

**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

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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.

- 1.1 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.
- 1.2 References to any statute or statutory provision include references to:
  - 1.2.1 all Acts of Parliament and all other legislation having legal effect in the United Kingdom;
  - 1.2.2 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.

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- 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
  - 1.1.1. the Accountable Body
  - 1.1.2. the Company; and
  - 1.1.3. 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

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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;



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- 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.

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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

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- 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.

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- 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-

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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.

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- 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;



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- (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

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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.

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- 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.