



Section G: Accountable Body Agreement

March 2019



ACCOUNTABLE BODY AGREEMENT

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Dated

March 2019

(1) WILTSHIRE COUNCIL

(2) SWINDON BOROUGH COUNCIL

**SWINDON AND WILTSHIRE LOCAL
ENTERPRISE PARTNERSHIP LIMITED**

ACCOUNTABLE BODY AGREEMENT

This Agreement made on

2019

BETWEEN:

1. **WILTSHIRE COUNCIL** of County Hall, Bythesea Road, Trowbridge, Wiltshire, BA14 8JN (“**Wiltshire**”);
2. **SWINDON BOROUGH COUNCIL** of Civic Offices, Euclid Street, Swindon, SN1 2JH (“**Swindon**”); and
3. **SWINDON AND WILTSHIRE LOCAL ENTERPRISE PARTNERSHIP LIMITED** (registered number 11766448) of Wiltshire Council Offices, Monkton Park, Chippenham, SN15 1ER (“**SWLEP**”)

(being either a “**Party**” or together “**the Parties**”)

BACKGROUND

- A. SWLEP was established in 2011 with the aim of stimulating growth in the economy across the Wiltshire and Swindon area. In part it aims 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 between the business community and the two local councils; Wiltshire and Swindon.
- B. Central government has requested that all Local Enterprise Partnerships (“LEPs”) develop a single assurance framework to cover all devolved government funding received by LEPs. SWLEP has been allocated Funding from central government which can only be paid to a local authority nominated as an accountable body. Wiltshire has agreed that it will act as the accountable body in respect of Funding received by SWLEP.
- C. The purpose of this Accountable Body Agreement is to set out the respective roles and responsibilities of Wiltshire acting as the accountable body for the SWLEP and Swindon and associated matters in relation to the application and allocation of devolved Funding by government to relevant projects and programmes.
- D. Swindon and Wiltshire are empowered under Section 1(1) Localism Act 2011.

IT IS AGREED AS FOLLOWS:

I Definitions

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

Accountable Body means Wiltshire;

Agreement means this Accountable Body Agreement and any schedules;

Chief Executive means the Chief Executive of Swindon;

Corporate Director means the Corporate Director with responsibility for economy and enterprise in Wiltshire or in his absence one of the other corporate directors in Wiltshire.

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 1st April and ending on 31st March or part thereof

Funding means all and any devolved government revenue and capital funding which government specifies should only be held by the accountable body and to be allocated by SWLEP pursuant to the Governance Framework;

Projects/Programmes the schemes allocated the Funding;

Scheme Promoters means Wiltshire or Swindon or such other organisation which supports and promotes any of the Projects or Programmes;

The SWLEP Governance Framework means the Swindon and Wiltshire Local Enterprise Partnership (SWLEP) Governance Framework dated [March 2019].

- 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 date hereof and shall continue in effect until either Wiltshire or Swindon or SWLEP terminates the Agreement in accordance with Clause 13 of this Agreement.

3 Roles and responsibilities

- 3.1 It is the overriding responsibility of SWLEP to ensure that SWLEP allocates or otherwise deals with the Funding in such a way which does not breach the terms and conditions upon which Wiltshire as Accountable Body has received the Funding for the purposes of the SWLEP and is in accordance with the SWLEP Governance Framework.

3.2 The roles and responsibilities of the Parties are set out in the Schedule I to this Agreement.

4 Governance and decision making

4.1 The governance and working arrangements between the Parties shall be in accordance with the SWLEP Governance Framework.

5 Financial Arrangements

5.1 Unless otherwise agreed, Swindon and Wiltshire is each solely responsible for Projects or Programmes for which either are the Scheme Promoter in their respective administrative areas and in respect thereof for compliance with any grant conditions in consultation with the Accountable Body which shall include the obligation to repay in whole or part the Funding in the event of non-compliance with any conditions.

5.2 With the approval of the S151 Officer, SWLEP will enter into any required grant funding or loan agreement with a Scheme Promoter in relation to any part of the Funding allocated to such Scheme Promoter which shall substantially be in the form of Grant Agreement attached in Schedule 2.

5.3 In the event that a Scheme Promoter who is a recipient of any part of the Funding granted by SWLEP fails to comply with the terms and conditions or any other aspect of any grant funding or loan agreement, SWLEP will use reasonable endeavours to recover such sums as may be due and to enforce such terms.

5.4 Wiltshire as the Accountable Body shall:

5.4.1 establish and maintain a financial system to account for all Funding received and disbursed on behalf of SWLEP;

5.4.2 transfer, subject to due diligence, the Funding for the Projects/Programmes on behalf of the SWLEP;

5.4.3 receive Funding and make timely payments in respect of such Funding for and on behalf of SWLEP;

5.4.4 assure itself that the records held by SWLEP for the revenue funding that is managed by the SWLEP meets all the requirements of the Accountable Body and are in line with the SWLEP Governance Framework. SWLEP being responsible for the internal audit to ensure financial controls are in place;

5.4.5 maintain proper records of all Funding received and disbursed for SWLEP and make such records available for inspection by both internal and external regulators;

5.4.6 supply, as necessary, completed statements of Funding received, expenditure and disbursement to SWLEP, funding organisations, central government and external auditor.

- 5.5 Interest will be calculated annually based on an actual cashflow on a monthly basis. In order to recognise the variation in interest rate applicable across the different investment routes, it will be applied using the average interest rate earned by Wiltshire Council for that month. SWLEP are required to submit a forecast cashflow for the ensuing financial year in May of that financial year.
- 5.6 Wiltshire will be paid a sum set and agreed each year for the reasonable costs of acting as the Accountable Body. This sum will be paid in arrears annually.
- 5.7 Where all the Parties agree, and in the event that there is a requirement to undertake any re-profiling of the Local Growth Deal Funding or subsequent capital funding streams in any Financial Year, that part of the aforementioned funding which has been the subject of such re-profiling shall be available to either Wiltshire for any of their respective capital projects. Such amount of such Funding utilised by Wiltshire in accordance with this Clause 5.6 shall be provided for in Wiltshire's budgets for the next Financial Year and immediately reimbursed to SWLEP at the start of the next Financial Year.
- 5.8 SWLEP and Swindon shall:
- 5.8.1 Co-operate with and assist Wiltshire acting in its role as accountable body in undertaking the day to day responsibility for Funding matters;
 - 5.8.2 Co-operate with and assist Wiltshire in regular audit examinations of all operating systems;
 - 5.8.3 Report any financial irregularity or suspected irregularity in the use of any of the Funding to Wiltshire.

6 Record Keeping and Communication

- 6.1 The SWLEP shall ensure that a proper record is kept of the proceedings of the SWLEP.
- 6.2 A communication protocol in relation to publicity and disclosure of information has been agreed between the Parties including the management and timing of such communications.

7 Freedom of Information

- 7.1 SWLEP and Swindon acknowledges that Wiltshire as Accountable Body is subject to the requirements of the FOIA and the EIR in respect to the Funding and shall:
- 7.1.1 provide all necessary assistance and cooperation as reasonably requested by Wiltshire to enable Wiltshire to comply with its obligations under the FOIA and the EIR; and
 - 7.1.2 provide Wiltshire with a copy of all information belonging to Wiltshire requested in the Request for Information which is in its possession or

control in the form that Wiltshire requires within 7 Working Days (or such other period as Wiltshire may reasonably specify) of Wiltshire's request for such information; and

7.1.3 not respond directly to a Request for Information unless authorised in writing to do so by Wiltshire.

7.2 SWLEP and Swindon acknowledges that Wiltshire may be required under the FOIA and the EIR to disclose Information concerning this Agreement without consulting or obtaining consent from either the SWLEP or Swindon. In these circumstances Wiltshire shall, in accordance with any relevant guidance issued under the FOIA, take reasonable steps, where appropriate, to give the SWLEP or Swindon advance notice, or failing that, to draw the disclosure to the SWLEP or Swindon's attention after any such disclosure.

7.3 The Parties acknowledge that where any of them receives a Request for Information not relating to Wiltshire as Accountable Body but otherwise in relation to Projects and Programmes, such a Request for Information will be dealt with by the recipient in accordance with the provisions of the FOIA.

8 Data Protection

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

8.2 The provisions of this Clause 8 shall apply during the continuance of the Agreement and indefinitely after its expiry or termination.

9 Confidentiality

9.1 Neither Party will use or disclose any confidential information provided by any other 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.

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

9.2.1 any information obtained from a third party who is free to divulge such information;

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

9.2.3 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.

9.3 Subject to Clause 9.2 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

10 Equality

- 10.1 The Parties shall perform its obligations under this Agreement in accordance with:
- 10.1.1 all applicable equality Law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);
 - 10.1.2 any applicable equality and diversity policy of the Parties from time to time; and
 - 10.1.3 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).

11 Social Value

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

12 Environmental

- 12.1 In performing their 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.

13 Termination on notice

- 13.1 This Agreement shall continue in full force and effect unless or until either Wiltshire or Swindon or SWLEP serve at least twelve months' notice to terminate to the other Parties or by mutual agreement of the Parties at any time.

14 Disputes

- 14.1 Prior to action under paragraph 80, Section F of the SWLEP Governance 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 (Section F of the SWLEP Governance Framework, paragraph 18).
- 14.2 If any Party receives any formal inquiry, complaint, claim or threat of action from a third party they shall notify the other Parties and co-operate with each other to respond, or take such action, as is appropriate and/or necessary.

15 The Contracts (Rights of Third Parties) Act 1999

15.1 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.

16 General

16.1 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 the Agreement, and that the Agreement is executed by its duly authorised representative.

16.2 The Agreement cannot be varied except in writing signed by a duly authorised representative of the Parties.

16.3 The Agreement contains the whole agreement between the Parties and supersedes and replaces any prior written or oral agreements, representations or understandings between them. 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.

16.4 Any waiver or relaxation either partly, or wholly of any of the terms and conditions of the Agreement shall be valid only if it is communicated to any 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 the Agreement.

16.5 The 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 the Agreement. No Party shall have, nor represent that it has, any authority to make any commitments on the other Parties' behalf.

16.6 Except as otherwise expressly provided by the Agreement, all remedies available to any Party for breach of the Agreement (whether under the 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 other remedies.

16.7 If any provision of the Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from the Agreement and rendered ineffective as far as possible without modifying the remaining provisions of the Agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of the Agreement.

17 Notices

17.1 Any notice to be given under the 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 Party in accordance with this clause.

18 English Law

18.1 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.

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

EXECUTED as a DEED BY)
THE COMMON SEAL OF WILTSHIRE)
COUNCIL being affixed hereto and)
authenticated by the undermentioned person)
authorised by the Council to act for that purpose:)

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Authorised Signatory

EXECUTED as a DEED BY)
THE COMMON SEAL OF SWINDON BOROUGH)
COUNCIL being affixed hereto and)
authenticated by the undermentioned person)
authorised by the Council to act for that purpose:)

.....

Authorised Signatory

EXECUTED as a DEED BY)

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Signed for and on behalf of
SWINDON AND WILTSHIRE LOCAL ENTERPRISE PARTNERSHIP LIMITED

Schedule I

Roles & Responsibilities

I.1 Wiltshire shall take appropriate steps to:

- I.1.1 Ensure (through the Section 151 officer) that Funding is used appropriately using the same checks that Wiltshire Council would of its own funds and in line with any grant conditions in the grant condition letter through a Section 31 Grant Determination.
- I.1.2 Ensure that it will not use the Funding for its own purposes without consent of the SWLEP.
- I.1.3 Confirm that the SWLEP Governance Framework is being adhered to.
- I.1.4 Confirm that the SWLEP has in place the processes to ensure the proper administration of its financial affairs.
- I.1.5 Release funding against a SWLEP agreed contract providing that the requirements meet the terms of the grant and the overall safeguarding of public money requirements and ensure that value for money is achieved.
- I.1.6 Approve the release of Funding in consultation with the Accountable Body Section 151 Officer and in accordance with the Accountable Body Agreement to the relevant scheme promoter in line with any grant conditions in the grant condition letter through a Section 31 Grant Determination.
- I.1.7 Ensure that all the requisite duties set out in s151 of 1972 Act are fully met including the safeguarding of public money, best value and value for money.
- I.1.8 Satisfy itself that arrangements for local external audit of Funding allocated by the SWLEP are comparable to Wiltshire Council's own arrangements for local authority spend.

I.2 SWLEP shall:

- I.2.1 Comply with the SWLEP Governance Framework.
- I.2.2 Develop strategic economic plans and policies.
- I.2.3 Identify a prioritised list of schemes within the available budget including under / over programming to enable prudent management.
- I.2.4 Make decisions based on the scrutiny of individual scheme business cases.
- I.2.5 Allocate funding which is approved by the Accountable Body.
- I.2.6 Using reasonable endeavours to ensure best value and value for money is achieved.
- I.2.7 Monitor progress of scheme delivery and spend.
- I.2.8 Use reasonable endeavours to ensure on-time delivery of schemes to the programme.
- I.2.9 Actively manage the devolved budget and programme to respond to changed circumstances.

I.3 Swindon shall:

- I.3.1 Comply with the terms and conditions of the Funding received by Wiltshire as the accountable body in relation to SWLEP pertaining to the administrative area of Swindon.
- I.3.2 Comply with the SWLEP Governance Framework.
- I.3.3 Provide all necessary assistance to SWLEP and Wiltshire in relation to Projects and Programmes which operate in the administrative area of Swindon.

Schedule 2: Draft Grant Agreement [draft is under review]