

THIS ACCOUNTABLE BODY AGREEMENT (ABA) IS MADE ON 24th February 2015 BETWEEN

- (1) NEW ANGLIA LOCAL ENTERPRISE PARTNERSHIP of Centrum, Norwich Research Park, Norwich, NR4 7UG (New Anglia LEP) and**
- (2) SUFFOLK COUNTY COUNCIL of Endeavour House 8 Russell Road Ipswich IP1 2BX (SCC)**

1. INTRODUCTION

- 1.1 The purpose of this ABA is to set out the framework for respective roles and responsibilities of New Anglia LEP as the organisation which has responsibility for making decisions on the project activity that the various funds set out at clause 2.2 below will support, along with other funding arising out of the Norfolk and Suffolk Economic Strategy, and SCC (as the organisation taking on the role of "Accountable Body" for New Anglia LEP and the funds set out at clause 2.2 below) who will have responsibility for ensuring that such decisions meet the legal, regulatory and funding criteria applicable at the time of decision and during the period of the project activity.

2. BACKGROUND AND CONTEXT

- 2.1 New Anglia LEP has been established to work with businesses and partners across the education, voluntary and public sector, to help grow jobs in Norfolk and Suffolk.
- 2.2 New Anglia LEP and SCC have developed in line with Government guidance a single assurance framework ("Assurance Framework") covering all Government funding flowing through New Anglia LEP, to ensure New Anglia LEP has robust value for money processes in place. The purpose of the LEP Assurance Framework is to support the developing confidence in delegating funding from central budgets and programmes via a single pot mechanism to LEPs and their accountable bodies. The Accountable Body is required to sign off the Assurance Framework.
- 2.3 New Anglia LEP has responsibility for deciding the project activities that Growth Deal funds will be allocated to which in this ABA, are referred to collectively as "the Programme". £290 million has been made available to New Anglia LEP from 2014 to 2021 as part of the Government's Growth Deal programme, for which all 38 LEPs across England have been invited to compete for an individual allocation. Growth Deals provide funds to local enterprise partnerships or LEPs for projects and programmes that benefit the local area and economy.
- 2.4 New Anglia LEP's particular objectives for the Programmes can be found in the relevant chapter of the Assurance Framework and include:

2.4.1 The Growing Places fund is a recycling loan fund which has been in operation in the New Anglia region since 2012.

The fund was designed to address the problems facing stalled developments, by providing financial support towards costs such as site infrastructure, services or access.

The fund operates predominantly as a loan fund but has awarded small grants where a regionally significant project can be delivered as a result and where the grant secures a major match funding contribution.

The Growing Places Fund is open to public and private applicants. The Fund now stands at a total allocation of approximately £32 million which has been matched by in excess of £280 million from public and private sources. The Fund has committed over £25 million on 28 capital investment projects and has supported 7 sector developments. The fund remains open to applications and has a pipeline of projects for consideration.

2.4.2

The Growing Business Fund is a grant fund which has been in operation in the New Anglia region since April 2013. The fund was initially supported by the Regional Growth Fund, with £12m awarded from Rounds 3 and 4 of the funding. In 2015 the New Anglia LEP secured an additional £25.57m by 2021 from the Local Growth Fund through the Growth Deals. The Fund provides grants between £25,000 and £500,000 to local businesses across Norfolk and Suffolk.

The fund supports the capital costs of expansion by the businesses, up to the maximum allowable contribution under General Block Exemption Regulations (GBER) Articles 14, 17, and 19, of up to 20% of the costs of the project for small businesses employing less than 50 people.

Medium sized businesses can receive funding of up to 10% towards the project cost or 20% if regulated by De Minimis, but no more than equivalent of EUR200,000 around £175k (official exchange rate as of February 2018).

2.4.3

The Small Grant Scheme is a grant fund that has been in operation in the New Anglia region since August 2013. The programme is currently part of New Anglia Business Growth Programme supported by £12.48m from the European Regional Development Fund. It provides grants between £1,000 and £25,000 to local businesses across Norfolk and Suffolk.

The programme supports SMEs through the provision of grants to assist them to grow and expand, employ new staff, introduce new products and services, improve productivity or efficiency, increase their competitiveness etc.

Small businesses employing less than 50 people may apply for up to 20% of the costs of the project under General Block Exemption Regulations (GBER) Articles 14, 17, 18 and 19. Medium sized businesses may apply for funding of up to 10% towards the project cost or 20% if regulated by De Minimis regulations (EUR 200,000 is a maximum amount of all De minimis aid a business may receive over a 3 year fiscal period). SMEs based in an Assisted Area may apply for an additional 10% of funding.

3. TERM AND TERMINATION OF ABA

- 3.1 This ABA, once signed by both parties, will be deemed to have come into effect on 7th July 2014 and will continue in place until 31 March 2021 unless it is terminated in accordance with the other provisions of clause 3. The ABA can be extended beyond 31 March 2020 if agreed by both parties. There will also be a 'light touch' review each year to allow discussion of progress reported to the Audit and Risk Committee and early discussion of any changes necessary in the changing landscape of LEP funding and programming.
- 3.2 Subject to clauses 3.3 and 3.4 if, at any time during the term of this ABA, either party wishes to bring the ABA to an end, the following consultation and notice procedures shall apply:
 - (a) the party proposing to terminate the ABA must consult the other party about the termination in good time and in any event, at least, nine months before the proposed termination of the ABA,
 - (b) the party terminating the ABA must give at least six months' written notice to the other party,
- 3.3 If a party to the ABA commits a material breach of any term of the ABA, the other party may send a written notice to the breaching party, setting out the nature of the breach and the required remedy and giving not less than three months' notice to remedy the breach. If the breach has not been remedied at the end of the notice period, then the party who served the notice may serve a further notice of two months, terminating the ABA.
- 3.4 Where the operative period for a Programme comes to an end or the funding under the Programme ceases, this ABA shall terminate in part in relation to that Programme.
- 3.5 In any circumstance where this ABA terminates in whole or in part, and without prejudice to any other rights or remedies the parties may have, the parties must use their best endeavours to have in place, from the date of termination of the ABA or the relevant part of the ABA, arrangements for transferring existing agreements and liabilities, for example under the various grant and loan agreements that SCC will have entered into on behalf of New Anglia LEP, to a replacement Accountable Body.
- 3.6 Where it is not possible for existing agreements and liabilities to be transferred (or it is agreed that they shall not transfer) and as a result SCC retains some or all of such liabilities, New Anglia LEP shall indemnify SCC against those liabilities and shall provide sufficient funding for SCC to meet those liabilities e.g. under grant and loan agreements.
- 3.7 New Anglia LEP shall indemnify SCC against any financial costs or liabilities incurred, including but not limited to redundancy costs, on the termination of the

ABA in whole or in part except where termination takes place under clause 3.3 as a result of an un-remedied breach by SCC.

4. ROLES AND RESPONSIBILITIES OF NEW ANGLIA LOCAL ENTERPRISE PARTNERSHIP

New Anglia LEP shall:

- 4.1. Comply with all the regulations and guidance notes from the Ministry for Housing, Communities and Local Government, Cabinet Office, Department for Business, Energy and Industrial Strategy, and other relevant funding bodies including but not exhaustively: state aid regulations, relevant departmental funding criteria and the wider regulatory framework for the funds included in this agreement ensuring that funds are used appropriately, and in a manner that is consistent with the contents of any offer letters from government.
- 4.2. Decide the economic growth priorities and strategies for the Programme and the overall grant allocations in line with the initial submission and the funding agreement for the Programme.
- 4.3. Approve and submit to SCC an annual delivery plan of planned expenditure and outcome and output targets – this may take the form of a copy of any such report sent to the LEP Board.
- 4.4. Strive to achieve all the outputs and key indicators set out in the delivery plan for the Programmes and produce an annual progress report as required by the funding bodies.
- 4.5. Develop close working links and joint working arrangements with SCC, other Local Enterprise Partnerships and other relevant bodies as appropriate.
- 4.6. Set up appropriate consultation procedures, business involvement and membership of New Anglia LEP's Board to facilitate the development and implementation of the Programmes.
- 4.7. Have in place appropriate processes with funding guidelines and criteria and make decisions about the approval of projects in accordance with the guidelines and criteria. This is subject to the requirements of the relevant funding body and should be in line with the regulatory and legal framework for the funding after considering any recommendations from SCC. This will include an appropriate risk appraisal and management process.
- 4.8. Agree with SCC and implement policies and procedures for ensuring value for money in the use of funds, whether by New Anglia LEP or by the organisations which are funded through the Programmes. This will include the establishment of and compliance with appropriate procedures relating to:

(a) competitive tendering and procurement where New Anglia LEP is purchasing goods, services or works. and

(b) the processes to be followed by organisations funded through the Programmes, for example, by requiring competitive tendering of goods, services or works funded through the Programmes where appropriate

In relation to (a), if SCC procures and enters into contracts for goods, services or works for New Anglia LEP, then SCC procurement procedures will be followed. New Anglia LEP is a contracting authority for the purposes of the Public Contracts Regulations (these are subject to change in 2015), so if New Anglia LEP procures and enters into the contracts then it will do so in line with relevant EU procurement rules and the internal procedures that are to be established under this clause.

- 4.9. Ensure that proper procedures exist for the regular monitoring of progress in implementing the Programmes.
- 4.10. Evaluate the impact of the Programmes through appropriate measures, if necessary agreed with SCC, to comply with relevant funders' requirements.
- 4.11. Work with SCC in drafting and developing written procedures and appropriate management, administration, finance and IT systems for the Programmes covered by this ABA. New Anglia LEP will develop its own procedures which are outside the scope of this ABA.
- 4.12. Ensure that both New Anglia LEP and, to the extent that it is appropriate to the nature of the relevant project those organisations to whom funding is provided, have in place effective policies and procedures to:
 - I. ensure equality of opportunity and diversity in employment of staff and delivery of services. These should demonstrate how all parties will comply with relevant equality legislation and respective Codes of Practice. Evidence of the implementation of this policy shall be kept available for inspection.
 - II. ensure that all relevant legislation and guidance on state aid is complied with.
 - III. ensure open and transparent commissioning processes are used including for the purchase of goods and services which adhere to relevant legal procurement and commissioning processes. This includes EU procurement rules where relevant.
 - IV. ensure the health and safety of staff and service users in compliance with relevant Health and Safety legislation.

- V. ensure where the project involves work with children and young people, projects should have in place procedures for ensuring compliance with relevant Children's and Young Persons legislation.
 - VI. ensure that, in the event of SCC receiving a complaint about New Anglia LEP or a constituent project, the relevant party/ies is/are required to co-operate fully with them in the investigation and resolution of the complaint, including complying with any recommendations arising from such investigation.
 - VII. respond to requests for information under Freedom of Information Act 1998 (Fol) and related legislation. If New Anglia LEP or SCC receive an Fol request both parties shall provide such information as is required by them to enable a full response to be made to the request within the statutory time limit. It is accepted that New Anglia LEP is exempt from Fol in the body of the legislation but the Assurance Framework issued by BEIS makes it a requirement that New Anglia LEP complies with the spirit of this legislation and New Anglia LEP confirms that it will do so. It should be noted that applicants are currently advised that information will be treated as commercially sensitive in the event of an FOI request being received, although this cannot be guaranteed until the individual circumstance arises.
 - VIII. comply with The General Data Protection Regulation.
- 4.13. Co-operate with SCC or any external or internal auditors appointed and to make available for inspection all documentation and provide responses to any queries raised.
- 4.14. Work with SCC to ensure value for money and probity are achieved in the delivery of the Programmes and by individual projects.
- 4.15. Ensure that any assistance given to an organisation by New Anglia LEP is within the limits laid down by any obligation of the European Union or appropriate funding organisation, and that all relevant procurement procedures are met; should this not be the case, there will be reduction in, or repayment of, grant.
- 4.16. Make arrangements for the effective monitoring of individual projects within procedures agreed with SCC and make any necessary changes to achieve targets and the overall Programme.
- 4.17. Ensure that accounts are maintained by relevant officers (particularly the New Anglia LEP Financial Controller) from New Anglia LEP.
- 4.18. Permit SCC to use the funds allocated to the LEP to carry out its Accountable Body role, including the allocation of loan and grant funding to an SCC account and shall permit SCC to retain such funding until such time as SCC's obligations under this ABA and any grant or loan or other agreements made as a result of

the ABA or SCC's role as Accountable Body are discharged or transferred to a third party"

- 4.19 Work with SCC on the creation of the local Assurance Framework and adhere to its requirements.

5. ROLES AND RESPONSIBILITIES OF THE ACCOUNTABLE BODY – SCC

SCC, through the Section 151 Officer, will have responsibility for ensuring that a local Assurance Framework is in place, that it meets the standards set out in the LEP Assurance Framework Guidance document, and that all funding decisions are made in accordance with it.

SCC shall:

- 5.1 Ensure decisions and activities of New Anglia LEP conform with legal requirements with regard to equalities, social value, environment, State Aid, procurement
- 5.2 Ensure (through its Section 151 Officer) that the funds identified in para 2.2 are used appropriately.
- 5.3 Ensure that the Assurance Framework is adhered to
- 5.4 Maintain the official record of New Anglia LEP proceedings and holding copies of all relevant LEP documents related to LGF funding.
- 5.5 Having regard to its role as Accountable Body for the Programmes, have responsibility for agreeing or challenging the decisions of the LEP, in the context of legal, regulatory or funding criteria, when New Anglia LEP are approving projects. To avoid doubt, as SCC is the Accountable Body, it may, acting reasonably, decide that it is not appropriate to implement a New Anglia LEP decision where:
 - it is unlawful
 - It contravenes relevant grant or funding guidelines or criteria
 - It is in breach of financial regulations
 - It is in breach of the Assurance Framework
 - It is in breach of any other relevant terms, requirements or policies imposed on SCC or New Anglia LEP

or there is a significant risk of this. Where SCC considers this to be the case, it will consult with New Anglia LEP to consider what amendments may be made in order to address SCC's concerns and where it is not possible to agree an approach, the matter will be referred to dispute resolution in accordance with clause 7.2.

- 5.6 Ensuring that there are arrangements for internal audit of funding allocated by New Anglia LEP, at least equivalent to those in place for Local Authority spend.

- 5.6.1 Act as accountable body for the Programmes. The tasks undertaken by the Accountable Body to fulfil this role are set out in the Assurance Framework, and include financial management and overview of spend across all Programmes.
- 5.6.2 Jointly with New Anglia LEP, ensure that value for money and probity is achieved in the use of partnership funding and that all guidelines and procedures as issued by funding bodies are complied with.
- 5.6.3 Recognise the demands and priorities of New Anglia LEP's plans in setting its corporate priorities.
- 5.6.4 Ensure that proper procedures exist for the regular monitoring of progress in implementing the Programmes. Evaluate the impact of the Programmes through appropriate measures, if necessary agreed with SCC, to comply with relevant funders' requirements.
- 5.6.5 Collate and submit to the relevant monitoring body (in the case of City Deal this is currently: MHCLG and Lancaster University as the intermediary body) interim and final claims for relevant grant on behalf of New Anglia LEP, receive payment of funds and arrange an independent audit of the final grant claim and internal audit of the Programme.
- 5.6.6 Ensure that suitable financial and accounting procedures are in place for the Programmes and ensure that arrangements are in place for the audit of the claims and all systems and procedures including the approval and appraisal processes of projects. Report any suspected irregularity or probity issues to the relevant funding body, the New Anglia LEP Board and the Council.
- 5.6.7 Co-operate with New Anglia or any external auditors appointed and to make available for inspection all documentation and provide responses to any queries raised.
- 5.6.8 Be responsible for achieving the best return on New Anglia LEP funds in line with an acceptable risk policy agreed by both parties through the Audit and Risk Committee. New Anglia LEP will provide a funding profile to enable this to be pursued effectively. SCC will sit on the Audit and Risk Committee which has oversight of all the programmes within New Anglia LEP's remit. SCC will identify one member of staff within finance, to cover off financial and funding issues.
- 5.6.9 In agreement with and with all necessary assistance from New Anglia LEP make the following arrangements:
 - I. in certain pre-agreed circumstances arrangements for the provision of effective management and administration support to New Anglia LEP.
 - II. make use of a grant and/or loan agreement and ancillary documents to enter into a legally binding agreement with funding recipients in relation to the Programmes.

- III. prepare and submit any financial and non-financial information required from New Anglia LEP by the funding bodies.
 - IV. maintain any required financial management systems and supporting documentation up to the end date of the Programmes, and then to transfer all such documents to an appropriate storage location as required by the relevant funding body
 - V. authorise the release of funding in accordance with the requirements of the relevant funding body.
- 5.10 Work with New Anglia LEP in drafting and developing written procedures and appropriate management, administration, finance and IT systems for the Programmes covered by this ABA. New Anglia LEP will develop its own procedures which are outside the scope of this ABA.

6. PROGRAMME MANAGEMENT

New Anglia LEP will make all arrangements for effective management and administration support to the Programmes as necessary. SCC will be paid for support provided to New Anglia LEP in support of the roll out of funding that has been awarded between 7th July 2014 to 31 March 2021 to support the delivery of the Economic Strategy. This will include a post for finance. SCC will be reimbursed for the support it provides to manage and administer the individual Programmes. Where possible some or all of the cost for conducting the accountable body role will be agreed with SCC and included in the bid submission(s) on behalf of New Anglia LEP. This is likely to take the form of a 7% 'top slicing' of the programmes received by New Anglia LEP to support resourcing of the Accountable Body role and appropriate staff costs within New Anglia LEP. Any alternative arrangements for the provision are to be agreed by the New Anglia LEPs Board following consultation with SCC.

7. MISCELLANEOUS

7.1 AMENDMENTS

If either party wishes to amend this ABA during its term, the party shall submit details of the proposed amendment in writing for consideration by both parties with a commitment that agreement be reached within 21 days and where agreement to the amendment is not reached in this period, the issue shall be referred for dispute resolution in accordance with clause 7.2 below.

7.2 DISPUTE RESOLUTION

Both parties shall attempt to resolve any disputes or differences by negotiating in good faith, in the first instance through day to day consultation.

If they fail to resolve a dispute within 21 days from it arising, either party may refer the matter for determination to a meeting of the following representatives of the parties:

- SCC as Accountable Body – Assistant Director Strategic Development, or alternative representative of the Accountable Body and
- New Anglia LEP – Chair of Board, or Chief Executive

If the dispute is not resolved within 28 days of its referral to the above group, then the parties agree to identify, within 14 days thereafter, a suitable independent third party as an expert or as a facilitator of consideration of the dispute. The identity of this third party may vary in order to provide the parties with flexibility to select a party who is appropriate to the particular circumstances of the issue but by way of example, this may include another local authority, legal Counsel or a mediator. Once the parties have agreed on a suitable third party, they will refer the matter to that third party within 14 days of agreement and will use their best endeavours to ensure that the dispute is considered as quickly as possible thereafter and in any event, within 21 days of referral. The parties will have the flexibility to decide on the terms of reference of the relevant third party.

7.3 FAILURE TO DELIVER

SCC will have the right to take appropriate action in respect of a funding recipient, in accordance with the terms of the funding recipient's grant or loan agreement, including withholding of payment as a result of any breach of the terms of the grant or loan agreement and/or failure to take account of the regulatory or legal framework including state aid guidance. Payment may be resumed once the failure has been remedied.

7.4 WAIVER

The failure or delay of either party in exercising any right or remedy in response to the action or lack of action of the other party under the terms of this agreement will not prevent them doing so at a later date nor operate as a waiver.

7.5 CONFIDENTIALITY

Each party agrees to keep confidential such information as it may acquire from time to time in relation to the other party where such information is by its nature confidential. Neither party shall use the other's confidential information for any purpose other than to perform its obligations under this ABA. This shall not apply if both parties agree to its disclosure or where disclosure is, in the opinion of the discloser, is necessary to comply with the Data Protection Act 1988 or Freedom of Information Act 2000.

7.6 GOVERNING LAW AND JURISDICTION

This ABA is intended to be legally binding and shall be governed by and construed in accordance with English law and, without affecting the dispute resolution procedure set out in clause 7.2, each party agrees to submit to the exclusive jurisdiction of the courts of England and Wales.

7.7 NO PARTNERSHIP

Nothing in this ABA is intended to, or shall be deemed to; establish any partnership or joint venture between the parties.

7.8 SIGNATURES

By signing this ABA both parties have agreed to the terms and conditions set out in the ABA (including contribution to costs) under which SCC will undertake the Accountable Body role.

Signed for and on behalf of
New Anglia Local Enterprise
Partnership by:

.....
Chief Executive of New Anglia LEP (Chris Starkie)

Signed for and on behalf of
Suffolk County Council by:

.....
Authorised Signatory