

DATED _____ **2016**

AGREEMENT BETWEEN

STOKE ON TRENT CITY COUNCIL

&

STOKE-ON-TRENT & STAFFORDSHIRE LOCAL ENTERPRISE PARTNERSHIP

IN RESPECT OF THE ROLE OF THE ACCOUNTABLE BODY
FOR THE CORE AND CAPACITY FUND

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THIS AGREEMENT is made the **01 April** day of 2016

BETWEEN:

(1) Stoke on Trent City Council (the “**City Council**”)

and

(2) Stoke-on-Trent & Staffordshire Local Enterprise Partnership (the “**LEP**”)

BACKGROUND

(A) The LEP is an unincorporated partnership between local authorities and businesses and has established a board of directors. It exists to determine local economic priorities and to lead economic growth and job creation within its area. The LEP has been given responsibility for the development of a locally-based growth strategy that utilises public funding, including funding for The Core & Capacity Grants within Stoke-on-Trent and Staffordshire.

(B) The City Council is the Accountable Body (as defined below) for the Core and Capacity Funds on behalf of the LEP and this Agreement sets out the relationship and responsibilities between the City Council and the LEP in accordance with the guidance issued by the Department for Business Innovation and Skills in December 2014 entitled “LEP Assurance Framework”.

IT IS AGREED as follows:

1 DEFINITIONS AND INTERPRETATION

The Following words will, within this Agreement, have the meaning set against them below:

1.1. Definitions

Accountable Body	means Stoke-on-Trent City Council as the accountable local authority for the LEP in respect of The Core & Capacity Grants as required by central government.
Announcement	means any public and/or external announcement communication or circular including without limitation any statement or comment made through the

	medium of any and all means of social media;
Commencement Date	01 April 2016
Constitution	means the Stoke on Trent & Staffordshire Local Enterprise Partnership Constitution a web link is attached at Appendix 1
Core and Capacity Funds	means Revenue grants allocated by BIS supporting LEP activity within Stoke on Trent and Staffordshire
EU Procurement Requirements	means all applicable United Kingdom and European procurement legislation in connection with the procurement of works, supplies or services including European Union directives.
FOIA	means the Freedom of Information Act 2000.
Funding	means the Core and Capacity Funds
Fund Risk Register	means, in connection with the administration and use of the Core and Capacity Funds, details of any and all risks maintained by the LEP.
Grant Award Letter	means the letter from the Department for Business Innovation & Skills dated 08 February 2016 in which Funding is made available to the LEP.
Grant Offer Letter	means a letter from the Accountable Body to a Grant Recipient setting out the terms and conditions on which funding will be made available from the Core and Capacity Funds to a Grant Recipient
Grant Recipient	means a person, other than the Accountable Body, which is awarded funding from the Core and Capacity Funds
LEP	Means the Staffordshire and Stoke-on-Trent Local Enterprise Partnership
LEP Board	means the Partnership Board for the LEP
LEP Executive Group	means the Executive Group for the LEP.
LEP Proceedings	means: (a) agendas for Board Meetings (b) minutes of Board Meetings (c) terms of reference (d) register of interests (e) record of decisions taken outside of meetings; and (f) executed Agreement Change Notices
Local LEP Assurance Framework	means the suite of documents together comprising the LEP's Assurance Framework including the following: (a) Constitution;

	(b) Complaints policy; (c) Project prioritisation and business case process; (d) Service Level Agreements with the Accountable Bodies; (e) Service Level Agreement with delivery partners; (f) Any additional (or updated) documents which may be added from time to time and following approval by the LEP Board.
Member	means any member of the LEP
Month(s)	means calendar month(s)
Office Hours	Means between the hours of 9.00am and 5.00pm on any Working Day.
Project	means projects approved by the LEP for the receipt of Funding.
Quarterly	means once per each period of the financial year as follows: a) 1 April to 30 June b) 1 July to 30 September c) 1 October to 31 December; and d) 1 January to 31 March
Regulatory Body	means those government departments and regulatory, statutory and other entities, committees and bodies that, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate or influence the matters dealt with in this Agreement, the Partnership Arrangements or any other affairs of the Partners;
Working Day	means during Office Hours on any day from Monday to Friday (inclusive) which is not Christmas Day, Good Friday or a statutory bank holiday in England.

1.2. Interpretation

- 1.2.1. Clause and Appendix headings shall not affect the interpretation of this Agreement.
- 1.2.2. The Appendices form part of this Agreement and shall have effect as if set out in full in the body of this Agreement and any reference to this Agreement includes the Appendices
- 1.2.3. A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors and permitted assigns.

- 1.2.4. Words in the singular shall include the plural and vice versa.
- 1.2.5. A reference to one gender shall include a reference to the other genders.
- 1.2.6. A reference to a statute or statutory provision is a reference to it as it is in force as at the date of this Agreement, taking account of any amendment, extension, or re-enactment and includes any statute, statutory provision or subordinate legislation which it amends or re-enacts.
- 1.2.7. A reference to writing or written includes faxes but not e-mail.
- 1.2.8. Documents in the agreed form are documents in the form agreed by the Parties to this Agreement and initialled by them or on their behalf for identification.
- 1.2.9. Where the words **include(s)**, **including**, or **in particular** are used in this Agreement, they are deemed to have the words "without limitation" following them.
- 1.2.10. Any obligation in this Agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.2.11. A reference to a document is a reference to that document as varied or novated (in each case, other than in breach of the provisions of this Agreement) at any time.
- 1.2.12. References to clauses and appendices are to the clauses and appendices of this Agreement.
- 1.2.13. Reference to a Clause is a reference to the whole of that clause unless stated otherwise; and
- 1.2.14. In the event and to the extent only of any conflict between the Clauses and the Appendices, the Clauses shall prevail over the Appendices.

2 COMMENCEMENT, REVIEW AND TERMINATION

2.1. Commencement

- 2.1.1. This Agreement will commence on the Commencement Date and will remain in force unless and / or until terminated in accordance with clause 2.3 of this Agreement.

2.2. Review

2.2.1. The Agreement will be reviewed on 1 April of each year. No amendment to the provisions of this Agreement shall be effective unless made in accordance with the Agreement Change Procedure set out in Appendix 2.

2.3. Termination

2.3.1. Either Party may terminate all or part of this Agreement for convenience at any time on giving not less than three (3) Months' notice in writing to the other Party.

2.3.2. Either Party may terminate all or part of this Agreement if the other:

2.3.2.1. commits a material breach which is incapable of remedy;

2.3.2.2. commits a material breach which is capable of remedy, but is not remedied within fourteen (14) Working Days of a notice from the other requiring such remedy.

2.4. The termination rights set out in this Agreement are without prejudice to any other rights or remedies the Parties may have.

3 GOVERNANCE

3.1. The LEP will:

3.1.1. act in accordance with its Constitution;

3.1.2. utilise funding in accordance with the relevant requirements of the Grant Award Letter;

3.1.3. seek and heed the advice of the Accountable Body prior to committing Funding to ensure that monies are used appropriately;

3.1.4. ensure that the LEP Executive Group consider and make recommendations to the Accountable Body as to the allocation, treatment and management of Funds;

3.1.5. maintain a Programme Risk Register that will be reviewed as appropriate.

3.1.6. Advise the Accountable Body of any proposed amendments to the constitution and request the comments of the Accountable Body on the proposed changes, to be provided at the next Board Meeting after the proposed changes were notified.

3.2. The City Council as Accountable Body will be required to:

3.2.1. ensure that the Funding is used appropriately and in accordance with the Grant Award Letter and the aims of the LEP;

- 3.2.2. ensure compliance with the local LEP Assurance Framework; and
- 3.2.3. record the decisions of the LEP in approving funding .

4 FINANCIAL ARRANGEMENTS

4.1. The Accountable Body will:

- 4.1.1. hold the Funding and make payments in accordance with the decisions of the LEP, provided that the terms and conditions relating to Funding are in accordance with any obligations placed on the Council under S31 of the Local Government Act 2003.
- 4.1.2. account to the LEP on monies received;
- 4.1.3. hold the Funding in such a way that they are separately identifiable from the Accountable Body's own funds and will provide financial statements to the LEP on a Quarterly basis.
- 4.1.4. require that Grant Recipients comply with the terms of the Grant Offer Letter which will set out, amongst other things, the funding conditions, outputs, outcomes, milestones and reporting requirements.

5 RECORD KEEPING / AUDIT ARRANGEMENTS

5.1. The Accountable Body shall maintain the official record of LEP Proceedings and hold all documents for the LEP in connection with the administration and use of Funding;

5.2. The Accountable Body will ensure that there are arrangements in place for the local audit of funding allocated by the LEP which are at least equivalent to those in place for local authority spend.

5.3. The Accountable Body and the LEP will jointly maintain a Fund Risk Register which will, as a minimum, include:

- 5.3.1. the date on which the risk occurred;
- 5.3.2. details of the risk;
- 5.3.3. value of the risk;
- 5.3.4. any mitigating factors for the risk;
- 5.3.5. who has responsibility for the risk and any mitigating factors; and
- 5.3.6. the frequency at which the risk is reviewed.

6 STATUTORY OBLIGATIONS

6.1. The Accountable Body will ensure that the LEP and any Grant Recipient complies in all material respects with all relevant legislation including but not limited to the following:

6.1.1. Equalities

6.1.1.1. Not to unlawfully discriminate either directly or indirectly on such grounds as race, colour, ethnic or national origin, disability, sex or sexual orientation, religion or belief, or age; and without prejudice to the generality of the foregoing not to unlawfully discriminate within the meaning and scope of the Equality Act 2010, the Human Rights Act 1998 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof. The Accountable Body shall take reasonable steps to secure the observance of this Clause by all employees and / or officers.

6.1.1.2. The Accountable Body will require Grant Recipients to provide assurance to the Accountable Body that it has in place and in operation a policy covering equal opportunities so as to avoid unfair discrimination or any other unjustifiable bias directly or indirectly in relation to the implementation of the relevant Project.

6.1.1.3. Where appropriate the Accountable Body will request that relevant evidence shall be provided as to the implementation of this policy by the Grant Recipient.

6.1.2. Procurement

6.1.2.1. The Accountable Body shall ensure that any Grant Recipient will comply with all applicable EU Procurement Requirements in connection with the procurement of any Project.

6.1.3. Bribery

6.1.3.1. The Accountable Body shall (and will ensure its Staff shall) comply with the Bribery Act 2010 at all times and must notify the LEP immediately if a breach of this Act is suspected or known.

6.1.3.2. The Accountable Body shall maintain in place throughout the duration of the Agreement its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the relevant requirements and will enforce them where appropriate.

6.1.4. Prevention of Fraud

6.1.4.1. The Accountable Body shall take all reasonable steps to prevent fraud by its employees and / or officers in connection with the Capital Funding.

6.1.4.2. The Accountable Body shall notify the LEP immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.

6.1.5. Data Protection

6.1.6. The Parties shall throughout the duration of the Agreement (and for so long as they shall have personal data in their possession) comply with the provisions of the Data Protection Act 1998 and have in place appropriate technical, security and organisational procedures and measures (“the Measures”) to protect against accidental or unlawful disclosure and against accidental loss or destruction of, or damage to personal data received, obtained, being processed by or otherwise in the possession of the Parties pursuant to the Agreement.

6.1.7. Insofar as the Accountable Body processes any personal data on behalf of the LEP, the Accountable Body shall process that personal data only on behalf of the LEP and for the purposes of performing its obligations as Accountable Body and in accordance with instructions contained in this Agreement or received from the LEP from time to time; and shall not otherwise modify, amend or alter the contents of that personal data or disclose or permit disclosure of any of that personal

data to any third party unless specifically authorised in writing by the LEP.

6.2. Freedom of Information

- 6.2.1. The LEP shall use reasonable endeavours to assist the Accountable Body to comply with its obligations under the FOIA. In the event that the Accountable Body receives a request for information under the FOIA or any other applicable legislation governing access to information, and requires the LEP's assistance in obtaining the information that is the subject of such request or otherwise, the LEP will respond to any such request for assistance from the Accountable Body within such timeframes as requested by the Accountable Body (and in any case no later than 10 Working Days after receiving the Accountable Body's request) in order for the Accountable Body to comply with its statutory obligations.
- 6.2.2. In the event that the Accountable Body receives a request for information under the FOIA or any other applicable legislation which relates to either the Agreement or the LEP, the Accountable Body shall immediately consult the LEP with regard to the request as to whether or not the requested information and in particular whether any Confidential Information should be disclosed should be disclosed and take the LEP's views into account when making a decision as to whether or not the requested information should be disclosed and give serious consideration to whether any exemptions within the FOIA apply to the request for information.
- 6.2.3. If the Accountable Body determines that information (including Confidential Information) must be disclosed, it shall notify the LEP of such decision as soon as reasonably practicable.

7 COSTS

- 7.1. The Accountable Body will be responsible for its own costs limited to management, administrative and accounting costs incurred in its role as Accountable Body.

- 7.2. The LEP agrees to pay the reasonable legal costs or legitimate expense(s) incurred by the Accountable Body incurred as a result of its role as Accountable Body.

8 NOTICE

8.1. Any notice given under this Agreement shall be in writing and signed by or on behalf of the Party giving it and shall be served by delivering it personally, sending it by pre-paid recorded delivery, registered post or by e-mail to the relevant Party to the person at the address notified from time to time by the Parties for the receipt of notices under this Agreement. Any such notice shall be deemed to have been received:

- 8.1.1 if delivered personally, at the time of delivery;
- 8.1.2 in the case of first class or recorded delivery post, on the second Working Day after the date of posting; and
- 8.1.3 in the case of e-mail, if the e-mail is received during Office Hours then on that Working Day. If the e-mail is received outside Office Hours then on the next Working Day provided that Notice shall also be sent by pre-paid post to the addressee.

9 ANNOUNCEMENTS, COMMUNICATIONS AND REPRESENTATION

9.1. Announcements

9.1.1. Subject to Clause 9.1.3 neither Party shall make, or permit any person to make any Announcement concerning this Agreement, the other Party or the Funding without the prior written consent of the other Party (such consent not to be unreasonably withheld or delayed). The Parties shall consult together on the timing, contents and manner of release of any Announcement.

9.1.2. Where any action or omission of either Party relating to the Funding, is or is likely to be the subject of media comment, the Parties will use reasonable endeavours to consult each other prior to making any response to the media or to the public.

9.1.3. Where an Announcement is required by law or any governmental or Regulatory Body or by any court or other authority of competent jurisdiction, the Party required to make the announcement shall promptly notify the other Party. The Party concerned shall make all reasonable attempts to agree the contents of the Announcement before making it.

9.2. Communications

9.2.1. Each Party agrees to provide all information reasonably required in an accurate and timely manner for the other for it to produce internal communications as required for it to produce such internal communications as may reasonably be required.

9.2.2. The Parties shall support each other in making positive internal and external communications about the Agreement.

9.2.3. Each Party shall, both during the Agreement and following its termination, pay the utmost regard to the standing and reputation of the other and shall not do anything which may:

9.2.3.1. damage the reputation of the other Party;

9.2.3.2. bring the other Party into disrepute;

9.2.3.3. attract adverse publicity to the other Party; or

9.2.3.4. harm the confidence of the public in the other Party.

9.3. Representation

9.3.1. The LEP will ensure that neither itself or any Member shall do or omit to do, or permit any other person to do or omit to do anything which would lead a reasonable person to believe that, in the absence of express consent, they have the authority to bind either the LEP and / or the Accountable Body.

9.3.2. In addition, neither the LEP or its Members will allow anyone to be or to remain of the view that, in the absence of express consent, they have the authority to bind either the LEP and / or the Accountable Body.

9.3.3. The LEP shall ensure that the City Council's involvement as Accountable Body is publicised on website and in all literature produced by the LEP.

10 THIRD PARTY RIGHTS

10.1. Nothing contained within this Agreement is intended to confer or purport to confer any right to enforce any provision contained in this Agreement upon any person who is not a party to this Agreement and the Contracts (Rights of Third Parties) Act 1999 shall not apply.

11 GOVERNING LAW AND JURISDICTION

11.1. The Agreement, and any dispute or claim arising out of or in connection with it, shall be governed by, and construed in accordance with, the law of England.

11.2. The Parties irrevocably agree that the courts of England shall have exclusive jurisdiction to settle any dispute or claim that arises out of, or in connection with, the Agreement or its subject matter.

This Agreement is signed by the Parties as follows:

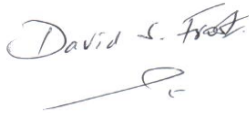


Signed by

For and on behalf of **the City Council**

Name Laura Rowley

Position Director of Resources and Customer Services



Signed by

For and on behalf of **the LEP** as authorised by its constitution

Name David Frost

Position Chairman, Stone-on-Trent & Staffordshire LEP

Appendix 1

Stoke on Trent & Staffordshire Local Enterprise Partnership Constitution

Web link to LEP Constitution Document March 2015

<http://www.stokestaffslep.org.uk/about-us/governance/>

Appendix 2 - Change Procedure

1. PURPOSE

- 1.1 This Appendix sets out the Agreement Change Procedure to be used by the Parties to effect changes to this Agreement. For the avoidance of doubt this Appendix does not apply to the LEP Assurance Framework which is a live suite of documents, and does not prevent the LEP Board from making any amendments, or adding to that suite of documents.

2. PRINCIPLES

- 2.1. The Accountable Body and the LEP shall conduct discussions relating to proposed changes to this Agreement in good faith. Neither Party shall unreasonably withhold or delay consent to the other Party's proposed changes to this Agreement.
- 2.2. Any discussions, negotiations or other communications which may take place between the Parties in connection with any proposed changes to this Agreement, including the submission of any written communications, prior to the signing by both Parties of the relevant Agreement Change Notice ("**ACN**"), shall be without prejudice to the rights of either Party.

3. PROCEDURE

- 3.1. Should either Party wish to propose a change to this Agreement, that Party shall submit a draft ACN detailing the proposed change to the other Party using the proforma at Annex A to this Appendix in accordance with Clause 2 of this Agreement.
- 3.2. Within ten (10) Working Days of the submission of a draft ACN (or such other period as may be agreed between the Parties) the receiving Party shall respond to the draft ACN in accordance with Clause 2 of this Agreement. If appropriate, the Parties shall enter into discussions to discuss the draft ACN.
- 3.3. Discussions between the Parties following the submission of a draft ACN shall take place between five (5) Working Days (or such other period as agreed by the Parties) and result in either:
 - 3.3.1. agreement between the Parties on the changes to this Agreement to be made (including agreement on the date on which the changes to this Agreement are to take effect (the "**ACN Effective Date**") within five (5) Working Days (or such other period as agreed by the Parties), such agreement to be expressed in the form of proposed revisions to the text of the relevant parts of this Agreement; or
 - 3.3.2. no further action being taken on that draft ACN.

- 3.4. Where agreement is reached in accordance with paragraph 3.3.1 of this Appendix, the Accountable Body will prepare a final ACN for execution by both Parties within five (5) Working Days (or such other period as agreed by the Parties). This final ACN shall be uniquely identified by a sequential number allocated by the Accountable Body.
- 3.5. The LEP will sign two (2) copies of each ACN and submit these to the Accountable Body no less than ten (10) Working Days prior to the ACN Effective Date.
- 3.6. Subject to the agreement reached in accordance with paragraph 3.3.1 of this Appendix remaining valid the Accountable Body shall the copy of the approved ACN within five (5) Working Days of receipt. Following signature, the Accountable Body will store one (1) copy of the signed ACN on behalf of the LEP in its role as Accountable Body and pursuant to clause 5.1 of this Agreement.

Annex A

Agreement Change Note for the Agreement Change Procedure

Sequential Number: [to be allocated by the City Council]

Title:

Originator: for the [City Council / the LEP]

Date change first proposed:

Number of pages attached:

WHEREAS the City Council and the LEP entered into an Agreement to define the role of Accountable Body for the LEP dated [] and now wish to amend that Agreement as follows:

Reason for proposed change

[Party proposing change to complete]

Full details of proposed change

[Party proposing change to complete]

Details of likely impact, if any, of proposed change on other aspects of the Agreement

[Party proposing change to complete]

IT IS AGREED as follows:

1. With effect from [date] the Agreement shall be amended as set out below:

[Details of the amendments to the Agreement to be inserted here – to include the explicit changes required to the text in order to effect the change, i.e. Clause/Appendix//paragraph number, required deletions and insertions etc]

2. Save as herein amended, all other terms and conditions of the Agreement inclusive of any previous ACNs shall remain in full force and effect.

Signed for and on behalf of the City Council

By

Name

Title

Date

Signed for and on behalf of the LEP

By

Name

Title

Date