

GRANT AGREEMENT

between

ESSEX COUNTY COUNCIL
acting as the Accountable Body for the SOUTH EAST LEP LIMITED

and

SOUTH EAST LEP LIMITED

and

NAME OF UPPER TIER LOCAL AUTHORITY

IN RELATION TO SECTOR SUPPORT FUND FOR [PROJECT NAME]

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THIS AGREEMENT is dated day of 2020

PARTIES

- (1) **ESSEX COUNTY COUNCIL**, the “Accountable Body” for the South East Local Enterprise Partnership, whose principal address is at County Hall, Market Road, Chelmsford, CM1 1LX (“**the Accountable Body**”)
- (2) **SOUTH EAST LEP LIMITED** (company number 12492037) whose registered address is situated at County Hall, Market Road, Chelmsford, Essex CM1 1QH (“**SELEP Ltd**”)
- (3) [**LOCAL AUTHORITY**] whose principal address is at [*Local Authority address*] (“**Recipient**”)

BACKGROUND

- (A) Essex County Council (ECC) is the Accountable Body for the purposes of Funding allocated to SELEP Ltd by Central Government and other responsibilities as set out in the Assurance Framework.
- (B) SELEP Ltd has endorsed a programme to support sector focussed activities that are being undertaken on a pan-LEP basis.
- (C) The programme is funded via the revenue element of the Growing Places Fund (“GPF”) grant. This grant was awarded to the Accountable Body on behalf of SELEP Ltd in 2012.
- (D) The Recipient is the lead partner authority responsible for delivery of the SSF revenue project.
- (E) The project allocation to deliver the SSF revenue project will be transferred from the Accountable Body to the Recipient under the arrangements set out within this Agreement.
- (F) On [**DATE OF STRATEGIC BOARD MEETING**] SELEP Ltd’s Strategic Board endorsed the revenue Grant allocation for the [**NAME OF PROJECT**] up to [**VALUE OF SSF AWARD**].
- (G) The award of funding was approved by the SELEP Secretariat Chief Executive Officer on [**INSERT DATE OF SSF DECISION REPORT BEING AGREED**].

IT IS HEREBY AGREED as follows

1. DEFINITIONS

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

Accountable Body: means Essex County Council or other body appointed by SELEP Ltd for ensuring that expenditure is spent legally and in accordance with government reporting guidance.

Accountability Board: means the joint committee of the Partner Authorities established on 13th November 2015 under sections 101 and 102 of the Local

Government Act 1972, and 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 manage the distribution of Funding.

Agreement: means this Agreement in its entirety, including all schedules and/or documents referred to in this Agreement, and any subsequent variations and any supplemental agreements made from time to time by the parties;

Assurance Framework: means a guide to the structure of Accountability Board, Accountable Body and SELEP Ltd, the processes and systems which are used to manage its activities, including the detailed processes applied to manage the funding awarded from Government.

Bribery Act: the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation.

Clawback Period: means the period from the date of this Agreement to five years after the Completion Date.

Clawback Event: shall mean any of the events more particularly described in Clause 3.6 and Clause 12.

Commencement Date: [INSERT DATE]

Completion Date: the completion date is the [INSERT DATE] or as otherwise agreed in writing with the Accountable Body and SELEP Secretariat Chief Executive.

Data Protection Legislation: means all applicable data protection legislation and privacy legislation in force from time to time in the UK including the GDPR; the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426); any other directly applicable European Union regulation relating to privacy; and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data and the privacy of electronic communications.

Drawdown Schedule: the drawdown schedule in respect of the Grant set out in Schedule 3: Drawdown Schedule and shows the earliest dates at which the Grant can be released under the terms of this Agreement;

Estimated Total Project Cost: £[INSERT TOTAL PROJECT COST]

FOI Legislation: means the Freedom of Information Act 2000 and subordinate legislation made under this and the Environmental Information Regulations 2004;

GDPR: General Data Protection Regulation ((EU) 2016/679)

Grant: the sum up to £[INSERT SSF VALUE], [VALUE IN WRITTEN FORM], to be paid to the Recipient in accordance with this Agreement.

Grant Period: the period for which the Grant is awarded starting on the Commencement Date and ending on [INSERT END DATE].

Intellectual Property Rights: all patents, copyrights and design rights (whether registered or not) and all applications for any of the foregoing and all rights of

confidence and Know-How however arising for their full term and any renewals and extensions.

Know-How: information, data, know-how or experience whether patentable or not and including but not limited to any technical and commercial information relating to research, design, development, manufacture, use or sale.

Partner Authorities: means Southend on Sea Borough Council, East Sussex County Council, Essex County Council, Kent County Council, Medway Council and Thurrock Council.

Prohibited Act: means:

- (a) offering, giving or agreeing to give to any servant of SELEP Ltd, SELEP Secretariat or Accountable Body any gift or consideration of any kind as an inducement or reward for:
 - (i) doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Agreement or any other contract with SELEP Ltd or Accountable Body; or
 - (ii) showing or not showing favour or disfavour to any person in relation to this Agreement or any other contract with SELEP Ltd or Accountable Body;
- (b) entering into this Agreement or any other contract with SELEP Ltd or Accountable Body where a commission has been paid or has been agreed to be paid by the Recipient or on its behalf, or to its knowledge, unless before the relevant contract is entered into particulars of any such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to SELEP Ltd, SELEP Secretariat and Accountable Body;
- (c) committing any offence:
 - (i) under the Bribery Act;
 - (ii) under legislation creating offences in respect of fraudulent acts; or
 - (iii) at common law in respect of fraudulent acts in relation to this Agreement or any other contract with SELEP Ltd or Accountable Body; or
- (d) defrauding or attempting to defraud or conspiring to defraud SELEP Ltd or Accountable Body.

Project: the project described and set out in Schedule 1: The Project Application.

Project Change: means a change to a Project's costs, scope, outcomes or outputs from the information specified in Schedule 1.

SELEP Secretariat: means those persons employed by the Accountable Body for the purposes of providing administrative, technical or professional support to SELEP Ltd and the Accountability Board;

Significant Change: A significant change is incurred when any one of the following arises:

- (a) proposal to cancel, postpone or suspend the Project by longer than six months;
- (b) the Project, as defined in Schedule 1, is altered or amended so as to change the Project Summary or Project Outcomes as set out in Schedule 1: The Project Application which is considered, by the Accountable Body and/or SELEP Chief Executive, to potentially impact the value for money case;
- (c) Change to the total project cost of more than 40%.

Strategic Board: the board of SELEP Ltd Directors;

Subsidy: means

(a) any aid granted by a Member State of the European Union or through the resources of such Member State in any form whatsoever which distorts or threatens to distort competition by favouring a particular undertaking or the production of certain goods in so far as such aid affects trade between European Union Member States where aid is granted before 1 January 2021; or

(b) any aid benefit or advantage (which includes but is not limited to assets, rates, funds and land) granted by or through a public sector body which is subject to any Subsidy Control Rules where this is granted on or after 1 January 2021.

Subsidy Control Rules: means the law in force from time to time in the UK including the law embodied in the European Union (Future Relationship) Act 2020, the Trade Agreements and any other UK or international law relating to subsidy control in the UK and all other legislation and regulatory requirements in force from time to time which apply to measure granted by a public body to an economic actor, as may be updated from time to time.

Trade Agreements: means the UK-EU Trade and Cooperation Agreement, the World Trade Organisation Agreement on Subsidies and Countervailing Measures, the Agreement on Trade-Related Investment Measures, the General Agreement on Trade in Services, and such other free trade agreements entered into by the UK with any other country from time to time.

2. PURPOSE OF GRANT

2.1 The Recipient shall use the Grant only for the delivery of the Project and in accordance with the terms and conditions set out in this Agreement. The Grant shall not be used

for any other purpose without the prior written agreement of the Accountable Body, such agreement shall not be unreasonably withheld.

- 2.2 The Recipient must report any Project Change(s) to the SSF project's costs, scope, outcomes or outputs from the information specified in the application, to the SELEP Secretariat and the Accountable Body at least one month prior to implementation.
- 2.3 Project Change requests must be considered by the Recipient for the project, prior to submission to the SELEP Secretariat and review by the Accountable Body.
- 2.4 Where there are changes to the scope and/or SSF grant allocation, the Recipient is required to complete a SSF Change Request Form, using the template made available by the SELEP Secretariat. For minor Project Change, which are in keeping with the scope and benefits stated in the original application, the SELEP Secretariat Chief Executive Officer and the Accountable Body will consider the approval of the change request.
- 2.5 Significant Changes to the Project will require the Recipient to update Schedule 1: The Funding Application for an updated independent review by the Accountable Body and endorsement by SELEP Ltd, prior to the change being agreed by the SELEP Chief Executive Officer and Accountable Body.
- 2.6 It is at the discretion of the SELEP Secretariat and the Accountable Body to determine whether the proposed Project Change needs to be considered by SELEP Ltd.
- 2.7 If a Project Change is found to be unacceptable to the Accountable Body or SELEP Chief Executive, the Project Change will be brought to the attention of SELEP Ltd prior to the Project Change being rejected.
- 2.8 If the Project Change or Significant Project Change is not approved by the SELEP Chief Executive, following consideration by SELEP Ltd and the conditions of the grant cannot be satisfied, the Recipient will be required to repay the grant to the Accountable Body, as per the conditions of this agreement.
- 2.9 Where the Recipient intends to apply to a third party for other funding for the Project, it will notify the SELEP Secretariat and Accountable Body in advance of its intention to do so and, where such funding is obtained, it will provide SELEP Secretariat with details of the amount and purpose of that funding. The Recipient agrees and accepts that it shall not apply for duplicate funding in respect of any part of the Project or any related administration costs that the Accountable Body is funding under this Agreement.

3. PAYMENT OF GRANT

- 3.1 The Grant shall be paid in line with the Drawdown Schedule and upon receipt of a completed and signed version of Schedule 5: Claim Form from the Recipient.

- 3.2 The Grant is limited to a maximum of £[INSERT VALE OF SSF], [INSERT SSF VALUE IN FULL WRITTEN FORM] and shall not be increased in the event of any overspend by the Recipient in its delivery of the Project.
- 3.3 The Recipient shall promptly repay to the Accountable Body any money incorrectly paid to it either as a result of an administrative error or otherwise. This includes (without limitation) situations where either an incorrect sum of money has been paid or where Grant monies have been paid in error before all conditions attaching to the Grant have been complied with by the Recipient.
- 3.4 In accepting the Grant from the Accountable Body the Recipient warrants that they will comply with their obligations, Warranties and Undertakings under this agreement and that they will (as specified in Schedule 1):
- (a) [ADD SPECIFIC PROJECT DELIVERABLES]
 - (b) Provide a quarterly update to the SELEP Secretariat on Project progress, in a format specified by the SELEP Secretariat which meets the minimum requirements set out in Schedule 2: Quarterly Reporting Data Requirements.
- 3.5 In the event that the Recipient fails to meet its obligation under clause 3.4, the Accountable Body shall be entitled to exercise its rights under clauses 12 and 17 of this Agreement. The obligations at clause 3.4(e) shall be the subject of quarterly reporting by the Recipient to the SELEP Secretariat in accordance with clause 6.2.
- 3.6 The obligations set out at clause 3.4 of this Agreement shall survive the termination or expiry of this Agreement. The failure of the Recipient to meet its obligations under clause 3 of this Agreement shall constitute a Clawback Event and the Accountable Body shall be entitled to exercise its clawback rights under clause 12 of this Agreement.

4. USE OF GRANT

- 4.1 The Grant shall be used by the Recipient against actual spend incurred in the delivery of the Project. The Recipient shall not use the Grant to:
- (a) make any payment to members of the Recipient; or
 - (b) purchase buildings or land; or
 - (c) pay for any expenditure not directly related to the Project

unless this has been approved in writing by the Accountable Body in advance of the spend being incurred.

- 4.2 The Recipient shall not spend any part of the Grant on the delivery of the Project after the Grant Period unless this has been approved in writing by the Accountable Body.

4.3 This Agreement provides for available funding up to the value of the Grant. In the event that the Project does not utilise all the available funding by the end of the Grant Period, the Recipient shall not be entitled to any non-spent Grant.

4.4 Any unspent Grant must be returned to the Accountable Body by BACS payment within six months of the Project having been completed.

5. ACCOUNTS AND RECORDS

5.1 The Grant shall be shown in the Recipient's accounts as a restricted fund and shall not be included under general funds.

5.2 The Recipient shall keep separate, accurate and up-to-date accounts and records of the receipt and expenditure of the Grant monies received by it.

5.3 The Recipient shall keep all invoices, receipts, and accounts and any other relevant documents relating to the expenditure of the Grant for a period of at least six years following receipt of any Grant monies to which they relate. The Accountable Body shall have the right to review, at the Accountable Body's reasonable request, the Recipient's accounts and records that relate to the expenditure of the Grant and shall have the right to take copies of such accounts and records.

5.4 The Recipient shall comply with and facilitate the Accountable Body's compliance with all statutory requirements as regards accounts, audit or examination of accounts, annual reports and annual returns applicable to itself and the Accountable Body.

6. MONITORING AND REPORTING

6.1 The Recipient shall closely monitor the delivery and success of the Project throughout the Grant Period to ensure that the aims and objectives of the Project are being met and that this Agreement is being adhered to.

6.2 The Recipient shall provide the Accountable Body and the SELEP Secretariat with a quarterly update on project progress in line with the quarterly reporting data requirements set out at Schedule 2 and a final report which shall confirm whether the Project has been successfully and properly completed at the end of the Grant Period in such formats as the Accountable Body and the SELEP Secretariat may reasonably require.

6.3 The Recipient's Section 151 Officer or equivalent responsible finance officer is required to carry out the normal stewardship role in terms of monitoring and accounting in respect of the Grant funding. The Recipient is responsible for providing quarterly reports to the SELEP Secretariat and the Accountable Body to enable biannual reporting to the SELEP Strategic Board.

- 6.4 Where the Recipient has obtained funding from a third party for its delivery of part of the Project, the Recipient shall include the amount of such funding in its financial reports together with details of what that funding has been used for.
- 6.5 The Recipient shall on request provide the Accountable Body with such further information, explanations and documents as the Accountable Body may reasonably require in order for it to establish that the Grant has been used properly in accordance with this Agreement.
- 6.6 The Recipient shall permit any person authorised the Accountable Body such reasonable access to its employees, agents, premises, facilities and records, for the purpose of discussing, monitoring and evaluating the Recipient's fulfilment of the conditions of this Agreement and shall, if so required, provide appropriate oral or written explanations from them.
- 6.7 The Recipient shall permit any person authorised by the Accountable Body for the purpose to visit the Recipient upon the Accountable Body's reasonable request to monitor the delivery of the Project. Where, in its reasonable opinion, the Accountable Body considers that additional visits are necessary to monitor the Project, it shall be entitled to authorise any person to make such visits on its behalf.
- 6.8 The Recipient shall provide the Accountable Body with a final report on completion of the Grant Period which shall confirm whether the Project has been successfully and properly completed. At the same time as the Recipient provides the Accountable Body with its final report, it shall propose in writing a Completion Date for the purposes of calculating any repayments that may become due in the event a Clawback Event occurs (Completion Date Notice).

7. ACKNOWLEDGMENT AND PUBLICITY

- 7.1 The Recipient shall acknowledge the Grant in its annual report and accounts, including an acknowledgement of Essex County Council as the Accountable Body of the South East LEP as the source of the Grant.
- 7.2 The Recipient shall acknowledge the support of SELEP Ltd in any materials that refer to the Project and in any written or spoken public presentations about the Project. Such acknowledgements (where appropriate or as requested by SELEP Secretariat) shall include the SELEP Ltd name and logo (or any future name or logo adopted by SELEP Ltd) using the templates provided by the SELEP Ltd.
- 7.3 In using the SELEP Ltd name and logo, the Recipient shall comply with all reasonable branding guidelines issued by the Accountable Body and/or SELEP Secretariat from time to time.

- 7.4 The Recipient agrees to participate in and co-operate with promotional activities relating to the Project that may be instigated and/or organised by SELEP Ltd, SELEP Secretariat and/or the Accountable Body.
- 7.5 The Recipient also agrees to comply with the current publicity requirements (including any branding guidelines) as defined by Government for investments made by SELEP Ltd.
- 7.6 SELEP Ltd, SELEP Secretariat and/or the Accountable Body may acknowledge the Recipient's involvement in the Project as appropriate without prior notice.
- 7.7 The Recipient shall comply with all reasonable requests from SELEP Ltd, Accountable Body and/or SELEP Secretariat to facilitate visits, provide reports, statistics, photographs and case studies that will assist SELEP Ltd, Accountable Body and/or SELEP Secretariat in its promotional activities relating to the Project and/or the Grant.

8. INTELLECTUAL PROPERTY RIGHTS

- 8.1 SELEP Ltd, the Accountable Body and the Recipient agree that all rights, title and interest in or to any information, data, reports, documents, procedures, forecasts, technology, Know-How and any other Intellectual Property Rights whatsoever owned by either SELEP Ltd, Accountable Body or the Recipient before the Commencement Date or developed by either party during the Grant Period, shall remain the property of that party.
- 8.2 If SELEP Ltd and/or the Accountable Body has provided the Recipient with any of its Intellectual Property Rights for use in connection with the Project (including without limitation its name and logo), the Recipient shall, on termination of this Agreement, cease to use such Intellectual Property Rights immediately and shall either return or destroy such Intellectual Property Rights as requested by SELEP Ltd and/or the Accountable Body except in relation to the Project's continued branding as a SELEP Ltd supported facility.

9. CONFIDENTIALITY

- 9.1 Subject to clause 10 (Freedom of Information), each party shall during the term of this Agreement and thereafter keep secret and confidential all Intellectual Property Rights or Know-How or other business, technical or commercial information disclosed to it as a result of the Agreement and shall not disclose the same to any person save to the extent necessary to perform its obligations in accordance with the terms of this Agreement or save as expressly authorised in writing by the other party.
- 9.2 The obligation of confidentiality contained in this clause shall not apply or shall cease to apply to any Intellectual Property Rights, Know-How or other business, technical or commercial information which:

- (a) at the time of its disclosure by the disclosing party is already in the public domain or which subsequently enters the public domain other than by breach of the terms of this Agreement by the receiving party;
- (b) is already known to the receiving party as evidenced by written records at the time of its disclosure by the disclosing party and was not otherwise acquired by the receiving party from the disclosing party under any obligations of confidence; or
- (c) is at any time after the date of this Agreement acquired by the receiving party from a third party having the right to disclose the same to the receiving party without breach of the obligations owed by that party to the disclosing party.

10. FREEDOM OF INFORMATION

10.1 The Recipient and SELEP Ltd acknowledge that the Accountable Body is subject to the requirements of the FOI Legislation and the Environmental Information Regulations 2004 and each party shall assist and co-operate with the Accountable Body (at their own expense) to enable the Accountable Body to comply with these information disclosure requirements.

10.2 The Recipient and SELEP Ltd shall:

- (a) transfer the request for information to the Accountable Body as soon as practicable after receipt and in any event within 2 (two) Working Days of receiving a request for information;
- (b) provide the Accountable Body with a copy of all information in its possession or power in the form that the Accountable Body requires within 5 (five) Working Days (or such other period as the Accountable Body may specify) of the Accountable Body requesting that information; and
- (c) provide all necessary assistance as reasonably requested by the Accountable Body to enable the Accountable Body to respond to a request for information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations 2004.

10.3 The Accountable Body shall be responsible for determining at its absolute discretion whether the information:

- (a) is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations 2004;
- (b) is to be disclosed in response to a request for information

10.4 In no event shall the Recipient or SELEP Ltd respond directly to a request for information unless expressly authorised to do so by the Accountable Body.

10.5 The Recipient and SELEP Ltd acknowledge that the Accountable Body may, acting in accordance with the Secretary of State for Constitutional Affairs' Code of Practice on

the discharge of public authorities' functions under Part 1 of FOIA (issued under section 45 of the FOIA, November 2004), be obliged under the FOIA or the Environmental Information Regulations 2004 to disclose information:

- (a) without consulting with the Recipient; or
- (b) following consultation with the Recipient and having taken its views into account, provided always that where clause 10.5(b) applies the Accountable Body shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Recipient advanced notice, or failing that, to draw the disclosure to the Recipient's attention after any such disclosure.

10.6 The Recipient shall ensure that all information produced in the course of the Agreement or relating to the Agreement is retained for disclosure and shall permit the Accountable Body and SELEP Ltd to inspect such records as requested from time to time.

11. DATA PROTECTION

11.1 The Recipient shall (and shall procure that any of its staff involved in connection with the activities under the Agreement shall) comply with any notification requirements under the Data Protection Legislation and GDPR. All Parties will duly observe all their obligations under the Data Protection Legislation which arise in connection with the Agreement.

12. WITHHOLDING, SUSPENDING, REPAYMENT AND CLAWBACK OF GRANT

12.1 The Accountable Body's intention is that the Grant will be paid to the Recipient in full. However, without prejudice to the Accountable Body's other rights and remedies, the Accountable Body may at its discretion withhold or suspend payment of the Grant and/or require repayment of all or part of the Grant if during the Clawback Period:

- (a) the Recipient uses the Grant for purposes other than those for which they have been awarded;
- (b) the delivery of the Project does not start within 6 (six) months of the Commencement Date and the Recipient has failed to provide the Accountable Body with a reasonable explanation for the delay and agree the change with the SELEP Secretariat Chief Executive;
- (c) the Recipient brings forward a Project Change or Significant Change and this Project Change or Significant Change is not agreed by the SELEP Secretariat Chief Executive, following consideration by SELEP Ltd;
- (d) the Recipient is, in the reasonable opinion of the Accountable Body, delivering the Project in a negligent manner;

- (e) binding funding agreements for the Project have not been entered into in the terms and for the amounts described in the Recipient's application contained in Schedule 1: The Project Application;
 - (f) the Recipient obtains duplicate funding from a third party for the Project;
 - (g) the Recipient obtains funding from a third party which, in the reasonable opinion of the Accountable Body, undertakes activities that are likely to bring the reputation of the Project or the Accountable Body into disrepute;
 - (h) the Recipient provides SELEP Ltd, Accountable Body or SELEP Secretariat with any materially misleading or inaccurate information;
 - (i) the Recipient commits or committed a Prohibited Act;
 - (j) any member of the recipient, employee or volunteer of the Recipient has (a) acted dishonestly or negligently at any time and directly or indirectly to the detriment of the Project or (b) taken any actions which, in the reasonable opinion of the Accountable Body, SELEP Secretariat and/or SELEP Ltd, bring or are likely to bring the Accountable Body and/or SELEP Ltd name or reputation into disrepute;
 - (k) the Recipient ceases to operate for any reason, or it passes a resolution (or any court of competent jurisdiction makes an order) that it be wound up or dissolved (other than for the purpose of a bona fide and solvent reconstruction or amalgamation);
 - (l) the Recipient becomes insolvent, or it is declared bankrupt, or it is placed into receivership, administration or liquidation, or a petition has been presented for its winding up, or it enters into any arrangement or composition for the benefit of its creditors, or it is unable to pay its debts as they fall due;
 - (m) the Recipient fails to comply with any of the terms and conditions set out in this Agreement and fails to rectify any such failure within 30 days of receiving written notice detailing the failure;
 - (n) a Clawback Event occurs (when calculation of the repayment required shall be calculated over the Clawback Period as specified in Schedule 4: Clawback Schedule).
- 12.2 The decision as to whether a Clawback Event has occurred shall be at the Accountable Body's sole discretion, in consultation with the Chief Executive Officer of SELEP.
- 12.3 Wherever under the Agreement any sum of money is recoverable from or payable by the Recipient (including any sum that the Recipient is liable to pay to the Accountable Body in respect of any breach of the Agreement), the Accountable Body may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Recipient under the Agreement or under any other agreement or contract with the Accountable Body.
- 12.4 The Recipient shall make any payments due to the Accountable Body without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise.

- 12.5 Should the Recipient be subject to financial or other difficulties which are capable of having a material impact on its effective delivery of the Project or compliance with this Agreement it will notify the Accountable Body as soon as possible so that, if possible, and without creating any legal obligation, the Accountable Body will have an opportunity to provide assistance in resolving the problem or to take action to protect the Accountable Body and/or SELEP Ltd and the Grant monies.
- 12.6 Any costs or expenditure above the estimated project cost set out in Schedule 1: Project Application will be the responsibility of the Recipient. In the event that the Project costs are less than estimated the Accountable Body reserves the right to reduce the Grant pro rata.
- 12.7 If the Grant or any part thereof is determined to amount to or contain a prohibited subsidy under the Subsidy Control Rules or a trade partner has raised concerns about a subsidy through actionable Trade Agreement and challenged the measure and remedial measures are applied to the United Kingdom then the Accountable Body shall be entitled to recover from the Recipient the amount of prohibited subsidy (in full or in part) together with such interest as it is required by Law to recover and the Recipient must pay such amount(s) within ten (10) Business Days of the Accountable Body requesting repayment.

13. LIMITATION OF LIABILITY

- 13.1 The Accountable Body accepts no liability for any consequences, whether direct or indirect, that may come about from the Recipient running the Project, the use of the Grant or from withdrawal of the Grant. The Recipient shall indemnify and hold harmless the Accountable Body, its employees, agents, officers or sub-contractors with respect to all claims, demands, actions, costs, expenses, losses, damages and all other liabilities arising from or incurred by reason of the actions and/or omissions of the Recipient in relation to the Project, the non-fulfilment of obligations of the Recipient under this Agreement or its obligations to third parties.
- 13.2 Subject to clause 13.1, the Accountable Body's liability under this Agreement is limited to the payment of the Grant in accordance with this Agreement.

14. WARRANTIES AND UNDERTAKINGS

- 14.1 The Recipient warrants, undertakes and agrees that:
- (a) it has all necessary resources and expertise to deliver the Project (assuming due receipt of the Grant);
 - (b) it has not committed, nor shall it commit, any Prohibited Act;
 - (c) it shall at all times comply with all relevant legislation and all applicable codes of practice and other similar codes or recommendations, and shall notify the Accountable Body immediately of any significant departure from such legislation, codes or recommendations;

- (d) it shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to employees and other persons working on the Project;
- (e) it has and shall keep in place adequate procedures for dealing with any conflicts of interest;
- (f) it has and shall keep in place systems to deal with the prevention of fraud and/or administrative malfunction;
- (g) all financial and other information concerning the Recipient which has been disclosed to the Accountable Body, SELEP Secretariat and SELEP Ltd is to the best of its knowledge and belief, true and accurate;
- (h) it is not subject to any contractual or other restriction imposed by its own or any other organisation's rules or regulations or otherwise which may prevent or materially impede it from meeting its obligations in connection with the Grant;
- (i) it is not aware of anything in its own affairs, which it has not disclosed to the Accountable Body, SELEP Secretariat and SELEP Ltd, which might reasonably have influenced the decision of the Accountable Body to make the Grant on the terms contained in this Agreement; and/or
- (j) since the date of its last accounts there has been no material change in its financial position or prospects.

15. INSURANCE

- 15.1 The Recipient shall effect and maintain with a reputable insurance company a policy or policies in respect of all risks which may be incurred by the Recipient, arising out of the Recipient's performance of the Agreement, including death or personal injury, loss of or damage to property or any other loss (the **Required Insurances**).
- 15.2 The Required Insurances referred to above include (but are not limited to):
- (a) public liability insurance with a limit of indemnity of not less than five million pounds (£5,000,000) in relation to any one claim or series of claims arising from the Service; and
 - (b) employer's liability insurance with a limit of indemnity of not less than five million pounds (£5,000,000) in relation to any one claim or series of claims arising from the Service.

The Recipient shall (on request) supply to the Accountable Body a copy of such insurance policies and evidence that the relevant premiums have been paid.

16. DURATION

- 16.1 Except where otherwise specified, the terms of this Agreement shall apply from the date of this Agreement until the anniversary of expiry of the Grant Period or for so long as any Grant monies remain unspent by the Recipient, whichever is longer.
- 16.2 Any obligations under this Agreement that remain unfulfilled following the expiry or termination of the Agreement shall survive such expiry or termination and continue in full force and effect until they have been fulfilled.

17. TERMINATION

- 17.1 The Accountable Body may terminate this Agreement and any Grant payments on giving the Recipient three months' written notice should it be required to do so by financial restraints or for any other reason.

18. ASSIGNMENT

- 18.1 The Recipient may not, without the prior written consent of the Accountable Body, assign, transfer, sub-contract, or in any other way make over to any third party the benefit and/or the burden of this Agreement or, except as contemplated as part of the Project, transfer or pay to any other person any part of the Grant.
- 18.2 The Accountable Body shall only assign or transfer, or make over to any third party the benefit and/or the burden of this Agreement, in the event that they are no longer the Accountable Body, or, in the event of a change to the boundaries of the administrative areas of the Unitary and County Council members of SELEP Ltd, the Recipient falls outside the boundaries of the successor of the Accountable Body.

19. WAIVER

- 19.1 No failure or delay by any Party to exercise any right or remedy under this Agreement shall be construed as a waiver of any other right or remedy.

20. NOTICES

- 20.1 All notices and other communications in relation to this Agreement shall be in writing and shall be deemed to have been duly given if personally delivered, e-mailed, or mailed (first class postage prepaid) to the Recipient at the address referred to above. If personally delivered or if e-mailed all such communications shall be deemed to have been given when received (except that if received on a non-working day or after 5.00 pm on any working day they shall be deemed received on the next working day) and if mailed all such communications shall be deemed to have been given and received on the second working day following such mailing.

21. DISPUTE RESOLUTION

- 21.1 In the event of any complaint or dispute (which does not relate to the Accountable Body's right to withhold funds or terminate) arising between the parties to this Agreement in relation to this Agreement the matter should first be referred for resolution to the Section 151 Officer of the Accountable Body or any other individual nominated by the Accountable Body from time to time.
- 21.2 Should the complaint or dispute remain unresolved within 14 days of the matter first being referred to the Section 151 Officer of the Accountable Body or other nominated individual, as the case may be, all Parties may refer the matter to the SELEP Strategic Board or its successor to resolve the dispute within 28 days, or such other period as may be mutually agreed by the Accountable Body and the Recipient.
- 21.3 If the parties remain dissatisfied after the conclusion of the process set out in clause 21.2, the parties may seek to resolve the matter through mediation under the CEDR Model Mediation Procedure (or such other appropriate dispute resolution model as is agreed by all parties). Unless otherwise agreed, the parties shall bear the costs and expenses of the mediation equally.

22. NO PARTNERSHIP OR AGENCY

This Agreement shall not create any partnership or joint venture between:

- a) the Accountable Body and the Recipient; or
- b) SELEP Ltd and the Recipient;

nor any relationship of principal and agent, nor authorise any party to make or enter into any commitments for or on behalf of the other party.

23. JOINT AND SEVERAL LIABILITY

Where the Recipient is not a company nor an incorporated entity with a distinct legal personality of its own, the individuals who enter into and sign this Agreement on behalf of the Recipient shall be jointly and severally liable for the Recipient's obligations and liabilities arising under this Agreement.

24. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

This Agreement does not and is not intended to confer any contractual benefit on any person pursuant to the terms of the Contracts (Rights of Third Parties) Act 1999.

25. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the law of England and the parties irrevocably submit to the exclusive jurisdiction of the English courts.

26. SURVIVAL

The Clawback provisions in this Agreement shall survive the termination of this Agreement and the expiry of the Grant Period.

This document has been agreed and takes effect on the date stated at the beginning of it.

**For and on behalf of ESSEX COUNTY
COUNCIL AS ACCOUNTABLE BODY
FOR SELEP Ltd**

Authorised Signatory
 Print
 Date

***For and on behalf of [INSERT LOCAL
AUTHORITY]***

.....
 Authorised Signatory
 Print
 Date

<p>SIGNED for and on behalf of SELEP Ltd</p> <p>Adam Bryan as joint attorney for South East LEP Ltd under a power of attorney dated 3 September 2020 in the presence of:</p>	<p>..... Adam Bryan</p>
<p>..... <i>signature of witness</i></p>	
<p>Name of Witness:</p>	
<p>Address of Witness:</p>	

and Suzanne Bennett as joint attorney for South East LEP Ltd under a power of attorney dated 3 September 2020 in the presence of: Suzanne Bennett Attorneys for South East LEP Ltd
..... <i>signature of witness</i>	
Name of Witness:	
Address of Witness:	

SCHEDULE 1: THE PROJECT APPLICATION
[INCLUDE PROJECT APPLCIATION AS ENDORSED BY THE STRATEGIC BOARD]

SCHEDULE 2: QUARTERLY REPORTING DATA REQUIREMENTS

A standardised template will be supplied to the scheme promoter on a quarterly basis requesting the following information:

Progress update on project delivery	Sector Support Fund funding transferred to date
Date of last project update to the relevant SELEP working group	Sector Support Fund spend to date
Update on delivery of project outputs	Update on utilisation of in-kind match contributions
Update on delivery of expected project benefits	Total project spend to date
Actual/updated expected Completion Date	Updated total project cost
Which outputs have been delivered to date	Update on project spend and budget, including reasons for any changes
Which benefits have been delivered to date (quantify where possible)	Updated drawdown schedule
Updated project risk assessment (complete with updated RAG status)	Updated Sector Support Fund and Match Funding spend profiles

Quarterly reporting submissions to SELEP must receive sign off from the relevant S151 officer or appropriate finance officer prior to submission.

The information provided will be used to provide SELEP Strategic Board with an update on project delivery and realisation of expected project outcomes. This information will be presented in the public domain.

SCHEDULE 3: PAYMENT SCHEDULE

[INCLUDE DRAWDOWNPAYMENT SCHEDULE AS ENDORSED BY THE STRATEGIC BOARD]

Amount of Grant Payable	Date of Payment

SCHEDULE 4: CLAWBACK SCHEDULE

Period from Completion Date	Percentage of Grant to be repaid
Within 1 year after Completion Date	100%
Within 1-2 years after Completion Date	80%
Within 2-3 years after Completion Date	60%
Within 3-4 years after Completion Date	40%
Within 4-5 years after Completion Date	20%
From 5 years after Completion Date	0%

SCHEDULE 5: CLAIM FORM SCHEDULE



Sector Support Fund Draw Down Request

This Sector Support Fund claim form should be completed and sent to the SELEP Secretariat (hello@southeastlep.com) on an annual basis, in accordance with the Projects funding breakdown. The claim form should be submitted in advance of the Sector Support Fund funding being required.

In accordance with the terms of the Grant Agreement dated, the Applicant is seeking to apply for a drawdown of the grant as follows:

Project Title:	
Funding to be transferred to (<i>please state which Local Authority the funding should be transferred to</i>):	
Grant Value:	
Amount previously drawn down:	
Claim period (<i>please state the financial year which this claim relates to</i>):	
Amount of Draw Down requested:	

Declaration

I confirm that spend of the Sector Support Fund grant will be in accordance with the conditions of the Grant Agreement.

Signed Lead Project Officer

Name:

Dated:

Signed Finance Officer

Name:

Dated:

