

<b>Key Decision Required:</b>	<b>YES</b>	<b>In the Forward Plan:</b>	<b>NO</b>
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## **CABINET**

**8 OCTOBER 2021**

### **REPORT OF THE PORTFOLIO HOLDER FOR BUSINESS & ECONOMIC GROWTH**

#### **A.5 NORTH ESSEX ECONOMIC BOARD – COLLABORATION AND FUNDING AGREEMENT**

(Report prepared by Barbara Pole)

#### **PART 1 – KEY INFORMATION**

##### **PURPOSE OF THE REPORT**

The purpose of this report is to seek Cabinet approval to enter into a Collaboration and Funding Agreement with the local authority partners that together comprise the North Essex Economic Board, and to allocate 10% of the North Essex Councils' Additional Restrictions Grant (ARG) funding in support of the Board's COVID-19 recovery interventions.

For Cabinet to give authority to the Portfolio Holder for Business & Economic Growth and Corporate Finance and Governance to approve future projects agreed by the North Essex Economic Board (NEEB) that fall within this 10 percent of the District's ARG funding.

##### **EXECUTIVE SUMMARY**

The Government made funding available to local authorities through its Additional Restrictions Grant scheme (ARG) to support businesses that were severely impacted by COVID-19 related restrictions.

At its meeting on 11<sup>th</sup> November 2020 the North Essex Economic Board (NEEB) determined (subject to constituent member approval) to establish a pool of top sliced ARG funding (10 percent of each district's allocation) in support of sub-regional (North Essex) business support and skills interventions approved by the Board to support the areas COVID-19 recovery.

Ten percent of Tendring District Council's ARG grant equates to £293,000. However, it is not expected that this full amount will be required. Tendring District Council and other Councils have already spent funds on Click it Local which forms part of this agreement (for Tendring this was covered by a previous decision). Essex County Council are currently taking forward the Business Support element of the programme which has come in below the anticipated budget of £150,000 per Council reducing the budget to £120,000 per district for this programme.

Braintree are leading the skills element of the programme and therefore this will be a separate ask.

With all North Essex Councils contributing to the ARG pool, the Board will have a project fund of £1.65m. ECC did not receive ARG funding, but have contributed a further £220,000 to cover elements of the programme that the ARG can't pay for such as staffing and marketing costs.

The North Essex Economic Board is a partnership of local authorities comprising: Braintree, Maldon, Tendring, Uttlesford, Colchester, Chelmsford, and Essex County Council. TDC's representative on the board is Cllr. Mary Newton, Portfolio Holder for Business and Economic Growth plus an officer support from the Economic Growth Team.

By pooling resources the partners will be able to implement a range of sub-regional project interventions that together will have a positive impact on the economic recovery of North Essex. Interventions will also focus on the delivery of skills necessary to support businesses and to get residents of working age back into employment.

The partners have endeavoured to provide business support that compliments localised projects currently running within their districts which include such schemes as Tendring's Business Support Service which is delivered by Colbea. The programme of support to business has been developed to align with the Council's Back to Business delivery Plan, helping Tendring to recover from the challenges of the pandemic.

The Board has identified six 'quick win projects. These are as follows:

- Click it Local
- Digital Support
- Importing & Exporting
- Financial & Debt Management
- Start-up Support
- Business Navigation

The first of the projects supported by the Board was Click it Local, albeit given the need to set-up the Collaboration and Funding Agreement, this was contracted separately by each local authority partner rather than through a single contract. Members will recall that the Click it Local scheme was launched in Tendring on 27<sup>th</sup> April 2021. The scheme provides an online platform enabling local independent shops and retailers to be able to compete with the likes of Amazon on convenience and choice. The NEEB partners have determined to extend this initiative until the end of the financial year (March 2022), keeping it free for those businesses signed up to the platform.

Following the launch of Click it Local in districts across North Essex partners initiated a procurement exercise (led by Essex County Council) to secure contractors to provide a

range of Business Support and Skills related interventions tailored to meet the needs of businesses across North Essex.

To this end officers representing the seven local authority partners have recently evaluated the tenders received vis-à-vis five support programmes. These include:

- **Business Navigation Support** – The aim of this procurement is to appoint a specialist organisation to deliver free business navigation support across North Essex. The primary purpose is to increase the number of businesses accessing business navigation services from within the NEEB area. It will be expected that additional dedicated Business Support Navigators are used to help North Essex businesses to identify relevant programmes, initiatives and/or funding schemes currently on offer across Essex and to assist in accessing the support available.
- **Pre-start and start-up business support** – This procurement is for the business start-up support element of the programme. The aim is to deliver free advice and support to individuals who have ambitions to start a business and to start-up a business during their first 12 months of trading. The service will include the provision of learning, advice, mentoring and networking.
- **Specialist importing and exporting advice** - This procurement is for the free importing and exporting advice support element of the programme. The service will provide free structured one-to-one and one-to-many bespoke advisory support to businesses who currently trade, or who want to begin to trade, both within Europe and with the rest of the world.
- **Financial and debt management support** – The primary purpose of this procurement is to provide free one-to-one financial and debt management support and advice to businesses, alongside navigation services which signpost businesses to other financial support programmes, in order to create and safeguard jobs and support business growth and survival across North Essex.
- **Business digitising and e-commerce support** – This procurement is for the business digitising and e-commerce support element of the programme including cyber security. The aim is to deliver free support especially as digital transformation is key to the recovery of businesses, with the need to switch to online platforms as alternative and additional sales channels.

Partners' ARG contribution has until now remained within the budgets held by each of the second tier authorities with the understanding that the monies would be transferred to ECC as required (subject to the approval of a Collaboration and Funding Agreement).

ECC is now seeking TDC's agreement to the Collaboration and Funding Agreement and (subject to ratification) as requested that the Council transfer 10 percent of its top sliced ARG funding to an account to be held and managed by the County Council.

This allows us two options:-

**Option 1:** Approve the terms of the draft Collaboration and Funding Agreement and agree to make available 10 percent of the ARG and continue to support the NEEB projects as agreed on the 17<sup>th</sup> November 2020. This will allow TDC to continue its support for businesses via the six quick win interventions outlined above; or

**Option 2:** Determine not to sign the Collaboration and Funding Agreement and withhold the ARG funding which the Council's Board representative approved in principle in November 2020. This option could irreparably damage the Council's reputation and its standing with other partners to the North Essex Economic Board.

**PLEASE NOTE:** This report, whilst published as a forthcoming "Key Decision", has not been published to the Council's website for the required 28 calendar days. Due to the reasons of urgency, and in accordance with the Council's Constitution, permission has been sought from, and granted by, the Chairman of the Resources and Services Overview & Scrutiny Committee (Cllr. M E Stephenson) for the General Exception Procedure to be used in order that this matter can be considered at this Cabinet meeting. Copies of the relevant documents are published with this report.

#### **RECOMMENDATION(S)**

**Cabinet is asked to:**

- 1. Agree the maximum allocation of £293,000 from the Additional Restrictions Grant Fund to Essex County Council for the purposes of delivering the projects identified by North Essex Economic Board (NEEB) on the terms and conditions as set out in the Collaboration and Funding Agreement, attached as Appendix A; and**
- 2. Delegate authority to the Portfolio Holder for Business & Economic Growth and the Portfolio Holder for Corporate Finance and Governance to agree future projects agreed by the NEEB that fall within this 10 percent of the District's ARG funding.**

## **PART 2 – IMPLICATIONS OF THE DECISION**

#### **DELIVERING PRIORITIES**

##### Corporate Plan (2020-2024)

The NEEB project programme responds directly to the corporate priorities identified within the Council's 2020-2024 Corporate Plan and accords with the Community Leadership and Tending4Growth themes, which are central to that Plan.

NEEB's interventions respond to a number of priorities in the Council's Corporate Plan as set out below:

- Support existing businesses
- More and better jobs
- Develop and attract new businesses

### Back to Business (2021)

The Council's Back to Business Plan seeks to support the district's recovery from the Covid-19 pandemic.

The Plan seeks to target action that will secure improvements to the environment and the quality of life, and to provide support for the district's residents, businesses and the wider economy in order to support Tendring's recovery from the challenges of the pandemic.

NEEB's project programme aligns with the aspirations set out in the Council's Back to Business Delivery Plan.

### Tendring Economic Strategy (2020 – 2024)

The Tendring Economic Strategy was updated in 2020. The Strategy uses evidence from Office of National Statistics to demonstrate that there have been some important changes in the district's economy in recent years which require a change in approach.

The Strategy sets out five objectives:

Objective 1: Supporting the Economy of Tendring's Places

Objective 2: Targeting Growth Sectors

Objective 3: Ensure Residents have the Skills and Information to Participate

Objective 4: Support Growth & Innovation in Tendring's Businesses

Objective 5: Delivering Housing to Support the District's Economic Objectives

In broad terms NEEB's project interventions correspond with objectives 1 to 4.

### North Essex Economic Strategy

At a sub-regional NEEB's project interventions corresponds with the aims and objectives of the North Essex Economic Strategy (NEES), which was developed and approved by the North Essex Economic Board. This articulates a vision in which citizens live in new and established communities that are well connected and inspire innovation and creativity. The NEES has four Missions, which seek to:

1. Drive innovation and technological adoption;
2. Develop a skilled and resilient workforce;
3. Create a network of distinctive and cohesive places; and
4. Grow a greener, more sustainable economy.

The six project interventions currently being promoted by NEEB as a short term response to the COVID-19 pandemic align specifically with objectives 1, 2 and 4. The six project interventions will deliver against these objectives by supporting locally based businesses and potential entrepreneurs to develop viable and sustainable businesses.

### SELEP Local Industrial Strategy

At a regional level NEEB's project interventions align with the emerging themes of the Local Industrial Strategy currently being prepared by the South East Local Enterprise Partnership (SELEP), and with its Coastal Prospectus, which was approved by the SELEP Board at its meeting in March 2020.

N.B. Government has indicated that country-wide the LEPs Local Industrial Strategies may be dropped from the national agenda.

### UK Government Industrial Strategy

At a national level NEEB's project interventions align with the Government's Industrial Strategy, which focusses on supporting the UK economy to become more productive and seeks to drive stronger, resilient and more balanced growth. The Industrial Strategy argues that there are five foundations of productive economy: ideas; people; business environment; infrastructure; and places. At a micro level, the proposed responds positively to these themes.

## **FINANCE, OTHER RESOURCES AND RISK**

### **Finance and other resources**

The Council received the following three separate tranches of ARG grant funding from the Government:

Tranche 1 - £2,931,220  
Tranche 2 – £1,301,909  
Tranche 3 - £804,916

It is important to highlight that tranches 1 and 2 set out above have been fully spent on associated business grant schemes, which were subject to earlier decisions. This was based on the Government's requirement to spend these two tranches of funding by the 31 July 2021, to qualify for the 'top up' funding available as Tranche 3.

The 10 percent top slice set out in this report is based on Tranche 1 above, given this was the amount awarded at the time the 10 percent top slice was initially considered back in November 2020. This therefore provides 'base' funding of £293,000 to support the NEEB projects.

However, the following two schemes proposed by NEEB are being delivered directly by the Council funded from this top slice amount of £293,000:

Click it Local - £60,000  
Business Support - £120,000

After taking into account the above two schemes, £113,000 would remain available to transfer to the NEEB to support the other proposed projects / initiatives.

The 10 percent top slice amount of £293,000 is proposed to be funded from the £804,916 Tranche 3 grant highlighted above, leaving £511,916 available to support further projects / initiatives locally.

### **Risk**

By not continuing to contribute to the agreed projects will be damaging to the reputation of Tendring District Council and will be blemish partnership working with other local authorities within the NEEB.

We will also be failing our businesses who are in need of the support these projects will provide and help them to recover from the pandemic.

### **LEGAL**

Government issued Local Authorities Additional Restrictions Grant funding, in line with guidance issued by the Secretary of State for Business, Energy and Industrial Strategy, via a grant offer letter sent under section 31 of the Local Government Act 2003). Local Authorities will be responsible for delivering the funding so long as it accords with the funding and grant requirements.

The Collaboration and Funding Agreement to be entered into by the North Essex Economic authorities acknowledge that any projects to be funded through the pooled resources must align with Government's grant requirements.

General Exception provisions (Rule 14) within the Access to Information Procedure Rules can be relied upon with the Chairman of Resources and Services Overview and Scrutiny Committee's approval, if it is impracticable for 28 days' notice to be given of the Decision. The necessary approval has been obtained.

### **OTHER IMPLICATIONS**

**Consideration has been given to the implications of the proposed decision in respect of the following and any significant issues are set out below.**

**Crime and Disorder / Equality and Diversity / Health Inequalities / Area or Ward affected / Consultation/Public Engagement.**

#### Area or Ward Affected

NEEB's project programme (and future interventions) will benefit businesses across the Tendring district along with those located in Colchester, Braintree, Uttlesford,

Chelmsford and Maldon.

#### Health Inequalities

Improving employment opportunities through targeted business support (information, advice and guidance) will positively impact the health and wellbeing of local people.

#### Consultation/Public Engagement

ECC commissioned Mackman Research to conduct a thorough business survey to identify the impacts of the pandemic during September and October 2020 and the types of business support needed. More than 800 business responded to this survey. A total of 119 Tendring business representatives contributed to the research findings.

#### Crime and Disorder

It is generally accepted that prosperous innovative communities experience fewer incidents of crime and general disorder.

#### Equality and Diversity

The proposed project interventions seek to stabilise and support growth in the North Essex economy. This activity will benefit Tendring's economy, increase opportunities for local entrepreneurship, and grow and retain economic activity and job creation in the local area.

NEEB's project interventions represent action to support businesses emerging from the COVID-19 pandemic but form part of a wider strategic initiative that aims to transform the North Essex economy.

#### Environment and Carbon Neutrality

Elements of the proposed projects support businesses to become more Carbon Neutral by helping to them to transform digitally. They will also be provided with the skills and knowledge to make more informed choices in the future.

Click it Local is designed to support a reduction in the district's carbon footprint by providing an online shopping facility which reduces the need for individual customers to travel to specialised retail units. Click it Local will make one pick up for several customers. Further to this, at the request of the partnership Click it Local are also investing in electric vehicles to further the Council's agenda.

### **PART 3 – SUPPORTING INFORMATION**

#### **BACKGROUND**

Tendring District Council forms part of the North Essex Economic Board (NEEB). NEEB is a partnership of local authorities in the area working together as a catalyst to drive forward economic growth. The partnership consists of Braintree District Council, Colchester Borough Council, Chelmsford City Council, Maldon District Council, Tendring District Council, Uttlesford District Council and Essex County Council.

Whilst the longer-term aim of NEEB is to support and promote the economic prosperity of North and Mid Essex, short term the focus is on supporting the economic recovery from Covid-19. In order to actively support the economic recovery of North and Mid Essex from Covid-19, each local authority has committed to contributing 10 percent of their ARG funding (for Tendring this would be a maximum contribution of £293,000) towards a NEEB business support and skills programme.

The first of the projects was Click it Local which was launched in Tendring on 27<sup>th</sup> April 2021 and provides an online platform enabling local independent shops and retailers to compete with the likes of Amazon on convenience and choice.

A programme of business support activity has now been developed and is being progressed. Local business surveys, direct feedback from local businesses and information from business support partners have all been used to aid the development of the business support programme. The following five activities form the main initiatives that it is hoped will shortly be procured in order to deliver business support across North and Mid Essex.

- Business support navigation
- Business start-up and pre-start support
- Finance and debt management support
- Digital and cyber security support
- Importing and exporting support

The Board are keen to ensure that all initiatives enhance the existing business support landscape. Confirmation has been given by the Department for Business, Energy and Industrial Strategy (BEIS) that the business support programme proposed by NEEB would be a suitable use of ARG funding. Work is still being progressed to develop a skills programme to support businesses across North and Mid Essex.

ECC have agreed to procure the different strands of the business support programme on behalf of NEEB. In line with the existing timeframe, it is hoped that contracts for all five initiatives will be in place by the beginning of October and will run for a year. BEIS have confirmed that business support contracts can run past the March 2022 deadline of spending ARG funding, as long as funding is defrayed by this date.

<b>FURTHER HEADINGS RELEVANT TO THE REPORT</b>
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None
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<b>BACKGROUND PAPERS FOR THE DECISION</b>
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None
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<b>APPENDICES</b>
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A.1 Appendix A - Draft and Collaboration and Funding Agreement
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**A.1 APPENDIX A – DRAFT COLLABORATION AND FUNDING AGREEMENT**

**ESSEX COUNTY COUNCIL**

and

**BRAINTREE DISTRICT COUNCIL**

and

**CHELMSFORD CITY COUNCIL**

and

**COLCHESTER BOROUGH COUNCIL**

and

**MALDON DISTRICT COUNCIL**

and

**TENDRING DISTRICT COUNCIL**

and

**UTTLESFORD DISTRICT COUNCIL AND**

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**COLLABORATION AND FUNDING AGREEMENT**

in relation to the North Essex Economic Strategy Board's commissioning of the Skills and Business Support Programme for North and Mid Essex  
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This Agreement is dated the latest date of signature of this Agreement.

## **PARTIES**

- 1) **ESSEX COUNTY COUNCIL** of County Hall, Chelmsford, Essex CM1 1QH (**ECC**); and
- 2) **BRAINTREE DISTRICT COUNCIL** of **[\*\*ADDRESS]**; and
- 3) **CHELMSFORD CITY COUNCIL** of **[\*\*ADDRESS]**; and
- 4) **COLCHESTER BOROUGH COUNCIL** of **[\*\*ADDRESS]**; and
- 5) **MALDON DISTRICT COUNCIL** of **[\*\*ADDRESS]**; and
- 6) **TENDRING DISTRICT COUNCIL** of **[\*\*ADDRESS]**; and
- 7) **UTTLESFORD DISTRICT COUNCIL** of **[\*\*ADDRESS]**.

## **BACKGROUND**

- (A) The parties to this Agreement are local authorities for the purposes of the Local Government Act 1972 and best value authorities for the purposes of the Local Government Act 1999. The parties are entering into this Agreement further to partnership arrangements between them pursuant to Section 101 of the Local Government Act 1972.
- (B) The parties all work together as part of the North Essex Economic Strategy Board (**NEEB**) as a catalyst to drive forward economic growth across North and Mid Essex.
- (C) All the parties except ECC have been awarded funding from the Government's Additional Restrictions Grant (**ARG**) scheme to be used to support businesses that are severely impacted by COVID-19 restrictions by way of skills and business support grants or through wider business support. All ARG funding must provide direct support to businesses. ARG funding must not be used as a wage support mechanism, for capital projects that do not provide direct business support or to fund projects whereby local authorities are the recipients.
- (D) Through the NEEB, the parties (other than ECC) have agreed to commit a proportion of their ARG funding to a NEEB pooled fund for an aligned Skills and Business Support Programme to be delivered across North and Mid Essex in order to deliver wider economic benefits with the aim to safeguard and grow businesses and jobs.
- (E) The parties have agreed that ECC will manage the pooled fund and commission the Projects. The parties wish to establish a framework to govern their respective rights and obligations (including funding contributions to a pooled fund) in relation to particular Projects in respect of which they wish to co-operate, where such Projects fall within the Purpose of this Agreement.
- (F) In support of the Projects being delivered, ECC has committed £220,000 (via an agreement with Braintree District Council) from the Council's core economic growth 20/21 budget to provide match funding in order to fund a programme manager to oversee the NEEB Skills and Business Support Programme and to cover administrative and marketing costs that fall outside of the criteria for the ARG funding. ECC's funding will therefore not form part of the pooled fund.
- (G) This Agreement sets out the terms and conditions upon which the parties have agreed that such Projects will be commissioned.

## Agreed terms

### 1. Interpretation

1.1 The definitions and rules of interpretation in this clause apply in this Agreement.

**ARG:** has the meaning given to it in Recital C of this Agreement.

**Business Day:** a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

**Charges:** the charges payable by a party to the other in relation to a Project (if any), as set out in each case in a Project Schedule.

**Commencement Date:** the date of this Agreement.

**Contributing Parties:** the parties listed in clause 6.1 of this Agreement and **Contributing Party** shall be construed accordingly.

**Contributions:** the contributions made by the Contributing Parties in accordance with this Agreement and **Contribution** shall be construed accordingly.

**Intellectual Property Rights:** patents, utility models, rights to inventions, copyright and neighbouring and related rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**NEEB:** has the meaning given to it in Recital B of this Agreement.

**Pooled Fund:** the pooled fund of aggregate Contributions which shall be managed and utilised in accordance with this Agreement.

**Project:** any project listed in Schedule 1 and any other additional project agreed by the parties in accordance with clause 5 falling within the scope of the Purpose, in relation to which the parties will collaborate in accordance with this Agreement and if applicable as further agreed in relation to any particular Project and **Projects** shall be construed accordingly.

**Project Period:** subject to earlier termination in accordance with this Agreement, the period from the start date to the end date of a Provider Contract.

**Provider Contract:** any contract awarded to a provider by ECC in relation to a Project following a procurement process conducted in accordance with ECC's procurement policies and procedures and the Public Contracts Regulations 2015 and **Provider Contracts** shall be construed accordingly.

**Purpose:** to deliver an aligned Skills and Business Support Programme across North and Mid Essex in order to deliver wider economic benefits with the aim to safeguard and grow businesses and jobs.

**Service Provider:** a provider under a Provider Contract.

1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this Agreement.

1.3 The Schedules forms part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this **Agreement** includes the Schedules.

- 1.4 References to clauses and Schedules are to the clauses and Schedules of this Agreement and references to paragraphs are to paragraphs of the Schedule.
- 1.5 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's successors and permitted assigns.
- 1.6 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.7 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.8 A reference to any **party** shall include that party's personal representatives, successors and permitted assigns.
- 1.9 A reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.10 A reference to legislation or a legislative provision shall include all subordinate legislation made from time to time under that legislation or a legislative.
- 1.11 A reference to **writing** or **written** includes email but not fax.
- 1.12 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.13 A reference to **this Agreement** or to **any other agreement or document referred to in this Agreement** is a reference to this Agreement or such other agreement or document as varied or novated (in each case, other than in breach of the provisions of this Agreement) from time to time.
- 1.14 Where any statement is qualified by the expression **so far as a party is aware** or **to a party's knowledge** (or any similar expression), that statement shall be deemed to include an additional statement that it has been made after due and careful enquiry.
- 1.15 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.16 Where there is a conflict between the terms and conditions of this Agreement, and a Project Schedule, the terms and conditions shall prevail.
- 1.17 Any reference to this Agreement terminating shall, where the context requires, include a reference to this Agreement terminating by expiry.

## **2. Commencement and duration**

- 2.1 This Agreement shall commence on the Commencement Date and shall continue, (unless terminated earlier in accordance with this Agreement) until the final Provider Contract has expired or been terminated early, upon which this Agreement shall expire automatically without notice unless otherwise agreed by the parties.
- 2.2 The parties agree that where prior to the Commencement Date, ECC has had to commence the commissioning activities required by this Agreement in order to award the Provider Contracts in the desired timescales, any such activities shall be deemed to be within the scope of this Agreement.

## **3. Collaboration and co-operation**

- 3.1 In consideration of the mutual promises set out in this Agreement for which the parties shall pay to each other, if demanded, one pound sterling, the parties are entering into these partnership arrangements under this Agreement under section 101 of the Local Government Act 1972 and shall co-operate and collaborate within the Purpose in relation to the Projects and Provider Contracts.
- 3.2 The parties shall co-operate together in all aspects of the Purpose, Projects and Provider Contracts to make the most efficient use of all resources and obtain the best outcomes.
- 3.3 The parties will, in relation to the Purpose, Projects and Provider Contracts:
- (a) co-operate with each other, keep each another informed, to liaise effectively and work together in good faith in such a way to achieve the purpose of this Agreement;
  - (b) be open with information about the performance and financial status of the Provider Contracts;
  - (c) provide early information and notice relating to relevant problems including changes to contract arrangements or changes in respect of the Provider Contracts;
  - (d) act and deal in good faith towards each other in respect of all matters the subject of this Agreement; and
  - (e) co-operate with each other in connection with any proceedings brought against ECC in connection with any of the Provider Contracts including providing any evidence or information requested by any party.
- 3.4 The parties agree that the NEEB shall be continue to be in place for the duration of the Provider Contracts.

## **4. Existing arrangements**

- 4.1 Nothing in this Agreement shall restrict, prejudice or affect:
- (a) any party's right to continue to conduct its activities or arrangements that existed on the Commencement Date or that otherwise come into being outside the scope of this Agreement;
  - (b) the rights and powers, duties and obligations of the parties in the exercise of their functions as public bodies or in any other capacity including (without limitation), the

liabilities of the parties to any third parties for the exercise of their respective functions and obligations.

4.2 However, as the parties will be working together in relation to Projects where each party may have access to information or Intellectual Property Rights of the other parties, each party acknowledges that the other parties will need to protect such information and Intellectual Property Rights in accordance with clause 11 and clause 14.

4.3 The partnership arrangements under this Agreement shall not infer or imply any obligation on ECC to continue to perform any obligations under this Agreement in the absence of sufficient Contributions to the Pooled Fund.

## **5. Projects and Pooled Fund**

5.1 The Contributing Parties agree that ECC shall act as lead authority in relation to the Projects already agreed and set out in Schedule 1 at the date of this Agreement.

5.2 The parties acknowledge that service specifications for the Projects set out in Schedule 1 have been agreed by the parties prior to the Commencement Date and the parties have authorised ECC to commence the commissioning of such Projects in accordance with such specifications.

5.3 The parties shall agree any additional Projects in accordance with the processes followed by the NEEB and such additional Projects shall be subject to the terms of this Agreement where that parties agree that ECC will also act as lead authority in relation to such additional Projects.

5.4 Each Contributing Party confirms that:

- (a) the arrangements under this Agreement are compliant with the ARG scheme conditions and ECC shall have no liability for any claims or losses by any Contributing Party arising out of non-compliance with the ARG scheme conditions (other than where ECC has acted negligently);
- (b) each Project set out in Schedule 1 and the relevant applicable service specification is compliant with the ARG scheme conditions;
- (c) each Project and the relevant applicable service specification which is agreed by the parties after the Commencement Date will be compliant with the ARG scheme conditions;
- (d) it will at all times comply with law and be responsible for ensuring it has complied with its corporate governance and constitution (including any respective standing orders and standing financial instructions) in relation to entering into this Agreement and the arrangements under this Agreement.

5.5 The parties agree that subject to the Contributing Partners making the required Contributions under clause 6 of this Agreement:

- (a) ECC shall conduct the commissioning and procurement of the Projects in accordance with its procurement policies and procedures and the Public Contracts Regulations 2015;
- (b) ECC shall prepare and publish the tender documents and procedures for each Project and shall have sole discretion on the content of such documents and procedures provided that it is acting in accordance with the Purpose and the service specification for each Project;

- (c) the Contributing Parties shall participate in the evaluation panel for the bids for each Project provided that such participation is at all times compliant with the published tender documents and procedures and ECC's processes and procedures;
- (d) following evaluation, ECC shall make the final decision on the award of any Provider Contract following moderation of the scores with the evaluation panel and no Contributing Party shall be entitled to object to the identity of any proposed provider or any other matter relating to the award where the procurement of such Project has been carried out in accordance with the advertised tender documents and processes;
- (e) ECC shall be the only party who enters into the Provider Contracts with the relevant providers;
- (f) ECC shall make the required payments under such Provider Contracts;
- (g) ECC shall performance and contract manage such Provider Contracts in accordance with their terms with the aid of the resources of the programme manager appointed to assist with the Provider Contracts and the Contributing Parties shall not give any instructions to any Service Provider without the agreement of ECC;
- (h) ECC shall provide updates and reports (in an agreed format) to the Contributing Parties on the performance of the Providers under the Provider Contracts and the progress on the commissioning and procurement of any agreed Project which has not yet resulted in a Provider Contract. ECC shall not be required to incur additional expenses in providing reports or co-operating with any audit for the purposes of any reporting or audit required in relation to the use of the Contributions required by the ARG;
- (i) other than in accordance with Clause 6.7, the Contributing Parties shall not be entitled to reclaim any Contributions or offset or deduct any Contributions paid or agreed to be paid to ECC for the Pooled Fund against any obligation on the Contributing Parties to repay any amounts to the ARG scheme.

5.6 The parties shall agree any further Projects and specifications for such Projects in a timely fashion in order to enable ECC to commission such Projects in the required timescales. Each Contributing Party confirms that any future Projects approved by the NEEB will be compliant with the ARG scheme conditions imposed on it.

5.7 ECC shall have no liability to the Contributing Parties in the event that:

- (a) any procurement procedure does not result in an award of a Provider Contract due to reasons outside of ECC's control including the withdrawal or failure of a provider at any point prior to completion of a Provider Contract;
- (b) there is a delay in the award of Provider Contract due to insufficient Contributions from the Contributing Parties;
- (c) a Provider Contract cannot be awarded due to insufficient Contributions from the Contributing Parties;
- (d) any audit or other reconciliation of the ARG scheme determines that clawback is payable by any Contributing Party (other than where ECC has acted negligently);
- (e) any sums paid to a provider under a Provider Contract are not used for their intended purpose due to a default by the Provider including without limitation the fraud or insolvency of the provider;
- (f) ECC is unable to reclaim any sums paid in advance to a provider under a Provider Contract where such sums are not used for their intended purpose due to a default by the Provider including without limitation the fraud or insolvency of the provider.

- 5.8 Unless terminated earlier in accordance with this Agreement, each Project and relevant applicable Provider Contract remains valid during the applicable Project Period.
- 5.9 Each Contributing Party shall in relation to each Project and relevant applicable Provider Contract:
- (a) perform its obligations as required including the conditions imposed on it in relation to the ARG scheme which includes the following requirements:
    - (i) ARG funding must provide direct support to businesses;
    - (ii) ARG funding must not be used as a wage support mechanism, for capital projects that do not provide direct business support or to fund projects whereby local authorities are the recipients;
    - (iii) ARG funding must not be used for administrative, marketing, contract management or project management costs;
  - (b) use reasonable care and skill in performing such obligations;
  - (c) comply with good industry practice;
  - (d) comply with all laws applicable to it;
  - (e) obtain and maintain consents, licences and permissions (statutory, regulatory, contractual or otherwise) that are necessary to enable it to comply with such obligations.
- 5.10 Each party shall ensure that it uses employees, contractors or agents in performing its obligations under a Project who are suitably qualified and experienced.

## 6. Contributions

- 6.1 Each Contributing Party shall during the term of this Agreement contribute the maximum amount set out below against its name to the Pooled Fund in accordance with this clause 6, subject to any Contributing Party agreeing any additional contributions in accordance with this Agreement:

<b>Contributing Party</b>	<b>Maximum contribution</b>
Braintree District Council -	£305,000
Chelmsford City Council -	£389,000
Colchester Borough Council -	£357,000
Maldon District Council -	£130,000
Tendring District Council -	£293,000
Uttlesford District Council	£183,000
	<b>£1,657,000</b>

- 6.2 Once the value of any proposed Provider Contract is known, the Contributing Parties shall agree their respective Contributions relating to such Provider Contract. Each Contributing Party shall pay to ECC such agreed Contributions within [10 days] of such agreement. The Contributing Parties acknowledge and agree:
- (a) that ECC shall not be required to enter into any Provider Contract until there are sufficient funds in the Pooled Fund for the relevant Provider Contract;

- (b) that where any Contributing Party is unwilling or unable to agree its Contributions or does not pay any agreed Contribution, ECC shall not enter into any affected Provider Contract unless the remaining Contributing Parties agree any additional Contributions and pays such sums to ECC;
- (c) where any Contributing Party has not contributed to any Provider Contract, it shall not be entitled to any of the services under such Provider Contract;
- (d) that where the Contributing Parties agree to extend any Provider Contract, ECC shall not be required to extend any such Provider Contract until there are sufficient funds in the Pooled Fund for the relevant Provider Contract .

6.3 The Pooled Fund will be ring-fenced for ECC to pay invoices submitted by the providers under the Provider Contracts (excludes VAT which is recoverable) and any other costs agreed by the parties under this Agreement.

6.4 ECC shall be responsible for managing the Pooled Fund on behalf of the Contributing Parties, establishing the financial and administrative support necessary to enable the effective and efficient management of the Pooled Fund and carrying out all required accounting and auditing formalities. All internal auditors and all other persons authorised by the parties will be given the right of access by them to any document, information or explanation they require from any employee of the parties in order to carry out their duties under this Agreement. This right is not limited to financial information or accounting records and applies equally to premises or equipment used in connection with this Agreement. Access may be at any time without notice, provided there is good cause for access without notice.

6.5 ECC shall ensure that the Provider Contracts are funded from the Pooled Fund and shall keep the Contributing Parties informed as to any spend from the Pooled Fund at such intervals as are appropriate given the short-term nature of the Provider Contracts.

6.6 ECC shall use all reasonable endeavours to ensure that there is no overspend or underspend of the Pooled Fund provided that where:

- (a) there is an overspend which has been legitimately incurred including any agreed variations for additional services or additional unforeseen liabilities under any Provider Contract, the Contributing Parties shall pay to ECC such further amounts as agreed; and
- (b) there is an underspend at any time in the Pooled Fund, ECC shall assess any future likely spend under the Provider Contracts and no sums shall be returned to the Contributing Parties until the reconciliation exercise undertaken under clause 6.7 below.

6.7 ECC shall not be required to align any spend from the Pooled Fund to any individual Contributing Party. Where by 30 November 2021, all the parties agree that any remaining funds in the Pooled Fund are not committed or unlikely to be committed to Provider Contracts, ECC shall pay such remaining funds to the Contributing Parties by 31 December 2021, in such amounts to be agreed by the parties provided that where the Contributing Parties are unable to agree or unable to agree in a timely fashion, ECC shall be entitled to make that determination and pay such sums back to the Contributing Parties within a reasonable time period of such determination.

## **7. Information flow and Project management**

7.1 To enable the parties to maximise the benefits of their collaboration, each party shall:

- (a) engage the other parties in planning discussions in relation to the Purpose from time to time including at the NEEB;
- (b) keep the other parties informed about its own progress in relation to each Project and Provider Contract; and
- (c) facilitate regular discussions between appropriate members of its personnel and those of the other parties in relation to each Project and Provider Contract, including in relation to:
  - (i) performance and issues of concern in relation to each Project and Provider Contract;
  - (ii) new developments and resource requirements;
  - (iii) compliance with deadlines; and
  - (iv) such other matters as may be agreed between the parties from time to time.

7.2 Each party shall:

- (a) supply to the other parties information and assistance reasonably requested by it relating to a Project and Provider Contract as is necessary to enable the other parties to perform their own obligations in relation to the Project and Provider Contract; and
- (b) review documentation, including draft specifications or service descriptions or other technical documentation, for use when performing its obligations in relation to a Project and Provider Contract (if any), as soon as reasonably practicable at the request of the other parties, and notify it of any errors or incorrect assumptions made in any such documents so far as it is aware.

## **8. Charges**

8.1 Except as provided for in clause 8.2, each party shall:

- (a) not be entitled to charge the other parties for the provision of anything it provides in connection with each Project, Provider Contract and this Agreement; and
- (b) be otherwise responsible for its own costs incurred in connection with each Project, and Provider Contract and this Agreement.

8.2 Where:

- (a) the parties agree that any parties are responsible for any amounts in addition to any Contribution, such parties shall pay the relevant parties such amounts as agreed; and
- (b) any amounts are payable under the terms of this Agreement (other than the Contributions and agreed top-ups in relation to any overspend or additional Contributions referred to in clause 6), the relevant parties shall pay such amounts as required to the relevant other parties.

## **9. Provider Contracts**

9.1 Unless otherwise provided, the charges under a Provider Contract are exclusive of VAT which shall be included in invoices and payable by ECC, if applicable, in addition to the charges.

- 9.2 If a party fails to make a Contribution under this Agreement by the due date, then ECC shall be entitled to as applicable:
- (a) refuse to enter into any Provider Contract; or
  - (b) terminate a Provider Contract in accordance with its terms;
  - (c) refuse to extend a Provider Contract;
  - (d) refuse to vary a Provider Contract,
- until such time as the defaulting parties make the relevant Contributions and ECC shall not be liable for any resulting delay or failure to achieve any outcomes under such Provider Contract due to having to take any such actions.
- 9.3 Where ECC incurs any loss in relation to any Provider Contracts arising from any claims from a Service Provider and/or any third party, the Contributing Parties shall indemnify ECC against any such losses other than where such losses are due to ECC's default or breach of a Provider Contract.
- 9.4 ECC shall not be liable for any losses of any Contributing Party where such party is required to repay any part of its ARG funding which has been committed to the Provider Contracts unless ECC has used such funds other than for payment of the providers under the Provider Contracts.

## 10. Set-off

All amounts due under this Agreement shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

## 11. Confidentiality

- 11.1 **Confidential Information** means all confidential information (however recorded or preserved) disclosed by a party or its employees, officers, representatives or advisers (together its **Representatives**) to another party and that party's Representatives whether before or after the date of this Agreement in connection with the Purpose or any Project or Provider Contract, including information which:
- (a) relates to the existence and terms of this Agreement or any agreement entered into in connection with the Purpose or a Project;
  - (b) would be regarded as confidential by a reasonable business person relating to:
    - (i) the business, assets, affairs, customers, clients, suppliers, or plans, intentions, or market opportunities of the disclosing party; and
    - (ii) the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing party;
  - (c) is developed by the parties in the course of carrying out this Agreement or any Project or Provider Contract; and
  - (d) is specified as confidential in any Project.
- 11.2 The provisions of this clause shall not apply to any Confidential Information that:
- (a) is or becomes generally available to the public (other than as a result of its disclosure by the receiving party or its Representatives in breach of this clause); or
  - (b) was available to the receiving party on a non-confidential basis before disclosure by the disclosing party; or

- (c) was, is or becomes available to the receiving party on a non-confidential basis from a person who, to the receiving party's knowledge, is not bound by a confidentiality agreement with the disclosing party or otherwise prohibited from disclosing the information to the receiving party; or
- (d) the parties agree in writing is not confidential or may be disclosed; or
- (e) is developed by or for the receiving party independently of the information disclosed by the disclosing party.

- 11.3 Each party shall keep the other party's Confidential Information confidential and shall not:
- (a) use such Confidential Information except for the purpose of exercising or performing its rights and obligations under this Agreement in relation to the Purpose and any Project or Provider Contract (**Permitted Purpose**); or
  - (b) disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this clause.

- 11.4 A party may disclose the other party's Confidential Information to those of its Representatives who need to know such Confidential Information for the Permitted Purpose, provided that:
- (a) it informs such Representatives of the confidential nature of the Confidential Information before disclosure; and
  - (b) it procures that its Representatives shall, in relation to any Confidential Information disclosed to them, comply with the obligations set out in this clause as if they were a party to this Agreement,

and at all times, it is liable for the failure of any Representatives to comply with the obligations set out in this clause.

- 11.5 A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 11.5, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.

- 11.6 A party may, provided that it has reasonable grounds to believe that another party is involved in activity that may constitute a criminal offence under the Bribery Act 2010, disclose Confidential Information to the Serious Fraud Office without first informing the other party of such disclosure.

- 11.7 Each party reserves all rights in its Confidential Information. No rights or obligations in respect of a party's Confidential Information other than those expressly stated in this Agreement are granted to the other party, or to be implied from this Agreement.

- 11.8 On termination of this Agreement, unless such things are needed by it to perform its obligations under a Project or Provider Contract (and only until the end of such time), each party shall:
- (a) return to the other party all documents and materials (and any copies) containing, reflecting, incorporating or based on the other party's Confidential Information;
  - (b) erase all the other party's Confidential Information from computer and communications systems and devices used by it, including such systems and data

storage services provided by third parties (to the extent technically practicable or permitted by law); and

- (c) certify in writing to the other party that it has complied with the requirements of this clause, provided that a recipient party may retain documents and materials containing, reflecting, incorporating or based on the other party's Confidential Information to the extent required by law or any applicable governmental or regulatory authority. The provisions of this clause shall continue to apply to any such documents and materials retained by a recipient party.

11.9 Except as expressly stated in this Agreement, no party makes any express or implied warranty or representation concerning its Confidential Information.

11.10 The provisions of this clause 11 shall continue to apply after termination of this Agreement in accordance with clause 23.

## **12. Announcements**

12.1 Subject to clause 12.2, no party shall make, or permit any person to make, any public announcement, communication or circular (**announcement**) concerning the existence, subject matter or terms of this Agreement, the wider transactions contemplated by it, or the relationship between the parties, without the prior written consent of the other parties (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.

12.2 Where an announcement is required by law or any governmental or regulatory authority (including, without limitation, any relevant securities exchange), 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.

## **13. Data protection**

Each party shall, at its own expense, ensure that it complies with and assists the other parties to comply with the requirements of all legislation and regulatory requirements in force from time to time in the UK relating to the use of personal data and the privacy of electronic communications, including (i) the Data Protection Act 2018 and any successor UK legislation, (ii) the retained EU law version of General Data Protection Regulation ((EU) 2016/679) (UK GDPR), and (iii) the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a party.

## **14. Intellectual property**

14.1 This Agreement does not transfer any interest in Intellectual Property Rights. All Intellectual Property Rights developed or created by a party pursuant to a Project shall be owned by that party (**Created IPR**).

- 14.2 Each party grants to the other parties a non-exclusive, personal, royalty-free licence during the applicable Project Period to use its Created IPR in relation to a Project to the extent necessary for the other party to carry out its obligations in relation to that Project.
- 14.3 At the end of the applicable Project Period, a party licensed to use Created IPR under clause 14.2 shall cease to use that Created IPR and shall return any physical embodiment of the Created IPR (including any copies) in its possession or control to the other party.
- 14.4 Each party shall immediately give written notice to the other party of any actual, threatened or suspected infringement of any party's Intellectual Property Rights (including Created IPR) used in connection with a Project of which it becomes aware.

## 15. Employees and non-solicitation

- 15.1 Each party agrees that it shall not, without the prior written consent of the relevant other party, at any time from the Commencement Date to the expiry of 12 months after the expiry or termination of this Agreement, solicit or entice away from that party or employ or attempt to employ any person who is, or has been, engaged as an employee, consultant or subcontractor of that party in relation to a Project.

## 16. Anti-bribery

- 16.1 Each party shall in relation to this Agreement and each Project and Provider Contract:
- (a) comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (**Relevant Requirements**);
  - (b) have and shall maintain in place throughout the term of this 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;
  - (c) promptly report to the other party any request or demand for any undue financial or other advantage of any kind received by it in connection with the performance of this Agreement;
  - (d) Each party shall provide such supporting evidence of compliance as another party may reasonably request.
- 16.2 Each party shall ensure that any person associated with it who is performing obligations in connection with this Agreement does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on that party in this clause 16 (**Relevant Terms**). Such party shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to the other parties for any breach by such persons of any of the Relevant Terms.
- 16.3 Breach of this clause 16 shall be deemed a material breach under clause 21.3 and clause 22.2.
- 16.4 For the purposes of this clause 16, a person associated with a party includes but is not limited to any contractor, subcontractor, agent or consultant of that party.

## **17. Warranties**

17.1 Each party warrants that:

- (a) it has full power and authority to carry out the actions contemplated under this Agreement; and
- (b) its entry into and performance under the terms of this Agreement will not infringe the Intellectual Property Rights of any third party or cause it to be in breach of any obligations to a third party; and
- (c) subject to clause 11.9, so far as it is aware, all information, data and materials provided by it under this Agreement will be accurate and complete in all material respects, and it is entitled to provide the same to the other without recourse to any third party;

17.2 Except as expressly provided in this Agreement, there are no conditions, warranties or other terms binding on the parties with respect to the actions contemplated by this Agreement. Any condition, warranty or other term in this regard that might otherwise be implied or incorporated into this Agreement, whether by statute, common law or otherwise, is, to the extent that it is lawful to do so, excluded by this Agreement.

## **18. Indemnity**

18.1 Liability and obligation under this Agreement is several, not joint and no party shall have any liability or obligation arising out of a breach of this Agreement by another party of its representations, warranties and covenants hereunder.

18.2 Subject to the other provisions in this clause 18, if any party(ies) (**First Party**) incurs a loss arising out of or in connection with this Agreement or any Project or Provider Contract as a consequence of any act or omission of any other party(ies) (**Other Party**) which constitutes negligence, fraud or a breach of contract in relation to this Agreement then the Other Party shall be liable to the First Party for that loss and shall indemnify the First Party accordingly.

18.3 Clause 18.2 shall only apply to the extent that the acts or omissions of the Other Party contributed to the relevant loss. Furthermore, it shall not apply if such act or omission occurred as a consequence of the Other Party acting in accordance with the instructions or requests of the First Party.

18.4 If any third party including a Service Provider makes a claim or intimates an intention to make a claim against any party, which may reasonably be considered as likely to give rise to liability under this Clause 18 the party(ies) that may claim against the other indemnifying party(ies) will:

- (a) as soon as reasonably practicable give written notice of that matter to the other parties specifying in reasonable detail the nature of the relevant claim;
- (b) not make any admission of liability, agreement or compromise in relation to the relevant claim without the prior written consent of the other partners (such consent not to be unreasonably conditioned, withheld or delayed); and
- (c) give the other parties and their professional advisers reasonable access to its premises and personnel and to any relevant assets, accounts, documents and records within its

power or control so as to enable the indemnifying party and its professional advisers to examine such premises, assets, accounts, documents and records and to take copies at their own expense for the purpose of assessing the merits of, and if necessary defending, the relevant claim.

- 18.5 The parties shall at all times take all reasonable steps to minimise and mitigate any loss for which a party(ies) is entitled to bring a claim against the other parties pursuant to this Agreement.
- 18.6 This indemnity shall not cover the indemnified party to the extent that a claim under it results from the indemnified party's negligence or wilful misconduct.
- 18.7 If a payment due from the indemnifying party under this clause is subject to tax (whether by way of direct assessment or withholding at its source), the indemnified party shall be entitled to receive from the indemnifying party such amounts as shall ensure that the net receipt, after tax, to the indemnified party in respect of the payment is the same as it would have been were the payment not subject to tax.

## **19. Insurance**

During the term of this Agreement and for a period of 12 months thereafter, each party shall, so far as is possible at reasonable cost and allowable by law or guidance, effect and maintain appropriate insurance (or equivalent) arrangements in respect of all potential liabilities arising from the arrangements under this Agreement.

## **20. Limitation and exclusion of liability**

- 20.1 Nothing in this Agreement shall limit or exclude a party's liability:
- (a) for death or personal injury caused by its negligence, or that of its employees, agents or sub-contractors;
  - (b) for fraud or fraudulent misrepresentation;
  - (c) for breach of any obligation as to title or quiet possession implied by statute; or
  - (d) for any other act, omission, or liability which may not be limited or excluded by law;
  - (e) under the indemnity in clause 18.
- 20.2 Subject to clause 20.1, no party shall have any liability to another party, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or for any indirect or consequential loss arising under or in connection with this Agreement.
- 20.3 The parties expressly agree that if any limitation or provision contained or expressly referred to in this clause 20 is held to be invalid under any applicable statute or rule of law, it shall, to that extent, be deemed omitted in accordance with clause 28.

## **21. Termination of a Provider Contract**

- 21.1 The grounds and procedures for terminating a Provider Contract shall be as specified within the Provider Contract terms and conditions.

- 21.2 Where the parties agree to terminate a Provider Contract, any costs, payments or losses arising from such termination shall be payable by the Contributing Parties unless such termination is due to a material breach of ECC. Where a Service Provider terminates a Provider Contract, any costs, payments or losses arising from such termination shall be payable by the Contributing Parties unless such termination is due to a material breach of ECC.
- 21.3 For the purposes of this clause, **material breach** in **Error! Bookmark not defined.Error! Reference source not found.** in relation to a Provider Contract means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the Contributing Parties would otherwise derive from a substantial portion of a Provider Contract.
- 21.4 Termination of a Provider Contract in accordance with this clause shall have the effect that:
- (a) the terminated Provider Contract shall be severed from this Agreement, which shall otherwise remain in full force and effect; and
  - (b) the provisions of clause 23 shall otherwise apply (*mutatis mutandis*) in relation to the Provider Contract.

## 22. Termination of Agreement

- 22.1 Without prejudice to any other rights under this Agreement, subject to clause 22.2, where:
- (a) any party(ies) (the **Breaching Party**) commits a material breach of any of its obligations under this Agreement which is not capable of remedy; or
  - (b) any party(ies) (the **Breaching Party**) commits a material breach of any of its obligations under this Agreement which is capable of remedy but has not been remedied within 10 days of receipt of written notice from ECC,
- any party may refer the matter to the NEEB which shall decide whether or not the Breaching Partner should continue to be a party to this Agreement and any resulting payments by the Contributing Parties required to ensure that there are sufficient funds in the Pooled Fund. For the avoidance of doubt:
- (i) the Breaching Partner shall not be entitled to vote on this decision but will be entitled to make representations to the NEEB as part of their discussions; and
  - (ii) the Breaching Party shall indemnify ECC for any losses including those arising under a Provider Contract arising from the material breach of the Breaching Party.
- 22.2 For the purposes of **Error! Bookmark not defined.Error! Reference source not found.**, **material breach** means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the terminating party would otherwise derive from a substantial portion of this Agreement; or whether the Breaching Partner fails to make any payment required under this Agreement.
- 22.3 The parties shall not be permitted to terminate this Agreement unless:
- (a) all the Provider Contracts have expired or been terminated; or
  - (b) the parties all agree the termination of any remaining Provider Contracts and pay ECC any additional Contributions if necessary in order to be able to terminate such Provider Contracts.

## **23. Consequences of termination**

23.1 On termination of this Agreement, the following clauses shall continue in force:

- (a) clause 1 (Interpretation);
- (b) clause 6 (Contributions)
- (c) clause 9 (Provider Contracts);
- (d) clause 10 (Set-off);
- (e) clause 11 (Confidentiality);
- (f) clause 13 (Data protection);
- (g) clause 14 (Intellectual property);
- (h) clause 15 (Employees and non-solicitation);
- (i) clause 17.1(b) and clause 17.2 (Warranties);
- (j) clause 18 (Indemnity);
- (k) clause 19 (Insurance);
- (l) clause 20 (Limitation and exclusion of liability);
- (m) clause 21.4 (Termination of a Provider Contract);
- (n) clause 23 (Consequences of termination);
- (o) clause 24 (Force majeure);
- (p) clause 27 (Notices);
- (q) clause 28 (Severance);
- (r) clause 29 (No partnership or agency);
- (s) clause 30 (Rights and remedies);
- (t) clause 31 (Inadequacy of damages);
- (u) clause 32 (Waiver);
- (v) clause 34 (Third party rights);
- (w) clause 37 (Entire agreement);
- (x) clause 38 (Mediation);
- (y) clause 39 (Governing law); and
- (z) clause 40 (Jurisdiction).

23.2 Termination of this Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of this Agreement which existed at or before the date of termination.

23.3 On termination of this Agreement, unless such things are needed by it to perform its obligations or to comply with law or guidance, each party shall, and shall use all reasonable endeavours to procure that its Representatives shall, as soon as reasonably practicable:

- (a) return or destroy (as directed in writing by the relevant party) any documents, handbooks, or other information or data provided to it by the other party for the purposes of this Agreement; and
- (b) return all of the other party's equipment and materials, failing which, the other party may enter the relevant premises and take possession of them. Until these are returned or repossessed, that party shall be solely responsible for their safe-keeping.

## **24. Force majeure**

Neither party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure result from events,

circumstances or causes beyond its reasonable control. In such circumstances [the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for 4 weeks, the party not affected may terminate this Agreement by giving 20 days' written notice to the other parties provided that the parties have agreed the termination of any Provider Contracts first and such Provider Contracts have been terminated and clause 21.2 shall apply in such circumstances.

**25. Assignment and other dealings**

25.1 The parties acknowledge that none of them shall assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights and obligations under this Agreement without the prior written consent of the other parties.

**26. Variation**

26.1 No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

**27. Notices**

27.1 A notice given to a party under or in connection with this Agreement shall be in writing and sent to the party at the address or email address as otherwise notified in writing to other parties.

27.2 The following table sets out methods by which a notice may be sent and, if sent by that method, the corresponding deemed delivery date and time:

<b>Delivery method</b>	<b>Deemed delivery date and time</b>
Delivery by hand.	On signature of a delivery receipt or at the time the notice is left at the address.
Pre-paid first class post or other next working day delivery service providing proof of delivery.	9.00 am on the second Business Day after posting or at the time recorded by the delivery service.
Email	at the time of transmission if made before 5.00pm on a Business Day and a hard copy of such notice is also sent by pre-paid first class post or other next working day delivery service on the same day as that on which the electronic mail is sent

27.3 For the purpose of clause 27.2 and calculating deemed receipt:

- (a) all references to time are to local time in the place of deemed receipt; and
- (b) if deemed receipt would occur in the place of deemed receipt on a Saturday or Sunday or a public holiday when banks are not open for business, deemed receipt is deemed to take place at 9.00 am on the day when business next starts in the place of receipt.

27.4 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

## **28. Severance**

- 28.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Agreement.
- 28.2 If any provision or part-provision of this Agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

## **29. No partnership or agency**

- 29.1 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party except as set out in the Provider Contracts.
- 29.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

## **30. Rights and remedies**

The rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

## **31. Inadequacy of damages**

Without prejudice to any other rights or remedies that a party (**first party**) may have, the other party (**other party**) acknowledges and agrees that damages alone would not be an adequate remedy for any breach of the terms of this Agreement by the other party. Accordingly, the first party shall be entitled to the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of the terms of this Agreement.

## **32. Waiver**

- 32.1 A waiver of any right or remedy under this Agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.
- 32.2 A failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

### **33. Counterparts**

- 33.1 This Agreement may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.
- 33.2 Transmission of an executed counterpart of this Agreement (but for the avoidance of doubt not just a signature page) by email in PDF (or other agreed) format shall take effect as delivery of an executed counterpart of this Agreement. Where this method of delivery is adopted, without prejudice to the validity of the agreement thus made, each party shall send to ECC the original of such counterpart as soon as reasonably possible thereafter.
- 33.3 No counterpart shall be effective until each party has executed at least one counterpart.

### **34. Third party rights**

- 34.1 A person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.
- 34.2 This Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.
- 34.3 The rights of the parties to rescind or vary this Agreement are not subject to the consent of any other person.

### **35. Further assurance**

At its own expense, each party shall, and shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute and deliver such documents and perform such acts as may reasonably be required for the purpose of giving full effect to this Agreement.

### **36. Costs**

Subject to clause 8, each party shall pay its own costs incurred in connection with the negotiation, preparation, and execution of this Agreement and any documents referred to in it.

### **37. Entire agreement**

- 37.1 This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous drafts, agreements, arrangements and understandings between them, whether written or oral, relating to its subject matter.
- 37.2 Each party agrees that it shall have no remedies in respect of any representation or warranty (whether made innocently or negligently) that is not set out in this Agreement. No party shall have any claim for innocent or negligent misrepresentation based on any statement in this Agreement.

**38. Mediation**

- 38.1 If any dispute arises in connection with this Agreement, the parties will attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution (**CEDR**) Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator will be nominated by CEDR. To initiate the mediation a party must give notice in writing (**ADR notice**) to the other party to the dispute requesting a mediation. A copy of the request should be sent to CEDR.
- 38.2 The mediation will start not later than 20 days after the date of the ADR notice. The commencement of a mediation will not prevent the parties commencing or continuing court proceedings.

**39. Governing law**

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.

**40. Jurisdiction**

Each party irrevocably agrees that, subject to clause 38, the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

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

Executed for and on behalf of  
**ESSEX COUNTY COUNCIL** by:



Authorised Signatory  
Name: Steve Evison  
(Director of Sustainable Growth)  
Date: 28/07/21

Executed for and on behalf of  
**BRAINTREE DISTRICT COUNCIL** by:

Authorised Signatory  
Name:  
Date:

Executed for and on behalf of  
**CHELMSFORD CITY COUNCIL** by:

Authorised Signatory  
Name:  
Date:

Executed for and on behalf of  
**COLCHESTER BOROUGH COUNCIL** by:

Authorised Signatory  
Name:  
Date:

Executed for and on behalf of  
**MALDON DISTRICT COUNCIL** by:

Authorised Signatory  
Name:  
Date:

Executed for and on behalf of  
**TENDRING DISTRICT COUNCIL** by:

Authorised Signatory  
Name:  
Date:

Executed for and on behalf of  
**UTTLESFORD DISTRICT COUNCIL** by:

Authorised Signatory  
Name:  
Date:

## Schedule 1 Projects

1. Projects agreed by the parties at the date of this Agreement to be procured by ECC as lead authority in accordance with ECC's procurement policies and procedures and the Public Contracts Regulations 2015:

	<b>Project</b>	<b>Maximum duration (months) subject to confirmation by the Government</b>	<b>Maximum value (£) subject to confirmation prior to award of any resulting Provider Contract</b>
1.1.	Business navigational support - procurement of a specialist organisation to deliver free business navigational support across North and Mid Essex to assist businesses to find appropriate business support from existing providers and from the schemes outlined below.	12	150,000
1.2.	Pre-start and start-up business support - procurement of a specialist organisation to deliver fully funded advice and support to individuals who have ambitions to start a business and to start-up businesses in their first 12 months of trading.	12	150,000
1.3.	Specialist importing and exporting advice - procurement of a specialist organisation to deliver fully funded importing and exporting advice across North and Mid Essex.	12	150,000
1.4.	Financial and debt management support - procurement of a specialist organisation to deliver free financial and debt management support across North and Mid Essex.	12	150,000
1.5.	Business digitising and e-commerce support - procurement of a specialist organisation to deliver free business digital and e-commerce support across North and Mid Essex.	12	150,000