposes) shall include an impact assessment of the proposed variation.

25. GOVERNING LAW AND JURISDICTION

- 25.1 This Agreement shall be governed by and interpreted in accordance with the law of England and Wales.
- 25.2 Each Member Authority irrevocably submits to the exclusive jurisdiction of the courts of England and Wales.
- 25.3 Each Member Authority shall comply with all laws and regulations in force in England and Wales.

26. RIGHTS OF THIRD PARTIES

26.1 This Agreement does not create any rights enforceable by any person not party to it under the Contracts (Rights of Third Parties) Act 1999.

27. SEVERANCE

27.1 Any clause or provision of this Agreement which is held to be illegal or unenforceable (in whole or in part) under any enactment or rule of law shall no longer form part of the Agreement.

27.2 In the event that any clause or provision is excluded (in whole or in part) under the terms of this Agreement, the validity and enforceability of the remainder of the Agreement shall not be affected. In such circumstances, the Member Authorities will agree in good faith to modify this Agreement so as to effect the original intent of the Member Authorities as closely as possible in an acceptable manner to all Member Authorities.

28. REVIEW

28.1 This Agreement shall be reviewed by the Management Committee at any time and due to any circumstances by the majority agreement of all Member Authorities.

28.2 The Management Committee may delegate the review function (or any part of it) to such sub-committee, advisory group or officer as it determines appropriate and any review may cover (but not be limited to) risk management, asset management and pension liabilities.

29. ASSIGNMENT

29.1 This Agreement is personal to the Member Authorities and cannot be assigned otherwise than as part of a statutory reorganisation.

30. HEALTH AND SAFETY

30.1 Each Member Authority shall be responsible for the health and safety of its own members, offices and personnel engaged in any of the activities in relation to ESPO.

31. COSTS OF PREPARING AGREEMENT

31.1 Each Member Authority shall bear its own costs in the preparation of this Agreement.

32. NO FETTERING

32.1 Nothing in this Agreement shall affect, fetter or otherwise qualify the statutory functions or exercise thereof by each of the Member Authorities.

SIGNATORIES

IN WITNESS whereof the Parties have executed this Agreement as a Deed the day and year above written

The Common Seal of
CAMBRIDGESHIRE COUNTY COUNCIL
 was hereunto affixed
 in the presence of -

The Common Seal of
LEICESTER CITY COUNCIL
 was hereunto affixed
 in the presence of -

The Common Seal of
LEICESTERSHIRE COUNTY COUNCIL
 was hereunto affixed
 in the presence of -

The Common Seal of
LINCOLNSHIRE COUNTY COUNCIL
 was hereunto affixed
 in the presence of -

The Common Seal of
NORFOLK COUNTY COUNCIL
 was hereunto affixed

in the presence of –

The Common Seal of
PETERBOROUGH CITY COUNCIL

was hereunto affixed

in the presence of -

The Common Seal of
WARWICKSHIRE COUNTY COUNCIL

was hereunto affixed

in the presence of -

DRAFT