

**Memorandum of Understanding between [x] and the Department for Communities and Local Government concerning the delegation of tasks in respect of the European Regional Development Fund**

1. This Memorandum is between [x] and the Department for Communities and Local Government 'DCLG'.
2. For the purposes of this Memorandum, DCLG is acting as the Managing Authority (MA) for England in respect of the European Regional Development Fund ('ERDF') 2014-2020 Programme. *[Date of designation to be footnoted]*
3. Under this Memorandum, DCLG delegates certain tasks under the ERDF 2014-2020 Programme, which are to be carried out on behalf of DCLG by the [X].
4. This Memorandum sets out the ERDF tasks that DCLG will delegate to [X] as an Intermediate Body for the purposes of Article 123(6) of Regulation (EU) No 1303/2013, and constitutes the formal written record of that arrangement as required under Article 123(6).

**ERDF Local Enterprise Partnership area in respect of which [X] will perform delegated tasks**

5. This delegation relates to the tasks listed below that are financed by the England ERDF 2014-20 Programme's notional allocation in respect of the [X] Local Enterprise Partnership ("LEP") Area.<sup>1</sup>

**Working arrangements**

6. DCLG's nominated officer for the [X] is the Head of the local Growth Delivery Team who will act on behalf of DCLG in respect of all its interactions with DCLG about its delegated tasks. [X] will ensure that all contact with DCLG in respect of their delegated tasks are addressed to him/her or a DCLG nominated deputy.
7. [X] will use DCLG's standard business process, IT system for ERDF for carrying out its delegated tasks listed below.
8. A side letter will set out the arrangements that will apply for the commencement of delegated tasks which have previously been in part undertaken by DCLG.

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<sup>1</sup> Insert LEP area definition

## Tasks delegated to [X]

9. **Overview:** [X] will contribute to local ESI Funds sub-committee papers as follows: local strategic fit content for call design; assessment and appraisal of local strategic fit content for, respectively, outline and full applications for ERDF. This content will be based on the local ESI Funds Strategy. [X] will work with DCLG to support the local ESI Funds sub-committee in this regard.
10. **Call design:** [X] will decide on the local strategic fit content for project calls based on the relevant ESI Funds Strategy and will seek the advice of the local ESI Funds sub-committee to inform its decision. Its decision will be in accordance with the 2014-20 ERDF England Operational Programme<sup>2</sup> and Operational Programme specific objectives, outputs and results of the relevant priority axis/axes.
11. **Call timings: The Head of the local Growth Delivery Team** will consult with [x] about the timing of DCLG issue of calls. [X's] input will assist calls to be timed in order to respond effectively to local ESI Fund Strategy priorities in relation to the ERDF Operational Programme as well as local opportunities for complementary funding and programmes, in particular those opportunities arising through the local Devolution Deal. *[Insert reference to text of local devolution deal]*.
12. **Outline Application stage:** [X] will assess each Outline Application for local strategic fit based on the relevant ESI Funds Strategy and will decide which to approve in relation to the relevant Project Selection Criteria. It will seek the advice of the local ESI Funds sub-committee to inform its decision
13. **Full Application Stage:** [X] will appraise each Full Application for local strategic fit based on the relevant ESI Funds Strategy and will decide which to approve in relation to the relevant Project Selection Criteria. It will seek the advice of the local ESI Funds sub-committee to inform its decision.
14. **Local Strategic Fit** in paragraphs [9, 10, 11 and 13] above is as defined in the Selection Criteria<sup>3</sup> for the ERDF 2014-2020 programme, which provides:
  - a. The proposed operation contributes to the needs/opportunities identified in the Call for Proposals to which it is responding.

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<sup>2</sup> The European Regional Development Fund England Operational Programme; ISBN: 978-1-4098-4630-7. It can be found at

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/453888/England\\_ERDF\\_operational\\_programme\\_FINAL\\_140815.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/453888/England_ERDF_operational_programme_FINAL_140815.pdf)

<sup>3</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/430594/ERDF\\_and\\_ESF\\_Selection\\_Criteria\\_200315\\_Published.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/430594/ERDF_and_ESF_Selection_Criteria_200315_Published.pdf)

- b. The proposed operation is aligned to the local growth needs set out in the local ESI Funds Strategy and contributes to the specific objectives, outputs and results of the relevant priority axes set out in the Operational Programme.
15. In addition, [X] will provide advice to the Managing Authorities on the following Value for Money and Deliverability selection criteria:

#### **Value for money**

- a. The operation must represent value for money. In assessing value for money, the Managing Authority will take account of:
  - i) Efficiency: the rate/unit costs at which the operation converts inputs to the Fund outputs.
  - ii) Economy: the extent to which the operation will ensure that inputs to the operation are at the minimum costs commensurate with the required quality.
  - iii) Effectiveness: the extent to which the operation contributes to programme output targets, results and/or significant strategic impact at the local level.

#### **Deliverability**

- a. The operation is deliverable within the requirements of the fund specific Operational Programme taking account risks, constraints and dependencies
- b. Evidence has shown that this type of operation is effective or where the operation is new or innovative, the risks have been considered and appropriate mitigations put in place

#### **Performance monitoring**

16. The Head of the Local Growth Delivery Team will keep [X] informed about the performance of 2014-20 ERDF locally in relation to the [X] ESI Funds Strategy and specific projects, particularly those which are a high priority, high risk or which are significantly under-performing. Regular review meetings will be scheduled between the Managing Authority and Intermediate Body to discuss this information and agree actions as appropriate.

#### **Conflict of interest where [X] is an applicant or potential applicant for ERDF**

17. [X's] management systems will ensure a separation of functions in order to avoid the possibility of any conflict of interest arising between the unit or Department [within X] which performs its delegated tasks as an IB and any unit or Department or arm's-length body [of X] involved with beneficiary responsibilities, as a recipient or potential recipient of ERDF.

18. A description of the arrangements that [X] will put in place is annexed to this Memorandum.

### **Financial liability of X**

19. The Intermediate Body (XXXX) shall be liable to the Managing Authority (DCLG) for the value of any financial corrections imposed as a result of an “irregularity” or “systematic irregularity” arising from any act or omission of the Intermediate Body which relates to a task delegated to the Intermediate Body under this Memorandum. For the purposes of this paragraph, “irregularity” and “systematic irregularity” have the meaning given in Article 2(26) and (38) of the Common Provision Regulations (Regulation 1303/2013). For the avoidance of doubt any financial correction will only be one that is directly attributable to the identified “irregularity” or “systematic irregularity”.
20. In paragraph 19, “act or omission” does not include the provision of advice as set out in paragraph 15.
21. The value of any financial correction shall be no more than the amount of defrayed expenditure directly attributable to the identified “irregularity” or “systematic irregularity”. The total cumulative financial liability of the Intermediate Body shall not exceed the total amount of defrayed expenditure relating to its notional allocation Programme and up to a maximum of €xxxxx.

### **Resolution of disputes**

22. [X] and DCLG shall use reasonable endeavours to negotiate in good faith and settle any dispute between them over matters set out in this Memorandum.
23. If the dispute is not settled through discussion between the Head of the local Growth Delivery Team and a representative of [X], either X or DCLG may refer the dispute in writing to a [X] or [X ] (“Senior Personnel”) of each of the parties for resolution.
24. If the dispute is not resolved, the final decision shall be taken by [the Director, European Programmes and Local Growth Delivery, DCLG], given DCLG’s responsibility for the management of the 2014 to 2020 Programme and its accountability to the EU Commission for the discharge of such responsibility.
25. In order for the GIAA to discharge its responsibilities under EU law, in respect of conducting effective audits, the GIAA requires access to all relevant records, assets, personnel and premises held by X, which relate to any of the issues set out in this Memorandum.
26. This Memorandum does not in any way limit any parties’ right to commence proceedings in any court of competent jurisdiction in England and Wales.

## **Complaints**

27. In relation to any complaint relating to a function of the Intermediate Body, DCLG shall ensure that the Intermediate Body has the opportunity to see all relevant material and make representations before any decision is made.

## **Disclosure and Freedom of Information**

28. Neither DCLG nor X shall make any press announcements or otherwise publicise the existence of this Memorandum, without the prior agreement of the other party such agreement not to be unreasonably withheld or delayed.
29. For the avoidance of doubt, nothing in the paragraph above shall prevent either party from disclosing any information relating to this Memorandum after consultation with the other party in the following circumstances:
- a. for the purpose of any examination of this Memorandum by the National Audit Office pursuant to the National Audit Act 1983 or otherwise; or
  - b. for parliamentary, governmental, statutory or judicial purposes; or
  - c. in relation to any other legal obligation on the party, including the obligations imposed by the Freedom of Information Act 2000 (FOIA).
30. If either party receives a request for information under the FOIA in respect of this Memorandum, that party shall consult the other in relation to the proposed response.

## **Duration**

31. This Memorandum will come into effect upon signature by both parties and will remain in force:
- a) for the duration of the 2014-2020 ERDF Programme in England, or
  - b) until it is terminated by either party.
32. Either party may terminate this Memorandum at any time and for any reason on the provision of six months written notice to the other party.
33. The tasks delegated, compliance with EU and domestic requirements set out in law and DCLG Guidance, and the associated working arrangements specified under this Memorandum shall be subject to annual review by DCLG.

*Signature block*