

Dated

2014

- (1) LINCOLNSHIRE COUNTY COUNCIL
- (2)
- (3)
- (4)
- (5)
- (6)
- (7)
- (8) GREATER LINCOLNSHIRE LOCAL ENTERPRISE PARTNERSHIP
LIMITED

Members Agreement
relating to Greater Lincolnshire Local Enterprise Partnership

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BETWEEN

- (1) **LINCOLNSHIRE COUNTY COUNCIL** of County Offices, Newland, Lincoln LN1 1YL ("**the Member**"); and
- (2)
- (3)
- (4)
- (5)
- (6)
- (7)
- (8) **GREATER LINCOLNSHIRE LOCAL ENTERPRISE PARTNERSHIP LIMITED** (registered number []) whose registered office is at [] ("**the Company**").

BACKGROUND

- (A) The Company was incorporated in England and Wales as a private company limited by Guarantee on [] under the Companies Act 2006.
- (B) The Members have set up the Company for the purpose of acting as Local Enterprise Partnership for the Greater Lincolnshire region as more particularly described in **Article []** of the Articles.
- (C) The Members wishes to participate as a Members in the Company and have agreed to enter into this Deed for the purpose of regulating their relationship and their dealings with the Company.
- (D) The Company has agreed with the Members that it will comply with the terms and conditions of this Deed insofar as they relate to the Company.

OPERATIVE CLAUSES

1. **DEFINITIONS AND INTERPRETATION**

In this Deed:

- 1.1 the following expressions have the following meanings unless inconsistent with the context:

“Act”	the Companies Act 2006
“Adjourned Meeting”	bears the meaning set out in the Articles
“Applicable Requirement”	any statute, statutory provision, statutory instrument, subordinate legislation, regulation, standard, bye-law, law, direction, notice, proclamation, order, resolution, rule of court, directive, mandatory code of practice or conduct, guidance or other instrument of requirement, in all cases having the force of law within any national or local jurisdiction issued, declared, passed or given effect to in any manner by HM Parliament, the legislation making institutions of the European Union, any court or other judicial forum, any Commission of Inquiry, local authority, statutory undertaking or relevant authority or any other person or body having such power and any voluntary code of practice or conduct or other requirement which so relates and which the relevant party has elected to comply with in respect of its business generally (to the extent applicable) (including any rules or codes of conduct or best practice statements) or any other requirements relating to this Deed or otherwise in connection with any of the activities to be undertaken by the Company or any Member in connection with this Deed in all cases in force from time to time
“Articles”	the articles of association of the Company in the form set out in Appendix B to be adopted with effect from Completion and references to an Article shall mean a specific article in the Articles
“Board”	the Directors of the Company, or such of those Directors present at a duly convened meeting of the Directors at which a quorum is present in accordance with the Articles
“Business”	the purpose of the Company as described in Article [] of the Articles

"Business Day"	any day (other than a Saturday or Sunday) or a bank or public holiday in England and Wales
"Completion"	the performance by the parties of their respective obligations under clause 4
"Confidential Information"	any financial or other information in respect of the Company or the Business or the Member or any matter subject to or in connection with this Deed
"Director"	any duly appointed director of the Company from time to time
"Financial Year"	means the year commencing 1 st April and expiring on the subsequent 31 st March , with the first such period commencing 1 st April 2014 and expiring on the subsequent 31 st March 2015
"FOIA"	the Freedom of Information Act 2000
"Funds"	The Single Local Growth Fund, the Invest and Grow Fund and such other Funds as the members shall agree shall be administered by the company from time to time
"Information"	has the meaning given under section 84 of the FOIA
"Memorandum of Association"	the memorandum of association the Company in the form set out at Appendix A
"Request for Information"	shall have the meaning set out in FOIA or any apparent request for information under the FOIA or the Environmental Information Regulations 2004
"Subsidiary"	has the meaning given to it by section [] of the Act

1.2 references to any statute or statutory provisions will, unless the context otherwise requires, be construed as including references to any earlier statute or the corresponding provisions of any earlier statute, whether repealed or not, directly or indirectly amended, consolidated, extended or replaced by such statute or provisions, or re-enacted in such statute or provisions, and to any subsequent statute or the corresponding provisions of any subsequent statute in

force at any time prior to the date of this Deed directly or indirectly amending, consolidating, extending, replacing or re-enacting the same, and will include any orders, regulations, instruments or other subordinate legislation made under the relevant statute or statutory provisions which are in force prior to the date of this Deed;

- 1.3 references to persons will be construed so as to include bodies corporate, unincorporated associations and partnerships;
- 1.4 references to clauses and the Schedules are to clauses of and the Schedules to this Deed;
- 1.5 the Schedules form part of this Deed and will have the same force and effect as if expressly set out in the body of this Deed;
- 1.6 the headings to the clauses of this Deed and to the paragraphs of the Schedules will not affect its construction;
- 1.7 any phrase in this Deed introduced by the term "include", "including", "in particular" or any similar expressions will be construed as illustrative and will not limit the sense of the words preceding that term.

2. **CONSIDERATION**

In consideration of the mutual agreements and undertakings set out in this Deed the parties have granted the rights and accepted the obligations in this Deed.

3. **COMPLETION**

Completion shall take place immediately after the execution of this Deed when the parties shall take, or procure to be taken at board and Members' meetings of the Company the following steps, to the extent not already taken:

- 3.1 the appointment or designation of the following persons as Directors as appropriate (to the extent not already appointed prior to the date hereof):

Name	Appointment or designation
	Director
	Director
	Director
	Director

3.2 the adoption of the Memorandum of Association in the form set out in **Appendix A**; and

3.3 the adoption of the Articles of the Company in the form set out in **Appendix B**. and

4. **CONDUCT OF THE COMPANY'S AFFAIRS**

4.1 The Board shall be responsible for the day to day management of the Company and without prejudice to the generality of the foregoing the Company shall:

4.1.1 transact all its business on arm's length terms;

4.1.2 maintain, with a well-established and reputable insurer, adequate insurance against all risks usually insured against by companies carrying on the same or a similar business and (without prejudice to the generality of the foregoing for the full replacement or reinstatement value of all its assets of an insurable nature;

4.1.3 not acquire, dispose, hire, lease, license or take licences of any assets, goods, rights or services otherwise than at the best price reasonably obtainable in the circumstances;

4.1.4 keep proper books of account and therein make true and complete entries of all its dealings and transactions of and in relation to the Business;

4.1.5 provide the Member [quarterly] with unaudited management accounts for the preceding financial quarter in a form reasonably acceptable to the Member together with a budget and cashflow forecast for the remaining period of that Financial Year;

4.1.6 prepare its accounts in accordance with the Act and in accordance with all applicable accounting standards and principles and practices generally acceptable in the United Kingdom;

4.1.7 prepare such accounts in respect of each accounting reference period as are required by statute and procure that such accounts are audited as soon as practicable and in any event not later than 4 months after the end of the relevant accounting reference period;

4.1.8 make arrangements for the administration of the Funds in accordance with clause 5;

4.1.9 fulfil those elements of its purpose in relation to [skills] in accordance with clause 6; and

4.1.10 fulfil its role under the Articles in relation to the appointment of Directors in accordance with clause 7.

5. **THE FUNDS**

5.1 [The Company undertakes to [the Upper Tier Councils] to administer each of the Funds in accordance with the purposes for which they were each established, the rules and any guidance issued in respect of each Fund and the reasonable requirements of LCC (or any successor) in their capacity as Accountable Body for each of the Funds].

5.2 [Without prejudice to the generality of 5.1 the Company undertakes to establish a Committee of the Board to be known as the Local Approvals Board with the following membership]

[]

5.3 [The Local Approvals Board shall have the following terms of reference

[Specify the terms of reference of the Local Approvals Board]

5.4 [The Company shall fulfil its role in respect of the Funds through the Local Approvals Board]

5.5 [LCC undertakes to act as Accountable Body for the Funds with the following functions

- Account for the Funds
- Make payments from the Fund
- Enter into contracts for the receipt of the Funds and for payments from the Funds

all in accordance with decisions made in accordance with [5.4].

5.6 [The Company shall through the Local Approvals Board notify LCC as Accountable Body of all decisions it has reached in respect of the Funds and provide LCC with all information reasonably required to consider the proposal in its capacity as Accountable Body.]

5.7 [The Company shall not proceed to implement any decision of the Local Approvals Board without prior consent of LCC as Accountable Body.]

5.8 LCC shall not withhold consent under 5.7 except on the grounds that to proceed with the decision would be inconsistent with LCC's obligations as Accountable Body or otherwise give rise to a risk to the Council that it considers to be unacceptable.

6. **SKILLS BOARD**

6.1 The Company undertakes to establish a Committee of the Directors to be known as the Skills Board

6.2 The Skills Board shall consist of [] Directors and [] other members to be co-opted from the membership of the Lincolnshire and Rutland Skills Board

6.3 The Terms of Reference of the Skills Board shall be as follows

[Insert terms of reference]

6.4 [The Company undertakes to fulfil its role in relation to skills through the Skills Board]

7. **APPOINTMENTS OF DIRECTORS**

7.1 [The Company shall establish an Appointments Committee with the following membership to fulfil the role of the Appointments Committee under the Articles.]

8. **SUPPORT TO THE COMPANY**

8.1 [LCC shall provide the secretariat to the Company to include

-]

9. **DISPUTE RESOLUTION**

9.1 [Provisions for dispute resolution especially with regard to the relationship between the company and the Accountable Body]

10. **TERMINATION OF THIS DEED**

10.1 This Deed shall continue in full force and effect from the date hereof until:

10.1.1 The parties agree in writing to its termination; or

10.1.2 the Company goes into liquidation whether voluntary or compulsory (other than for the purpose of an amalgamation or reconstruction approved by the Members).

10.2 Termination of this Deed pursuant to this **clause 10** shall be without prejudice to any accrued rights and liabilities of the parties.

11. **RECORDS, REPORTING CONFIDENTIALITY AND DISCLOSURE**

11.1 **Books and records**

The Company shall:

- 11.1.1 at all times keep true, accurate and up to date books and records of all the affairs of the Company;
- 11.1.2 subject to **clause 11.2** at all times make available to the Members and their duly authorised representatives full and complete access (including copying facilities) to the books, records, accounts, documents and premises of the Company; and
- 11.1.3 subject to **clause 11.2** supply to each Member such information relating to the Company as it may require and without prejudice to the foregoing shall keep the Members fully and promptly informed as to all material developments regarding the Company's financial and business affairs and promptly notify the Members of any significant event (including without limitation any litigation or arbitration) the outcome of which will or is likely to affect the Company or its Business, finances, assets or affairs.

11.2 **Confidentiality**

Each of the parties hereto shall hold in confidence and shall not and shall procure that its employees, agents and contractors shall not, except as provided by this clause and **clause 11.3**, without the written consent of the other parties (such consent not to be unreasonably withheld) or if required by any other provision of law divulge to any third party any Confidential Information or use any such information other than for the purposes anticipated by this Deed provided that the provisions of this **clause 11.2** shall not apply to information which may properly come into the public domain through no fault of the party so restricted.

11.3 **Freedom of Information**

- 11.3.1 **Clause 11.2** shall not apply where a party has obtained the written consent of the other party (such consent not to be unreasonably withheld) to divulge or use any Confidential Information or where Confidential Information is required to be disclosed by any law or statutory or regulatory obligation including without limitation the FOIA and the Environmental Information Regulations 2004 (but only to the extent of such law or statutory or regulatory obligation).
- 11.3.2 Each party acknowledges that the Public Sector Members are subject to the requirements of the FOIA and the Environmental Information Regulations 2004 and each party shall assist and cooperate with the Public Sector Members (at their own expense) to enable the Public Sector Members to comply with these Information disclosure obligations.

- 11.3.3 Where a party receives a Request for Information in relation to Information which it is holding on behalf of a Public Sector Member, it shall:-
- (a) transfer the Request for Information to the Public Sector Member as soon as practicable after receipt and in any event within five Business Days of receiving a Request for Information;
 - (b) provide the Public Sector Member with a copy of all Information in its possession or power in the form that the Public Sector Member requires within five Business Days (or such other period as the other party may specify) of a request from the Public Sector Member; and
 - (c) provide all necessary assistance as reasonably requested by the Public Sector Member to enable that Public Sector Member to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations 2004.
- 11.3.4 Where a party receives a Request for Information which relates to Confidential Information, it shall inform the other parties of the Request for Information as soon as practicable after receipt and in any event within five Business Days of receiving a Request for Information.
- 11.3.5 If any party determines that Information (including Confidential Information) must be disclosed under the FOIA or the Environmental Information Regulations 2004, it shall notify the other parties of that decision at least two Business Days before disclosure.
- 11.3.6 Each Public Sector Member shall be responsible for determining at its absolute discretion whether the Confidential Information and/or any other Information:-
- (a) is exempt from disclosure under the FOIA or the Environmental Information Regulations 2004;
 - (b) is to be disclosed in response to a Request for Information.
- 11.3.7 Each party acknowledges that any Public Sector Member may, acting in accordance with the Department for Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under Part I of the Freedom of Information Act 2000, be obliged under the FOIA or

the Environmental Information Regulations 2004 to disclose Information:-

- (a) without consulting with the other parties, or
- (b) following consultation with the other parties and having taken their views into account.

11.4 Notwithstanding the provisions of **clause 11.2**, but subject to **clause 11.5** each Director (whilst he or she holds that office) will be entitled to make full disclosure to the Members of any information relating to the Company which the Members may reasonably require.

11.5 **Audit and Access**

The Company shall co-operate fully and in a timely manner with any request from time to time of any auditor (whether internal or external) of the Members and the Audit Commission to provide documents, or to procure the provision of documents, relating to the Company, and to provide, or to procure the provision of, any oral or written explanation relating to the same. In particular, the Members and/or any auditors shall be permitted access to any and all documentation in the possession, custody or control of the Company (who shall procure that any person acting on its behalf (including any sub-contractor) who has such documents and/or any information shall also provide such access. For the avoidance of doubt, this right will include the power to interview staff, sub-contractors, staff of sub-contractors take copies of any and all documentation and have access to and take copies of any computer data held by the Company.

11.6 **Duration**

The provisions of **clauses 11.2** and **11.3** shall survive any termination of this Deed.

12. **AUDITORS**

The Company shall not appoint any auditors to the Company without having obtained the consent of the Audit Commission to such appointment.

13. **PROPRIETARY/PUBLICITY REQUIREMENTS AND ANNOUNCEMENTS**

13.1 The Company will comply with all Applicable Requirements including those relating to proprietary and publicity requirements summarised in **Schedule 1**.

13.2 All announcements, advertisements, circulars or other publications concerning or relating to the subject matter of this Deed or the Company shall be co-ordinated save as expressly stated and/or made by the Company (save as required by law)

unless otherwise agreed by the Member or as expressly stated otherwise in this Deed.

- 13.3 The Company is considered to be a contracting authority for the purposes of the Public Contracts Regulations 2006 but should it be held that the Company is not a contracting authority the Company shall act in accordance with those regulations as if it were a contracting authority.

14. **NO PARTNERSHIP OR AGENCY**

Nothing in this Deed shall constitute a partnership between the parties hereto or constitute one the agent of the other and neither of the parties shall do or suffer anything to be done whereby it shall or may be represented that it is the partner or agent of the other party hereto (save as aforesaid) unless that party is appointed partner or agent of that other party with the consent in writing of that party.

15. **WAIVER**

The waiver by either party of any default by the other party in the performance of any obligation of such other party under this Deed shall not affect such party's rights in respect of any other default nor any subsequent default of the same or of a different kind nor shall any delay or omission of either party to exercise any right arising from any default, affect or prejudice that party's rights as to the same or any future default.

16. **VARIATION**

Any variation of any term of this Deed shall be in writing duly signed by the Member and the Company.

17. **CONFLICT WITH ARTICLES**

Where the provisions of the Memorandum of Association or the Articles conflict with the provisions of this Deed, the Members and the Company agree that the provisions of this Deed shall prevail, to the intent that the Members may if necessary in any case procure the amendment of the Memorandum of Association or the Articles to the extent required to enable the Company and its affairs to be administered as provided herein.

18. **NOTICES**

Subject to the provisions of the Articles regulating certain types of notices:

- 18.1 Any demand, notice or other communication given or made under or in connection with this Deed will be in writing.

18.2 Any such demand, notice or other communication will, if given or made in accordance with this **clause 18**, be deemed to have been duly given or made as follows:

18.2.1 if sent by prepaid first class post, on the second Business Day after the date of posting; or

18.2.2 if delivered by hand, upon delivery at the address provided for in this **clause 18**; or

18.2.3 if sent by facsimile, on the day of transmission provided that a confirmatory copy is, on the same Business Day that the facsimile is transmitted, sent by pre-paid first class post in the manner provided for in this **clause 18**;

provided however that, if it is delivered by hand or sent by facsimile on a day which is not a Business Day or after 4.00 pm on a Business Day, it will instead be deemed to have been given or made on the next Business Day.

18.3 Any such demand, notice or other communication will, in the case of service by post or delivery by hand, be addressed to the recipient at the recipient's address stated in this Deed or at such other address as may from time to time be notified in writing by the recipient to the sender as being the recipient's address for service.

18.4 Any such demand, notice or other communication will, in the case of service by facsimile, be sent to the recipient or to any person service on whom (in accordance with the foregoing provisions of this **clause 18**) is deemed to be service on the recipient, using a facsimile number then used by the recipient or (as the case may be) such other person at an address which (in accordance with such provisions) could have been used for service by post.

18.5 For the avoidance of doubt, where proceedings have been issued in the Courts of England and Wales, the provisions of the Civil Procedure Rules must be complied with in respect of the service of documents in connections with those proceedings.

19. **FAIRNESS CLAUSE**

In the event that any circumstance arises during the term of this Deed which is not within the contemplation of the parties at the date hereof and not provided for in this Deed either expressly or impliedly then the parties agree that such matter shall be dealt with and resolved in such manner as shall operate between them for fairness and, so far as is possible, without detriment to the interests of either of them.

20. **UNLAWFUL FETTER ON THE COMPANY'S STATUTORY POWERS**

20.1 Notwithstanding any other provision contained in this Deed the Company shall not be bound by any provision of this Deed to the extent that it would constitute an unlawful fetter on any statutory power of the Company.

20.2 Nothing in this Deed shall be construed:

20.2.1 to be a resolution of all the members of the Company in the absence of a properly passed resolution in accordance with the Articles; or

20.2.2 as a fetter on the statutory rights and obligations of a Member (where applicable).

21. **COSTS**

Each of the parties hereto will pay its own legal costs and expenses incurred in connection with the preparation of this Deed.

22. **SEVERABILITY**

The illegality, invalidity or unenforceability of any clause or part of this Deed will not affect the legality, validity or enforceability of the remainder. If any such clause or part is found by any competent court or authority to be illegal, invalid or unenforceable the parties agree that they will substitute provisions in a form as similar to the offending provisions as is possible without thereby rendering them illegal, invalid or unenforceable.

23. **EXERCISE OF POWERS**

23.1 Words denoting an obligation on a party to do any act, matter or thing include, except as otherwise specified, an obligation to procure that it be done and words placing a party under a restriction include an obligation not to permit or allow infringement of that restriction.

24. **ENTIRE AGREEMENT**

This Deed and the Articles constitute the entire contractual relationship between the parties in relation thereto and there are no representations, promises, terms, conditions or obligations between the parties other than those contained or expressly referred to therein. This clause does not restrict liability of either party for representations made fraudulently.

25. **ASSIGNMENT**

25.1 The Member shall not assign nor transfer nor purport to assign nor transfer any of its rights or obligations hereunder (other than to a successor body) without the prior written consent of the Company.

25.2 The Company shall not assign nor transfer nor purport to assign nor transfer any of its rights or obligations hereunder without the prior written consent of the Member.

26. **CONTRACT (RIGHTS OF THIRD PARTIES) ACT**

The parties to this Deed do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

27. **LAW AND JURISDICTION**

This Deed shall be governed by and construed in accordance with the laws of England and Wales and each of the parties hereto submits to the exclusive jurisdiction of the English and Welsh Courts.

THIS DOCUMENT is executed as a deed and delivered on the date stated at the beginning of this Deed.

SCHEDULE 1

THE COMMON SEAL of
LINCOLNSHIRE COUNTY COUNCIL
was hereunto affixed in the presence of

)
)
)

Executed as a deed by

acting by:

Director

Director/Company Secretary

APPENDIX A

Memorandum of Association

APPENDIX B

Articles of Association