

DATE: 1st April 2015
Revised at: 22nd April 2016

SOUTH EAST MIDLANDS LOCAL ENTERPRISE PARTNERSHIP LIMITED

AND

LUTON BOROUGH COUNCIL

ACCOUNTABLE BODY AGREEMENT relating to FUNDS HELD ON BEHALF OF
SEMLEP

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DEED OF AGREEMENT dated 1st April 2015

BETWEEN:-

- (1) **SOUTH EAST MIDLANDS LOCAL ENTERPRISE PARTNERSHIP LIMITED** a private company limited by guarantee with no share capital (Company Number 07652124) whose registered office is situate at Unit 1 Cranfield Innovation Centre University Way Cranfield Bedford Bedfordshire MK43 0BT ("SEMLEP"); and
- (2) **LUTON BOROUGH COUNCIL** of Town Hall, Luton, LU1 2BQ ("the Council")

being each a "Party" and collectively "the Parties".

BACKGROUND:

SEMLEP is one of 39 Local Enterprise Partnerships ("LEPS") established to provide the vision, knowledge and strategic leadership needed to drive sustainable private sector growth and job creation in its area.

LEPs are locally owned partnerships between local authorities and businesses. They play a central role in determining local economic priorities and understanding activities to drive economic growth and the creation of local jobs. LEPs come in all shapes and sizes and the make-up of Boards, in terms of public and private sector participants, varies greatly too. LEPs are evolving from the bottom up – free from central control and shaped according to local need.

One of the largest LEPs by geographical coverage, SEMLEP includes 11 local authorities. The area has already successfully secured two Enterprise Zone's, Velocity Growth Hub and has established a Strategic Economic Plan aimed at delivering economic growth until 2020.

This Agreement sets out an overarching approach to the management of the Funds held by the Council on behalf of SEMLEP. At the date of this Agreement this covers the following funds:-

Capital

- Growing Places Fund and
- Local Growth Fund

and

Revenue

- Growing Places Fund
- SEMLEP core funding
- Local Growth Fund
- Careers and Enterprise Company
- Other ad hoc funds

However, additional funding stream may be included within the scope of this agreement from time to time subject to agreement between the parties.

IT IS AGREED:-

1 DEFINITIONS

- 1.1 In this Agreement words beginning with initial capital letters have the meaning set out in this Clause:

“Accountable Body”	means the legal entity which is responsible for ensuring proper financial management of the Funds held by SEMLEP;
“Agreement”	means this agreement entered into by the Parties including any Appendices and Schedules to it;
“Agreed”	means with the prior written agreement of and “Agree” shall be construed accordingly;
“Approved Projects”	means all projects which have been through Project Appraisal / Due Diligence and have been approved by the SEMLEP Board (in accordance with any appropriate guidance) for the purposes of the SEMLEP programme and “Approved” and “Approval” shall be construed accordingly;
“Authorised Representative”	means the representative appointed by each Party and notified to the other Party to be the principal officer and line

	of communication between the Parties authorised to make day to day decisions in respect of the operational performance of this Agreement;
"Auditors"	means any auditors appointed by SEMLEP, the Council or a government body;
"Board"	means the Board of Directors of SEMLEP;
"Capital Asset"	means any item of equipment or other asset which has a value of £5,000 or more;
"Claim"	means the reimbursement by the Accountable Body of eligible expenditure;
"Claiming & Payment Mechanism"	means the mechanism in which Requests For Payment are made by SEMLEP or project proposers / so that Eligible Expenditure on Approved Projects can be paid from SEMLEP Funds;
"Confidential Information"	means in relation to the other Party, information relating to that Party, its employees or agents its business, accounts, finances, contractual arrangements, transactions or affairs provided or supplied to the Party under or in connection with this Agreement other than:- <ul style="list-style-type: none"> • any information which is already in the public domain otherwise than as a result of a breach of this Agreement; and/or • any information obtained from a third party who is free to divulge such information;
"Delivery Agent"	means the organisations which or individuals who are

	engaged by SEMLEP (or if appropriate the Council) to deliver Approved Projects in the implementation of the managed funds;
BEIS	means the Department for Business, Energy and Industrial Strategy (or such other department which is or becomes responsible for overseeing the Funding Programmes);
DCLG	means the Department for Communities and Local Government;
DfT	means the Department for Transport;
Funding Agreement	means the agreement between the Council and the Project proposer which sets out the funding profile and milestones;
Financial Irregularity	means any fraud or other impropriety or mismanagement or the use of Funding for purposes other than agreed by SEMLEP or the Accountable Body;
Financial Regulations	means the financial regulations and standing orders adopted by SEMLEP and the Accountable Body from time to time;
Financial Year	means during the continuation of this Agreement a year ending on 31 March or such other date as may vary from time to time;
Interest	means the interest accrued on an annual basis on capital funds calculated on the annual interest achieved on the Council's overall investments;
Interest paid date	means the 30 th April in the following year;

Interest estimate	means the interest estimate that will be provided to SEMLEP to assist with budgeting;
LEP Assurance Framework	means the Framework in which the LEP must operate to ensure transparency in using public funds;
Management Fee	means the fee to be paid to the Accountable Body for Treasury Management of the SEMLEP funds;
Monitoring	means the process followed in accordance with Guidelines to monitor the performance and delivery of Approved Projects to ensure the proper use of Funding and "Monitored" shall be construed accordingly;
Month	means any calendar month and "Monthly Period" shall be construed accordingly;
Party	means a Party to this Agreement and "parties" shall be construed accordingly
Project Appraisal Due Diligence	means the process which must be followed to ensure as far as reasonably practicable that a Proposed Project will deliver the relevant outcomes as set out in the agreed Project Appraisal and Due Diligence Process;
SEMLEP Business Plan	means the SEMLEP Business Plan that is prepared annually setting out the spend and outputs to be achieved over the forthcoming year; and
SEMLEP Funds	means the funds held by the Council on behalf of SEMLEP.

1.2 In this Agreement:

1.2.1 references to legislation include all subsequent legislation amending replacing

or reenacting it and any regulation made or guidance issued under it (where appropriate);

1.2.2 references to Clauses, Schedules and Appendices are to Clauses in and Schedules and Appendices to this Agreement unless stated otherwise;

1.2.3 references to the masculine include the feminine and neuter and to the singular include the plural and vice versa;

1.2.4 the index and headings are for ease of reference and are not to affect its interpretation;

1.2.5 references to “consent” are to prior written consent from the consenting Party;

1.2.6 references to any Party include their successors and assignees;

1.2.7 references to organisations include all corporate bodies, persons, Projects, trusts and unincorporated associations;

1.2.8 the term “including”, “includes” and “in particular” are illustrative only and are not intended to limit the breadth of the words which precede them;

1.2.9 references to the Secretary of State for the Department for Business, Energy and Industrial Strategy shall include any person holding such office from time to time by the same or any title substituted for it or such other person as may be respectively appointed to carry out the duties of or to deputise for the person referred to; and

1.2.10 references to an officer or employee of any Party shall include any person holding such office from time to time by the same or any title substituted for it or such other person as may be respectively appointed to carry out the duties of or to deputise for the person referred to.

2. THE OBLIGATIONS OF THE ACCOUNTABLE BODY

2.1 The Accountable Body shall:-

- 2.1.1 receive funds as the Accountable Body from funding organisations on behalf of SEMLEP;
- 2.1.2 produce a quarterly summary of income and expenditure report for presentation to the SEMLEP Finance, Risk and Audit Committee;
- 2.1.3 during the period in which it remains the Accountable Body within one (1) week before the start of the Approved Project will enter into a Funding Agreement with the delivery partner;
- 2.1.4 monitor, track and receive Growing Places Fund (GPF) Loan funding from Approved Projects.
- 2.1.5 produce a quarterly summary of loans outstanding and repayment on GPF capital;
- 2.1.6 ensure decision making by the SEMLEP Board, when approving projects for funding, is carried out in accordance with the LEP Assurance Framework at Annex 2
- 2.1.7 release of funds to SEMLEP or Approved Projects in line with Schedule 1 in Annex 1;
- 2.1.8 make appropriate amendments to Annex 1 with the agreement of SEMLEP in relation to any additional SEMLEP funds held;
- 2.1.9 account to SEMLEP on an annual basis for any interest accrued on capital sums;
- 2.1.10 Attend all decision making groups as per Annex 2 Governance Structure unless they have a different Accountable Body to ensure compliance with the LEP Assurance Framework;
- 2.1.11 maintain financial records of all grants claims and payments and to reconcile all such records with the financial records of the Accountable Body including any interest payable;

- 2.1.12 co-operate with and provide all necessary information as reasonably required by SEMLEP to enable it to fulfill its role in delivering Approved Projects approved by the SEMLEP Board;
- 2.1.13 carry out its obligations in this Agreement using all reasonable skill, care and speed and in a proper and efficient manner and in compliance with Annex 3 The LEP Assurance Framework, Government Guidelines, and all relevant legislation statutory instruments orders rules regulations and other subordinate legislation;
- 2.1.14 operate prompt and efficient systems for the payment of funding to Approved Projects;
- 2.1.15 provide confirmation to funding agencies that the Accountable Body is satisfied with the LEP Assurance Framework;
- 2.1.16 promptly raises any concerns or issues on the LEP Assurance Framework with the SEMLEP Board and undertake quarterly officer level meetings with SEMLEP and an annual compliance check the CEO of Luton Borough Council, S151 Officer to ensure that the Assurance Framework is being complied with;
- 2.1.17 check that there is no Financial Irregularity in the use of the Funding by the delivery agents and to the extent that the Accountable Body at any time suspects any such Financial Irregularity, to immediately report its suspicions to the SEMLEP Board any details of steps being taken to remedy the Financial Irregularity;
- 2.1.18 ensuring decisions and activities of the LEP conform with legal requirements with regard to equalities, social value, environment, State Aid and procurement;
- 2.1.19 check that Approved Projects have complied with appropriate legal requirements in relation to state aid, public procurement and the Public Sector Equality Duty Act 2010 and undertake an assurance audit of at least 2 Approved Projects per year;
- 2.1.20 be responsible for procuring, commissioning and engaging as appropriate any relevant consultants and contractors for the SEMLEP Programme at the request of

SEMLEP;

2.1.21 respond to requests under Freedom of Information and/or Environmental Information Regulations in consultation with SEMLEP;

2.1.22 provide any additional support requested by SEMLEP in the management of the programme to an agreed additional fee; and

2.1.23 request payment of an agreed management fee from SEMLEP in respect of the obligations set out in Clauses 2.1.1 to 2.1.23

2.2 The obligations and functions of the Accountable Body do not include:-

2.2.1 the day to day management decisions in relation to the funding and delivery of Approved Projects;

2.2.2 the management and delivery of the SEMLEP Board activity;

2.2.3 strategic or policy decisions in relation to SEMLEP, except in relation to the rules and guidance in relation to LEP Assurance Framework, propriety, accountability and legal compliance;

2.2.4 the day to day management of SEMLEP; or

2.2.5 approval of the funding allocation once agreed by the SEMLEP Board.

2.3 The Council's Chief Executive and its Section 151 officer are required to sign and return to the relevant funder any declarations as requested and meet any required timescale.

3. RESPONSIBILITIES OF SEMLEP

3.1 SEMLEP shall:-

3.1.1 commission Approved Projects;

3.1.2 be solely responsible for strategic decision making, the setting of priorities, and

policy formation in relation to SEMLEP strategic priorities;

- 3.1.3 decide how all funding is to be allocated and spent;
- 3.1.4 carry out the Appraisal of Proposed Projects in accordance with the Project Appraisal and Approval Process (arranging for independent appraisal where appropriate) within the LEP Assurance Framework;
- 3.1.5 be responsible for whether or not to Approve Proposed Projects (subject to inclusion within SEMLEP strategic priorities);
- 3.1.6 make appropriate arrangements with Delivery Agents which are engaged to deliver Approved Projects agreeing appropriate terms;
- 3.1.7 monitor the delivery of funded Approved Projects
- 3.1.8 be responsible for the set-up, maintenance and operation of its own financial management systems and Financial Regulations to facilitate financial probity and the proper use of funding and always in accordance with the Financial Regulations;
- 3.1.9 be responsible for procuring, commissioning and engaging as appropriate any relevant consultants and contractors for the SEMLEP Programme;
- 3.1.10 be responsible for providing the Accountable Body with the milestones, outcomes and outputs achieved during the Approved Projects to be included in Funding Agreements;
- 3.1.11 comply with its own policies at all times;
- 3.1.12 do everything within its power to ensure it complies with the requirements and regulations of the funder;
- 3.1.13 reconciliation of advance payments to Approved Projects where these have been agreed;

- 3.1.14 make requests for payments for spend to the Accountable Body in accordance with Annex 1.
- 3.1.15 in partnership with the Accountable Body provide any programme reports as requested by funders
- 3.1.16 establish and implement the LEP Assurance Framework for SEMLEP to be reviewed annually and published on the SEMLEP website;
- 3.1.17 operate a Growing Places Fund Task Group and Local Growth Programme Management Board;
- 3.1.18 maintain an official record of LEP proceedings and hold copies of all relevant LEP documents relevant to SEMLEP funds; and
- 3.1.19 pay the agreed fee to the Council for Accountable Body services.

4. AUDIT ARRANGEMENTS

- 4.1 The Accountable Body shall in accordance with Government Guidance ensure that the audit requirements which are required of it as the Accountable Body are complied with.
- 4.2 Both Parties shall co-operate with the reasonable requirements of any Auditor and take all reasonable steps to comply with any recommendations made by Auditors except in so far as the requirements asked by an Auditor conflict with requirements SEMLEP and Government Guidance.

5. PROTOCOLS AND GENERAL PRINCIPLES

- 5.1 The Parties acknowledge that they have a shared responsibility to ensure that expenditure of Funding is made in accordance with the approval of the SEMLEP Board and Government Guidelines and to that they have agreed to comply with SEMLEP's Financial Regulations published as at the date hereof and/or as approved by resolution of the SEMLEP Board from time to time with the agreement in writing of the Accountable Body (such agreement not to be

unreasonably withheld or delayed).

6. ACCESS TO INFORMATION AND RECORDS

- 6.1 The Parties shall ensure that invoices, receipts and other relevant records of expenditure of Growing Places Funding are kept and are retained for at least 7 years after the end of the Financial Year in which it has been claimed.
- 6.2 The Parties shall ensure that all necessary documents and records which are held by them in respect of the Local Growth Fund Programme are (and shall use all reasonable endeavors to ensure that relevant documents and records held by third parties are) available for access by the DCLG and the Auditors and to enable Project Appraisal, Approval and Monitoring of Projects to take place.

7. CLAWBACK

- 7.1 The Parties shall at all times use all reasonable endeavors to ensure compliance with the Financial Guidance and in particular:
 - 7.1.1 agree if funding for Approved Projects will be suspended when issues of non-delivery or mis-management have been identified and are investigated; and
 - 7.1.2 agree the process for claw back of funding would non-delivery or mismanagement be proven.

8. COMMENCEMENT AND TERMINATION

- 8.1 This Agreement shall apply and take effect and regulate the relationship between the Parties upon the terms hereof from 1st April 2015 and shall continue until it is terminated.
- 8.2 This Agreement may be terminated in whole or in part:-
 - 8.2.1 by either Party serving upon the other not less than six (6) calendar months' notice in writing;

8.2.2 if a Party ("the Party not in default") considers that the other Party ("the Party in default") commits or allows to be committed a material or fundamental breach ("Breach") of any term of this Agreement the Party not in default shall have the right to serve notice in writing on the Party in default specifying:-

8.2.2.1 the details of the alleged Breach;

8.2.2.2 the steps the Party in default must take to remedy the Breach; and

8.2.2.3 the period in which the Party in default has to remedy the Breach ("the Remedy Period") which shall be a reasonable time (and in any event not less than twenty eight (28) days).

PROVIDED that if at the end of the Remedy Period it is the Party not in default's reasonable opinion that the Party in default has not remedied the Breach or the Breach is incapable of remedy the Party not in default shall be entitled to give notice in writing to terminate the Agreement immediately; or

8.2.3 if after a review in October 2017 that this Agreement is no longer fit for purpose.

8.3 Termination under Clause 8.2 is without prejudice to the rights and liabilities of the Parties which accrued before termination or which arise from the need to transfer the role of the Accountable Body from the Council or to wind up the Funding Programme.

8.4 On termination under Clause 8.2 the Parties must obtain and comply with directions of funders as to the disposal and/or application of any outstanding Funding.

9. **RESOLUTION OF DISPUTES**

9.1 Each of the Parties agrees to use all reasonable endeavors to resolve disputes in connection with SEMLEP Funds or this Agreement by day to day consultation between the Parties' officers.

9.2 If any dispute cannot be resolved in accordance with Clause 12.1 the Authorised

Representatives shall meet in good faith within ten (10) Working Days of a request from either Party to the other to attempt to resolve the dispute.

9.3 If any dispute cannot be resolved in accordance with Clause 12.2:-

9.3.1 a Party may serve a dispute notice ("Dispute Notice") on the other Party. The notice must state the subject matter of the dispute and set out proposals to resolve it;

9.3.1.1 within ten (10) Working Days of the date of service of the dispute notice, the Party receiving it may serve a counter notice ("counter notice") with alternative proposals to resolve the dispute. The counter notice must also suggest three possible alternative dates (within the next ten (10) Working Days) for a meeting between the Parties;

9.3.1.2 the Party receiving the counter notice must confirm to the Party serving the counter notice which of the dates is suitable for the meeting;

9.3.1.3 the Head of Business and Consumer Services or nominee of the Accountable Body and the Chair and/or one Director of SEMLEP must use all reasonable endeavors to attend the meeting and to resolve the dispute;

9.3.1.4 if the dispute is not resolved at any time after six (6) weeks from the service of the dispute notice, any Party may refer the matter to arbitration. The arbitrator shall be agreed by the Parties within fourteen (14) days or,

9.3.1.5 if there is no such agreement, either Party may apply to the Centre for Dispute Resolution to appoint an Arbitrator. The Arbitration Act 1996 shall apply and the decision of the Arbitrator shall be binding on the Parties

10 NON DISCRIMINATION

10.1 The Parties shall not in respect of any function carried out under this Agreement unlawfully or unfairly discriminate on the grounds of age, disability, faith, gender, pregnancy/maternity, race or sexual orientation, marriage and civil partnership including within the meaning of the

scope of the Equality Act 2010 and any other applicable anti-discrimination statutes or any statutory modification or re-enactment thereof.

- 10.2 The Parties shall take all reasonable steps to ensure the observance of the provisions of Clause 13.1 by their employees and agents.

11 ASSIGNMENT

- 11.1 Neither Party may assign, charge, transfer or subcontract this Agreement or its rights and obligations under it or any part of it to any third parties without the prior written consent of the other Party.
- 11.2 This Agreement is to bind and benefit the successors and assignees of each of the Parties.

12 LEGAL POWERS

- 12.1 Nothing in this Agreement shall impose on any of the Parties any obligation or restriction which is inconsistent or incompatible with SEMLEP's objects.

13 FURTHER ASSURANCE

Each Party agrees to do and so far as they are able to procure that third parties do all things reasonably within their powers which are necessary or desirable to carry this Agreement into full force and effect or give effect to its spirit and intent, including acting in good faith.

14 NO PARTNERSHIP

- 14.1 Nothing in this Agreement shall constitute imply or be deemed a partnership.
- 14.2 Neither Party has any authority to bind the other.

15 WAIVER

- 15.1 Failure or delay in exercising any rights, powers, or privileges under this Agreement shall not operate as a waiver of them.

- 15.2 The single or partial exercise of any right, power or privilege does not prevent any other exercise or any other right, power or privilege.
- 15.3 Any waiver of a breach of this Agreement is not to be deemed a waiver of any subsequent breach or default and does not affect the other terms of this Agreement.

16 ENTIRE AGREEMENT

- 16.1 This Agreement includes the understanding of the Parties with respect to its contents and all prior agreements have been merged in it.
- 16.2 No representations or warranties have been made other than those expressly given by this Agreement.

17 SEVERANCE

- 17.1 If any term of this Agreement is or becomes illegal, void or unenforceable the remainder of this Agreement shall continue in force as though that term had not been included in it.
- 17.2 The rights and remedies given by this Agreement are cumulative and do not exclude any other rights or remedies given by the law.

18 NOTICES

18.1 Method of Service

Any notice or other communication required to be given in this Agreement to a Party shall be sufficiently served if served by hand, when left at a Party's principal address, or if sent by prepaid first class or recorded delivery post or facsimile transmission it is addressed to the Party at its address as stated in this Agreement or as otherwise notified by the Party in accordance with this Clause and marked for the attention of, in the case of:-

18.1.1 SEMLEP, the Chair and copied to Chief Executive of SEMLEP and

18.1.2 the Council to the Head of Business and Consumer Services.

19 ENGLISH LAW

The formation, construction, performance, validity and all aspects of this Agreement are to be governed by English law and the Parties agree to submit to the exclusive jurisdiction of the English courts.

20 FORCE MAJEURE

Neither Party shall be liable for any delay in performing its obligations under this Agreement if such delay is caused by circumstances beyond its reasonable control (including without limitation any delay caused by any act or omission of the other Party). Provided however that any delay or non-performance by an agent subcontractor or contractor of the Party so delaying or not performing shall not relieve that Party from liability for delay or non-performance except where it is beyond the reasonable control of the agent, subcontractor or contractor concerned.

21 COSTS

Each Party must pay their own costs and expenses in negotiating, preparing and executing this Agreement.

22 RIGHTS OF THIRD PARTIES

For the avoidance of doubt nothing in this Agreement shall confer on any third party any benefit or the right to enforce any term of this Agreement. The Parties may agree to cancel or vary this Agreement in whole or in part without being required to seek or obtain the consent of any third.

23 CONFIDENTIALITY

The Parties agree to respect Confidential Information which may, from time to time, become available to them out of the operation of this Agreement, and to comply with the Data Protection Act 1998.

24 COUNTERPARTS

This Agreement may be executed in counterparts and this has the same effect as if the affixations of the seals and/or the signatures on the counterparts were on a single copy of this Agreement.

IN WITNESS whereof the Parties have executed this Agreement as a Deed and have hereunto set their respective hands the day and year first before written.

SIGNED AS A DEED by)
SOUTH EAST MIDLANDS)
LOCAL ENTERPRISE)
PARTNERSHIP LIMITED)
acting by)
a Director and)
a further Director/the)
Company Secretary thereof)



Director



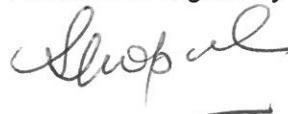
Director/Company Secretary

SIGNED AS A DEED on)
behalf of **LUTON**)
BOROUGH COUNCIL)
acting by two Authorised)
Signatories)



Authorised Signatory

Authorised Signatory



The Schedule

Annex 1

Fund	Form of funding agreement	Method for claims	Authorisation	Payment Schedule
Growing Places Fund (capital)	Loan agreement between the Council, SEMLEP and project	Claim by project as set out in the funding agreement	Loans agreed by SEMLEP Board. Claims authorised by the Accountable Body	
Growing Places Fund (revenue)	n/a	Invoice	Board minute	
Local Growth Fund (DCLG)	Funding letter setting out quarterly payment, milestone and outputs	Quarterly payments in advance	Projects approved by the SEMLEP Board Claims approved by the Chair of the Growing Places Fund Task Group as a quarterly schedule	
Local Growth Fund (DfT)	To be agreed	tbd	to be agreed	

Use of accrued interest	AB Agreement	Invoice	SEMLEP Finance, Risk and Audit Committee	
SEMLEP Core funding	AB Agreement	Invoice	SEMLEP CEO	