

Inter Authority Agreement re SEMLEP – Heads of Terms dated [] 2024

1. Background

The six Local Authorities within the SEMLEP area (as stated in paragraph 4 below) have endorsed a proposal for West Northamptonshire Council (WNC) to become host authority and accountable body for the South East Midlands Local Enterprise Partnership (Limited's functions ("SEMLEP") from 1 April 2024. This follows the Government's decision to withdraw core funding from LEPs issued in August 2023 with guidance subsequently issued by the Department for Levelling Up, Housing and Communities ("DLUHC") on 10 December 2023 relating to the integration of the functions of LEPs into local "First Tier" democratic institutions. These Heads of Terms are intended to be superseded by a more detailed Inter Authority Agreement in due course. The parties will use all reasonable endeavours to agree the terms of this agreement within 3 months of the date hereof.

2. Legal Powers

The legal basis is pursuant to the powers of Local Authorities to act for the benefit of their areas under Section 1(4) of the Localism Act 2011 and otherwise and to appoint committees under Section 102 of the Local Government Act 1972.

3. Decision Making/Governance

All of the parties shall commit to work constructively to support the ongoing operation of previous SEMLEP activities and its strategic economic planning function, and to act openly and in good faith to support their ongoing success, and shall not take part in any activities which might undermine them.

A Joint Committee, hosted by Milton Keynes City Council on behalf of the parties shall meet on a regular basis to discuss the proposals behind the in principle agreement for WNC to take over hosting the functions of SEMLEP and shall replace the current Central Area Growth Board.

It is proposed that in future a Joint Committee will be set up to take decisions under Section 101(1) and (5) of the Local Government Act 1972.

The parties will agree detailed terms of reference for the ongoing work of the Central Area Growth Board (CAGB) / any future Joint Committee as promptly as possible after 1 April 2024.

WNC will act in accordance with the decisions of CAGB (initially) and thereafter by the Joint Committee, provided always that funding of any resultant cost increases or any actions which may result in substantive losses or other liabilities, shall only be agreed with the explicit agreement of WNC as Accountable Body (provided always, that any party may, in the event of dispute, refer the decision for mediation in accordance with paragraph 15). In the event that the Joint Committee is unable, following debate, to reach a decision, WNC shall be authorised (in the case of urgency and / or where substantive liabilities need to be mitigated) to make decisions in order to satisfy its position as Accountable body and to inform the budgetary position.

Individual Local Authorities will be responsible for taking the necessary executive decisions to enter into these Heads of Terms and any subsequent Agreement(s).

4. Parties

The parties comprise:

- West Northamptonshire Council;
- North Northamptonshire Council;
- Milton Keynes City Council;
- Central Bedfordshire Council;
- Luton Borough Council; and
- Bedford Borough Council.

5. Commencement

These Heads of Terms will commence (subject to preparatory activities) on 1 April 2024 and will continue thereafter until or unless determined by the parties as agreed.

6. Scope

These Heads of Terms relate to the SEMLEP functions which transfer to WNC comprising the delivery of the Growth Hub, Careers Hub and the Strategic Economic Planning function, as further described in Schedule 1 below across the areas of the Local Authorities areas of the parties named at paragraph 4 above. The parties anticipate that WNC will maintain these functions (“the Functions”), subject to any request or requirement of HM Government to modify or add to their role with regard to economic development activities.

7. Principal and Aims

The parties aims will be to ensure that the Functions continue to be operated for the benefit of the whole area covered by the six Local Authorities.

As far as possible to ensure that the Functions are carried out in the most cost-effective way.

To deliver the Functions in accordance with the KPIs set out in the Funding Agreements for each of the services currently entered into between SEMLEP and the relevant party(ies), and any KPIs agreed between parties via the CAGB / any Joint Committee.

To provide regular reporting back to the other parties through the reporting mechanisms established by the CAGB / any Joint Committee when established.

All parties shall support WNC in a review of SEMLEP functions as described in paragraph 3 above during the first 6 months of the date of these Heads of Terms to inform a budget position for 2025/26. Subsequent reviews shall be determined by the parties via agreement within CAGB or its successor governance arrangement.

8. Termination and Exit Strategy

The Heads of Terms between the parties shall continue with respect to all parties until any party gives not less than 6 months’ notice in writing to all of the other parties of its intention to withdraw from them.

In the event of such withdrawal, the party giving notice shall contribute an e proportion of the ongoing liabilities to which WNC or any of the other parties will be liable for over the period from termination (including sums in respect of actual or anticipated

redundancy costs and the termination of any contracts), until the end of the relevant financial year, or a period of 6 months, whichever is the latter, based on each party bearing an equal proportion of such liabilities, subject always to use of reserves as agreed, capped over the duration of these arrangements (after any agreed withdrawal from reserves) at £X per Authority. This cap shall be reviewed by the parties on or around 36 months from the date hereof.

For the avoidance of doubt, the terminating party shall not be entitled to a share of any financial reserves transferred to WNC from SEMLEP on withdrawal, without prejudice to the final position as provided for in paragraph 11 below.

In the event that two or more parties withdraw from the relationship envisaged by these Heads of Terms, the remaining parties will consider, in good faith, whether it is appropriate or viable to continue with these arrangements and convene an appropriate discussion.

The parties may at any time, if they all agree, terminate these arrangements in whole. In such case, subject to all parties sharing the cost of winding-up the activities, including the costs of employee redundancy and contract termination, all parties shall be entitled to an equal share of the financial reserves maintained by WNC with respect to the Functions.

9. Staffing Arrangements

Transfer of staff in accordance with TUPE.

Staff will be transferred from SEMLEP and employed by WNC from 1 April 2024 in accordance with their pay and grading structure, subject to TUPE and all accrued rights, including with regard to employee consultation. Redundancy, where required, will be carried out under WNC's redundancy policies and any other policies.

10. Pensions

Staff will be entitled to join the LGPS Northamptonshire Pensions Scheme with WNC as scheme employer. Terms for the transfer of staff, including treatment of benefits accrued from the current SEMLEP pension scheme will be resolved following actuarial involvement where necessary, after 1 April 2024.

11. Funding/Costs

In respect of funding transferred and received at 1 April 2024 and all future funding awarded for the purpose of delivering the functions determined by the Government, WNC are the accountable body.

Luton Borough Council shall remain the legacy accountable body following the SEMLEP closure in respect of historic liabilities, including certain detailed responsibilities as defined in Schedule 2 shall be transferred to WNC.

WNC will utilise Government funding, any existing project funding, and reserves to create a stronger year one position, to include up to £495,000 in year one (2024/2025) to support the delivery of the Strategic Economic function, Growth Hub and Careers Hub functions as set out in Government guidance.

The other parties will support WNC in completing a review and potential restructure of services during 2024/2025, with the aim of seeking to reduce or remove the use of reserves from budget setting in future years.

Heads of Terms for an Inter Authority Agreement between the Six Authorities of SEMLEP

WNC will hold a sum of £2.5 million from the SEMLEP GPF contingency and any remaining general reserves from SEMLEP transferred at closure for the specific purpose of providing support for previous LEP functions. This could include:

- to meet a shortfall in Government funding for future years and for closure costs, including redundancy and pension strain costs should any part of historic LEP functions need to be wound up at a point in the future; and
- with the objective of minimum of £1 million always remaining in the fund for the purpose of being available to fund closure of the services (to include redundancy / pension strain, legal and administrative costs).

WNC will account to the other parties for all expenditure from such contingency monies and seek to hold them in a separate interest bearing account.

In the event of identified reserves relating to SEMLEP liabilities transferred to WNC at 1 April 2024 being insufficient to meet the costs of ending the operation of functions, or being required to support ongoing functions previously carried out by SEMLEP, each Local Authority undertakes to contribute a share of such liabilities as set out, and subject to the liability cap in paragraph 8 above to meet any financial shortfall suffered by WNC.

In the event of identified reserves and other grant funding remaining at the end of the operation of previous LEP functions, unless prevented by Government guidance at this time, the six Local Authorities, through the anticipated Joint Committee arrangement, will agree a mechanism for the equitable redistribution to the six Local Authorities of the remaining funding, deducting all costs incurred by WNC associated with the termination of services, functions, consequent staff redundancy costs, pension strain and contractual liabilities in line with the percentage share for each Authority indicated in Clause 8 above.

12. **Assets**

WNC and Luton Borough Council will enter into Transfer Agreements in due course (substantially following the form of agreement circulated) with SEMLEP related to the transfer of assets, current contracts of SEMLEP and liabilities, and will share the content of any such Agreement with the other parties. A process to notify third parties of contract assignments or novation will be agreed.

WNC and Luton will confirm their proposed management / overhead charge to the other parties as soon as practicable.

13. **Insurance**

Nothing in these Heads of Terms 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,

and WNC will be responsible for insuring its activities within these Heads of Terms.

14. Indemnity

Each party shall indemnify the others in full in terms of any liability of the other parties arising from their negligence, breach of contract or other third party liability.

15. Dispute Resolution

The parties will seek to agree a mechanism to escalate treatment of any dispute to Chief Officer level, using all reasonable endeavours to resolve such amicably and, thereafter, if they are unable to resolve, by an approved process of third party utilising the model commercial mediation process of CEDR (The Centre for Effective Dispute Resolution), unless otherwise agreed, the costs of such process to be shared equally between the disputing parties..

16. Data Protection/Freedom of Information

Any data transferring between the parties will be handled in accordance with GDPR obligations and all required protections put in place. The content of any FOI/EIR applications related to the subject of these Heads of Terms received by any party shall be shared between the parties, and any disclosure approved by WNC as accountable body.

It is not anticipated that a formal Data Sharing or Data Transfer Agreement will be required to facilitate WNC's activities.

17. Confidentiality

The parties will seek to maintain all necessary commercial confidentiality, particularly with regard to commercial third parties with whom the parties deal, and shall seek to ensure that their officers and members respect such obligation.

18. Copyright and Intellectual Property

WNC will seek to ensure that any Intellectual Property Rights held by SEMLEP are properly assessed and transferred to it. Following such transfer, all such rights (in particular such rights of third parties) will be fully respected and protected by all parties.

19. Variation

No variation of these Heads of Terms shall be effective, unless it is in writing and signed all of the Parties (or their authorised representatives).

20. Waiver

A waiver of any right or remedy under these Heads of Terms or by law is only effective if given in writing, and shall not be deemed a waiver of any subsequent breach or default. A failure or delay by a party to exercise any right or remedy provided under these Agreement Heads of Terms 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 these Heads of Terms or by law shall prevent or restrict the further exercise of that or any other right or remedy.

21. Third Parties

It is agreed for the purposes of the Contract (Rights of Third Parties) Act 1999 that these Heads of Terms is not intended to and does not give to any person who is not a party to these Heads of Terms any rights to enforce any provisions contained within them.

22. Governing Law and Jurisdiction

These Heads of Terms shall be governed by and construed in accordance with the laws of England and Wales.

23. Force Majeure

No Party shall be in breach of these Heads of Terms, nor liable for delay in performing, or failure to perform any of its obligations under them, if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances, the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed. If the period of delay or non-performance continues for two months, the parties shall refer the matter via the Dispute Resolution process set out at paragraph 15 above.

24. Severability

If any provision or part-provision of these Heads of Terms 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 paragraph shall not affect the validity and enforceability of the rest of these Heads of Terms. If any provision or part-provision of them 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.

SCHEDULE 1 Growth Hubs

Growth Hubs are designed to:

- Promote the advantages of seeking business support.
- Simplify the process of accessing support for businesses by connecting businesses to support available in a local area.
- Improve co-ordination of local business support services in line with local and national economic policy goals.
- Fill any gaps in support services with bespoke offering where needed.

Growth Hubs primarily provide a 'front window' for businesses, bringing together agencies and organisations that provide business support, playing a brokerage, support and facilitator role. The principles of funding require Growth Hub services to be free of charge, impartial, and to make services available through a range of channels, including working alongside the national business support helpline and providing face-to-face support where feasible.

The SEMLEP Growth Hub launched in 2014 and provides the following functions:

- Business advice and support including events.
- Business grants (currently until March 25).
- Business engagement / partnership working.
- Acting as a central point to refer to other business support (e.g. resource hub).
- Business support helpline.
- Additional funded project activity (e.g. UKSPF activity).

Careers Hub

The South East Midlands Careers Hub is part of a national network of centres of excellence on a mission to improve the careers outcomes for young people. The Careers Hub is funded by the Department for Education via the Careers & Enterprise Company.

The Careers Hub connects together local employers with careers leaders in schools, colleges and training providers to coordinate careers education and enhance each student's early experiences of the work place. The South East Midlands Careers Hub aims to support around 150 schools, and multiple colleges and providers across Bedfordshire and Luton, Milton Keynes and Northamptonshire.

Careers Hub supported programmes bring partners together, to act with the shared aims of inspiring young people, and giving students the knowledge and practical skills to make decisions about their next step.

Five priorities areas for the South East Midlands Careers Hub are:

- Connecting careers provision in schools and colleges to the needs of the local economy.
- Targeting interventions for economically disadvantaged young people, those who face additional barriers and those at risk of leaving school and not continuing training for getting a job.
- Amplifying the opportunities of apprenticeships, technical and vocational routes into work.
- Facilitating more, high quality experiences with employers for students and teachers.

- Embedding best practice (known as the 8 Gatsby Benchmarks) in careers provision in schools and colleges.

Strategic Economic Planning

Producing economic strategies in their area and delivery of both Strategic Economic Plans and Local Industrial Strategies that brought together local businesses, authorities, and individuals to develop a long-term economic strategy for the respective areas.

From April 2024, government encourages areas to produce (or update) economic strategies on an ongoing basis to support local decision making, furthering the work previously undertaken by LEPs. Government expects areas to publish their (existing, new, or updated) strategy within six months of receiving funding for 2024/2025.

Where possible Government suggest building on the Local Industrial Strategies or any other similarly relevant strategies or documents already in place. These strategies should be underpinned by a strong evidence base and look to identify: the local economic opportunities (including areas of comparative advantage); challenges; and where there are opportunities for strategic connections across regions.

Incorporating the voice of business

LEPs have provided a strong forum for the voice of business and this function will continue in the new arrangements, Government guidance was published on the 2 August 2023 and subsequently on the 19 December 2023 highlighting the need to embed a strong, independent, and diverse local business voice into the new arrangements. This includes the following requirements from Government:

- The expectation for local authorities to create or continue to engage with an economic growth board (or similar) within their functional geography.
- Suggestions of the types of things the private sector could add value to within new arrangements such as enhancing local economic strategies and interventions, providing challenging and insight on business impacts of public sector initiatives and providing the view of local businesses as part of regional decision making.
- An expectation that membership of the Board be selected and recruited in an open and transparent process and that terms of reference of the Board manages issues such as conflict of interest, confidentiality, gateway criteria or disqualification/removal procedures.
- Ensuring the governance structure delivers an independent business voice. For example, in choice of Chair and the appointment process, how terms of reference are set, how decisions are made and agreed within the board (and disputes managed), and in managing public communications.
- Ensuring the board is representative of the whole geography.
- Types of activity the board is involved in could include consultation on emerging plans, engagement with district councils, Towns Boards and UKSPF programmes (where appropriate), endorsement for significant public funding proposals and linkages with wider plans and engagement structures such as Growth Hubs, LSIPS and Careers Hubs.
- Local authorities are also asked to consider how the Board will relate to other local for a e.g. Town Deal Boards and relevant wider pan-regional economic planning organisations e.g. Midlands Engine.

SCHEDULE 2
Luton Retainer Responsibilities

Luton Borough Council are the historical Accountable Body for SEMLEP and will be responsible for:

- historic ERDF funded contracts;
- liabilities in respect of contracts pre-[insert date]; and
- monitoring of historic agreements entered into before [insert date].

DRAFT

Heads of Terms for an Inter Authority Agreement between the Six Authorities of SEMLEP

Signed by:
For and on behalf of **West Northamptonshire Council**

Signed by:
For and on behalf of **North Northamptonshire Council**

Signed by:
For and on behalf of **Milton Keynes City Council**

Signed by:
For and on behalf of **Central Bedfordshire Council**

Signed by:
For and on behalf of **Luton Borough Council**

Signed by:
For and on behalf of **Bedford Borough Council**

DRAFT