



## LEAD MEMBER FOR STRATEGIC MANAGEMENT AND ECONOMIC DEVELOPMENT

**DECISIONS** to be made by the Lead Member for Strategic Management and Economic Development, Councillor Keith Glazier

**TUESDAY, 11 FEBRUARY 2020 AT 3.00 PM**

**COMMITTEE ROOM - COUNTY HALL, LEWES**

### **AGENDA**

- 1 Decisions made by the Lead Cabinet Member on 12 November 2019 (*Pages 3 - 4*)
- 2 Disclosure of Interests  
Disclosure by all Members present of personal interests in matters on the agenda, the nature of any interest and whether the Members regard the interest as prejudicial under the terms of the Code of Conduct.
- 3 Urgent items  
Notification of any items which the Lead Member considers urgent and proposes to take at the appropriate part of the agenda.
- 4 SELEP Legal Personality (*Pages 5 - 46*)  
Report by the Director of Communities, Economy and Transport
- 5 Any urgent non-exempt items previously notified under agenda item 3
- 6 Exclusion of public and press  
To consider excluding the public and press from the meeting for the remaining items of the agenda on the grounds that if the public and press were present there would be disclosure to them of exempt information as specified in Category 5 of Part 1 of Schedule 12A to the Local Government Act 1972 (as amended), namely information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.
- 7 SELEP Legal Personality - Exempt information (*Pages 47 - 74*)  
Report by the Director of Communities, Economy and Transport
- 8 Any other exempt items previously notified under agenda item 3

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3 February 2020

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## **LEAD MEMBER FOR STRATEGIC MANAGEMENT AND ECONOMIC DEVELOPMENT**

DECISIONS made by the Lead Member for Strategic Management and Economic Development, Councillor Keith Glazier, on 12 November 2019 at County Hall, Lewes

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Councillor Rupert Simmons spoke on item 4 (see minute 7)

### 5 DECISIONS MADE BY THE LEAD CABINET MEMBER ON 8 OCTOBER 2019

5.1 The Lead Member approved as a correct record the minutes of the meeting held on 8 October 2019.

### 6 REPORTS

6.1 Reports referred to in the minutes below are contained in the minute book.

### 7 LOCAL GROWTH FUND (LGF) ROUND 3B - GRANT AGREEMENT FOR THE BEXHILL CREATIVE WORKSPACE PROJECT

7.1 The Lead Member considered a report by the Director of Communities, Economy and Transport.

#### DECISIONS

7.2 The Lead Member RESOLVED to (1) Approve grant funding to the value of £0.96m to Rother District Council to fund the delivery of the Bexhill Creative Workspace project (following approval of the business case by the SE LEP Accountability Board on 13 September 2019); and

(2) Delegate authority to the Director of Communities, Economy and Transport to agree the terms of any agreements and to take all other necessary actions in respect of Recommendation 1.

#### Reasons

7.3 The project supports the delivery of the SELEP's strategic objectives as outlined in the new Economic Strategy Statement 2019, the East Sussex Growth Strategy strategic priorities and the County Council's core priorities in 'driving sustainable economic growth' and 'making best use of resources by maximising the funding available through external bidding'.

7.4 As a result of the award by the SELEP Investment Panel and Accountability Board of grant funding to East Sussex of £0.96m through the SELEP Local Growth Fund Round 3b programme, the allocation of £0.96m funding to Rother District Council will fund the delivery of the Bexhill Creative workspace project.

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**Report to:** Leader and Lead Member for Strategic Management and Economic Development

**Date of meeting:** 11 February 2020

**By:** Director of Communities, Economy and Transport

**Title:** SELEP Legal Personality

**Purpose:** To approve changes being proposed to the legal personality of the South East Local Enterprise Partnership (SELEP) so that SELEP can become a 'Company Limited by Guarantee', and agree that the Leader of the County Council becomes a Company Director of SELEP Ltd.

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**Recommendations:** The Leader and Lead Member is recommended to:

- (1) Agree to East Sussex County Council (ESCC) continuing its role as a partner in and a member of the South East Local Enterprise Partnership (SELEP) after it becomes a Private Company Limited by Guarantee (SELEP Ltd), the terms of which are set out in the new SELEP Articles of Association (Appendix 1);
  - (2) Agree that ESCC enters into a new partnership agreement – termed the SELEP Framework Agreement (Appendix 2) – between SELEP Ltd and the six upper-tier authorities that comprise SELEP, noting that the existing Joint Committee Agreement (governing the SELEP Accountability Board) has been updated and is included within the new SELEP Framework Agreement;
  - (3) Confirm that the Leader of the County Council will continue to be the ESCC representative on SELEP and will take up the appointment of Company Director of SELEP Ltd, as per the new membership arrangements described in the SELEP Articles of Association;
  - (4) Confirm that the Leader of the County Council will continue to be the formal voting representative of ESCC at SELEP Strategic Board meetings and at SELEP Accountability Board meetings;
  - (5) Delegate authority to the ESCC Monitoring Officer to sign the SELEP Framework Agreement on behalf of ESCC; and
  - (6) Delegate further authority to the ESCC Monitoring Officer, in consultation with the Leader of the County Council and the Director of Communities, Economy and Transport, to enter into any additional legal agreements or contracts as required to implement the above decisions.
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## 1. Background information

1.1. In July 2018 the government published its 'Strengthened Local Enterprise Partnerships' document, referred to as the LEP Review. It included a series of recommendations and requirements on such things as openness, transparency, accountability and scrutiny in order to ensure a consistent approach to governance across all 38 LEPs. Through its Assurance Framework, SELEP already had a robust set of governance arrangements well-established, so the majority of the recommendations have been applied.

1.2. Two of the requirements involved a much greater level of consideration: Board Composition (reducing the number of board members, adjusting the public / private-sector ratio, increasing diversity) and Legal Personality (making SELEP a limited company). Whilst SELEP members and partners were happy with SELEP's operating framework, these changes were required of all LEPs, to be implemented by the end of March 2020.

1.3. SELEP established two working groups to consider each of the above and come up with proposals for a way forward. The final recommendations on Board Composition were approved by the SELEP Strategic Board on 4 October 2019. The proposals of the Legal Personality subgroup were approved by the SELEP Strategic Board on 6 December 2019 – subject to the additional approvals of SELEP’s constituent upper-tier local authorities.

1.4. In making the transition to ‘SELEP Ltd’, two key documents have been created: the SELEP Articles of Association and the SELEP Framework Agreement, both attached to this report as appendices 1 and 2 respectively. The functions of these documents are described in paragraph 2.3 below, along with a summary of the main changes brought about by the change of legal status.

1.5. As one of the six upper-tier authorities of SELEP, East Sussex County Council (ESCC) is now asked to approve the change of legal status of SELEP, including the above two documents, through our internal governance procedures (Lead Member).

## **2. Supporting information**

2.1. One of the key requirements of the LEP Review was that all LEPs should have a legal personality, and whilst no particular model was specified, the government did make it clear that any future funding will continue to be awarded via a local authority ‘Accountable Body’.

2.2. The Accountable Body for SELEP is Essex County Council (Essex CC). Previously, to allow the organisation to direct funds whilst remaining within the law and its own governance structures, SELEP devolved authority for those funds to a ‘Joint Committee’ (a mechanism under public law that allows local authorities to come together to make decisions such that responsibility for allocating funding is not restricted to the single organisation acting as Accountable Body). The Joint Committee, of which the County Council is a member, was formed in 2015 and continues to function under the name of the SELEP Accountability Board. The powers of the SELEP Accountability Board are delegated from the six upper-tier authorities who are partners in the Joint Committee Agreement.

2.3. Throughout the process of considering the new legal personality it has been SELEP’s intention to keep things as close to the current operating model as possible whilst at the same time ‘ticking the box’ for the limited company setup. SELEP has therefore agreed to the following:

- The legal personality to be adopted will be a Company Limited by Guarantee (CLG).
- The financial transactions, assets and liabilities of the partnership will remain within the Accountable Body (Essex CC). SELEP Ltd will be a shell company with no assets – it will not hold any funding or employ any staff (with the Secretariat continuing to be employed by Essex CC). This minimises risk and cost, but has the consequence that it is still the local authorities that will make the final decisions on funding allocations via the SELEP Accountability Board. This is a longstanding arrangement which the business members of the current SELEP Strategic Board support, as in practice the federated boards work hard to develop a consensus on funding, endorsed by the SELEP Strategic Board, long before final funding decisions are taken by the SELEP Accountability Board.
- It is not possible to make the SELEP Accountability Board part of the new Limited Company structure (as it is a function of Local Government and therefore Public Law rather than Corporate Law), so the functions of the SELEP partnership will actually be wider than ‘SELEP Ltd’ and can be considered to be made up of three components – SELEP Ltd, SELEP Accountability Board and the Accountable Body.
- Whilst it may not be possible to capture all of these functions within a single organisation, the relationship between them can be formally described within a partnership agreement, setting out the respective responsibilities of the different components of SELEP described above. This partnership agreement will be referred to as the ‘SELEP Framework Agreement’. Note that the existing Joint Committee Agreement between the six upper-tier authorities (setting out the responsibilities of the SELEP Accountability Board) will be included as a subsection of the new SELEP Framework Agreement.

- SELEP operates a ‘federated’ model, with local boards by geographical area allowing for decision making at a local level. There is close interaction between the federated boards and SELEP, with the federated boards providing an advisory function on local issues, plus project endorsement and prioritisation for their local areas. The federated boards also put forward members to sit on the SELEP Strategic Board. There are four federated boards – Team East Sussex, Kent & Medway Economic Partnership, Success Essex and Opportunity South Essex. This federated operating model will remain unchanged, allowing the federated boards to continue to have a strong voice in the running of the company.
- The new SELEP Strategic Board, as approved by the current Strategic Board on 6 October 2019, will consist of twenty members plus an additional five ‘co-opted’ members. The twenty main members will be made up of the private-sector Chair and Deputy Chair, twelve further private-sector members appointed from the federated boards (including three from Team East Sussex) and six public-sector members representing each of the upper-tier local authorities (including ESCC). The five co-opted members will initially be made up of two Borough / District Council representatives and three private-sector members representing Further Education, Higher Education and the Third Sector. The twenty main members will be able to serve for two years at a time, renewable up to a maximum tenure of six years, while the five co-opted members will serve for one year only.
- The Company Limited by Guarantee model includes a board of directors and an overall membership. The Company Directors of SELEP Ltd will be the 25 members of the new SELEP Strategic Board, as listed above. The membership of SELEP Ltd will be made up of all the members of the four federated boards. For clarity, ESCC is not a corporate member of the federated board and therefore will not be a member of the new SELEP Ltd Company, but will have power under Article 23.5 of the company’s articles of association that states “each council is entitled to nominate one member”.

2.4. New **Articles of Association** have been constructed to define the constitution of SELEP Ltd, setting out such things as the terms of membership, responsibilities of Company Directors and limitations of liability. The **SELEP Framework Agreement** has also been produced and all six upper-tier authorities of SELEP, along with SELEP Ltd itself, will need to sign-up to it.

2.5. As indicated above, the new SELEP Strategic Board members, including the Leader of the County Council will become Company Directors of SELEP Ltd. Note that there are certain requirements of Company Directors of limited companies, as laid out in Corporate Law. Essex CC, as Accountable Body, has obtained counsel’s advice on the liabilities of the company and its Directors. Counsel has advised that since the company has no assets the risks are low and most liabilities will be covered by directors’ and officers’ insurance, which the company intends to procure. Details of indemnity and insurance are given in paragraph 39 of the SELEP Articles of Association, and a copy of counsel’s opinion on Directors’ liabilities is attached to a report later on the agenda.

2.6. The liability of each member of SELEP Ltd is limited to £1.00 (the amount that each member undertakes to contribute to the company in the event of its being wound up while he or she is a member, or within one year after he or she ceases to be a member). Otherwise this report has no direct financial implications since SELEP will continue to operate in the current manner and the County Council will continue to contribute and passport funding to recipients in the same way as it currently does.

### 3. Conclusion and reason for recommendations

3.1. SELEP is required by Government to adopt a new legal personality from April 2020. This was one of the principle requirements of the 2018 LEP Review so is absolutely necessary in order for SELEP to continue receiving its core funding from Government, as well as other annual programme funds (including Local Growth Fund monies).

3.2. The approach taken by SELEP has been developed in consultation with the government’s Ministry of Housing, Communities and Local Government (MHCLG) and the Department for Business, Energy and Industrial Strategy (BEIS) who are happy with the proposals. The

recommendations in this report have been developed in consultation with all six upper-tier authorities of SELEP. The County Council has been fully engaged in this process from the outset, with the Leader of the County Council sitting on the legal personality subgroup.

3.3. The two key documents – SELEP Articles of Association and SELEP Framework Agreement – have been reviewed by County Council officers in the Economic Development and Legal Services teams, providing recommendations to the County Council's Monitoring Officer who in turn provided detailed feedback to SELEP on the draft versions of the documents, and subsequently gave their endorsement to the final versions.

3.4. The Lead Member is therefore recommended to:

3.4.1. **Agree** to East Sussex County Council (ESCC) continuing its role as a partner in and a member of the South East Local Enterprise Partnership (SELEP) after it becomes a Private Company Limited by Guarantee (SELEP Ltd), the terms of which are set out in the new SELEP Articles of Association (Appendix 1).

3.4.2. **Agree** that ESCC enters into a new partnership agreement – termed the SELEP Framework Agreement (Appendix 2) – between SELEP Ltd and the six upper-tier authorities that comprise SELEP, noting that the existing Joint Committee Agreement (governing the SELEP Accountability Board) has been updated and is included within the new SELEP Framework Agreement.

3.4.3. **Confirm** that the Leader of the County Council will continue to be the ESCC representative on SELEP and will take up the appointment of Company Director of SELEP Ltd, as per the new SELEP Board membership arrangements described in the SELEP Articles of Association.

3.4.4. **Confirm** that the Leader of the County Council will continue to be the formal voting representative of ESCC at SELEP Strategic Board meetings and at SELEP Accountability Board meetings.

3.4.5. **Delegate authority** to the ESCC Monitoring Officer to sign the SELEP Framework Agreement on behalf of ESCC.

3.4.6. **Delegate further authority** to the ESCC Monitoring Officer, in consultation with the Leader of the County Council and the Director of Communities, Economy and Transport, to enter into any additional legal agreements or contracts as required to implement the above decisions.

3.5. Upon approval of this report, alongside the approvals of the other five upper-tier authorities, SELEP will register SELEP Ltd at Companies House, after which all parties can sign the Framework Agreement, ensuring the change of SELEP legal personality is fully implemented by the end of March 2020 deadline.

RUPERT CLUBB  
Director of Communities, Economy and Transport

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## LOCAL MEMBERS

All

**THE COMPANIES ACT 2006**  
**PRIVATE COMPANY LIMITED BY**  
**GUARANTEE**

**ARTICLES OF ASSOCIATION**  
**OF**

**SOUTH EAST LEP LIMITED (the "Company") Dated 2019**

**Interpretation, objects and limitation of liability**

**1. INTERPRETATION**

1.1. In these Articles, unless the context otherwise requires

**Accountability Board** means the joint committee of the Councils constituted in accordance with the Framework Agreement

**Accountable Body:** means Essex County Council or such other local authority from time to time having responsibility for overseeing the proper administration of financial affairs within the LEP Area when these relate to public funds;

**Act:** means the Companies Act 2006;

**AGM:** has the meaning given to it in article 26;

**Articles:** means the Company's articles of association for the time being in force;

**Assurance Framework:** means the local assurance framework as adopted by the Company with the agreement of the Accountable Body from time to time in accordance with the requirements of the central government in order to pay funding to local enterprise partnerships;

**Bankruptcy:** includes individual insolvency proceedings in a jurisdiction other than England and Wales or Northern Ireland which have an effect similar to that of bankruptcy;

**Business Day:** means any day (other than a Saturday, Sunday or public holiday in England) when banks in London are open for business;

**Chair:** has the meaning given to it in article 12.1;

**Code of Conduct:** means the code of conduct contained in the Assurance Framework

**Confidential:** information is classified if it falls within the definition of 'exempt information' or "confidential information" by virtue of The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012. This includes:

- (a) Information provided by a Government Department on terms which forbid the disclosure of the information to the public;
- (b) Where disclosure to the public is prohibited by a court or;
- (c) Where the Accountability Board holds "exempt information" under Schedule 12A of the Local Government Act 1972.

This also includes information relating to an individual, relating to the financial or business affairs of a particular person, negotiations, labour relations, legal professional privilege and in connection to the investigation or prosecution of a crime.

**Conflict:** means a situation in which a Director has or can have, a direct or indirect interest that conflicts or may conflict, with the interests of the Company;

**Conflicts of Interest Policy:** means the policy of the Company governing Conflicts, as set out in the Assurance Framework.

**Co-opted Directors:** means the following, selected in accordance with the Assurance Framework

- Two District/Borough/City Council Leaders or Cabinet Members
- One Further Education representative
- One Higher Education representative
- One Third Sector representative

**Councils** means Southend on Sea Borough Council, East Sussex County Council, Essex County Council, Kent County Council, Medway Council and Thurrock Council

**Deputy Chair:** has the meaning given in article 12.2;

**Director:** means a Director of the Company and includes any person occupying the position of Director, by whatever name called;

**Directors:** means all of the Co-opted Directors, the Private Sector Directors, the Public Sector Directors, the Chair and the Deputy Chair.

**Document:** includes, unless otherwise specified, any document sent or supplied in electronic form;

**Electronic form:** has the meaning given in section 1168 of the Act;

**Eligible Director:** means a Director who would be entitled to vote on the matter at a meeting of Directors (but excluding any Director whose vote is not to be counted in respect of the particular matter pursuant to article 15 and/or the Conflicts of Interest Policy);

**Federated Boards:** means all or any of the four groups of persons known at the date of incorporation from the four federated areas known as follows,

- "Success Essex",
- "Opportunity South Essex",
- "the Kent and Medway Economic Partnership" and
- "Team East Sussex "

or such successor or replacement body approved by the Directors as part of the Assurance Framework with the consent of each Council whose administrative area is served by the relevant Federated Board.

**Federated Board Members:** means a person who appears to the Directors to be a member of any of the Federated Boards.

**Framework Agreement:** means the agreement between the Councils and the Company constituting the Accountability Board

**Class of Members** means either the East Sussex Members, the Essex Members, the South Essex Members, the Kent and Medway Members as the case may be

**LEP Area:** means the combined administrative areas of the Councils or such other geographical area as is assigned to the Company by government from time to time;

**Member:** means a person whose name is entered in the Register of Members of the Company and **Membership** shall be construed accordingly;

**East Sussex Member** means a Member who was either

- nominated by the **East Sussex Members**;
- was a member of the Team East Sussex Federated Board at the date of incorporation; or has been nominated by the Directors as an East Sussex Member in accordance with article 23

**Essex Member** means a Member who was either

- nominated by the **Essex Members**;
- was a member of the Success Essex Federated Board at the date of incorporation; or
- has been nominated by the Directors as an Essex Member in accordance with article 23

**Kent and Medway Member** means a Member who was either

- nominated by the **Kent and Medway Members**;
- was a member of the Kent and Medway Economic Partnership Federated Board at the date of incorporation; or
- has been nominated by the Directors as a Kent and Medway Member in accordance with article 23.

**South Essex Member** means a Member who was either

- nominated by the **South Essex Members**;
- was a member of the Opportunity South Essex Federated Board at the date of incorporation; or
- has been nominated by the Directors as a South Essex Member in accordance with article 23.

**Model Articles:** means the model articles for private companies limited by guarantee contained in Schedule 2 of the Companies (Model Articles) Regulations 2008 (SI 2008/3229) as amended prior to the date of adoption of these Articles;

**Objects:** has the meaning given to it in article 2.1 and **object** shall mean any one of them;

**Private Sector Director:** means the following:

- The Chair
- The Deputy Chair
- Two individuals nominated by the Success Essex Members as the Success Essex business representatives
- Two individuals nominated by the Opportunity South Essex Members as the Opportunity South Essex business representatives
- Five individuals nominated by Kent & Medway Members as the Kent & Medway Economic Partnership business representatives
- Three individuals nominated by East Sussex Members as the Team East Sussex business representatives

**Public Sector Director:** means a person nominated as such by one of the Councils being

- One person from Essex County Council,
- One person from Thurrock Council,
- One person from Southend-on-Sea Borough Council,
- One person from Medway Council,
- One person from Kent County Council and
- One person from East Sussex County Council

**Scheme of Delegation:** has the meaning given to it in article 7.3;

**Secretariat** means those persons employed by the Accountable Body or a Council for the purposes of providing administrative, technical, secretarial or professional support to the Company and the Accountability Board pursuant to the Framework Agreement

**Secretary:** means an officer of the Secretariat nominated by the Accountable Body to act

as such

**Special Resolution:** has the meaning given in section 283 of the Act;

**Subsidiary:** has the meaning given in section 1159 of the Act;

**Writing:** means the representation or reproduction of words, symbols or other information in a visible form by any method or combination of methods, whether sent or supplied in electronic form or otherwise.

- 1.2. Save as otherwise specifically provided in these Articles, words and expressions which have particular meanings in the Act shall have the same meanings in these Articles.
- 1.3. Headings in these Articles are used for convenience only and shall not affect the construction or interpretation of these Articles.
- 1.4. A reference in these Articles to an **article** is a reference to the relevant article of these Articles unless expressly provided otherwise.
- 1.5. Unless expressly provided otherwise, a reference to a statute or statutory provision shall include any subordinate legislation from time to time made under that statute or statutory provision.
- 1.6. Any word following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 1.7. The Model Articles shall not apply to the Company.

## **2. OBJECTS**

2.1. The objects for which the Company is established (**Objects**) are:

- 2.1.1. to stimulate economic growth, productivity, employment, community development, job creation, inward investment, training and development, and commerce in the LEP Area;
- 2.1.2. to promote the LEP Area positively at regional, national, European and international levels on matters affecting its economic development; and
- 2.1.3. to act as a facilitator to develop strong working relationships between key stakeholders across the South East of England, ensuring there is a shared vision for a prosperous LEP Area to unlock barriers to growth.

## **3. POWERS**

3.1. In pursuance of the Objects, the Company has the power to:

- 3.1.1. do all such things which in the opinion of the Directors are in the best interests of the Company and its Members; and
- 3.1.2. do all such other lawful things as are incidental or conducive to the pursuit or to the attainment of any of the Objects.

## **4. INCOME**

- 4.1. The income and property of the Company from wherever derived shall be applied solely in promoting the Objects.
- 4.2. No distribution shall be paid or capital otherwise returned to the Members in cash or otherwise. Nothing in these Articles shall prevent payment in good faith by the Company of expenses to Members or Directors in accordance with policies that may be adopted from time to time in the Assurance Framework.

## 5. WINDING UP

On the winding-up or dissolution of the Company, after provision has been made for all its debts and liabilities, any assets or property that remain available to be distributed or paid, shall not be paid or distributed to the Members but shall be transferred to similar bodies or another body with objects similar to those of the Company within the LEP Area or as directed by the government department then responsible for Local Enterprise Partnerships or their successor body.

## 6. GUARANTEE

- 6.1. The liability of each Member is limited to £1.00, being the amount that each Member undertakes to contribute to the assets of the Company in the event of its being wound up while he or she is a Member or within one year after he or she ceases to be a Member, for
  - 6.1.1. payment of the Company's debts and liabilities contracted before he or she ceases to be a Member;
  - 6.1.2. payment of the costs, charges and expenses of the winding up; and
  - 6.1.3. adjustment of the rights of the contributories among themselves.

### Directors: General

## 7. DIRECTORS' GENERAL AUTHORITY AND CONDUCT

- 7.1. There shall be **between twenty and** twenty-five Directors of the Company
  - Fourteen Private Sector Directors
  - Six Public Sector Directors (no more than one nominated by each Council)
  - Five Co-opted Directors
- 7.2. Subject to these Articles, Directors are responsible for the management of the Company's business and may exercise all the powers of the Company accordingly.
- 7.3. Each of the Directors shall use their respective rights and powers to procure, so far as they are each able, that decisions of the Company are carried out in accordance with the Assurance Framework and any scheme of delegation for the time being adopted by the Company and contained in the Assurance Framework (**Scheme of Delegation**).
- 7.4. Subject always to the Act, in their conduct of the Company's business the Directors shall at all times:
  - 7.4.1 conduct themselves in a professionally responsible manner;
  - 7.4.2 have due regard to all confidentiality obligations concerning the Company's business;
  - 7.4.3 observe the seven principles as set out by The Committee on Standards in Public Life (as amended from time to time); and
  - 7.4.4 comply with the provisions of the Assurance Framework.

## **8. DIRECTORS MAY DELEGATE**

### 8.1. Subject to the Articles:

8.1.1 the Directors may delegate any of the powers which are conferred on them under the Articles and which are in line with the Assurance Framework and any Scheme of Delegation:

- i. to such person or committee;
- ii. by such means (including power of attorney)
- iii. to such an extent;
- iv. in relation to such matters or territories; and
- v. on such terms and conditions;
- vi. as they think fit.

8.1.2 If the Directors so specify, any such delegation may authorise further delegation of the Directors' powers by any person to whom they are delegated.

8.1.3 The Directors may revoke any delegation in whole or part, or alter its terms and conditions at any time.

### **Directors: Decision-Making**

## **9. DIRECTORS TO TAKE DECISIONS COLLECTIVELY**

9.1. The general rule about decision-making by Directors is that any decision of the Directors must be a majority decision taken in one of the following ways:

9.1.1. on show of hands at a meeting of the Directors;

9.1.2. by written resolution, copies of which have been signed by a majority of the Eligible Directors or to which a majority of the Eligible Directors have otherwise indicated agreement in writing; or

9.1.3. by a majority of the Eligible Directors indicating to each other, by any means, that they share a common view on a matter.

9.2. A decision may not be taken in accordance with this article 9 if the Eligible Directors purporting to take the decision would not have formed a quorum had the decision taken place in a meeting.

## **10. DIRECTORS' MEETINGS**

10.1. Directors' meetings shall take place not less than once per every three months. Directors meetings shall be open to the public, with the exception of any information or items classified as Confidential

10.2. Notwithstanding the provisions of article 10.1 meetings of the Directors are called by the Chair or Deputy Chair by giving not less than twenty Business Days' notice of the meeting to the Directors or by authorising the Secretary (if any) to give such notice.

10.3. A Director who is absent from the UK and who has no registered address in the UK shall not be entitled to notice of the Directors' meeting.

- 10.4. A person is able to exercise the right to speak at a Directors' meeting when that person is in a position to communicate to all those attending the meeting, during the meeting, any information or opinions which that person has on the business of the meeting
- 10.5 No business shall be transacted at a meeting of directors unless it is either:
- (a) included on the agenda for the meeting which is sent out with the notice given under article 10.2 convening the meeting; or
  - (b) certified by the Chair as urgent after consulting all directors by email.

## **11. QUORUM FOR DIRECTORS' MEETINGS**

- 11.1. At a meeting of the Directors, unless a quorum is participating, no proposal is to be voted on, except a proposal to call another meeting.
- 11.2. The quorum for the transaction of business at a meeting of Directors is any fifteen Eligible Directors, provided that such number must include
- At least one Success Essex business representative
  - At least one Opportunity South Essex business representative
  - At least one Kent & Medway Economic Partnership business representative
  - At least one Team East Sussex business representative
  - At least three public sector Directors
- 11.3. If the total number of Directors in office for the time being is less than the quorum required, the Directors must not take any decisions other than to appoint Co-opted Directors if there is a vacancy in accordance with article 19.

## **12. CHAIRING OF DIRECTORS' MEETINGS, APPOINTMENT OF CHAIR AND DEPUTY CHAIR AND TERMS OF OFFICE**

- 12.1. The Company shall have at all times appointed a chairperson who shall be a Private Sector Director and who shall be appointed in accordance with the process set out in the Assurance Framework and the person so appointed for the time being is the **Chair**.
- 12.2. The Company shall have at all times appointed a deputy to the Chair (Deputy Chair), who shall be a Private Sector Director and who shall be appointed in accordance with the process set out in the Assurance Framework and the person so appointed for the time being is the **Deputy Chair**.
- 12.3. Subject to clause [12.4], a Chair or Deputy Chair (as applicable) shall be appointed for periods of no more than two years, such appointment ending at the meeting of the Directors falling closest to the second anniversary of their appointment (or re-appointment). Unless otherwise determined by [special resolution], the Chair or Deputy Chair (as applicable) shall be entitled to put themselves forward for re-election for a further period of two years in accordance with the Assurance Framework provided that no Chair or Deputy Chair shall be able to serve more than six years in their respective role.
- 12.4. Where the Chair or Deputy Chair puts him or herself forward for re-election, such election shall occur at the board meeting at which their board appointment ends in accordance with article [12.3].

## **13. NOT USED**

[not used]

#### **14. CASTING VOTE**

- 14.1 If the numbers of votes for and against a proposal at a meeting of Directors are equal, the Chair or Deputy Chair chairing that meeting has a casting vote.
- 14.2 But this does not apply in respect of a particular meeting (or part of a meeting) if, in accordance with the Articles, the Chair or Deputy Chair chairing the meeting is not an Eligible Director for the purposes of that meeting (or part of a meeting).

#### **15. DIRECTORS' CONFLICTS OF INTEREST**

- 15.1 The Company shall at all times keep in force the Conflicts of Interest Policy to deal with Conflicts.
- 15.2 Subject always to the provisions of the Conflicts of Interest Policy, if a proposed decision of the Directors is concerned with an actual or proposed transaction or arrangement with the Company in which a Director is interested, that Director is not to be counted as participating in the decision-making process for quorum or voting purposes unless the Director's interest cannot in the opinion of the Chair reasonably be regarded as likely to give rise to a conflict of interest
- 15.3 For the purposes of this article, references to proposed decisions and decision-making processes include any Directors' meeting or part of a Directors' meeting.

#### **16. RECORDS OF DECISIONS TO BE KEPT**

Where decisions of the Directors are taken by electronic means, such decisions shall be recorded by the Directors in permanent form, so that they may be read with the naked eye.

#### **17. DIRECTORS' DISCRETION TO MAKE FURTHER RULES**

Subject to these articles, the Directors may make any rule which they think fit about how they and any committees formed by them take decisions, and about how such rules are to be recorded or communicated to Directors, provided always that any such rule is consistent with the Assurance Framework, the Framework Agreement and these Articles.

#### **Directors: numbers and appointment**

#### **18. NUMBER OF DIRECTORS**

Unless otherwise determined by special resolution, the number of Directors shall not be less than twenty but shall not exceed twenty-five.

#### **19. APPOINTMENT OF DIRECTORS**

- 19.1 The Directors shall be composed of Private Sector Directors, Public Sector Directors and Co-opted Directors.
- 19.2 Upon a vacancy arising for any reason for a Private Sector Director, other than the Chair and the Deputy Chair, a replacement shall be appointed by the Class of Members for the area in which the vacancy has arisen.
- 19.3 The person appointed to a vacancy as set out in article 19.2 shall be the person securing the largest number of votes at a meeting of the relevant Class of Members held for this purpose and notified to the Secretary by the person chairing that meeting

in accordance with any applicable requirements and policies set out in the Assurance Framework.

- 19.4 Upon a vacancy arising for any reason in the office of Chair or Deputy Chair a replacement shall be appointed in accordance with article 12.
- 19.5 Upon a vacancy arising for a Public Sector Director, a replacement shall be appointed on the written nomination of the relevant Council given to the Secretary by the proper officer of that Council.
- 19.6 If at any time there are fewer than five Co-opted Directors then the Directors may co-opt a person appearing appropriate to the Board in accordance with the Assurance Framework.

## **20. RETIREMENT OF DIRECTORS**

- 20.1 A Private Sector Director shall retire from office on the second anniversary of their appointment. Subject to articles 20.2 and 20.3, such retiring Director shall be eligible for re-appointment by relevant Class of Members .
- 20.2 A Private Sector Director shall, subject to article 20.3, be eligible for re-appointment for two further periods of two years.
- 20.3 Any Private Sector Director (including the Chair and Deputy Chair) who shall have served for a total of six years shall not be entitled to be re-appointed.
- 20.4 Co-opted Directors shall retire from office on the first anniversary of their appointment.
- 20.5 A Director may resign from office by notice given to the Secretary.

## **21. DISQUALIFICATION AND REMOVAL OF DIRECTORS**

- 21.1 A person ceases to be a Director as soon as:
  - 21.1.1 that person ceases to be a Director by virtue of any provision of the Act or these Articles or s/he becomes prohibited by law from being a Director;
  - 21.1.2 that person shall for more than twelve months have been absent without permission of the Directors from meetings of Directors held during that period and the Directors resolve that that person's office be vacated;
  - 21.1.3 a Bankruptcy order is made against that person;
  - 21.1.4 a composition is made with that person's creditors generally in satisfaction of that person's debts;
  - 21.1.5 two-thirds of the board of Directors resolve that the person has failed to conduct themselves in accordance with article 7 and should as a consequence be removed from office; or
  - 21.1.6 in the case of a Public Sector Director, they cease for any reason to be a member of Cabinet of the Council which appointed them; or
  - 21.1.7 in the case of a Private Sector Director (other than the Chair and Deputy0, by a vote to that effect passed by a majority of those present and voting at a meeting of their appointing Class of Members .
- 21.2 Save where a Director is a Public Sector Director, a Director shall upon ceasing to be a Director by virtue of article 21 at the same time cease to be a Member.

### **Directors: alternate Directors and miscellaneous**

## **22 ALTERNATE DIRECTORS**

- 22.1 Directors may appoint alternates in accordance with the provisions of the Assurance Framework for the Directors and any alternate appointed in accordance with such provisions shall be bound by any rules relating set out in the Assurance Framework [and Terms of Reference] for the Directors.

## 23 MEMBERSHIP

- 23.1 The first Members of the Company at incorporation shall be those who have subscribed to these articles.
- 23.2 Subject to article 23.3 any person appearing to the Directors to be a Federated Board member shall be entitled to become a Member if they submit an application for membership in the form prescribed by the Company
- 23.3 The maximum number of each Class of Members (East Sussex Members, Essex Members, South Essex Members and Kent and Medway Members) shall be as specified in the Assurance Framework from time to time but shall not in any event exceed fifty Members per Federated Board.
- 23.4 If the number of any category of Members is fewer than the maximum determined by reference to Article 23.3 then the Members of that category may, at a meeting of that category of Members called for the purpose, nominate a further Member to that category of Members by a majority of those present and voting.
- 23.5 Each Council is entitled to nominate one Member.
- 23.6 If anyone nominated as a member does not opt to become a member within one month of being nominated (or their nomination being accepted by the Directors if later) then the person or group entitled to nominate to that vacancy may make a further nomination to replace the original nominee.

## 24 DISQUALIFICATION AND REMOVAL OF MEMBERS

- 24.1 A person ceases to be a Member as soon as:
- 24.1.1 that person ceases to be a Member by virtue of any provision of the Act or these Articles or s/he becomes prohibited by law from being a Member;
  - 24.1.2 that person misses two consecutive AGMs without attending any meetings in the intervening period;
  - 24.1.3 a Bankruptcy order is made against that person;
  - 24.1.4 a composition is made with that person's creditors generally in satisfaction of that person's debts;
  - 24.1.5 notification is received by the Company from the Member that the Member is resigning, and such resignation has taken effect in accordance with its terms;
  - 24.1.6 The Member is in breach of the Code of Conduct or is otherwise disrupting the business of the Company and at a meeting of that category of Members called for the purpose a majority of those present and voting resolve to remove that person as a Member;
  - 24.1.7 In the case of an Essex Member an East Sussex Member, a Kent and Medway Member or a South Essex Member, it appears to the Directors that the Member is no longer a member of a Federated Board.

## 25 TRANSFER OF MEMBERSHIP

Membership shall not be transferable.

### Decision making by Members: general meetings

## 26 ANNUAL GENERAL MEETING

- 26.1 The Company shall hold an annual general meeting (**AGM**) at least once every calendar year and which shall be open to the general public save at a time when the meeting is considering items classified as Confidential.

## 27 ATTENDANCE AND SPEAKING AT GENERAL MEETINGS

- 27.1 A person is able to exercise the right to speak at a general meeting when that person is in a position to communicate to all those attending the meeting, during the meeting, any information or opinions which that person has on the business of the meeting.
- 27.2 A Member is able to exercise the right to vote at a general meeting when:
  - 27.2.1 that Member is able to vote, during the meeting, on resolutions put to the vote at the meeting; and
  - 27.2.2 that Member's vote can be taken into account in determining whether or not such resolutions are passed at the same time as the votes of all the other Members attending the meeting.
- 27.3 The Directors may make whatever arrangements they consider appropriate to enable those Members attending a general meeting to exercise their rights to speak or vote at it.
- 27.4 In determining attendance at a general meeting, it is immaterial whether any two or more Members attending it are in the same place as each other.

## **28 Not used**

### **29. CHAIRING GENERAL MEETINGS**

- 29.1. The Chair or, in his or her absence, the Deputy Chair shall preside as chair of every general meeting.
- 29.2. If neither the Chair nor the Deputy Chair is present within fifteen minutes after the time appointed for holding the meeting and willing to act, the meeting shall be adjourned and reconvened.

### **30. ATTENDANCE AND SPEAKING BY NON-MEMBERS**

- 30.1 At an AGM the Chair of the meeting shall permit such other persons who are not Members of the Company to attend and speak in accordance with the Assurance Framework.
- 30.2 In addition to the other provisions of these articles the Chair of a general meeting may permit others to attend a meeting and speak.

### **31. ADJOURNMENT**

- 31.1. The chair of the meeting may adjourn a general meeting if:
  - 31.1.1. the meeting consents to an adjournment; or
  - 31.1.2. it appears to the chair of the meeting that an adjournment is necessary to protect the safety of any person attending the meeting or ensure that the business of the meeting is conducted in an orderly manner.
- 31.2. The chair of the meeting must adjourn a general meeting if directed to do so by at least 50% of the Members present at the meeting.
- 31.3. When adjourning a general meeting, the chair of the meeting must:
  - 31.3.1. either specify the time and place to which it is adjourned or state that it is to continue at a time and place to be fixed by the Directors; and
  - 31.3.2. have regard to any directions as to the time and place of any

adjournment which have been given by the meeting.

- 31.4. If the continuation of an adjourned meeting is to take place more than 14 days after it was adjourned, the Company must give at least 7 clear days' notice of it (that is, excluding the day of the adjourned meeting and the day on which the notice is given):
- 31.4.1. to the same persons to whom notice of the Company's general meetings is required to be given; and
  - 31.4.2. containing the same information which such notice is required to contain.
- 31.5. No business may be transacted at an adjourned general meeting which could not properly have been transacted at the meeting if the adjournment had not taken place.

### **Voting at general meetings**

#### **32. VOTING: GENERAL**

Without prejudice to any other provision of these Articles, a resolution put to the vote of a general meeting must be decided on a show of hands unless a poll is duly demanded in accordance with the Articles.

#### **33. ERRORS AND DISPUTES**

- 33.1. No objection may be raised to the qualification of any person voting at a general meeting except at the meeting or adjourned meeting at which the vote objected to is tendered, and every vote not disallowed at the meeting is valid.
- 33.2. Any such objection must be referred to the chair of the meeting whose decision is final.

#### **34. POLL VOTES**

- 34.1. A poll on a resolution may be demanded:
- 34.1.1. in advance of the general meeting where it is to be put to the vote; or
  - 34.1.2. at a general meeting, either before a show of hands on that resolution or immediately after the result of a show of hands on that resolution is declared.
- 34.2. A poll may be demanded by:
- 34.2.1. the chair of the meeting;
  - 34.2.2. the Directors;
  - 34.2.3. two or more persons having the right to vote on the resolution; or
  - 34.2.4. a person or persons representing not less than one tenth of the total voting rights of all the Members having the right to vote on the resolution.

- 34.3. A demand for a poll may be withdrawn if:

- 34.3.1. the poll has not yet been taken; and
  - 34.3.2. the chair of the meeting consents to the withdrawal.
- 34.4. Polls must be taken immediately and in such manner as the chair of the meeting directs.

## **35. CONTENT OF PROXY NOTICES**

- 35.1. Proxies may only validly be appointed by a notice in writing (a "proxy notice") which:
- 35.1.1. states the name and address of the Member appointing the proxy;
  - 35.1.2. identifies the person appointed to be that Member's proxy and the general meeting in relation to which that person is appointed;
  - 35.1.3. is signed by or on behalf of the Member appointing the proxy, or is authenticated in such manner as the Directors may determine; and
  - 35.1.4. is delivered to the Company in accordance with the Articles and any instructions contained in the notice of the general meeting to which they relate.
- 35.2. The Company may require proxy notices to be delivered in a particular form, and may specify different forms for different purposes.
- 35.3. Unless a proxy notice indicates otherwise, it must be treated as:
- 35.3.1. allowing the person appointed under it as a proxy discretion as to how to vote on any ancillary or procedural resolutions put to the meeting; and
  - 35.3.2. appointing that person as a proxy in relation to any adjournment of the general meeting to which it relates as well as the meeting itself.

## **36. DELIVERY OF PROXY NOTICES**

- 36.1. A person who is entitled to attend, speak or vote (either on a show of hands or on a poll) at a general meeting remains so entitled in respect of that meeting or any adjournment of it, even though a valid proxy notice has been delivered to the Company by or on behalf of that person, and if s/he does so the proxy (notice) shall be revoked.
- 36.2. An appointment under a proxy notice may be revoked by delivering to the Company a notice in writing given by or on behalf of the person by whom or on whose behalf the proxy notice was given.
- 36.3. A notice revoking a proxy appointment only takes effect if it is delivered before the start of the meeting or adjourned meeting to which it relates.
- 36.4. If a proxy notice is not executed by the person appointing the proxy, it must be accompanied by written evidence of the authority of the person who executed it to execute it on the appointer's behalf.

## **37. AMENDMENTS TO RESOLUTIONS**

- 37.1. An ordinary resolution to be proposed at a general meeting may be amended by ordinary resolution if:

- 37.1.1. notice of the proposed amendment is given to the Company in writing by a person entitled to vote at the general meeting at which it is to be proposed not less than 48 hours before the meeting is to take place (or such later time as the chairman of the meeting may determine); and
  - 37.1.2. the amendment does not go beyond what is necessary to correct a grammatical or other non-substantive error in the resolution.
- 37.2. If the chair of the meeting, acting in good faith, wrongly decides that an amendment to a resolution is out of order, the chair's error does not invalidate the vote on that resolution.

### **Administrative arrangement**

## **38. MEANS OF COMMUNICATION TO BE USED**

- 38.1. Any notice, document or other information shall be deemed served on or delivered to the intended recipient:
- 38.1.1. if properly addressed and sent by prepaid United Kingdom first class post to an address in the United Kingdom, 48 hours after it was posted (or five Business Days after posting either to an address outside the United Kingdom or from outside the United Kingdom to an address within the United Kingdom, if (in each case) sent by reputable international overnight courier addressed to the intended recipient, provided that delivery in at least five Business Days was guaranteed at the time of sending and the sending party receives a confirmation of delivery from the courier service provider);
  - 38.1.2. if properly addressed and delivered by hand, when it was given or left at the appropriate address;
  - 38.1.3. if properly addressed and sent or supplied by electronic means, one hour after the document or information was sent or supplied; and
  - 38.1.4. if sent or supplied by means of a website, when the material is first made available on the website or (if later) when the recipient receives (or is deemed to have received) notice of the fact that the material is available on the website.

For the purposes of this article, no account shall be taken of any part of a day that is not a Business Day.

- 38.2. In proving that any notice, document or other information was properly addressed, it shall suffice to show that the notice, document or other information was addressed to an address permitted for the purpose by the Act.

## **39. INDEMNITY AND INSURANCE**

- 39.1. Subject to article 39.2, but without prejudice to any indemnity to which a relevant officer is otherwise entitled:
- 39.1.1. each relevant officer shall be indemnified out of the Company's assets against all costs, charges, losses, expenses and liabilities incurred by him as a relevant officer in the actual or purported execution and/or discharge of his duties, or in relation to them including any liability incurred by him in defending any civil or criminal proceedings, in which judgment is given in his favour or in which s/he is acquitted or the proceedings are otherwise

disposed of without any finding or admission of any material breach of duty on his part or in connection with any application in which the court grants him, in his capacity as a relevant officer, relief from liability for negligence, default, breach of duty or breach of trust in relation to the Company's (or any associated company's) affairs; and

- 39.1.2. the Company may provide any relevant officer with funds to meet expenditure incurred or to be incurred by him in connection with any proceedings or application referred to in article 39.1.1 and otherwise may take any action to enable any such relevant officer to avoid incurring such expenditure.
- 39.2. This article does not authorise any indemnity to the extent that such indemnity would be prohibited or rendered void by any provision of the Act or by any other provision of law and any such indemnity is limited accordingly.
- 39.3. The Directors may decide to purchase and maintain insurance, at the expense of the Company, for the benefit of any relevant officer in respect of any relevant loss.
- 39.4. In this article:
  - 39.4.1. companies are associated if one is a subsidiary of the other or both are subsidiaries of the same body corporate; and
  - 39.4.2. a **relevant loss** means any loss or liability which has been or may be incurred by a relevant officer in connection with that relevant officer's duties or powers in relation to the Company, any associated company or any pension fund or employees' share scheme of the Company or associated company; and
  - 39.4.3. a **relevant officer** means any Director or other officer or former Director or other officer of the Company, but excluding in each case any person engaged by the Company (or associated company) as auditor (whether or not s/he is also a Director or other officer), to the extent s/he acts in his capacity as auditor.

#### **40. Changes to Articles or Assurance Framework**

- 40.1 No change to these articles or to the Assurance Framework shall take effect unless agreed in advance by the Accountable Body and until the Accountability Board has been given written notice of the proposed changes, those changes have been considered at a meeting of the Accountability Board and the decision maker has considered any comments or views expressed by the Accountability Board or any members thereof.
- 40.2 The Accountable Body shall not withhold its approval under article 40.1 unless in its opinion the change is likely to prejudice the ability of the Company or the Accountable Body to comply with the terms of any agreement to which the Accountable Body is party relating to the administration of funds or the ability to be allocated Government Funds.
- 40.3 In addition to the preceding clauses, no change to the articles which would affect the number of directors or members who may be appointed or nominated by any Class of Members may be approved without the approval of a majority of all Classes of Members
- 40.4 In addition to the preceding clauses, no change to the number of directors to be appointed by any Local Authority may be approved without being approved without the approval all local authority members.

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**DATED** \_\_\_\_\_ **2020**

- SOUTHEND-ON-SEA BOROUGH COUNCIL** (1)  
and  
**EAST SUSSEX COUNTY COUNCIL** (2)  
and  
**ESSEX COUNTY COUNCIL** (3)  
and  
**KENT COUNTY COUNCIL** (4)  
and  
**THURROCK COUNCIL** (5)  
and  
**MEDWAY COUNCIL** (6)  
and  
**[SOUTH EAST LEP LIMITED]** (7)

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**FRAMEWORK AGREEMENT**

**In relation to South East Local Enterprise Partnership**

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**THIS AGREEMENT** is made on

2019

**BETWEEN**

- (1) **SOUTHEND-ON-SEA BOROUGH COUNCIL** of Civic Centre, Victoria Avenue, Southend-on-Sea, SS2 6ER (“Southend”);
- (2) **EAST SUSSEX COUNTY COUNCIL** of County Hall, St Anne’s Crescent, Uckfield, Lewes, East Sussex, BN7 1UE (“East Sussex”);
- (3) **ESSEX COUNTY COUNCIL** of County Hall, Market Road, Chelmsford, Essex, CM1 1QR (“Essex”);
- (4) **KENT COUNTY COUNCIL** of County Hall, Maidstone, Kent, ME14 1XQ (“Kent”); and
- (5) **THURROCK COUNCIL** of Civic Offices, New Road, Grays, Essex, RM17 7SL (“Thurrock”);
- (6) **MEDWAY COUNCIL** of Gun Wharf, Dock Road, Chatham, Kent, ME4 4TR (“Medway”)

together referred to as “**the Councils**” and individually as a “**Council**”.

- (7) **[SOUTH EAST LEP LIMITED]** of [ ] (“**Company**”)

**BACKGROUND**

- (A) The Councils are local authorities for the purposes of the Local Government Act 1972 and best value authorities for the purposes of the Local Government Act 1999.
- (B) The unincorporated SELEP partnership was established in [ ] with the aim of stimulating growth in the economy across [ ] area. In part it aim to do this by playing a central role in determining local economic priorities and undertaking activities to drive economic growth and the creation of local jobs. It is a primary partnership of the Councils.
- (C) The Company was incorporated on [ ] in response to the requirement of Central Government for all Local Enterprise Partnerships to have legal personality.
- (D) Essex is the Accountable Body for the purposes of Funding allocated to the Company by central government and other responsibilities as set out in the Assurance Framework.
- (E) The purpose of this Agreement is to create an overarching framework setting out the duties and obligations, roles and responsibilities of the Councils, the Accountability Board, Accountable Body and the Company in relation to the activities undertaken to enable the delivery of the LEP achieve the Company's objects (as defined in its articles of association) and ithe Aims and Objectives.

## IT IS AGREED AS FOLLOWS:

### 1 Definitions

1.1 In this Agreement the following terms shall have the following meanings:

**Accountable Body** means Essex

**Accountability Board** means the joint committee of the Councils constituted in accordance with Schedule 2

**Agreement** means this Framework Agreement and any schedules;

**Aims and Objectives** means those aims and objectives set out in the Assurance Framework

**Assurance Framework** means the local assurance framework of the Company as adopted by the Company with the agreement of the Accountable Body and the Accountability Board from time to time in accordance with the requirements of central government in order to pay funding to local enterprise partnerships

**Commencement Date** means [xxxx] 2020

**Councils** means Southend, East Sussex, Essex, Kent, Medway, Thurrock.

**Council Contribution** for a particular Financial Year means a contribution which a Council has agreed to make to the Support Funding

**EIR** means the Environmental Information Regulations 2004;

**FOIA** means the Freedom of Information Act 2000;

**Financial Year** means during the continuance of the Agreement any period commencing on 1 April and ending on the following 31 March

**Funding** means all and any devolved government revenue and capital funding which central government pays to the Accountable Body for the purpose of SELEP;

**Funding Agreement** means an agreement between the Accountable Body a Council or such other Party to receive funding as may be necessary under which the Accountable Body pays Project Funding to that Council or such other party for onward transmission to a Recipient

**Parties** means the parties to this Agreement.

**Project Funding** means that part of the Funding which is to be used for the purposes of schemes allocated by the Company and Accountability Board

**Recipient** means a person or entity which has received Project Funding from a Council

**Secretariat** means those persons employed by the Accountable Body for the purposes of providing administrative, technical or professional support to the Company and the

Accountability Board in accordance with this Agreement

**Support Funding** means that part of the Funding which is not Project Funding aggregated with the Council Contributions.

**SELEP Area** means the combined administrative area of the Councils

**Support Contracts** means contracts entered into by the Accountable Body to the extent that they relate to the provision of advice or support or the provision of services to the Company and the Accountability Board.

**Terms of Reference** means the terms of reference of the Accountability Board as set out in Schedule 1.

1.2 Headings contained in this Agreement are for reference purposes only and should not be incorporated into this Agreement and shall not be deemed to be any indication of the meaning of the clauses to which they relate.

1.3 References to any statute or statutory provision include references to:

1.3.1 all Acts of Parliament and all other legislation having legal effect in the United Kingdom;

1.3.2 any subsequent statutes directly or indirectly amending, consolidating, extending, replacing or re-enacting that statute and also include any orders, regulations, instruments or other subordinate legislation made under that statute;

## 2. Duration

2.1 This Agreement shall commence on the Commencement Date and shall continue in effect until terminated in accordance with Clause 25 of this Agreement.

## 3 Principles and Key Objectives

3.1 The Parties will work together to deliver the Aims and Objectives acting in their respective capacities as Accountable Body, Accountability Board and the Company.

3.2 The Parties agree that the following principles underpin their collaborative working and the terms of this Agreement as follows:

3.2.1 mutual co-operation and collaboration;

3.2.2 accountability;

3.2.3 transparency;

3.2.4 mutual benefits

3.3 In order to achieve these objectives and the Aims and Objectives, the Parties agree that they will work together with mutual trust, good faith and in an open, co-operative and collaborative manner. The Parties will work together in a spirit of mutual trust in order to ensure the successful management of the Aims and Objectives and will respond in a timely manner (or within the timescales agreed between the Parties

where appropriate) to all reasonable requests from each other.

- 3.4 It is the overriding responsibility of the Parties to ensure that Funding is allocated in such a way which
  - 3.4.1 ensures that the Company and the Accountable Body comply with the terms and conditions on which Funding is paid to the Accountable Body
  - 3.4.2 ensures that public money is spent in the best way to develop and enhance the economy of the SELEP Area
  - 3.4.3 is in accordance with the Assurance Framework.

#### **4 Accountability Board**

- 4.1 The Accountability Board is constituted in accordance with Schedule 2 to this Agreement
- 4.2 The Parties agree that each will comply with its obligations set out in Schedule 1 to this Agreement.
- 4.3 In making decisions the Accountability Board will primarily have regard to the need to ensure that decisions it makes are supported by the people and organisations who participate in achieving the aims and objectives of the Company, the need to maintain the confidence of such persons in their ability to influence the award of funding insofar as it is proper to do so. Accordingly, the Accountability Board will give great weight to any recommendation made to it by or on behalf of the Company. The Accountability Board will also have regard to the following:
  - 4.3.1 The fact that Funding is paid to the Accountable Body by central government so that it can be spent in accordance with the Assurance Framework
  - 4.3.2 The fact that the Assurance Framework includes checks and safeguards designed to ensure that recommendations made to the Accountability Board have been made having regard to Aims and Objectives articulated by the Company and without the participation of any person or organisation which has a conflict of interest.
  - 4.3.3 The need to ensure that Funding is only paid when it is received from Central Government by the Accountable Body and the Accountable Body is satisfied that the conditions of Funding attached by central government have been complied with and that the Recipient has agreed to comply with any conditions of Funding required by central government or the Accountable Body.

#### **5 Finance**

- 5.1 The Accountable Body will hold all Funding on behalf of the Company and Accountability Board and will
  - 5.1.1 Maintain accounting records of transactions undertaken by or on behalf of the Company and Accountability Board in accordance with proper accounting practice
  - 5.1.2 Provide such information as the Accountability Board, Secretariat or the Company shall reasonably require about the money held by the Accountable Body
  - 5.1.3 Arrange for the external audit of the Funding.

- 5.1.4 Ensure that the Chief Executive Officer of SELEP is accountable to the Company in the discharge of his duties in accordance with the Assurance Framework.
- 5.2 The Accountable Body's section 151 officer will be responsible for ensuring that the Accountable Body complies with its duties under this agreement
- 5.3 The Accountable Body will not spend any Project Funding unless:
  - 5.3.1 The spend is in accordance with a decision taken by the Accountability Board;
  - 5.3.2 The spend is required in accordance with the conditions upon which the Funding was paid to the Accountable Body; or
  - 5.3.3 The spend is to defray a liability incurred by the Accountable Body wholly as a result of and in accordance with its role as the Accountable Body
- 5.4 The Accountable Body will only spend Support Funding on:
  - 5.4.1 The costs incurred in connection with employing the Secretariat
  - 5.4.2 Making an internal recharge in accordance with proper accounting practices to reflect the cost of providing services to the Company, the Accountability Board or to the Secretariat.
  - 5.4.3 The costs incurred in connection with the Company and Accountability Board Support Contracts.
- 5.5 Before the start of each Financial Year the Secretariat in consultation with the Company will bring a report to the Accountability Board with the proposals (a **Proposed Budget**) setting out
  - 5.5.1 the proposed level of Council Contributions (subject to agreement by the relevant Council, such agreement not to be unreasonably withheld and it shall be reasonable if the proposed Council Contribution is no more than the previous year's contribution increased in line with the retail prices index (excluding mortgages) over the previous 12 months using the most recent figures published at the time of calculation),
  - 5.5.2 the total Support Funding available
  - 5.5.3 how the Support Funding is to be allocated with respect to that Financial Year.
- 5.6 The Accountability Board shall approve the proposals with such amendments as they reasonably require, but in making amendments they must ensure that there will be sufficient Support Funding available in that year to defray the cost of implementing the Proposed Budget.
- 5.7 The Proposed Budget as approved by the Accountability Board shall be the Budget for that Financial Year.
- 5.8 The Budget may be amended by the Secretariat from time to time after consulting the Accountable Body with approval of the Accountability Board, but subject always to continuing obligation to ensure that there will be sufficient Support Funding available in that Financial Year to defray the cost of implementing the Budget
- 5.9 The Accountable Body shall manage the Support Funding with an officer in the Secretariat being the budget holder in accordance with the Accountable Body's constitution and financial regulations and shall use all reasonable endeavours to only spend the Support Funding in accordance with the Budget as amended from time to time.
- 5.10 If the Accountable Body incurs expenditure contrary to the Budget it shall report this to the Company and the Accountability Board promptly.
- 5.11 Each Council shall pay its Council Contribution to the Accountable Body no later than 1

July in each Financial Year

## **6 The Secretariat**

- 6.1 The Accountable Body will employ the Secretariat who will be employed on the Accountable Body's terms and conditions of employment and be subject to the employment policies of the Accountable Body.
- 6.2 The Accountable Body will ensure that line management is provided to the Secretariat in consultation with the Chair, where necessary, in order to ensure that the Secretariat is effectively performing its role.
- 6.3 The role of the Secretariat is
  - 6.3.1 to support allocation of Funding
  - 6.3.2 to liaise with members of the Company and Accountability Board, applicants
  - 6.3.3 to procure and manage the Company and Accountability Board contracts
  - 6.3.4 to administer the Company and Accountability Board
  - 6.3.5 to respond to requests for information regarding the Company and its business from the Accountability Board, and the Company;
  - 6.3.6 to manage the expenditure and recovery of Project Funding
  - 6.3.7 to manage the Company website and ensure it is kept updated
  - 6.3.8 to report to the Company, to the Accountability Board and to the Accountable Body about issues affecting SELEP and to provide such information as those bodies shall reasonably require.
  - 6.3.9 to liaise with central government and anyone providing Funding.
  - 6.3.10 to draft the Assurance Framework and to review it annually to ensure that it meets the requirements of the National Local Growth Assurance Framework
  - 6.3.11 to ensure that all operations and decision making of the Company and the Accountability Board meet the requirements of the Assurance Framework

## **7 Project Funding**

- 7.1 The process for allocation of Project Funding shall be in accordance with the Assurance Framework..
- 7.2 Subject to clause 5.3, the Accountable Body will not spend any Project Funding unless it has been allocated to the proposed spend by the Accountability Board on the recommendation of the Company and there is a contract (a Funding Agreement) relating to that Funding which is in such form as may be approved by the Company and the Accountable Body in place between
  - 7.2.1. the Accountable Body
  - 7.2.2. the Company; and
  - 7.2.3. the Council in whose administrative area the project will be delivered.
- 7.3 The Accountable Body will release Project Funding in accordance with the terms of Funding Agreements subject to the Accountable Body being reasonably satisfied that
  - 7.3.1 the terms of such agreements have been complied with, and
  - 7.3.2 the Accountable Body having received sufficient Project Funds to meet the release of the Funding.
- 7.4 A Council which is Party to a Funding Agreement will ensure that it is only paid out on

terms which require the Recipient to use the funding for the approved purposes and achieve those outputs within a defined time and which otherwise comply with the Assurance Framework and the terms upon which the relevant Project Funding is received.

7.5 A Council which is a party to a Funding Agreement must take action against the Recipient to enforce the terms of the agreement with the Recipient of the funding where there has been a breach of the agreement between the Council and the Recipient and either

- The Accountable Body considers that the Council needs to take action in order to comply with the terms of any Project Funding;
- The Accountable Body considers that it is necessary to do so in order to maintain public confidence in the Company and/or the Accountability Board or to minimize or avoid fraud; or
- the Company makes a written request.

## **8 Governance and decision making**

8.1 The Assurance Framework sets out governance and how decisions will be made and may only be changed:

8.1.1 By the Company with the agreement of the Accountable Body.

8.1.2 By the Accountability Board where agreement in accordance with 8.1.1 has not been possible and the change is the minimum required in order to comply with the requirements of the National Local Growth Assurance Framework, as may be amended from time to time, and the terms upon which any Funding is paid or is proposed to be paid or which the Company and/or the Accountability Board is required to make.

8.2 The Company agrees that it will not change its articles of association other than with the prior agreement of the Accountability Board (not to be unreasonably withheld or delayed).

8.3 The Company will

8.3.1 Approve an Economic Plan which sets out the Company's Strategic Direction and aims and objectives from time to time.

8.3.2 Appoint an investment panel to prioritise the allocation of Project Funding

8.3.3 Provide an Interface with central government

8.3.4 Oversee pan LEP work

8.3.5 Develop an annual delivery plan

8.3.6 Develop strategic economic plans and policies.

8.3.7 Identify a prioritised list of schemes within the available Project Funding including under / over programming to enable prudent management.

**9** The Accountable Body will take reasonable steps to

9.1 Ensure decisions and activities of the Company and the Accountability Board conform with legal requirements with regard to equalities, social value, environment, State Aid, public procurement;

- 9.2 Ensure that the funds are used appropriately, and in a manner that is consistent with the contents of the offer letter from central government, where appropriate;
- 9.3 Ensure that the Assurance Framework is adhered to;

## **10 Freedom of Information, Environmental Information and Transparency**

- 10.1 Each Party acknowledges that the other Party is subject to the requirements of the FOIA and the EIR and each Party shall, where reasonable, assist and co-operate with the other (at their own expense) to enable each Party to comply with these information disclosure obligations.
- 10.2 Where a Party receives a request for information under either the FOIA or the EIR in relation to information which it is holding on behalf of another Party it shall:
- 10.2.1 transfer the request for information to the other Party as soon as practicable after receipt and in any event within 2 (two) Business Days of receiving a request for information;
  - 10.2.2 provide the other Party with a copy of all information in its possession in the form that the other Party reasonably requires within ten (10) Business Days (or such longer period as the other Party may specify) of the other Party requesting that information unless the cost of compliance exceeds the limit set down pursuant to FOIA (and provides reasonable proof of this to the other party); and
  - 10.2.3 provide all necessary assistance as reasonably requested by the other Party to enable the other Party to respond to a request for information within the time for compliance set out in the FOIA or the EIR.
- 10.3 Where a Party receives a request for information under the FOIA or the EIR which relates to this Agreement, it shall inform the other Parties of the request for information as soon as practicable after receipt and in any event at least four (4) Business Days before disclosure and shall use all reasonable endeavours to consult with the other parties prior to disclosure and shall consider all representations made by the other Party in relation to the decision whether or not to disclose the information requested.
- 10.4 Subject to Clause 12 (Confidentiality), each Party shall be responsible for determining in their absolute discretion whether any information for the purposes of FOIA or the EIR,:
- 10.4.1 is exempt from disclosure under the FOIA or the EIR; and
  - 10.4.2 is to be disclosed in response to a request for information.
- 10.5 Each Party acknowledges that the other parties may be obliged under the FOIA or the EIR to disclose information:
- 10.5.1 without consulting with the other Party where it has not been practicable to achieve such consultation; or
  - 10.5.2 following consultation with the other Party and having taken its views into account.
- 10.6 The parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA or the EIR, the content of this Agreement is not Confidential Information.

10.7 Notwithstanding any other provision of this Agreement, the parties hereby consent to the publication of this Agreement in its entirety including from time to time agreed changes to this Agreement subject to the redaction of information that is exempt from disclosure in accordance with the provisions of the FOIA or the EIR.

## **11 Data Protection**

11.1 The Parties shall comply with their obligations under the Data Protection Act 2018 in the performance of their obligations under this Agreement.

11.2 The provisions of this Clause 11 shall apply during the continuance of this Agreement and indefinitely after its expiry or termination.

## **12 Confidentiality**

12.1 The parties will not use or disclose any confidential information provided by any other Party pursuant to this Agreement otherwise than for the performance of their obligations under this Agreement, save as may be otherwise agreed or required by law.

12.2 For the avoidance of doubt, confidential information shall not include:

12.2.1 any information obtained from a third Party who is free to divulge such information;

12.2.2 any information which is already in the public domain otherwise than as a breach of this Agreement; or

12.2.3 any information which was rightfully in the possession of a Party prior to the disclosure by any other Party and lawfully acquired from sources other than any other Party.

12.3 Subject to Clause 12.2 the Parties shall not make any press announcement or publicise the Agreement or any part of the Agreement in any way, except with the agreement of the other Parties

## **13 Equality**

13.1 The Parties shall perform their respective obligations under this Agreement in accordance with:

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

13.1.2 any applicable equality and diversity policy of the Parties from time to time; and

13.1.3 take all necessary steps, and inform each other of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission (or any successor organisation).

## **14 Social Value**

14.1 In performing their respective obligations in pursuance of this Agreement the Parties shall comply with the requirements of Public Services (Social Value) Act 2012.

## **15 Environmental**

15.1 In performing their respective obligations in pursuance of this Agreement the Parties shall at all times co-operate with each other to improve environmental performance where it is not detrimental to the interests of any Party to do so.

## **16 NOT USED**

[Not used]

## **17 Disputes**

17.1 Any dispute between the Accountable Body, the Company and the Accountability Board shall

17.1.1 first be escalated to the Chair of the Company, the Deputy Chair (as Chairman of the Accountability Board) and the and the Section 151 Officer of the Accountable Body within ten working days of the dispute arising. The Chair of the Company and the Accountable Body shall procure that Section 151 Officer agree to discuss and, in good faith, attempt to resolve any such dispute and try and reach agreement on the action required to resolve the dispute.

17.1.2 In the event that the Chair and the said Section 151 Officer are unable to resolve the dispute, then the matter shall be referred to central government (or grant awarding body if not central government) by any party to the dispute for consideration.

17.2 Prior to action under [TO BE INSERTED] of the Assurance Framework, if any Party has any issues, concerns or complaints about any matter relating to this Agreement that Party shall notify the other Party/Parties and the Parties shall then seek to resolve the issue by a process of consultation. If the issue cannot be resolved within a reasonable period of time, the matter shall be escalated to the Secretary of State for Business Environment and Industrial Strategy to resolve such dispute ([ ] Assurance Framework, paragraph [ ]).

17.3 If any Party receives any formal inquiry, complaint, claim or threat of action from a third Party they shall notify the Accountable Body and the Secretariat and co-operate with each other to respond, or take such action, as is appropriate and/or necessary in accordance with the complaints Policy in the Assurance Framework.

## **18 The Contracts (Rights of Third Parties) Act 1999**

18.1 The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement but this does not affect any rights which are available apart from this Act.

## **19 General**

19.1 Each of the Parties represents and warrants to the others that it has full capacity and authority, and all necessary consents, licences and permissions to enter into and perform its obligations under this Agreement, and that this Agreement is executed by its duly authorised representative.

- 19.2 This Agreement cannot be varied except in writing signed by a duly authorised representative of each of the Parties.
- 19.3 The Agreement contains the whole agreement between the Parties. The Parties confirm that they have not entered into the Agreement on the basis of any representation that is not expressly incorporated into the Agreement. Nothing in this clause shall exclude liability for fraud or fraudulent misrepresentation.
- 19.4 The Company shall permit any intellectual property created by or on behalf of the Company to be used by the Accountable Body and the Secretariat for the management and running of the Accountability Board, but for the avoidance of doubt, this clause does not operate to transfer the ownership of any intellectual property;
- 19.5 Any waiver or relaxation either partly, or wholly of any of the terms and conditions of this Agreement shall be valid only if it is communicated to every other Party in writing and expressly stated to be a waiver. A waiver of any right or remedy arising from a breach of contract shall not constitute a waiver of any right or remedy arising from any other breach of this Agreement.
- 19.6 This Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in this Agreement. No Party shall have, nor represent that it has, any authority to make any commitments on the other Parties' behalf.
- 19.7 Except as otherwise expressly provided by this Agreement, all remedies available to any Party for breach of this Agreement (whether under this Agreement, statute or common law) are cumulative and may be exercised concurrently or separately, and the exercise of one remedy shall not be deemed an election of such remedy to the exclusion of any other remedy.
- 19.8 If any provision of this Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the relevant provision shall, to the extent required, be severed from this Agreement and rendered ineffective as far as possible without modifying the remaining provisions of this Agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of this Agreement.

## 20 Notices

- 20.1 Any notice to be given under this Agreement shall be in writing and may be served by personal delivery, first class recorded or e-mail to the address of the relevant Party set out below, or such other address as that Party may from time to time notify to the other Parties in accordance with this clause.

## 21 English Law

- 21.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- 21.2 The Parties hereby agree and declare irrevocably that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-

contracted disputes or claims) arising out of or in connection with this Agreement or its subject matter or jurisdiction.

## **22. Insurance**

- 22.1 The costs of public liability insurance and employee insurance for the Secretariat will be covered by the Accountable Body's insurance arrangements where that liability arises due to the actions of the Secretariat. Where a Council incurs liability, that Council will need to deal with that liability itself.
- 22.2 All costs including claims administration and legal costs and a fair proportion of the premium paid by the Accountable Body will be paid for by the Accountable Body from the Support Funding.
- 22.3 All insurance claims made against or on behalf of the Secretariat or the Accountability Board will be managed on their behalf by the Accountable Body.
- 22.4 All Councils will cooperate with insurance claims investigations and notify the Accountable Body of any potential claims relevant to this Agreement in its subject matter as soon as is reasonably practicable and take all reasonable action to prevent and minimise any loss.
- 22.5 It is the responsibility of the individual Councils separately to ensure that appropriate insurance in relation to insurance for that Council's buildings and contents and other assets are in place. Consequently the insurance cost for buildings and assets shall not be charged to the Accountability Board.
- 22.6 The Accountable Body shall consider any reasonable request made by the Councils for the purpose of facilitating the procurement, administration and maintenance of any insurance relating to the Company and/or the Accountability Board.

## **23 Variation**

- 23.1 Any proposed variation to this Agreement will be discussed at the Accountability Board and at a board meeting of the Company. Each Party will then be responsible for agreeing those changes that are passed at such board meeting.

## **24. Withdrawal from this Agreement**

- 24.1 A Council may serve notice in writing to the Accountable Body at least nine months before the date on which it is to take effect, that they will be withdrawing from this Agreement. Such withdrawal may only take effect on 1 April in any year.
- 24.2 When the withdrawal of a Council takes effect
- (a) it shall no longer be entitled to contribute to the decisions taken by the Accountability Board or the Company.
  - (b) It shall no longer be required to pay a Council Contribution
  - (c) It shall not be responsible for debts or liabilities which are incurred by the Accountability Board after the withdrawal takes effect
- 24.3 A Council which withdraws from this Agreement shall continue to be liable under any Funding Agreements to which it is Party and may be required to enforce the terms of any Project Agreement under the terms of this Agreement as if it were still a party.

- 24.4 If any Party incurs any cost as a result of a Council withdrawing from this agreement then that Council shall bear that cost in full, and pay the same within [4] days of demand.
- 24.5 The provisions of this clause 24 shall survive a Council's withdrawal from this agreement.

## **25. Dissolution of the Company**

- 25.1 If the Company wound up or passes a resolution for its winding up or shall otherwise cease to exist then this clause 25 shall apply from the date of the resolution to terminate or the dissolution of the Company (whichever is the sooner) ('the Cessation Date').
- 25.2 From and after the Cessation Date:
- 25.2.1 The Accountability Board shall not approve any further allocation of funding.
  - 25.2.2 All Councils shall continue to be liable under Funding Agreements to which they are a Party and may be required to enforce the terms of any Project Agreement under the terms of this Agreement as if this Agreement were still fully in effect.
  - 25.2.3 Each Council shall pay to the Accountable Body within 30 days of demand an equal proportion of all costs incurred by the Accountable Body relating to the costs of closing down the Secretariat and other parts of SELEP relating thereto insofar as they cannot be met by any Funding.
- 25.4 The Parties shall work together with the relevant Secretary of State to decide how any remaining public funds will be managed.
- 25.5 This agreement shall terminate three months after all liabilities under clause 25.2.3 have been discharged or on such other date as may be agreed by the parties.
- 25.6 This clause applies subject to any contrary obligation on the Accountable Body imposed by any agreement between central government and the Accountable Body relating to the award of Funding.

**IN WITNESS WHEREOF** the parties have signed this Agreement as a Deed on the day and year first before written.

## Schedule 1

### Terms of Reference of the Accountability Board

- 1 The Accountability Board shall exercise the functions with respect to:
  - 1.1 the implementation of the Assurance Framework and all processes by which bids are assessed, risks considered, approvals made and performance managed
  - 1.2 appraisals and approvals of grants and loans, in accordance with recommendations made by the Company;
  - 1.3 monitoring project assessment and delivery;
  - 1.4 ensuring accountability from each of East Sussex, Essex, South Essex and Kent and Medway, relating to expenditure and programme delivery in accordance with recommendations made by the Company;
  - 1.3 considering and, if thought fit, approving variations to schemes which have received Project Funding;
  - 1.4 quarterly performance reporting on an exceptions basis to the board of the Company;
  - 1.5 reporting on progress to central government;
  - 1.6 any other accountability or assurance function required by central government or recommended by the Accountable Body's auditors or the S.151 Officer of the Accountable Body;
  - 1.7 approving an Annual Report to be made available to the Councils;
2. The Accountability Board will not have responsibility for
  - (a) staffing decisions.
  - (b) decisions about operational implementation and decisions will be taken as appropriate by the Secretariat or their representatives.
3. The Accountability Board may perform such other functions as the Councils may from time to time delegate to the Accountability Board with the written agreement of the Accountability Board and the Company.
4. Each Council agrees that it will not exercise its functions in relation to the function of the Accountability Board except;
  - 4.1 via the Accountability Board;
  - 4.2 via powers delegated to an officer by the Accountability Board; or

4.3 after consultation with the other Councils and the Company

## **Schedule 2**

### **Constitution of the Accountability Board**

#### 1. Definitions and Interpretation

##### 1.1 In this Schedule:

**the Act** means the Local Government Act 1972;

**Annual Report** means the report(s) which sets out the Accountability Board's activities, finance and performance for the preceding year, as required by paragraph 1.7 of Schedule 1;

**Clerk** means the person appointed in accordance with paragraph 12;

**Committee Member** means a member of the Accountability Board;

**Co-opted Members** means a Committee Member who is not a Council Member;

**Council Member** means a Committee Member who is a councillor of a local authority;

**Executive Member** means an elected member of a Council that is a Cabinet Member or a member of the Executive.

**Further Education Sector** means educational institutions or facilities providing education and training beyond compulsory education, but not falling within the definition of Higher Education Sector

**Higher Education Sector** means the education institutions which provide education and training at degree level and above;

**Deputy Chair** has the meaning given in the Company's articles of association.

#### 2. Joint Committee

2.1 The Councils hereby exercise their powers under sections 101 and 102 of the Act, section 9EA of the Local Government Act 2000 and the Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2012 and any other enabling legislation to form a joint committee to be known as the Accountability Board to manage the distribution of Funding

2.2 The Councils hereby delegate to the Accountability Board each Council's functions as set out in the Terms of Reference.

#### 3. Membership of the Accountability Board

3.1 The Accountability Board shall consist of nine members:

(a) Six local authority members comprising one executive member nominated by each Council (if a Council ceases to operate executive arrangements then it shall appoint its leader or deputy or the Chair or Vice-Chairman of a relevant Committee)

(b) Three non-voting Co-opted Members, appointed as follows;

- (i) One member appointed by the Accountability Board on the nomination of the Higher Education Sector in the SELEP Area;
  - (ii) One member appointed by the Accountability Board on the nomination of the Further Education Sector in the SELEP Area; and
  - (iii) the Deputy Chair of the board of the Company (ex officio).
- 3.2 A person who is disqualified under Part V of the Act from being an elected member of a relevant authority shall be disqualified from membership of the Accountability Board.
- 3.3 Each Council may change its nominated Committee Member at any time provided that written notice of any such change is given to the Secretariat, taking effect upon receipt. Such written notice may be given by electronic mail. Such change may be temporary or permanent.
- 3.4 Subject to the provisions of this Agreement officers and elected members of the Councils may attend meetings of the Accountability Board (or any sub-committee) to support their Committee Member in attendance at that meeting.

#### **4. Term of office**

- 4.1 A Council Member will hold office until one of the following occurs;
- (a) they are removed or replaced by the Council which appointed them; or
  - (b) they cease to be an elected member of the Council which appointed them
- 4.2. Where a vacancy occurs under paragraph 4.1 it shall be filled as soon as possible by the relevant Council.
- 4.3 Co-opted Members shall be appointed for a term of two years and shall be eligible for re-appointment for a maximum of two further two-year terms (i.e. a maximum of six years including their first term).
- 4.4 A Co-opted Member shall cease to hold office if
- (a) they resign by giving written notice to the Secretariat (in the case of the Deputy Chair that notice shall also take effect as a resignation as Deputy Chair of the Company);
  - (b) in the case of the Deputy Chair, they cease to hold that office;
  - (c) they are removed from office by the Accountability Board
  - (d) they are replaced by the sector which appointed them.
  - (e) in the case of the education representatives they cease to be employed by or hold office in an institution in the relevant sector in the SELEP Area.
- 4.5 Where a vacancy occurs under paragraph 4.4 it shall be filled as soon as possible in accordance with this schedule and the Assurance Framework .

#### **5. Voting**

- 5.1 Any question arising at a meeting of the Accountability Board shall be decided by a simple majority of the Council Members present and voting,
- 5.2 All voting shall be by a show of hands. Any Council Member may require the way they

voted to be recorded in the minutes of the meeting.

5.3 Co-opted Members are not entitled to vote.

## **6. Substitute Members**

6.1 A Council may appoint another Executive Member from the same Council to be a substitute member. No later than 30 minutes before the start of the meeting a substitution notice may be given to the Secretariat by:

- (a) the Council Member concerned; or
- (b) the Council

that the Substitute will be attending a meeting of the Accountability Board in place of the Council Member. Where a substitution notice is in effect the substitute will be in all respects a member of the Accountability Board in place of the Council Member.

## **7. Chair and Vice Chair of the Accountability Board**

7.1 The Deputy Chair shall be the Chair of the Accountability Board.

7.2 At its first meeting in the municipal year the Accountability Board shall appoint a Co-opted Member as Vice Chair.

7.3 If the Deputy Chair is not present within 15 minutes of the time at which the meeting was scheduled to begin the Vice Chair shall chair the meeting. If neither the Deputy Chair nor the Vice Chair are present within 15 minutes of the time at which the meeting was scheduled to begin, or are otherwise both unwilling to chair the meeting, then another Council Member present, chosen from amongst those present, shall chair the meeting. The person chairing the meeting shall be the "Chair" for the purposes of this Schedule for the duration of the meeting.

## **8. Assurance**

8.1 The Section 151 Officer and Monitoring Officer of the Accountable Body, or their representative, will attend meetings of the Accountability Board meetings in an advisory capacity.

8.2 Unless otherwise agreed all reports to the Accountability Board must also be sent to the Section 151 Officer and Monitoring Officer of the Accountable Body at least five clear working days before they are due to be published.

8.3 The Section 151 Officer and the Monitoring Officer, or their representatives, from the other Councils will be invited to observe the Accountability Board meetings.

## **9. Meetings of the Accountability Board**

9.1 The Accountable Body will maintain the official record of the Company and Accountability Board proceedings and hold copies of all relevant documents relating to funding allocated to the Accountable Body for the purposes of allocation by the Company;

9.2 The Accountability Board shall meet at least four times in each year save and except that;

9.3. The Chair of the Accountability Board may cancel any meeting if there is insufficient

business to be transacted but must give detailed reasons for doing so and as much notice as is reasonably possible.

- 9.4 A meeting of the Accountability Board must be convened to take place within one month of receipt of a written requisition from
- (a) the Chair of the Accountability Board
  - (b) at least three Council Members.
  - (c) the Monitoring Officer or Section 151 officer of the Accountable Body
- 9.5 The dates for the meetings in any year shall be agreed at a meeting of the Accountability Board, other than those convened pursuant to paragraph 9.4.
- 9.6 Meetings of the Accountability Board shall normally take place at High House, Production Park, Purfleet, RM19 1RJ or at such reasonable alternative venue as notified to the Councils by the Secretariat from time to time.
- 9.7 The agenda and reports for each meeting shall be issued by the Secretariat at least five clear days in advance of the meeting unless by exception by agreement of the Chair before the meeting and sent to each Committee Member and to the proper officer of each Council.
- 9.8 No item of business may be considered at a meeting of the Accountability Board unless it is on the agenda for the meeting or unless the Chair has agreed to accept the item on the grounds of special urgency which shall be set out in the minutes for the meeting.
- 9.9 Any key decisions must be included on the Forward Plan published 28 days in advance of the meeting.
- 9.9 Meetings of the Accountability Board will be open to the public and press except where the Accountability Board resolves that the press and public be excluded (which may only be during consideration of items containing confidential or exempt information within the meaning of Schedule 12A of the Act).
- 9.10 The agenda for each meeting shall include an opportunity for the public to ask questions or make statements on a matter within the remit of the Accountability Board.
- 9.11 The Secretariat and any Council may make a request to the Chair of the Accountability Board that a particular person or organisation is to be invited to attend a meeting of the Accountability Board for the purpose of making a presentation, or participating in discussion, on any item relevant to the Accountability Board's functions.

## 10. **Quorum**

- 10.1 The Quorum for meetings of the Accountability Board is two thirds of the Committee Members, including at least four Council Members.

## 11. **Minutes**

- 11.1 The minutes of the meeting shall be circulated to all Committee Members and shall be approved or amended at the next available meeting and, once approved, signed as an accurate record of the meeting by the Chair of the Accountability Board or by the person presiding at the meeting.
- 11.2 Minutes of the Accountability Board shall be published as required by law except to

the extent that they include any exempt information.

## **12. Clerk**

12.1 The Clerk shall be nominated by the Accountable Body from time to time. The Clerk in conjunction with the Secretariat is responsible for ;

- (a) Organising and publishing dates of forthcoming meetings;
- (b) Production, publication and distribution of agendas, reports and minutes of meetings;
- (c) Ensuring representation at meeting;

12.2 Advising on the operation of the Accountability Board; and

12.3 Providing guidance to, and the recording of Committee Members' declarations of interest in accordance with the code of conduct and the Assurance Framework.

## **13. Sub-Committees**

13.1 The Accountability Board may from time to time appoint such sub-committees as it considers appropriate to exercise such functions as may be delegated to it by the Accountability Board and to advise the Accountability Board in the discharge of its functions, save and except that the Accountability Board may not delegate to any sub-committee the approval of the budget or Annual Business Plan or the fixing of the annual contributions payable by the Councils.

13.2 The Accountability Board will determine the membership and terms of reference of any sub-committee.

## **14 Scrutiny Arrangements**

14.1 The decisions made by the Accountability Board may be subject to the individual scrutiny arrangements of each Council.

14.2 Committee Members and their officer advisers shall co-operate with the relevant Scrutiny Committee of any of the Councils and shall, where requested, comply with any statutory duty to attend any meeting of any relevant Scrutiny Committee.

## **15. Call in**

15.1 Call in should only be used in exceptional circumstances Day to day management decisions or routine operational decisions should not be subject to Call in.

15.2 Other than in the case of a decision which the Accountability Board resolves is a decision that shall be exempt from Call-in as it needs to be implemented urgently, no decision of the Accountability Board may be implemented until the later of

- (a) 5pm on the third day after the decision has been published on the Company website and sent to the Councils ('the Call-in Period');
- (b) the conclusion of any call-in received during the Call-in Period

15.3 A decision is called in by an elected member or members of a Council in the same way they would call in a decision of each Council's Cabinet except that elected members of a Council may only call-in a decision which affects that Council or its administrative area.

- 15.4 Once a decision or other action taken has been called in it may not be implemented until the scrutiny arrangements of the relevant Council whose membership has called in the decision or action have been completed. Where a relevant Scrutiny Committee (or full Council) makes recommendations to the Accountability Board, the Accountability Board shall arrange for the decision or action to be reconsidered in the light
- 15.5 When a Council receives notification that a decision has been called-in it will immediately notify the Clerk and the Secretariat by telephone or email.
- 15.6 If the Accountability Board is required to reconsider a decision at the request of a Council's Scrutiny Committee or full Council then it shall do so at a meeting and it may be necessary to convene a special meeting to deal with this.
- 15.7 Where any Member or officer is required to attend a Scrutiny Committee, the Chair of that Scrutiny Committee will inform the Secretariat who will ensure that the monitoring officer of that authority and that of the Accountable Body is informed
- 15.8 The operation this clause shall be kept under review.

**16. Conduct and expenses of members**

- 16.1 All Council Members shall observe at all times the provisions of the Code of Conduct adopted by their respective Councils.
- 16.2 Each Council shall be responsible for meeting any expenses to which any Committee Member or officer appointed by them, as its representative, is entitled as a result of their attendance at meetings of the Accountability Board.

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# Agenda Item 7

By virtue of paragraph(s) 5 of Part 1 of Schedule 12A of the Local Government Act 1972.

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