

envelope for the New Anglia Growth Hub and £20m PWLB at preferential rate - loan finance for infrastructure.

2.4 NALEP's particular objectives for the Programmes can be found in the relevant chapter of the Assurance Framework.:

2.4.1 The New Anglia Business Growth Programme

This funding programme aims to engage with businesses and enterprise across Norfolk and Suffolk and drive up levels of innovation and growth, by providing the ecosystem businesses need through a wide range of partnership activity, clustered around our Growth Hub – a physical hub of business advisors supported across Norfolk and Suffolk by a web presence and customer relationship management (CRM) system. This will enable the partnership of NALEP, SCC and (where relevant) other delivery agencies associated with the programme to drive up levels of Gross Value Added (GVA) across the whole of Norfolk and Suffolk and create new jobs and new enterprises.

2.4.2 The Business Growth Programme

This funding programme also forms an integral part of NALEP's business support activity and will enable NALEP to grow and develop the range of business support activity and programmes that NALEP has been delivering in partnership over the last two years through its Growing Business Fund and Business Information Portal.

2.4.3 Growth Hubs

The emerging New Anglia SEP emphasises the importance of the Growth Hub (the Growth Hub is a central point for businesses and individuals across Norfolk and Suffolk designed to provide an easy route to business support) in the emerging business support landscape, particularly around economic growth, enterprise development and job creation, with the Hubs forming a key role in addressing barriers to growth, increasing and accelerating business start-up rates and creating new businesses with high growth potential.

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 2020 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 Risk and Performance 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 NALEP, 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 of all of such liabilities, NALEP 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 NALEP 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 unremedied breach by SCC.

4. ROLES AND RESPONSIBILITIES OF NEW ANGLIA LOCAL ENTERPRISE PARTNERSHIP

NALEP shall:

- 4.1. Comply with all the regulations and guidance notes from Department for Communities and Local Government, Cabinet Office, Department for Business Innovation and Skills, 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 ensure 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 Partner 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 NALEP'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 requirements of the relevant funding body('s) and will keep 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 NALEP 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 NALEP 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 NALEP, then SCC procurement procedures will be followed. NALEP is a contracting authority for the purposes of the Public Contracts Regulations (these are subject to change in 2015), so if NALEP 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. NALEP will develop its own procedures which are outside the scope of this ABA.
- 4.12. Ensure that both NALEP 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 along with the VCSE best practice guide located on the SCC website:
<http://www.suffolk.gov.uk/assets/suffolk.gov.uk/Your%20Community/2013-03-07%20Good%20Practice%20Guide%20final.pdf>
 - 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 NALEP 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 (FoI) and related legislation. If NALEP or SCC receive an FoI 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 NALEP is exempt from FoI in the body of the legislation but the Assurance Framework issued by BIS makes it a requirement that NALEP complies with the spirit of this legislation and NALEP confirms that it will do.
 - VIII. comply with Data Protection regulations.
- 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 NALEP 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 NALEP Financial Controller) from NALEP.
 - 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 NALEP 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 NALEP 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 NALEP 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 NALEP 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 NALEP

or there is a significant risk of this. Where SCC considers this to be the case, it will consult with NALEP 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 local audit of funding allocated by NALEP at least equivalent to those in place for Local Authority spend.
 - 5.6.1 Act as accountable body for the Programmes. This role will involve financial management and overview of spend to ensure that it is in line with published criteria, state aid regulations and the wider regulatory and legal framework that applies to this funding.
 - 5.6.2 Jointly with NALEP, 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 NALEP's plans in setting its corporate priorities.
- 5.6.4 Work with NALEP and the delivery partners in drafting and developing standard written procedures which can be used as a guide across the Programmes.
- 5.6.5 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.
- 5.6.6 Collate and submit to the relevant monitoring body (in the case of City Deal this is currently: DCLG and Lancaster University as the intermediary body) interim and final claims for relevant grant on behalf of NALEP, receive payment of funds and arrange an independent audit of the final grant claim and internal audit of the Programme.
- 5.6.7 Ensure that suitable financial and accounting procedures are in place for the Programmes and make arrangements 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 NALEP Board and the Council.
- 5.6.8 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.
- 5.6.9 Be responsible for achieving the best return on NALEP funds in line with an acceptable risk policy agreed by both parties. NALEP will provide a funding profile to enable this to be pursued effectively. SCC will sit on the Risk and Performance Committee which has oversight of all the programmes within NALEP's remit. SCC will identify two members of staff to cover off financial and funding issues.
- 5.6.10 In agreement with and with all necessary assistance from NALEP make the following arrangements:
- I. in certain pre-agreed circumstances arrangements for the provision of effective management and administration support to NALEP.
 - 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 NALEP 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 SEP Funding in accordance with the requirements of the relevant funding body.
 - VI. Seek feedback from partners via the Growth Programme Compliance Group (SCC/NALEP/Norwich City Council members) on any revisions to procedural arrangements for the grant, loan and voucher programmes.
- 5.11 Work with NALEP in drafting and developing written procedures and appropriate management, administration, finance and IT systems for the Programmes covered by this ABA. NALEP will develop its own procedures which are outside the scope of this ABA.

6. PROGRAMME MANAGEMENT

NALEP will make all arrangements for effective management and administration support to the Programmes as necessary. SCC will be paid for support provided to NALEP in support of the roll out of funding that has been awarded between 7th July 2014 to 31 March 2020 to support the SEP. This will include a full time 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 NALEP. This is likely to take the form of a 7% 'top slicing' of the programmes received by NALEP to support resourcing of the Accountable Body role and appropriate staff costs within NALEP. Any alternative arrangements for the provision are to be agreed by the NALEP's 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 Economic Development, or alternative representative of the Accountable Body and
- NALEP – 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 NALEP (Chris Starkie)

Signed for and on behalf of
Suffolk County Council by:

.....
Authorised Signatory