

### Enterprise M3 Assurance Framework

This Assurance Framework (“Assurance Framework”) is to be read in conjunction with the Memorandum of Agreement between Hampshire County Council and Enterprise M3 Local Enterprise Partnership (the “MoA”) *(electronic link to be provided)*

This Assurance Framework is a ‘living document’. It shall be reviewed on an annual basis.

For the avoidance of any doubt, this Assurance Framework applies to all funding streams held by Hampshire County Council, in its role as the Accountable body to the Enterprise M3 Local Enterprise Partnership. This funding includes both capital and revenue funding.

#### 1. Name of the LEP

1.1 The Enterprise M3 Local Enterprise Partnership (“Enterprise M3”)

#### 2. Geography of the LEP

2.1 The Enterprise M3’s geographical area covers parts of both Surrey and Hampshire. It brings together localities within the following local authority district areas in Hampshire and Surrey:-

- Basingstoke and Deane Borough Council;
- East Hampshire District Council (partial);
- Elmbridge Borough Council;
- Guildford Borough Council;
- Hart District Council;
- New Forest District Council (partial);
- Runnymede Borough Council;
- Rushmoor Borough Council;
- Spelthorne Borough Council;
- Surrey Heath Borough Council;
- Test Valley Borough Council (partial);
- Waverley Borough Council;
- Winchester City Council (partial);
- Woking Borough Council

For further information on the geography of the Enterprise M3 see <http://www.enterprisem3.org.uk/map/>

### **3. Governance and Decision Making**

#### **3.1 Overall Structure**

3.1.1 Following the announcement on the Local Growth Fund, Enterprise M3 commenced a review of its governance procedures to ensure that it was fit for its future role. This review was driven by the changing role of local enterprise partnerships (LEPs) and has been focused on the increasing need for LEPs to focus on delivery; effective relationships with the business community; and political/financial accountability.

3.1.2 Enterprise M3 Board Members have agreed the high-level governance structure for Enterprise M3 which includes the following sub-groups:

- Enterprise M3 Board
- Enterprise M3 Programme Management Group
- Enterprise M3 Executive Steering Group
- Enterprise M3 European Management Group
- Enterprise M3 Action Groups
- Enterprise M3 Local Transport Body

3.1.3 A summary diagram the governance structure is contained within Annex' A'. A short description of the Board and each sub-group is set out below, with specific focus on the roles of the Board and sub-groups in terms of the governance of the Enterprise M3's funding streams.

3.1.4 There is also a Joint Leaders Board, which is chaired and supported by local authorities within the Enterprise M3 area. This group includes representatives from all local authorities within Enterprise M3 and meets to consider issues affecting those authorities. The Joint Leaders Board is not a sub-group of the Enterprise M3 Board, but provides the views of local authorities within the area. The Board does receive regular updates on discussions by the Joint Leaders Board and considers this at Board meetings.

#### **3.2 The Enterprise M3 Board**

3.2.1 The Enterprise M3 Board ("the Board") is responsible for the overall strategic direction of Enterprise M3 as set out in the Enterprise M3 Strategic Economic Plan ("the Strategic Economic Plan"), establishing targets and priorities and monitoring progress towards those targets. It will do this with full regard to the resources available. It will seek the views of the Joint Leaders Board, along with the Enterprise M3

Programme Management Group, the Enterprise M3 Executive Steering Group, the Enterprise M3 European Management Group, the Enterprise M3 Action Groups and the wider business community and stakeholders.

3.2.2 The representatives on the Board are intended to provide an appropriate geographical and sectoral balance across the Enterprise M3 area. Board members do not have appointed deputies.

3.2.3 In light of the priorities identified in the Strategic Economic Plan and with the desire to strengthen links to the 16 local authorities, the Board decided in November 2013 to increase its membership. The maximum number of Board members was increased to 20 and, at its meeting in March 2014, it was agreed that the representation on the Board would be made up as set out in Table 1 below. Table 1 also gives details as to the Board representatives as of 20 January 2015:

**Table 1: Enterprise M3 Board (Correct at 20 January 2015)**

<b>Representing</b>	<b>Geographical Coverage</b>
Business x 8	
Business Support Organisations x 2	1 Hampshire, 1 Surrey
Public Sector x 6	2 Hampshire Districts/Boroughs 2 Surrey Districts/Boroughs 2 County Councils
Third Sector x 1	
Higher Education x1	
Further Education x1	
Ministry of Defence x1	

3.2.4 District council representatives are selected by the Enterprise M3 Joint Leaders Board and the county councils put forward county representatives. Business Board member vacancies are advertised on the Enterprise M3 website and a representative is selected following applications and interview by the Chair and one Board Member. Nominations from the third sector, further education, higher education, business support organisations and Ministry of Defence representatives are agreed with the Board/Chair.

3.2.5 The Chair of the Board is drawn from business membership and will hold the appointment for three years; this can then be renewed for one further term of three years only. The Board will agree the renewal of the appointment of the Chair. Board Members are appointed initially for

up to three years, after this time the appointment is reviewed and may be extended for one further term only with agreement with the Board. Board members may only serve a maximum of six years.

- 3.2.6 Details of the individuals currently serving as members of the Board can be found on the Enterprise M3 website at: *(electronic link to be provided)*
- 3.2.7 The Board shall hold an Annual Meeting which can take the form of a conference. The Board shall hold ordinary meetings on such day and at such time and place as they may determine between each Annual Meeting.
- 3.2.8 No business shall be transacted at any meeting of the Board unless a quorum of at least six Board members is present. Both the public and private shall be represented within the quorum of at least six Board members.
- 3.2.9 The Enterprise M3 shall publish on its website a public notice of the Board meeting at least five clear working days before any meeting of the Board. Copies of the Agenda and any papers (save for confidential and exempt items) to be considered at a meeting of the Board will be open for inspection by the public at least five clear working days before any meeting of the Board, unless a matter is to be considered as a matter of urgency, in which case the item will be available for inspection as soon as it is added to the Agenda for the Board meeting. The public may make written representations to the Board, details of such will be published on the website of Enterprise M3. The minutes will be published on the website as soon as reasonably practicable after they have been signed by the Chair of the Board at the following Board meeting.
- 3.2.10 Where an item is placed for decision by the Board, the majority of members must agree to the position. If a decision is split, the Chair has the casting vote.
- 3.2.11 Board members may make decisions out of session via written communication (hardcopy or electronic). Unless unavoidable, a minimum of two weeks should be allowed for decision making out of session.
- 3.2.12 All financial decisions with regard to projects are made by the Enterprise M3 Board.
- 3.2.13 The Board will approve an annual budget and once approved the Director can approve requests for funding, as detailed within that plan. For requests above this amount or for expenditure outside of the financial plan, authorisation will be granted by the Board Chair and two other nominated Board Members.

3.2.14 The Director cannot approve their own expenses but can approve expenses of others. The Chair or other Board Members can approve Director's expenses.

### **3.3 Enterprise M3 Programme Management Group (PMG)**

3.3.1 The Enterprise M3 Programme Management Group ("the PMG") plays a key role in the ongoing management of Enterprise M3's funding programmes. The group does not have decision-making powers, rather it is an advisory group to the Board.

3.3.2 The PMG comprises the following representatives:

- 3 x Private Sector Enterprise M3 Board member (1 to chair)
- 1 x European Management Group representative
- 2 x Local Authority Member
- 2 x Local Authority Senior Officer
- 1 x Homes and Communities Agency representative
- 1 x Accountable body representative
- 1 x LEP Director

3.3.3 The main focus of the PMG is around the Local Growth Fund and the Growing Enterprise Fund, although it will have oversight of all funding programmes held and influenced by Enterprise M3. Responsibilities of the PMG include:

- Reviewing and making recommendations to the Board on the relative priority of proposals for funding;
- Consideration of due diligence and Action Group advice on proposals, and recommending to the Board whether proposals should proceed to contracting;
- Overseeing the development of an appropriate pipeline of proposals to be funded in future, and making recommendations to the Board around this.
- Making recommendations to the Board around the alignment of the funding programmes administered by the LEP.

3.3.4 Further detailed information about the role of the PMG, including its terms of reference can be found on the Enterprise M3 website at [\*\(electronic link to be provided\)\*](#)

### **3.4 Enterprise M3 Executive Steering Group**

3.4.1 The Enterprise M3 Executive Steering Group ("the ESG") offers peer support, expertise and advice on operational matters, including

business planning, resource planning and budgets. The ESG is not a decision-making body but may be given delegated powers (from time to time) to review specific issues and sign-off arrangements. The ESG meets bi-monthly. The ESG does not have a role in the allocation of funding.

3.4.2 The membership of the ESG comprises the following:

- Enterprise M3 Board Member (Chair)
- Enterprise M3 Director
- 2 x District/Borough Chief Executives (1 Hampshire; 1 Surrey)
- 2 x County Council representatives (with HCC also representing the Accountable body)
- 1 x FE representative (nominated by the FE sector)

3.4.3 Further detailed information about the role of ESG, including its terms of reference can be found on the Enterprise M3 website at *(electronic link to be provided)*

### **3.5 Enterprise M3 European Management Group (EMG)**

3.5.1 The Enterprise M3 European Management Group (“ the EMG”) will supervise the development and administration of the LEP’s European Structural and Investment Funding Programme (“the ESIF”). The final EMG will be a local sub-committee of the national Programme Monitoring Committee for ESIF. The national Programme Monitoring Committee cannot be established until Government agrees the make-up of the national ESIF Operational Programme with the European Commission. Until this time, the EMG has interim status.

3.5.2 The EMG will undertake a range of functions around the ESIF programme. The EMG is not a decision-making body, rather it will provide recommendations and guidance to the Managing Authorities for ESIF. The LEP has responsibility for recruitment to the EMG.

3.5.3 The membership of the EMG is subject to EU regulations and includes a wide range of representation from across the public, private and not-for-profit sectors. The LEP has appointed a Chair for the interim EMG from amongst its Board, and will also nominate one further Board member to sit on this group. Other members will be appointed through nomination by their sector.

3.5.4 The membership of the interim EMG comprises representatives from the following sectors:

- Enterprise M3 (chair);
- Local authorities;
- Private sector;
- Not-for-profit sector;
- Environmental;
- Trades unions;
- Higher education;
- Further education;
- Wider educations and skills sectors;
- Rural;
- Equality and diversity; and
- ESIF Managing Authorities.

3.5.5 The secretariat for the interim EMG is provided by the Enterprise M3, and there are strong links between the EMG and the PMG as well as the Board, to ensure alignment between the EU Structural Funding within the area and the wider capital funds.

3.5.6 Further detailed information about the role of the interim EMG, including its terms of reference can be found on the Enterprise M3 website at *(electronic link to be provided)*

3.5.7 The membership and terms of reference of the interim EMG will be reviewed in the transition to the final EMG in the summer of 2015.

### **3.6 Enterprise M3 Action Groups**

3.6.1 Enterprise M3 Action Groups (“Action Groups”) will play a key role in providing specialist advice and recommendations to the Board around particular projects. Enterprise M3 has the following Action Groups:

- Innovation & Enterprise Action Group
- Global Competitiveness through People Board
- Land & Property Action Group
- Transport Action Group
- Rural Action Group

3.6.2 The Action Groups will reflect the key issues and priorities in each sector. The Action Groups do not have financial decision-making responsibility.

3.6.3 Each Action Group will contain at least one Enterprise M3 Board member, and will be chaired by a member of the private sector, selected by the group. Chairs will be selected by each Action Group and agreed by the Board. The Chairs of the Action Groups are appointed for a terms of up to two years.

3.6.4 The Action Groups provide the interface between the individual businesses, local authorities and other public sector agencies throughout the Enterprise M3 geographic area.

3.6.7 Each Action Group will have its own Terms of Reference. These terms of reference can be found on the Enterprise M3 website at *(electronic link to be provided)*

### **3.7 Local Transport Body**

3.7.1 The Enterprise M3 Local Transport Body (“the LTB”) was established in May 2013 as an equal partnership between the Enterprise M3 and local highway authorities. The role was initially to allocate funding to major transport schemes, decide which investments should be prioritised; to review and approve individual business cases for those investments and ensure effective delivery of the programme.

3.7.2 However, with the introduction of the Growth Deal, the funding originally identified for LTBs to allocate is now given directly to LEPs. As a result of this, the role of the LTB has changed.

3.7.3 The LTB still considers investment and priorities for major transport infrastructure. However it does not have responsibility for making financial decisions. Instead, it now makes recommendations to the Board, via the PMG, and is advised and supported by the Enterprise M3 ‘Transport’ Action Group.

3.7.4 The LTB will contribute to strengthening productivity growth and meeting the long-term challenges of the economy. It will work towards meeting the key priorities of the Enterprise M3 as set out in the Strategy Economic Plan. The role of the LTB is therefore to:

- specify strategic and other objectives that major transport schemes should meet.
- invite local authorities and others to propose schemes that meet those objectives
- identify a prioritised list of major transport schemes within the available budget
- ensure that the successful schemes meet the stated policy objectives of the Enterprise M3 as outlined in the Enterprise M3 Strategic Economic Plan and local authorities, though their corporate

strategies and local transport plans and be responsible for ensuring good value for money

- make recommendations on individual scheme approvals, investment decision-making and the release of funding, including scrutiny of individual business cases, to the PMG and the Board.
- report progress regularly to the member organisations, the Department for Transport and other stakeholders.
- regularly review its operation to ensure that it remains fit for purpose.
- carry out any other relevant functions as required by its member organisations (and if agreed by the Board).

3.7.5 Full voting membership of the Enterprise M3 LTB Board consists of:

- Enterprise M3 LEP
- Hampshire County Council
- Surrey County Council

3.7.6 These members will form the LTB Board and have equal status.

3.7.7 Associate (non-voting) membership of the Enterprise M3 LTB consists of:

- Department for Transport
- Chairman of the Transport Action Group of Enterprise M3 LEP
- Hampshire and Surrey Chambers of Commerce
- Hampshire Business Alliance
- Representatives of district councils in Hampshire and Surrey
- Highways England
- Network Rail
- Public transport operators
- Heathrow airport

3.7.8 Further detailed information about the LTB, including its terms of reference can be found on the Enterprise M3 website at *(electronic link to be provided)*

### **3.8 Joint Leaders Board**

3.8.1 The Joint Leaders Board (“the Joint Leaders Board”) brings together the Leaders of all 16 Local Authorities in the Enterprise M3 area with the purpose of strengthening the local authority governance arrangements in support of Enterprise M3, to assist in the development and implementation of actions that will deliver the Strategic Economic Plan, and to collaborate on economic development issues affecting the wider area.

3.8.2 The Joint Leaders Board strengthens local authority collaboration in support of Enterprise M3 and provides democratic accountability for the Enterprise M3 growth agenda. The Joint Leaders Board also:

- advises Enterprise M3 on the collective view of councils around strategic priorities and the Strategic Economic Plan;
- co-ordinates the contribution of councils on actions and activities to deliver the Strategic Economic Plan – making best use of, and potentially aligning, economic development resources and activities;
- acts as a forum for collaboration and discussion between the Enterprise M3 LEP councils on issues affecting economic development and regeneration across the area – particularly spatial planning (including the ‘duty to co-operate’), housing and transport;
- appoints the district level local authority members to the Enterprise M3 Board.

3.8.3 The chairing and administration of the Joint Leaders Board is managed by local authorities. The Chairman and Vice-Chairman of the Joint Leaders Board are appointed on an annual basis from amongst the membership of the Joint Leaders Board. These roles are appointed at the first meeting of the municipal year and are eligible for re-appointment. In the absence of both the Chairman and Vice-Chairman, the Board shall appoint a Chairman for the meeting.

3.8.4 Further detailed information about the role and operation of the Joint Leaders Board can be found on the Enterprise M3 website at: *(electronic link to be provided)*

#### **4. Transparent Decision Making**

4.1 The Enterprise M3 recognises the importance of having clear arrangements in place which enable effective and meaningful engagement of local partners and the public. The Enterprise M3 also acknowledges the importance of operating transparently giving the public and stakeholders confidence that decisions made are proper, based on evidence, and capable of being independently scrutinized.

4.2 For these reasons, the Enterprise M3 has put in place (or is putting in place) a range of arrangements to ensure transparency and openness:-

##### **a) Website**

The Enterprise M3 will maintain a dedicated website through which local partners and the public can keep in touch with progress on implementing the Growth Deal and can access key documents *(electronic link to be provided)*

##### **b) Decision Making**

The Enterprise M3 will generally publish on its website Board papers, agendas and minutes to comply with local government

legislation, unless the Board paper is of a confidential nature or an exempt paper falling under Schedule 12A Local Government Act 1972, as amended. The papers presented to the Board will broadly cover decisions made to provide funding to particular projects, programme updates, the rationale behind funding decisions, and details of successful projects.

The publication of the Board papers, agendas and minutes are all referred hereto at paragraph 3.2.9.

**c) Data Protection and Freedom of Information**

The Enterprise M3 is an informal partnership and cannot act as data controller of personal data. The Enterprise M3 will adhere to the processes established by the County Council in relation to its obligations under the Data Protection Act 1998 and the Freedom of Information Act 2000, as set out at clause 9 of the MoA.

Members of the Board are fully committed to ensuring that they share information in accordance with their statutory duties/relevant legislation. Partners recognise that any data or records supplied to public bodies are potentially subject to the provisions of the Data Protection Act 1998 and the Freedom of Information Act 2000.

The Enterprise M3 will also adhere to the Local Government Transparency Code and, through the County Council as the Enterprise M3 LEP's Accountable body, will ensure that all Freedom of Information and Environmental Information Regulation requests are dealt with in line with the relevant legislation.

**d) Conflicts of Interest Policy**

The Enterprise M3 will be publishing on its website a Conflicts of Interest Policy. *(electronic link to be provided)*

**e) Risk Register**

The Enterprise M3 will retain a Risk Register, which will be reviewed on a regular basis. Member organisations will review the risk of their own involvement with the Enterprise M3 in accordance with their own procedures. The Risk Register will be published on its website. *(electronic link to be provided).*

**f) Register of Interests**

The Enterprise M3 will maintain a Register of Interests of its members in accordance with its Register of Interest Policy to be published on its website. *(electronic link to be provided)*

**g) Compliments and Complaints Policy**

The Enterprise M3 will be publishing on its website a Compliments and Complaints Policy as well as details around how members of the public and other stakeholders can contact the Enterprise M3

and provide input to the decision-making process. *(electronic link to be provided)*

Should Enterprise M3 receive any complaints from stakeholders, members of the public or internal whistle-blowers where it is alleged that the Enterprise M3 is acting in breach of the law, failing to adhere to its framework or failing to safeguard public funds, such matters shall be referred to the County Council, as the Accountable Body for the Enterprise M3 who shall deal with such matters in liaison with the Department for Business, Innovation and Skills and/or other government departments as appropriate.

#### **h) Equalities**

The Enterprise M3 and the County Council, in undertaking its role as the Accountable Body to the Enterprise M3, shall comply with their responsibilities under the Public Sector Equality Duty as set out in section 149 of the Equality Act 2010 and they should have regard to these requirements when apportioning funding.

The Board is committed to ensuring equality of opportunity in the delivery and accessibility of its services. Partners are committed to providing a safe environment free from unlawful discrimination and harassment both in employment and service delivery.

The Enterprise M3 and the County Council shall have due regard in the exercise of their roles and responsibilities to the need to:-

- eliminate discrimination, harassment and victimization and any other conduct prohibited under legislation;
- advance equality of opportunity between persons who share a relevant protected characteristic (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, gender and sexual orientation) and those who do not share it;
- foster good relations between persons who share a relevant protected characteristic and persons who do not share it

#### **i) Liability and Indemnity Insurance**

The Enterprise M3 will provide Trustee and Trust Fund Liability insurance. Public liability and trustee indemnity insurance will be provided to a limit of £1m which will cover damages and claimant costs and defence costs. The policy covers both the organisation and the personal liability of trustees (directors or committee members), in relation to running the trust. This is referred to in the policy as maladministration. A full copy of the insurance policy is available on request.

#### **j) Local Engagement**

Partnership engagement is recognised as a key strength of the Enterprise M3 with partners regularly commenting on the high levels of engagement. The Enterprise M3's approach is to use early and ongoing engagement with a wide range of partners,

driven by the Board. The Enterprise M3 holds regular consultative meetings and communication.

The Enterprise M3 consults with business forums, and the not for profit sector, and organises annual conferences, skills events, transport events on an ad-hoc basis. The Enterprise M3 also engages with the public and stakeholders via its Action Groups.

To ensure the partners and stakeholders are kept up to date with the overall funding programme, the Enterprise M3 will continue to use its established communications channels and tools, such as the monthly stakeholder newsletters and regular partner meetings and will build on these where necessary.

**k) Development, Prioritisation, Appraisal and Approval of Projects**

The Enterprise M3 will publish on its website arrangements for the development, prioritisation, appraisal and approval of projects (set out within Annex 'C'). This will be undertaken with view to ensuring that a wide range of delivery partners can be involved.

**l) Social Value for Investment**

The Enterprise M3 shall consider how additional social value could be obtained through its procurement activities, which will primarily focus on how its economic objectives can be achieved through each project.

**5. Accountable body – Role and Responsibilities**

- 5.1 Enterprise M3 is not a legal entity. It is an informal partnership for which the County Council acts as the lead Accountable body for all funding streams under the control of the Enterprise M3 LEP.
- 5.2 The respective roles and responsibilities of the Enterprise M3 and the County Council, in undertaking its role as the Accountable Body to the Enterprise M3 LEP, are confirmed hereto as set out in Annex 'B'.
- 5.3 The nature and scope of the relationship between the County Council and the Enterprise M3 is also set out in the MoA. The MoA sets out the support arrangements that the County Council, in its role as Accountable body, currently provides to the Enterprise M3 in the form of administration, business and technical support arrangements. Authority for the County Council to enter into the MoA was secured at the Cabinet meeting on 27 October 2014 and the Executive Member for Policy and Resources on 12 March 2015 (*yet to be agreed*)

- 5.4 The County Council is accountable for ensuring that all grant income received, payments out and any applicable repayments for all funding streams under the control of the Enterprise M3 LEP are accounted for and administered correctly (which are subject to the County Council's normal internal and external audit controls).
- 5.5 The County Council in undertaking its role as Accountable body to the Enterprise M3 shall ensure that expenditure is spent in accordance with all applicable legal requirements and also in accordance with the County Council's rules and procedures as set out in its Constitution and Financial Procedures. In particular, the County Council shall comply with its financial duties and rules which require it to act prudently in spending, which are overseen and checked by its Chief Finance Officer.
- 5.6 The County Council shall not implement any decision of the Board where it reasonably considers the decision to be unlawful. If for any other reason the County Council disagrees with a decision of the Board, then the County Council and the Enterprise M3 shall seek to resolve the matter by a process of consultation. If the matter cannot be resolved within a reasonable period of time, then the matter shall be escalated to the Executive Director of the Enterprise M3 and the County Council's Director of Economy, Transport and Environment who shall decide on the appropriate course of action to take. If the matter can still not be resolved, then the matter will be referred to an independent arbitrator to reach an agreement. The costs of an independent arbitrator shall be borne by the County Council and the Enterprise M3 respectively.
- 5.7 In terms of scrutiny arrangements, the Enterprise M3 has a Joint Leaders Board to ensure involvement of all of the local authority leaders. In order to help ensure appropriate decisions are made around the use of all funding streams secured by the Enterprise M3, the PMG oversees the funding programme. The County Council, as the Accountable body, is represented at a senior office level on PMG. This is in addition to the County Council's Deputy Leader having a seat on the Board.

## **6. Ensuring value for money: prioritisation, appraisal, business case development and risk management**

### **6.1 Overall Management**

- 6.1.1 The Enterprise M3 has robust arrangements in place to ensure value for money and effective delivery, through strong project development, project and options appraisal, prioritisation and business case development. These are set out hereto within Annex 'C'.

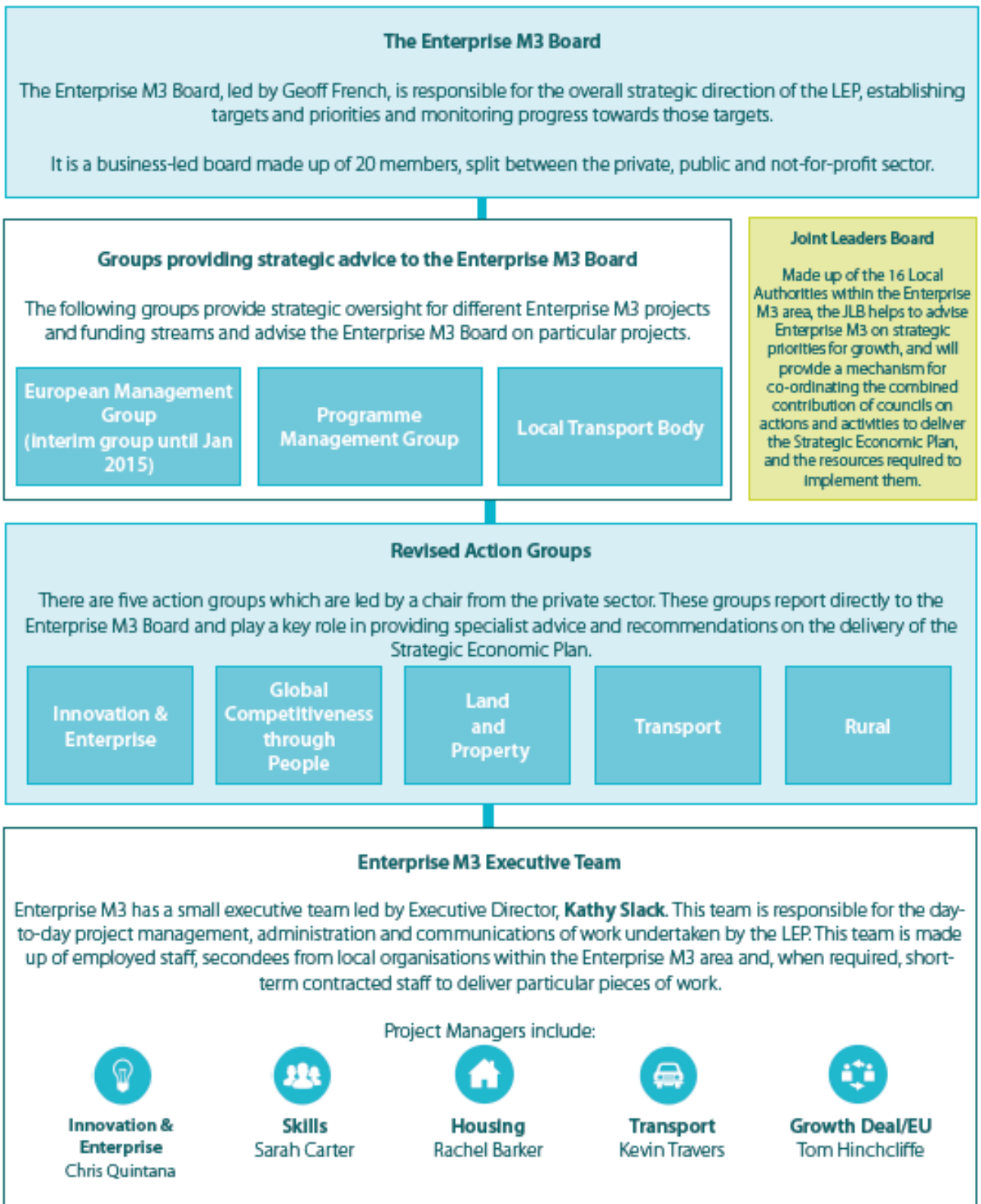
### **6.2 Funding – Allocations and Agreements**

- 6.2.1 Funding will be provided for individual and indivisible schemes or for coherent packages of closely-related schemes. Funding will not be provided for unspecified or loosely-defined uses.
- 6.2.2 Funding will only be used for schemes and/or purposes specified in the bid and associated approval decision, unless expressly approved by the Board.
- 6.2.3 The County Council, as the Accountable Body of all funding streams under the control of the Enterprise M3, is responsible for compliance with the funding terms and conditions laid down by DCLG, BIS, the DfT and/or any other relevant government funding agencies, which includes the obligation to repay, in whole or in part in the event of non-compliance with those terms and conditions.
- 6.2.4 The funding of cost increases will be considered on a case by case basis. As a general rule, the Enterprise M3 will expect promoters to bear cost increases that could reasonably be considered to be within their control. The Enterprise M3 may fund cost increases, for example where the reason for the cost increase could not reasonably have been expected, such as a change in legislation or scope of the project.
- 6.2.5 Prior to disbursement of funding to a project, a legal funding agreement must be in place with the delivery organisation. The legal funding agreement will be in substantially the same form as the template legal funding agreement attached hereto at Annex 'D'. In the case of the County Council being the delivery organisation, the County Council will confirm compliance with the terms of the legal funding agreement in the form of a letter as the County Council is unable to enter into a legal funding agreement with itself.
- 6.2.6 The legal funding agreement will:-
- set out delivery milestones for the project, a projected payment schedule (where applicable) and will include arrangements for reporting monitoring information back to the Enterprise M3;
  - provide assurance that any local contributions specified within the business case will be provided and accept liability for all cost increases; and
  - confirm that the awarded funding will only be used for the project for which it was awarded and that all reasonable efforts to control costs will be made.
- 6.2.7 Scheme promoters will be expected to bear scheme development costs for the first part of the application process. The preparation of detailed business cases is to be funded by scheme promoters. However, the Enterprise M3 may agree to fund reasonable costs which comply with the funding terms and conditions.

### **6.3 Evaluation and Monitoring**

- 6.3.1 The template for submitting full business case application requires promoters to clearly specify the Evaluation and Monitoring strategy. This forms an integral part of an application. As part of their evaluation of a proposal, the Enterprise M3 will assess the adequacy of a promoter's Evaluation and Monitoring strategy, giving consideration to evaluations that are proportionate to the value and scale of each scheme, whilst being affordable and representing value for money.
- 6.3.2 The Enterprise M3 will specify the monitoring metrics projects are expected to report on and the frequency on which these reports are required.
- 6.3.3 Evaluation methodologies and requirements will also be agreed with scheme promoters. Generally, the expectation will be that the scheme promoter funds evaluation activity from the project budget. Report(s) are to be produced and published on the Enterprise M3's website after suitable intervals/ period, following completion of the schemes.
- 6.3.4 The Evaluation Report(s) would aim to demonstrate the extent to which the assumed/ predicted impacts and benefits have been realised. They could cover the following measures, as appropriate for a scheme:
- Net additional jobs created in the Enterprise M3 area that can reasonably be linked to the intervention.
  - Net additional housing or employment floor space created or enabled as a consequence of the intervention (either directly or as part of a wider package of enabling measures).
  - Private sector investment leveraged as a result of the delivery of the intervention (either directly or as part of a wider package of enabling measures).
  - Local Gross Value Added (GVA) created and/or safeguarded.
  - Demonstrable contribution to retention of existing businesses in the Enterprise M3 area.
- 6.3.5 If appropriate and feasible, the Enterprise M3 may produce consolidated evaluation reports, covering several schemes that are related either by geography or by type of intervention or scale of funding or some other relevant criteria, with the aim of drawing out common findings and recommendations for future decision making.
- 6.3.6 The Enterprise M3 will produce an overall evaluation strategy setting out how it intends to undertake this. Individual scheme evaluations will be required to adhere to the principles set out within the overall evaluation strategy.

## The Structure of Enterprise M3 2014/15



### **Roles and Responsibilities – Prioritisation, Approval and Deployment of Funding**

#### 1.1 The Enterprise M3:

- Board will approve the disbursement of funding to all projects, and shall consider the advice of other relevant governance groups in doing so.
- Shall have responsibility for overall programme management for the funding programmes under the control of the Enterprise M3, including overall budget management, project monitoring and progress reporting, risk reporting and management;
- Shall act as the main point of contact for funding applicants/recipients;
- Shall receive and undertake all initial assessments of funding applications;
- Shall approve projects 'in principle' subject to contract and due diligence assessments;
- Shall undertake due diligence assessments of projects after the 'in principle' approval;
- Shall provide the County Council with all successful project details and financial details following approval by the Board in order for the County Council to develop the appropriate funding agreements;
- Shall undertake the necessary monitoring visits to ensure that projects are progressing in line with the funding agreement terms and conditions and that appropriate records are kept;
- Shall authorise project claims submitted by funding applicants/recipients and ensure that they are in line with the terms and conditions of the funding agreement;
- Shall provide confirmation that all funding provided by the Enterprise M3 has been used as per the terms and conditions laid down by DCLG, DfT and/or BIS and/or any other relevant funding agencies,
- Shall work in partnership with the County Council in its role as Accountable Body to seek recovery of the funding should projects default from the terms and conditions of the funding agreement.
- Shall deal with any complaints and/or appeals in relation to the funding application and the decision making an approval processes;
- Shall provide a designated manager to manage each of the funding programmes

#### 1.2 The County Council, acting as the Accountable body, shall:-

- Ensure that the funding is used appropriately in accordance with the funding terms and conditions;
- Ensure that any funding decisions and activities of the Enterprise M3 conform with all applicable legal requirements including for example, state aid, equalities, social value, environment and public procurement law, and that any development decisions for specific proposals must go

through the normal planning process and be guided by local plans taking into account all material considerations.;

- Ensure that the Enterprise M3 is made aware of the importance of state aid issues in relation to taking decisions on funding allocations;
- Support the Enterprise M3 in adhering to the Assurance Framework;
- Act in accordance with local government law and the County Council's rules and procedures as set out in its Constitution and Financial Procedures.
- Maintain the official record of Enterprise M3 proceedings and hold copies of all relevant Enterprise M3 documents relating to the funding, including maintaining accurate financial records;
- Ensure that there are arrangements for local audit of funding allocated by the Enterprise M3 at least equivalent to those in place for the County Council spend
- Receive block allocations of funding from Government on behalf of the Enterprise M3;
- Take responsibility for the decisions of the Enterprise M3 in approving projects;
- Where appropriate provide comments on the approved 'in principle' projects in time to contribute to any due diligence process assessment;
- Draw up individual legal funding agreements in line with the terms and conditions of the relevant funding source/programme;
- For 100% upfront funded projects, make payments within authorised budgets to funding applicants/recipients in a timely manner following receipt of instructions from the Enterprise M3;
- For projects with stage payments or retrospective funding, the County Council will discharge payment to the funding applicant/recipient in a timely manner following receipt of instructions from the Enterprise M3;
- Provide the Enterprise M3 with appropriate financial reports, in compliance with the requirements of DCLG, BIS, DfT and/or other relevant government funding agencies;
- Produce an annual statement of funding received and expenditure in relation to the funding programmes under the control of the Enterprise M3;
- Comply with all relevant accounting and audit requirements;
- Work in partnership with the Enterprise M3 in relation to any claw back issues and/or deviations from the funding agreements with the funding applicant/recipient and/or the funding agreement with DCLG, DfT, BIS and/or any other government funding agencies;
- Receive and process repayments (where applicable) in line with the County Council's accounting policies and procedures;
- Provide the Enterprise M3 with notification of any repayments made, or not made,
- Deal with any complaints or appeals in relation to the County Council discharging its role as the Accountable body. Any complaints will be dealt with through the County Council's own complaints procedure.

## **Financial/Audit**

### **2.1 The Enterprise M3 shall:-**

- Co-operate with and assist the County Council acting in its role as Accountable Body in undertaking the day to day responsibility for financial matters;
- Co-operate with and assist the County Council acting in its role as Accountable Body in regular audit examinations of all operating systems;
- Act upon any recommendations contained with the County Council's internal audit reports where the County Council's Chief Financial Officer so requires;
- Report any financial irregularity or suspected irregularity in the use of any funding to the County Council.
- Publish a statement of annual accounts, based on information provided by the accountable body.

### **2.2 The County Council, acting in its role as Accountable Body, shall:-**

- Establish and maintain a financial system to account for all monies received and disbursed on behalf of the Enterprise M3;
- Transfer, subject to the receipt of properly authorised instructions from the Enterprise M3 LEP, funding for projects identified by the Enterprise M3;
- Supply, as necessary, completed statements of income, expenditure and disbursements to the Enterprise M3, funding organisations, DCLG, DfT, BIS and/or external auditors, including information necessary to allow the Enterprise M3 to provide updates to its board and others in a timely manner, and to allow the publication of annual accounts by the Enterprise M3.

## **Legal**

### **3.1 The County Council, acting in its role as Accountable Body, shall:-**

- Ensure that any funding decisions and activities of the Enterprise M3 conform with all applicable legal requirements including for example, state aid, equalities, social value, environment and public procurement law, and that any development decisions for specific proposals must go through the normal planning process and be guided by local plans taking into account all material considerations.;
- Develop and finalise appropriate legal funding agreements (subject to the approval of the Enterprise M3) and enter into such legal funding agreements with the individual funding applicants/recipients, as instructed by the Enterprise M3, to include adequate provisions for the protection of public funds.
- Send and receive signed legal funding agreements to the individual funding applicants/recipients;
- Contract with any organisations who are providing advice to the Enterprise M3 in order to support the activity of the funding

programmes under the control of the Enterprise M3. The Enterprise M3 recognises the need for such work to be funded from the revenue element of the funding programmes (if applicable) and any such work will need to comply with the County Council's own financial and procurement processes;

- Advise on any state aid issues, as and when required, and signpost when further advice and input may be required.
- Spend and commence the procurement process and complete the appropriate contractual documentation on behalf of the Enterprise M3, where the Board has authorised the County Council to approve such spend and procurements processes, subject to adequate funding provision being made by the Board and compliance with the Assurance Framework.

DRAFT

### **Prioritisation, Appraisal, Value for Money and Business Case Development**

- Enterprise M3 will engage with a range of partners in order to reach a wide range of stakeholders and attract suitable project proposals for any funding that is likely to be available. The Enterprise M3 will endeavour to actively engage partners through its action groups, project managers and newsletters, and will also make information available via its website. The Enterprise M3 will aim to work with a sufficiently diverse set of partners to allow a wide range of project options likely to achieve the strategic objectives of the Enterprise M3 to come forward for consideration.
- Potential bidders will be provided within an intervention template document (a copy of which will also be made available on the Enterprise M3 website), which will capture outline business case information required to undertake an initial assessment around the merits of the proposed project.
- Following the submission of a completed intervention template, the Enterprise M3 will undertake an initial assessment of the proposal based on the following criteria:

#### **Fit with Strategic Economic Plan priorities, including:**

- Spatial priorities – Growth and Step-up Towns
- Sectoral priorities and links to the development of the SciTech Corridor
- Links to other relevant interventions and funding programmes

#### **Delivery risk, including:**

- Level of conceptual development
- Delivery barriers identified and/or mitigated
- Outline business case completed and feedback from BIS
- Identified delivery risks and mitigation

#### **Value for Money, including:**

- Economic outcomes expected
- LGF required and match funding/leverage
- Potential for providing funding as a loan
- Value for money assessments undertaken

This initial assessment will determine whether the proposal is something the Enterprise M3 would support, and the relative priority of the proposal. Project managers will provide feedback to bidders following this assessment.

- For those projects to be taken forward, Enterprise M3 will request the submission of a detailed business case, based on a template developed by the Enterprise M3. The business case template will seek a proportionate level of information to address the five cases within the HM Treasury Green Book business case development methodology.

The outline and full business cases are the evidential basis on which assessment of projects will take place, and by which the relative priority of projects will be determined.

- Independent scrutiny will then be undertaken around these business cases, verifying that the information provided is sound and can be used as evidence for decision-making around the priority and funding of the project. Rigour and data quality will be assessed, alongside the need and/or opportunity the project addresses. This process will also ensure established best practice is taken account of appropriately in proposals. Scrutiny will also test the extent to which clearly defined inputs, activities, outputs and economic outcomes, the additionality of these outputs, and factors such as deadweight and displacement have been taken into account.
- Following this, the business cases, and the advice provided through the independent scrutiny process, will be considered by the relevant Enterprise M3 Action Group(s), who will provide expert input as to the merits of the project. Action Groups will consider, proposals in line with the criteria set out above. Where an action group uses additional, theme specific, criteria to assess a project, these additional criteria will be clearly set out on the Enterprise M3's website.
- The Enterprise M3's PMG will then consider the outcome of this and form a view as to the relative priority of a project within the overall programme, and whether the project should proceed to contracting. The PMG has responsibility for comparing different types of projects across the programme. The PMG will make a formal recommendation to the Board stating that the proposal should:
  - proceed to contracting;
  - proceed to contracting subject to certain conditions being met; or
  - not proceed to contracting at this point.
- The Board, having considered the advice of the PMG, have authority approve projects to proceed to contracting and for detailed arrangements for the disbursement of funds to projects to be made.
- Value for money across the programme will be assessed and reviewed on an ongoing basis.
- Enterprise M3 has allocated named individuals as having responsibility for overseeing the scrutiny of business cases, and for ensuring there is overall value for money within the Local Growth Fund programme:

Name	Job Title	Responsible for
Tom Hinchcliffe	Programme Manager	Ensuring overall value for money within the programme.

Rachel Barker	Infrastructure Project Manager	Overseeing scrutiny of Housing and Growing Enterprise Fund business cases
Sarah Carter	Skills and Employability Project Manager	Overseeing scrutiny of Skills business cases
Chris Quintana	Enterprise and Innovation Project Manager	Overseeing Scrutiny of Enterprise and Innovation business cases
Kevin Travers	Transport Project Manager	Overseeing scrutiny of Transport business cases

**NB** Enterprise M3 is currently reviewing its business case development and prioritisation process. The findings of this review are expected in March 2015. This process may change depending on the findings of this review.

Template Legal Funding Agreement

DATED

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GRANT AGREEMENT – [ ]

between

HAMPSHIRE COUNTY COUNCIL

And

[NAME OF RECIPIENT]



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THIS DEED is dated [DATE]

#### PARTIES

- (1) Hampshire County Council, whose principal address is at The Castle, Winchester, Hampshire, SO23 8UJ(Funder).
- (2) [NAME OF RECIPIENT], [RELEVANT DETAILS OF LEGAL STRUCTURE] whose principal address is at [ADDRESS] (Recipient).

#### BACKGROUND

- (A) The Council is the Accountable Body for Enterprise M3 in connection with funding under the [ Insert fund details].
- (B) The Funder has agreed to pay the Grant to the Recipient on behalf of the LEP to assist it in carrying out the [ ]Project.
- (C) This Agreement sets out the terms and conditions on which the Grant is made by the Funder to the Recipient.
- (D) These terms and conditions are intended to ensure that the Grant is used for the purpose for which it is awarded.

#### AGREED TERMS

##### Definitions

In this Agreement the following terms shall have the following meanings:

**Bribery Act:** the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation.

**Claim Form:** means a request for the Grant in the form attached at Schedule 4.

**Commencement Date:** [START DATE].

**Governing Body:** the governing body of the Recipient including its directors or trustees.

**Grant:** the sum of £[AMOUNT] to be paid to the Recipient in accordance with this Agreement.

**Grant Period:** the period for which the Grant is awarded starting on the Commencement Date and ending on [DATE BY WHICH THE GRANT MUST BE SPENT].

**Intellectual Property Rights:** all patents, copyrights and design rights (whether registered or not) and all applications for any of the foregoing and all rights of confidence and Know-How however arising for their full term and any renewals and extensions.

Know-How: information, data, know-how or experience whether patentable or not and including but not limited to any technical and commercial information relating to research, design, development, manufacture, use or sale.

LEP: means the Enterprise M3 Local Enterprise Partnership.

Milestones: means [ ] as set out in Schedule 1.

Outputs: means the requirements for [ ] as set out in Schedule 1.

Prohibited Act: means:

offering, giving or agreeing to give to any servant of the Funder any gift or consideration of any kind as an inducement or reward for:

doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Agreement or any other contract with the Funder; or

showing or not showing favour or disfavour to any person in relation to this Agreement or any other contract with the Funder;

entering into this Agreement or any other contract with the Funder where a commission has been paid or has been agreed to be paid by the Recipient or on its behalf, or to its knowledge, unless before the relevant contract is entered into particulars of any such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to the Funder;

committing any offence:

under the Bribery Act;

under legislation creating offences in respect of fraudulent acts; or

at common law in respect of fraudulent acts in relation to this Agreement or any other contract with the Funder; or

defrauding or attempting to defraud or conspiring to defraud the Funder.

Project: the project described in Schedule 1.

Project Manager: the individual who has been nominated to represent the LEP for the purposes of this Agreement.

State Aid Law: means any European Union State aid laws (including without limitation under any Articles 106 to 109 inclusive of the Treaty of the Functioning of the European Union (as amended)) and/or any applicable judgement, court order, statute, statutory instrument, regulation, directive or decision

## Purpose of Grant

The Recipient shall use the Grant only for the delivery of the Project and in accordance with the terms and conditions set out in this Agreement. The

Grant shall not be used for any other purpose without the prior written agreement of the Funder and the LEP.

The Recipient shall not make any significant change to the Project without the Funder and the LEP's prior written agreement.

Where the Recipient intends to apply to a third party for other funding for the Project, it will notify the Funder and the LEP in advance of its intention to do so and, where such funding is obtained, it will provide the Funder and the LEP with details of the amount and purpose of that funding. The Recipient agrees and accepts that it shall not apply for duplicate funding in respect of any part of the Project or any related administration costs that the Funder and the LEP is funding in full under this Agreement.

#### Payment of Grant

Subject to clause 0, the Funder shall pay the Grant to the Recipient [in quarterly instalments in arrears]<sup>1</sup> in accordance with Schedule 2, a valid Claim Form and subject to the necessary funds being available when payment falls due. The Recipient agrees and accepts that payments of the Grant can only be made to the extent that the Funder has available funds.

No Grant shall be paid unless and until the Funder and the LEP are satisfied that such payment will be used for proper expenditure in the delivery of the Project is accompanied by a valid Claim Form with supporting evidence to the satisfaction of the Funder and the LEP to justify any works undertaken in accordance with the Milestones for the purposes of the Project.

The amount of the Grant shall not be increased in the event of any overspend by the Recipient in its delivery of the Project.

[The Grant shall be paid into a separate bank account in the name of the Recipient which must be an ordinary business bank account. All cheques from the bank account must be signed by at least two individual representatives of the Recipient.]<sup>2</sup>

[The Recipient shall not transfer any part of the Grant to bank accounts which are not ordinary business accounts within the clearing bank system, without the prior written consent of the Funder.]<sup>3</sup>

The Recipient shall promptly repay to the Funder any money incorrectly paid to it either as a result of an administrative error or otherwise. This includes (without limitation) situations where either an incorrect sum of money has

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<sup>1</sup> Can be amended for each Project

<sup>2</sup> Control and visibility of the funding – to be developed on a case by case basis.

<sup>3</sup> As above.

been paid or where Grant monies have been paid in error before all conditions attaching to the Grant have been complied with by the Recipient.

The Recipient shall enter into and complete all necessary legal documentation or procure the completion of all necessary legal documentation within 30 days of a request from the Funder for any of the following forms of security:

- (i) a first/second Legal charge in the form set out in Schedule [ ];or
- (i) a on demand bond in the form set out in Schedule [ ]; or
- (ii) a parent company guarantee in the form set out in Schedule [ ]<sup>4</sup>

#### Use of Grant

The Grant shall be used by the Recipient for the delivery of the Project in accordance with the agreed budget set out in Schedule 3. [For the avoidance of doubt, the amount of the Grant that the Recipient may spend on any item of expenditure listed in column 1 of Schedule 3 shall not exceed the corresponding sum of money listed in column 2 without the prior written agreement of the Funder.]<sup>5</sup>

Where the Recipient has obtained funding from a third party in relation to its delivery of the Project (including without limitation funding for associated administration and staffing costs), the amount of such funding shall be included in the budget in Schedule 3 together with a clear description of what that funding shall be used for.

The Recipient shall not use the Grant to:

- make any payment to members of its Governing Body;
- meet, cover or pay for any revenue expenditure [purchase buildings or land]<sup>6</sup>; or
- pay for any expenditure commitments of the Recipient entered into before the Commencement Date,

unless this has been approved in writing by the Funder and the LEP.

The Recipient shall not spend any part of the Grant on the delivery of the Project after the Grant Period.

Should any part of the Grant remain unspent at the end of the Grant Period, the Recipient shall ensure that any unspent monies are returned to the Funder.

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<sup>4</sup> Is security needed for your project? If not this can be deleted. Please refer to Legal Services for assistance with the application of security mechanisms.

<sup>5</sup> Details to be dealt with on a project by project basis

<sup>6</sup> To amend for each project

Any liabilities arising at the end of the Project including any redundancy liabilities for staff employed by the Recipient to deliver the Project must be managed and paid for by the Recipient using the Grant or other resources of the Recipient. There will be no additional funding available from the Funder or the LEP for this purpose.

- 4.7 The Recipient will comply with and will procure that any of its contractors complies with all applicable EU Procurement Requirements in connection with the procurement of any works, equipment, goods and services in relation to the Project and shall promptly provide to the Funder or any Government Office any information which the Funder may request in order to satisfy itself that the Recipient and the contractor have done so.
- 4.8 The Recipient will procure that procurement of works, equipment, goods and services by the Recipient and its contractors shall be based on value for money. In determining how this requirement should be met, the Recipient will (and will procure that its contractors will) take account of public sector accountability and probity and shall document the decision making process.
- 4.9 The Parties understand and agree that the Grant by the Funder under this Agreement is not consideration for any supply for Value Added Tax ("VAT") purposes whether by the Recipient or otherwise.
- 4.10 If, notwithstanding the agreement and understanding of the Parties as set out in Clause 4.9 above, it is determined that the Grant is consideration for a supply for VAT purposes, the Grant shall be treated as inclusive of any VAT.

#### Accounts and records

The Grant shall be shown in the Recipient's accounts as a restricted fund and shall not be included under general funds.

The Recipient shall keep separate, accurate and up-to-date accounts on an open book basis and records of the receipt and expenditure of the Grant monies received by it.

The Recipient shall keep all invoices, receipts, and accounts and any other relevant documents relating to the expenditure of the Grant for a period of at least six years following receipt of any Grant monies to which they relate. The Funder and the LEP shall have the right to review, at the Funder's reasonable request, the Recipient's accounts and records that relate to the expenditure of the Grant and shall have the right to take copies of such accounts and records.

The Recipient shall on request provide the Funder and the LEP with a copy of its annual accounts within six months (or such lesser period as the Funder may

reasonably require) of the end of the relevant financial year in respect of each year in which the Grant is paid.

The Recipient shall comply and facilitate the Funder's compliance with all statutory requirements as regards accounts, audit or examination of accounts, annual reports and annual returns applicable to itself and the Funder.

#### Monitoring and reporting

The Recipient shall closely monitor the delivery and success of the Project throughout the Grant Period to ensure that the aims and objectives of the Project are being met and that this Agreement is being adhered to.

The Recipient shall provide the Funder and the LEP within 30 days of a request to do so with a financial report and an operational report on its use of the Grant and delivery of the Project according to the timescales set by the LEP as set out in Schedule 1 and in such formats as the LEP may reasonably require.

Where the Recipient has obtained funding from a third party for its delivery of part of the Project, the Recipient shall include the amount of such funding in its financial reports together with details of what that funding has been used for.

The Recipient shall provide the Funder and the LEP with a risk register and insurance review in the format provided by the LEP on request.

The Recipient shall on request provide the Funder and the LEP with such further information, explanations and documents as the Funder and the LEP may reasonably require in order for it to establish that the Grant has been used properly in accordance with this Agreement.

The Recipient shall permit any person authorised by the Funder and the LEP such reasonable access to its employees, agents, premises, facilities and records, for the purpose of discussing, monitoring and evaluating the Recipient's fulfilment of the conditions of this Agreement and shall, if so required, provide appropriate oral or written explanations from them.

The Recipient shall permit any person authorised by the Funder and the LEP for the purpose to visit the Recipient once every quarter to monitor the delivery of the Project. Where, in its reasonable opinion, the Funder considers that additional visits are necessary to monitor the Project, it shall be entitled to authorise any person to make such visits on its behalf. [The Recipient shall provide local transport and accommodation for such visits, the cost of which may be charged to the Funder for payment.]<sup>7</sup>

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<sup>7</sup> To be set for each project.

The Recipient shall provide the Funder and the LEP with a final report on completion of the Grant Period which shall confirm whether the Project has been successfully and properly completed.

#### Acknowledgment and publicity

The Recipient shall acknowledge the Grant in its annual report and accounts, including an acknowledgement of the LEP as the source of the Grant.

The Recipient shall not publish any material referring to the Project or the Funder or the LEP without the prior written agreement of the Funder and the LEP. The Recipient shall acknowledge the support of the LEP in any materials that refer to the Project and in any written or spoken public presentations about the Project. Such acknowledgements (where appropriate or as requested by the LEP) shall include the LEP's name and logo (or any future name or logo adopted by the LEP) using the templates provided by the LEP from time to time.

In using the LEP's name and logo, the Recipient shall comply with all reasonable branding guidelines issued by the LEP from time to time.

The Recipient agrees to participate in and co-operate with promotional activities relating to the Project that may be instigated and/or organised by the LEP.

The Funder may acknowledge the Recipient's involvement in the Project as appropriate without prior notice.

The Recipient shall comply with all reasonable requests from the LEP to facilitate visits, provide reports, statistics, photographs and case studies that will assist the LEP in its promotional and fundraising activities relating to the Project.

#### Intellectual Property Rights

The Funder and the Recipient agree that all rights, title and interest in or to any information, data, reports, documents, procedures, forecasts, technology, Know-How and any other Intellectual Property Rights whatsoever owned by either the Funder or the Recipient before the Commencement Date or developed by either party during the Grant Period, shall remain the property of that party.

Where the Funder and/or the LEP has provided the Recipient with any of its Intellectual Property Rights for use in connection with the Project (including without limitation its name and logo), the Recipient shall, on termination of this Agreement, cease to use such Intellectual Property Rights immediately and shall either return or destroy such Intellectual Property Rights as requested by the Funder and/or the LEP.

## Confidentiality

Subject to clause 0 (Freedom of Information), each party shall during the term of this Agreement and thereafter keep secret and confidential all Intellectual Property Rights or Know-How or other business, technical or commercial information disclosed to it as a result of the Agreement and shall not disclose the same to any person save to the extent necessary to perform its obligations in accordance with the terms of this Agreement or save as expressly authorised in writing by the other party.

The obligation of confidentiality contained in this clause shall not apply or shall cease to apply to any Intellectual Property Rights, Know-How or other business, technical or commercial information which:

at the time of its disclosure by the disclosing party is already in the public domain or which subsequently enters the public domain other than by breach of the terms of this Agreement by the receiving party;

is already known to the receiving party as evidenced by written records at the time of its disclosure by the disclosing party and was not otherwise acquired by the receiving party from the disclosing party under any obligations of confidence; or

is at any time after the date of this Agreement acquired by the receiving party from a third party having the right to disclose the same to the receiving party without breach of the obligations owed by that party to the disclosing party.

- 9.3 The Funder in line with the government's ongoing drive to open up activities of the public sector to greater scrutiny has prepared its transparency agenda and the Recipient hereby agrees that nothing in this Agreement shall prevent the Funder from publishing any payments made by the Funder to the Recipient under the terms of this Agreement

## Freedom of information

The Recipient acknowledges that the Funder is subject to the requirements of the Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004 and shall assist and co-operate with the Funder (at the Recipient's expense) to enable the Funder to comply with these information disclosure requirements.

The Recipient shall:

transfer the request for information to the Funder as soon as practicable after receipt and in any event within [two] Working Days of receiving a request for information;

provide the Funder with a copy of all information in its possession or power in the form that the Funder requires within five working days (or such other period as the Funder may specify) of the Funder requesting that information; and

provide all necessary assistance as reasonably requested by the Funder to enable the Funder to respond to a 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.

The Funder shall be responsible for determining at its absolute discretion whether the information:

is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations 2004;

is to be disclosed in response to a request for information, and in no event shall the Recipient respond directly to a request for information unless expressly authorised to do so by the Funder.

In no event shall the Recipient respond directly to a request for information unless expressly authorised to do so by the Funder.

The Recipient acknowledges that the Funder may be obliged under the FOIA or the Environmental Information Regulations 2004 to disclose information:

without consulting with the Recipient; or

following consultation with the Recipient and having taken its views into account,

provided always that where clause 0 applies the Funder shall take reasonable steps, where appropriate, to give the Recipient advanced notice, or failing that, to draw the disclosure to the Recipient's attention after any such disclosure.

The Recipient shall ensure that all information produced in the course of the Agreement or relating to the Agreement is retained for disclosure and shall permit the Funder to inspect such records as requested from time to time.

[ 10.1 Each Party acknowledges that the other is subject to the<sup>8</sup> requirements of the FOIA and EIR and each Party shall where reasonable assist and co-operate with each other (at their own expense) to enable the other Party to comply with these information disclosure obligations.

10.2 Where any Party receives a request for information in relation to information which it is holding on behalf of another Party in relation to the Agreement, it shall (and shall procure that its sub-contractors shall):

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<sup>8</sup> Use alternative clause where Applicant is a public body

- (a) transfer the request for information to the relevant Party as soon as practicable after receipt and in any event within two (2) Working Days of receiving a request for information;
- (b) provide the relevant Party with a copy of all information in its possession or power in the form that the relevant Party requires within ten (10) Working Days (or such longer period as the relevant Party may specify); and
- (c) provide all necessary assistance as reasonably requested by the relevant Party to enable the relevant Party to respond to a request for information within the time for compliance set out in the FOIA and/or the EIR.

10.3 Each Party shall be responsible for determining in its absolute discretion whether any information:

- (a) is exempt from disclosure under the FOIA and/or EIR;
- (b) is to be disclosed in response to a request for information.

10.4 Each Party acknowledges that the other Party may be obliged under the FOIA and/or EIR to disclose information:

- (a) without consulting with the other Party where it has not been practicable to achieve such consultation; or
- (b) following consultation with the other Party and having taken its views into account.

#### Data protection

The Recipient shall (and shall procure that any of its staff involved in connection with the activities under the Agreement shall) comply with any notification requirements under the Data Protection Act 1998 (DPA) and both Parties will duly observe all their obligations under the DPA, which arise in connection with the Agreement.

## Withholding, suspending and repayment of Grant

The Funder's intention is that the Grant will be paid to the Recipient in full. However, without prejudice to the Funder's other rights and remedies, the Funder may at its discretion withhold or suspend payment of the Grant and/or require repayment of all or part of the Grant if:

- the Recipient uses the Grant for purposes other than those for which they have been awarded;
- the delivery of the Project does not start within [6 months]<sup>9</sup> of the Commencement Date and the Recipient has failed to provide the Funder with a reasonable explanation for the delay;
- the Funder considers that the Recipient has not made satisfactory progress with the delivery of the Project;
- the Recipient is, in the reasonable opinion of the Funder and the LEP, delivering the Project in a negligent manner;
- the Recipient obtains duplicate funding from a third party for the Project;
- the Recipient obtains funding from a third party which, in the reasonable opinion of the Funder and the LEP, undertakes activities that are likely to bring the reputation of the Project or the Funder and the LEP into disrepute;
- the Recipient provides the Funder and/or the LEP with any materially misleading or inaccurate information;
- the Recipient commits or committed a Prohibited Act;
- any member of the governing body, employee or volunteer of the Recipient has (a) acted dishonestly or negligently at any time and directly or indirectly to the detriment of the Project or (b) taken any actions which, in the reasonable opinion of the Funder, bring or are likely to bring the Funder's or the LEP's name or reputation into disrepute;
- the Recipient ceases to operate for any reason, or it passes a resolution (or any court of competent jurisdiction makes an order) that it be wound up or dissolved (other than for the purpose of a bona fide and solvent reconstruction or amalgamation);
- the Recipient becomes insolvent, or it is declared bankrupt, or it is placed into receivership, administration or liquidation, or a petition has been presented for its winding up, or it enters into any arrangement or composition for the benefit of its creditors, or it is unable to pay its debts as they fall due; or
- the Recipient fails to comply the reporting and monitoring requirements of Schedule 1<sup>10</sup> or delivery of any Outputs or Milestones;

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<sup>9</sup> Project specific

<sup>10</sup> You must set out these requirements in Schedule 1

the Recipient fails to comply with any of the terms and conditions set out in this Agreement and fails to rectify any such failure within 30 days of receiving written notice detailing the failure.

Wherever under the Agreement any sum of money is recoverable from or payable by the Recipient (including any sum that the Recipient is liable to pay to the Funder in respect of any breach of the Agreement), the Funder may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Recipient under the Agreement or under any other agreement or contract with the Funder.

The Recipient shall make any payments due to the Funder without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise.

Should the Recipient be subject to financial or other difficulties which are capable of having a material impact on its effective delivery of the Project or compliance with this Agreement it will notify the Funder as soon as possible so that, if possible, and without creating any legal obligation, the Funder will have an opportunity to provide assistance in resolving the problem or to take action to protect the Funder and the Grant monies.

The Funder may vary or withhold the Grant or any part thereof and/or require repayment of any Grant from the Recipient already paid if:-

- (a) repayment or recovery is required under State Aid Law; and/or
- (b) the Funder is otherwise required to repay or recover such Funding in whole or in part to or by the European Commission.

Any Grant required to be repaid in accordance with Clause 12.5 shall bear interest as required under State Aid Law.

#### Anti-discrimination

The Recipient shall not unlawfully discriminate within the meaning and scope of any law, enactment, order, or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation, age or otherwise) in employment.

The Recipient shall take all reasonable steps to secure the observance of clause 0 by all servants, employees or agents of the Recipient and all suppliers and sub-contractors engaged on the Project.

#### Human rights

The Recipient shall (and shall use its reasonable endeavours to procure that its staff shall) at all times comply with the provisions of the Human Rights Act 1998 in

the performance of this Agreement as if the Recipient were a public body (as defined in the Human Rights Act 1998).

The Recipient shall undertake, or refrain from undertaking, such acts as the Funder requests so as to enable the Funder to comply with its obligations under the Human Rights Act 1998.

#### Limitation of liability

The Funder accepts no liability for any consequences, whether direct or indirect, that may come about from the Recipient running the Project, the use of the Grant or from withdrawal of the Grant. The Recipient shall indemnify and hold harmless the Funder, its employees, agents, officers or sub-contractors with respect to all claims, demands, actions, costs, expenses, losses, damages and all other liabilities arising from or incurred by reason of the actions and/or omissions of the Recipient in relation to the Project, the non-fulfilment of obligations of the Recipient under this Agreement or its obligations to third parties.

Subject to clause 0, the Funder's liability under this Agreement is limited to the payment of the Grant.<sup>11</sup>

#### Warranties

The Recipient warrants, undertakes and agrees that:

it has all necessary resources and expertise to deliver the Project (assuming due receipt of the Grant);

it has not committed, nor shall it commit, any Prohibited Act;

it shall at all times comply with all relevant legislation and all applicable codes of practice and other similar codes or recommendations, and shall notify the Funder immediately of any significant departure from such legislation, codes or recommendations;

it shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to employees and other persons working on the Project;

it has and shall keep in place adequate procedures for dealing with any conflicts of interest;

it has and shall keep in place systems to deal with the prevention of fraud and/or administrative malfunction;

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<sup>11</sup> The LEP's maximum liability would always be the Grants value unless limited further. Please let Legal Services know if you want to amend this for any project.

all financial and other information concerning the Recipient which has been disclosed to the Funder is to the best of its knowledge and belief, true and accurate;

it is not subject to any contractual or other restriction imposed by its own or any other organisation's rules or regulations or otherwise which may prevent or materially impede it from meeting its obligations in connection with the Grant;

it is not aware of anything in its own affairs, which it has not disclosed to the Funder or any of the Funder's advisers, which might reasonably have influenced the decision of the Funder to make the Grant on the terms contained in this Agreement;

since the date of its last accounts there has been no material change in its financial position or prospects; and

has all relevant and necessary consents, licenses and planning permissions for the works as set out in Schedule 1

#### Insurance

The Recipient shall effect and maintain with a reputable insurance company a policy or policies in respect of all risks which may be incurred by the Recipient, arising out of the Recipient's performance of the Agreement, including death or personal injury, loss of or damage to property or any other loss.

The Recipient shall (on request) supply to the Funder a copy of such insurance policies and evidence that the relevant premiums have been paid.

#### Duration

Except where otherwise specified, the terms of this Agreement shall apply from the date of this Agreement until the anniversary of expiry of the Grant Period or for so long as any Grant monies remain unspent by the Recipient, whichever is longer.

Any obligations under this Agreement that remain unfulfilled following the expiry or termination of the Agreement shall survive such expiry or termination and continue in full force and effect until they have been fulfilled.

On termination or expiry of this agreement, the following clauses shall continue in force: 4.6, 5.3, 5.5, 12.2, 12.3, 12.5, 12.6, 15.1, 15.2 clause [NUMBER].

## Termination

- 19.1 The Funder may terminate this Agreement without liability any Grant payments on giving the Recipient three months<sup>12</sup> written notice should it be required to do so by financial restraints or for any other reason.

## Assignment

The Recipient may not, without the prior written consent of the Funder, assign, transfer, sub-contract, or in any other way make over to any third party the benefit and/or the burden of this Agreement or, except as contemplated as part of the Project, transfer or pay to any other person any part of the Grant.

## Waiver

No failure or delay by either party to exercise any right or remedy under this Agreement shall be construed as a waiver of any other right or remedy.

## Notices

All notices and other communications in relation to this Agreement shall be in writing and shall be deemed to have been duly given if personally delivered, [e-mailed,] or mailed (first class postage prepaid) to the address of the relevant party, as referred to above or otherwise notified in writing. If personally delivered [or if e-mailed] all such communications shall be deemed to have been given when received (except that if received on a non-working day or after 5.00 pm on any working day they shall be deemed received on the next working day) and if mailed all such communications shall be deemed to have been given and received on the second working day following such mailing.

## Dispute resolution

In the event of any complaint or dispute (which does not relate to the Funder's right to withhold funds or terminate) arising between the parties to this Agreement in relation to this Agreement the matter should first be referred for resolution to the Project Manager or any other individual nominated by the Funder from time to time.

Should the complaint or dispute remain unresolved within 14 days of the matter first being referred to the Project Manager or other nominated individual, as the case may be, either party may refer the matter to the Assistant Director for Economy in consultation with the Director of the LEP and the of the Funder and the Chair OR Chief Executive of the Recipient with an instruction to

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<sup>12</sup> Consider if this needs to be a shorter time frame. This may depend upon the payment schedule.

attempt to resolve the dispute by agreement within 28 days, or such other period as may be mutually agreed by the Funder and the Recipient.

In the absence of agreement under clause 0, the parties may seek to resolve the matter through mediation under the CEDR Model Mediation Procedure (or such other appropriate dispute resolution model as is agreed by both parties). Unless otherwise agreed, the parties shall bear the costs and expenses of the mediation equally.

#### No partnership or agency

This Agreement shall not create any partnership or joint venture between the Funder and the Recipient, nor any relationship of principal and agent, nor authorise any party to make or enter into any commitments for or on behalf of the other party.

#### Joint and several liability

Where the Recipient is not a company nor an incorporated entity with a distinct legal personality of its own, the individuals who enter into and sign this Agreement on behalf of the Recipient shall be jointly and severally liable for the Recipient's obligations and liabilities arising under this Agreement.

#### Contracts (Rights of Third Parties) Act 1999

This Agreement does not and is not intended to confer any contractual benefit on any person pursuant to the terms of the Contracts (Rights of Third Parties) Act 1999.

#### Governing law

This Agreement shall be governed by and construed in accordance with the law of England and the parties irrevocably submit to the exclusive jurisdiction of the English courts.

## Schedule 1 The Project

[Detailed gant chart to be attached setting out expected progress and milestones]

The following is to be taken from the final business case approved by the Board and PMG:

Description

Expected Outputs and outcomes to be set out

Monitoring & Reporting to be set out.

DRAFT

DRAFT

Schedule 2 Payment Schedule against project milestones

Milestone	Expected Date of Milestone Completion	Amount of Grant Payable	Expected Payment Date

DRAFT

Schedule 3 Breakdown of Grant

Item of Expenditure	Budget (in UK Sterling)

DRAFT

Schedule 4 Claim Form



Driving prosperity in the M3 corridor

- This form must be completed in full and signed off by the Recipient's representative as identified in the Grant Agreement.
- You must provide supporting evidence for your Claim.
- Unless agreed with the Project Manager, all Claims must be in line with the agreed budget.
- The Claim form and supporting evidence must be sent to the Project Manager.

1. Recipient details

Name	
Organisation	
Address	
Project Title	
Bank Name and Address	
Bank A/C Number	
Sort Code	

2. Funding - I/we wish to claim the following amount of:

£
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3. Declaration and Undertaking

- I/we declare that the project is being implemented in accordance with the Grant Agreement.
- I/we undertake to notify Enterprise M3 immediately in writing of any changes to detailed notes on this form and any attachments.
- Evidence of spend (invoices, certificates of work) will kept and made available for inspection by Enterprise M3.

Name (block capitals)	Signature	Date

[Supporting evidence must be provided with this claim form to support the claim for funding. Supporting evidence could<sup>13</sup> include invoices for work, demonstration that contracts are in place for work, certificates of practical completion.]

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

THE COMMON SEAL of  
HAMPSHIRE COUNTY COUNCIL  
was affixed to this Deed which was  
delivered when stated  
in the presence of:- )

Authorised Signatory

EXECUTED as a DEED  
by [NAME OF FUNDER]  
acting by and under the signatures of:  
[NAME OF DIRECTOR]

[NAME OF DIRECTOR OR COMPANY SECRETARY]

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<sup>13</sup> This will need to be amended depending on how you fund each project.

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