

Leicester Leicestershire

Delivering Growth Together



Leicester and Leicestershire Combined Authority

Operating Agreement

THIS AGREEMENT witnesses as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 The following definitions apply in the interpretation of this Agreement:

Business Case: means a business case as defined and further detailed in the Financial Procedure Rules
Change: means any change to this Agreement, the Constitution or any other legal document which governs the operation of the LLCA;
Change Control Note: means the note issued in relation to a Change in accordance with the Change Control Procedure;
Change Control Procedure: means the procedure for changing this Agreement as set out at clause 11;
Combined Area: means the area consisting of the administrative areas of the Constituent Councils;
Constituent Councils: means the constituent councils of the LLCA namely BDC, CBC, HDC, HBBC, City Council, County Council, MBC, NWLDC and OWBC;
Constitution: means the constitution of the LLCA adopted by the LLCA on [] 2016 setting out how the LLCA operates, how decisions are made and the procedures that are to be followed to ensure that the LLCA operates efficiently, effectively and is both transparent and accountable;
Core Support: means support (as further detailed in clause 4) provided by the Constituent Councils to the LLCA to facilitate cooperation between the Constituent Councils and the LLCA in the exercise of its functions in the Combined Area;
District Councils: means BDC, CBC, HDC, HBBC, MBC, NWLDC and OWBC;
Exit Plan: means the document detailing the strategy for a Constituent Council leaving the LLCA and terminating their part in this Agreement;
Financial Procedure Rules: means the financial procedure rules of the LLCA as contained within the Constitution
Members: means the individuals appointed by the Constituent Councils to be the Members of the LLCA as further defined in Article A3 of the Constitution;
Officer: means an individual appointed by the LLCA pursuant to Article A9 of the Constitution;
Operating Protocol: means a document which provides further detail and structure as to how the LLCA and Constituent Councils shall work together to discharge the Functions;
Order: means the Order made by the Secretary of State creating the LLCA;
Parties: means the LLCA and the Constituent Councils together and Party shall be construed accordingly;

Statutory Officer: means the Chief Operating Officer, the Monitoring Officer or the Chief Financial Officer of the LLCA – these terms are further defined in the Constitution at Article A1.1;
Working Day: means any day which is not a Saturday, Sunday or Public Holiday in England.

- 1.2 Clause headings shall not affect the interpretation of this Agreement.
- 1.3 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.4 Any reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and shall further include all subordinate legislation made from time to time.
- 1.5 References to clauses are to the clauses of this Agreement.
- 1.6 If any court or competent authority finds that any provision of this Agreement (or part of any provision) is invalid, illegal or unenforceable, that provision or part provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this Agreement shall not be affected.

2. STATUTORY OFFICERS

2.1 The LLCA is required by law to appoint the Statutory Officers. The LLCA has appointed the following officers to be the Statutory Officers of the LLCA:

Statutory Officer	Constituent Council of employment
Chief Operating Officer (acting as Head of Paid Service)	<u>Chief Executive, Leicestershire County Council</u>
Monitoring Officer	<u>City Barrister and Head of Standards / Monitoring Officer, Leicester City Council</u>
Chief Financial Officer	<u>Director of Finance</u>

- 2.2 The Statutory Officers shall each appoint a deputy or deputies to act in their absence or incapacity. Such deputy or deputies shall not be an officer of the Statutory Officer's Constituent Council.
- 2.3 The terms of the appointments to be made pursuant to clauses 2.1 to 2.2 shall be done in accordance with the Constitution, any resolution of the LLCA and/or any agreement entered into by the LLCA and any Constituent Council PROVIDED ALWAYS that the LLCA and the Constituent Councils agree that the costs incurred as a result of time spent by the Statutory Officers and their deputies carrying out and performing the roles and duties of the Statutory Officers shall not be charged to the LLCA but shall be borne by the Constituent Council employing the Statutory Officer and/or deputies.
- 2.4 The LLCA and Constituent Councils acknowledge and agree to engage with the support available to them from the Monitoring Officers and Section 151 Officers of the

Constituent Councils and the Statutory Officers shall utilise the existing groups in operation, for example the Leicestershire Treasurer's Association and the Monitoring Officer group, as appropriate.

3. OPERATING PROTOCOLS AND BUSINESS CASES

3.1 Operating Protocols

- (a) The LLCA and the Constituent Councils shall draw up, agree and keep under review such Operating Protocols as it deems necessary in order to facilitate the discharge of the Functions.
- (b) The review of any Operating Protocols shall take place at least annually and may form part of the review of the LLCA referred to in clause 9.

3.2 Business Cases

- (a) Where the LLCA is to: develop plans, strategies, frameworks or other strategic documents for the Combined Area or any part of the Combined Area; or undertake any other work in exercise or discharge of its Functions; then a Business Case shall be developed by Officers in accordance with the Financial Procedure Rules
- (b) In the preparation of every Business Case, a Constituent Council whose area is directly affected by the Business Case proposal may nominate one or more of their officers to contribute to the proposed Business Case.
- (c) Prior to being submitted to the LLCA for approval the Constituent Council(s) incurring any financial liability in relation to funding the costs of the Business Case where it is not already included within the approved budget of the LLCA must have approved in writing the proposed costing and arrangements for sharing of such costings between the relevant Constituent Councils.
- (d) The LLCA shall be asked to consider approving Business Cases by way of a report to any ordinary or extraordinary meeting of the Members.
- (e) Where Business Cases are developed and approved outside of the budget approval process but prior to the LLCA's budget approval for the relevant financial year then the budget for the work shall be included in the LLCA budget to be approved by the LLCA.
- (f) Where Business Cases are developed and approved "in year" the LLCA will take all reasonable steps to ensure its budget records and will ensure that such changes are approved where necessary.
- (g) Work to administer and operate the LLCA on a day to day basis (to include the actions of Statutory Officers exercising the delegated functions set out in the Constitution) does not require a Business Case provided that the costs for such work are included within the approved budget for the relevant financial year in which the work is undertaken.

4. CONSTITUENT COUNCIL SUPPORT ARRANGEMENTS

- 4.1 It is not intended that the LLCA shall directly employ any individual. Officer support may be provided by the Constituent Councils on the terms contained at Appendix 1 of this Agreement.
- 4.2 The LLCA and the Constituent Councils agree that any arrangements between two or more of the Parties, for the purpose of providing officer support to the LLCA by Constituent Councils, shall be made pursuant to section 113 of the Local Government Act 1972 and on the terms as contained in Appendix 1 of this Agreement.
- 4.3 The Core Support shall be provided to the LLCA by the following Constituent Councils:

Core Support Activity	Constituent Council
Administrative/Democratic Support (including support to the Chief Operating Officer and the Monitoring Officer of the LLCA)	<u>County Council (as host authority)</u>
Policy	<u>Appointed by Committees and employed by the County Council (as host authority)</u>
Legal (including support to the Monitoring Officer of the LLCA)	<u>City Council</u>
Communications and Public Relations	<u>County Council (as host authority)</u>
Commissioning and Procurement	<u>County Council (as host authority) in agreement with the City Council as MO</u>
Finance (including support to the Chief Financial Officer of the LLCA, insurance, banking arrangements)	<u>County Council (as host authority)</u>
Audit (internal audit)	<u>County Council (as host authority)</u>
ICT Support	<u>County Council (as host authority)</u>

- 4.4 Business Cases adopted by the LLCA may assign activities similar to Core Support, for any reason and at any time, to other Constituent Councils, with their written agreement, for the purpose of the work detailed in the Business Case.
- 4.5 The Constituent Councils shall be able to charge the LLCA for time spent in providing the Core Support, providing the support referred to in clause 4.4. above and providing any other support which the LLCA may request from them from time to time (together “**the Support**”).

Comment [EG1]: addition requested by Melton as a point of clarity

- 4.6 The maximum charge permitted for the provision of the Support by the Constituent Councils shall be the applicable officer hourly rate, calculated on the basis of their salary, plus an additional 30% of this rate to cover employee on-costs of providing the Support.
- 4.7 Officers providing the Support shall be required to accurately record their time spent on the provision of such Support and ensure evidence of time recording can be produced to the Constituent Councils if requested.
- 4.8 The Constituent Councils providing Core Support named in clause 4.3 may be reviewed in terms of performance and cost and may be replaced by another Constituent Council at any time where:
- (a) it is agreed by more than 50% of the Chief Executives of the Constituent Councils that a review is required; or
 - (b) the Constituent Council currently providing the Core Support has notified the LLCA that they are no longer able to provide the Core Support, for whatever reason in accordance with the provisions of Appendix 1 of this Agreement.
- 4.9 The process for undertaking a review under clause 4.8 shall be agreed between the Constituent Councils at the point where a review has been instigated.

5. COSTS AND BUDGETING

- 5.1 The LLCA shall prepare a budget for each financial year that it exists. The budget shall detail all anticipated expenditure for the coming financial year and all sources of revenue to fund that expenditure. The budget may change "in year" when additional Business Cases are agreed by the LLCA.
- 5.2 The LLCA shall only spend within the budget approved by its Members (as may be amended in accordance with the Constitution) subject to any provision within the Constitution allowing the transfer of funds within the approved budget.
- 5.3 The LLCA shall engage with the Constituent Councils in the preparation of the budget prior to approval by the Members. The Constituent Councils agree that the approval of the budget of the LLCA and any amendments to that budget are matters for the Members of the LLCA.
- 5.4 The Constituent Councils agree that costs incurred in relation to the administration of the LLCA (including Core Support) shall be apportioned between them as follows:
- (a) one third to the City Council;
 - (b) one third to the County Council; and
 - (c) one third to the District Councils to be apportioned between the District Councils on the basis of population.
- 5.5 The Constituent Councils agree that costs incurred in relation to the implementation of a Business Case shall be apportioned according to the impact on each Constituent Council. Suggested apportionment of costs shall be proposed by the Officer preparing the report to Members and shall be detailed in the Business Case.

- 5.6 Any sums agreed by the LLCA to be due from a Constituent Council to the LLCA shall be payable within thirty days of receipt of a valid invoice by the relevant Constituent Council from the LLCA. If a Constituent Council fails to pay any invoice by the due date for payment, then the Constituent Council shall, unless the LLCA directs otherwise, pay interest on the overdue amount at the rate of 4% per annum above the Bank of England base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgement. The Constituent Council shall pay the interest together with the overdue amount.
- 5.7 The LLCA envisages at least one invoice being submitted to each Constituent Council in each financial year that the LLCA operates. However, the LLCA reserves the right to submit invoices as and when it deems it necessary to ensure the LLCA can meet its financial, contractual and statutory obligations.
- 5.8 Each Constituent Council may submit at least one invoice to the LLCA each financial year that the LLCA operates for the cost of the provision of the Support as provided by that Constituent Council where the provision of the Support has been approved in advance by the LLCA or as provided for within this Agreement.
- 5.9 Where an invoice is disputed, the party or parties disputing the invoice shall notify in writing the Chief Financial Officer of the invoicing party within 15 days of receipt of the invoice in question. Disputes shall be resolved in accordance with the procedure set out at clause 10 of the Agreement and such procedure shall commence within 10 days of notification communicated under this clause.

6. INDEMNITY AND RISK

- 6.1 Where, after the establishment of the LLCA, a Constituent Council (hereafter referred to as the "**Indemnifying Council**") independently of the LLCA elects to:

- (a) exercise a power held concurrently with the LLCA; and/or
- (b) discharge a duty imposed concurrently on both the LLCA and the Indemnifying Council;

then the Indemnifying Council shall indemnify and keep indemnified the LLCA in respect of any costs, claims, liabilities and expenses arising as a result of or in connection with the exercise of the power or discharge of the duty by the Indemnifying Council.

- 6.2 Subject to clause 6.5, where the LLCA incurs liability in respect of any claim arising from the exercise of any power it holds, the discharge of any duty imposed upon it and/or the operation of the LLCA then the Constituent Councils agree that such liability (net of any applicable insurances held by the LLCA) shall be apportioned between the Constituent Councils as follows:

- (a) one third to the City Council;
- (b) one third to the County Council; and
- (c) one third to the District Councils to them be apportioned between the District Councils on the basis of population.

- 6.3 Subject to clause 6.4, where a Constituent Council incurs liability in respect of any claim arising from the exercise of any power and/or discharge of any duty by the LLCA (other than as a result of incurring such liability under clause 6.2) then the LLCA shall indemnify the Constituent Council in full against such liability. The LLCA's liability under this clause 6.3 shall be apportioned in accordance with clause 6.2.
- 6.4 Where a Constituent Council incurs liability in respect of any claim arising from the exercise of any power and/or discharge of any duty by the Constituent Council or its officers on behalf of the LLCA the LLCA shall not be liable to indemnify the Constituent Council for any such losses where they have occurred as a result of the Constituent Council or its officers acting ~~unreasonably~~, fraudulently, negligently, unlawfully or contrary to any provisions of the Constitution or this Agreement.
- 6.5 Where the LLCA incurs liability as a result of a Member exercising their vote on a reserved status decision or a unanimity decision as contained in the Constitution, so as to block the decision being taken then the Constituent Councils agree that such liability (net of any applicable insurances held by the LLCA) shall be shared equally by the Constituent Councils.
- 6.5 The LLCA shall hold and maintain such types of insurance policy and at such levels to sufficiently cover the activities undertaken and the officers involved under this Agreement.

7. CONFIDENTIALITY AND FREEDOM OF INFORMATION

- 7.1 Information (which shall include any draft documents, budgets, reports and any other documentation produced by or on behalf of the LLCA) communicated between the Parties is communicated on a confidential basis unless:
- (a) the Party providing the information states otherwise in writing; or
 - (b) the information is in the public domain; or
 - (c) a Party is the disclosure of information is required by law.
- 7.2 The LLCA and the Constituent Councils shall cooperate with each other and provide all necessary assistance in respect of any request for information received (whether under the Freedom of Information Act 2000, the Environmental Information Regulations 2004, the Local Government Transparency Code as amended from time to time or any other superseding legislation) by any Party in respect of the LLCA.
- 7.3 Each Party is responsible for responding to information requests received by it but shall have regard to any views expressed by the other Parties where the response to an information request requires disclosure of information supplied by one or more of the Parties.
- 7.4 All Parties shall provide the Party receiving a request (the "Receiving Party") with such information as the Receiving Party may reasonably require to discharge their statutory duty within five (5) Working Days of the request from the Receiving Party.
- 7.5 This Clause 7 shall survive upon termination of this Agreement.

8. MEETINGS OF THE LLCA

8.1 Meetings of the LLCA, its Committees and Sub-Committees, unless otherwise determined by the LLCA, shall be held at County Hall, Glenfield, Leicester, LE3 8RA.

9. REVIEW OF THE LLCA OPERATION, CONSTITUTION AND GOVERNANCE

9.1 The operation and governance of the LLCA will be reviewed on an annual basis. The review will be led by the Monitoring Officer as part of the requirements to review the Constitution set out in Article A13 of the Constitution.

9.2 The LLCA (through the Monitoring Officer) shall consult and due regard to the views of the monitoring officers of the Constituent Councils on the review prior to presenting any report to the Members on amendments to the Constitution.

9.3 Clause 9.2 shall not apply in circumstances where the Chair of the LLCA determines that reasons of urgency prevent such consultation.

9.4 Any consultation pursuant to clause 9.2 or lack of consultation pursuant to clause 9.3 shall be reported to the Members when they consider any changes to the Constitution.

9.5 The LLCA and the Constituent Councils agree that where any one or more of them proposes to undertake a review under section 111 of the Local Democracy, Economic Development and Construction Act 2009 they will first consult the other Parties on the need for such a review.

10. DISPUTE RESOLUTION

10.1 Any dispute arising between:

(a) the LLCA and one or more Constituent Councils shall in the first instance be referred to the Chief Operating Officer and a chief officer of the relevant Constituent Council(s) to negotiate in good faith; or

(b) two or more Constituent Councils concerning the operation of the LLCA shall in the first instance be referred to chief officers of the relevant Constituent Councils to negotiate in good faith.

10.2 Where the resolution of a dispute is not possible under clause 10.1 then the parties to the dispute may agree to submit the matter in dispute to mediation on such terms of appointment (including as to costs) of a mediator as may be agreed between them in writing.

10.3 Where the parties in dispute cannot reach agreement to submit the dispute to mediation any of the parties may pursue any other remedy available to it at law.

11. CHANGE CONTROL

PRINCIPLES

11.1 Where any of the Parties to this Agreement sees a need to change this Agreement, and such a change:

11.1.1 is a Key Decision as defined in the Constitution of the LLCA

11.1.2 has a cost which is equivalent to 10% or more of the LLCA allocated budget for the matter which is seeking to be changed; or

11.1.3 is determined by the Statutory Officers to be significant;

the Party may at any time recommend such Change only in accordance with the Change Control Procedure detailed within this clause.

11.2 Until such time as a Change is made in accordance with the Change Control Procedure, the Parties shall, unless otherwise agreed in writing, continue to perform and comply fully with this Agreement and its terms prior to such Change.

11.3 Any discussions which may take place between the Parties in connection with a request or recommendation before the authorisation of a resultant Change shall be without prejudice to the rights of the Parties.

11.4 Any action which a Party takes in relation to this Agreement which is not authorised in advance by a Change, and which has not been otherwise agreed in accordance with the Change Control Procedure, shall be undertaken entirely at the expense and liability of that Party unless otherwise agreed in writing between the Parties.

11.5 All proposed Changes by any Party which do not fall within clause 11.1 shall be taken by the Monitoring Officer and Chief Financial Officer of the LLCA following a process of consultation in accordance with clauses 11.5.1 to 11.5.3 below.

PROCEDURE

11.6 If any Party wishes to make a change to this Agreement, Constitution or any other legal document underpinning which governs the operation of the LLCA, the following procedure should be followed:-

11.6.1 The proposed Change shall be raised with the Monitoring Officer and Chief Financial Officer of the LLCA;

11.6.2 The Monitoring Officer and Chief Financial Officer shall discuss the proposal with the Monitoring Officers and Chief Financial Officers from the Constituent Councils in accordance with clause 2.4 of this Agreement;

11.6.3 The Monitoring Officer group and Leicestershire Treasurer's Association shall give consideration to the implications of the proposed Change including, as a minimum:

- a) Benefits to the LLCA of making the proposed Change (i.e. does it mitigate against a previously identified risk);
- b) Risks posed by the proposed Change; and
- c) Financial implications of the proposed Change.

11.6.4 The Monitoring Officers and Chief Financial Officers of the Constituent Councils will be asked to agree by simple majority to the proposed Change being made.

11.6.5 A report shall then be drafted by the Monitoring Officer and Chief Financial Officer of the LLCA to the next appropriate meeting of the LLCA, requesting approval of the Change.

11.6.6 Where a Change is not agreed by Monitoring Officers and/or Chief Financial Officers, any resulting dispute should be resolved in accordance with the dispute resolution process set out at clause 11 of this Agreement.

12. TERMINATION

12.1 This Agreement shall terminate with immediate effect on the date of dissolution of the LLCA.

12.2 Where any Constituent Council decides to leave the LLCA, they may serve a twelve (12) month written notice on all Parties to terminate their part in this Agreement with such notice to be effective on the 1st April after the notice has expired. A notice served under this clause 12.2 shall cease to be effective if within six (6) months of receiving the notice the Parties have not signed off an agreed Exit Plan in accordance with clauses 12.3 and 12.4.

12.3 Where a notice is served under clause 12.2, the Parties shall cooperate in good faith to agree an Exit Plan setting out how the arrangements considered in this Agreement in relation to the departing Constituent Council will be ended.

12.4 It is agreed by the Parties that continuation of the LLCA and the exercise of the Functions is paramount and options under the Exit Plan should be assessed in this light.

12.5 Any Exit Plan should deal with the following matters as a minimum:

- (a) Financial matters, including exit costs;
- (b) Outstanding liabilities (including liabilities arising prior to exit but which are not identified until post exit);
- (c) Management of continuing LLCA work and projects;
- (d) Staffing matters;
- (e) Timetable for departure; and
- (f) The future of the LLCA.

12.6 All liabilities of all Parties under this Agreement incurred whilst they were a Party shall survive the termination of this Agreement.

12.7 All pre-existing liabilities of a departing Party at the point of departure shall survive the part termination of this Agreement.

12.8 Any departing Party shall still be bound by the confidentiality provisions contained in Clause 7 of this Agreement.

13. GENERAL

13.1 Any notice, demand or other communication required to be served on the LLCA or any Constituent Council under this Agreement shall be sufficiently served if delivered personally to or sent by pre-paid first class recorded delivery post or email to the monitoring officer of the relevant Party at the address set out at the beginning of this

Agreement. If so sent, any such notice, demand or other communication shall, subject to proof to the contrary, be deemed to have been received by the relevant Party at the time of person delivery or on the second Working Day after the date of posting or transmission as the case may be.

- 13.2 Nothing in this Agreement shall affect, fetter or otherwise qualify the statutory functions of and the exercise or discharge of such functions by the LLCA and/or the Constituent Councils (or any one of them).
- 13.3 This Agreement shall be governed by and interpreted in accordance with the laws of England and Wales in force from time to time.
- 13.4 Each Party irrevocably submits to the exclusive jurisdiction of the courts of England and Wales.
- 13.5 A person who is not a Party to this Agreement shall not have any right to enforce this Agreement or any term of it by virtue of the Contracts (Rights of Third Parties) Act 1999.
- 13.6 The rights of the Parties to terminate, rescind or agree any variation, waiver or settlement under this Agreement are not subject to the consent of any other person.
- 13.7 Where any Party fails to enforce or delays in enforcing any obligation of any other Party or fails to exercise or delays in exercising a right under this Agreement, such failure or delay will not affect its right to enforce that obligation or constitute a waiver of that right. Any waiver by a Party of any provision of this Agreement will not, unless expressly stated to the contrary, constitute a waiver of that provision on a future occasion.
- 13.8 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the Parties or constitute any Party the agent of another Party.
- 13.9 This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

IN WITNESS whereof the Parties have caused this Agreement to be executed and delivered as a deed on the date at the beginning of this document.

EXECUTED as a DEED
by the LEICESTER AND LEICESTERSHIRE COMBINED AUTHORITY

Authorised signatory

Authorised signatory

EXECUTED as a DEED
by BLABY DISTRICT COUNCIL

Witness to the Seal

EXECUTED as a DEED
by CHARNWOOD BOROUGH COUNCIL

Witness to the Seal

EXECUTED as a DEED
by HARBOROUGH DISTRICT COUNCIL

Witness to the Seal

EXECUTED as a DEED
by HINCKLEY AND BOSWORTH BOROUGH COUNCIL

Witness to the Seal

EXECUTED as a DEED
by LEICESTER CITY COUNCIL

Witness to the Seal

EXECUTED as a DEED
by LEICESTERSHIRE COUNTY COUNCIL

Witness to the Seal

EXECUTED as a DEED
by MELTON BOROUGH COUNCIL

Witness to the Seal

EXECUTED as a DEED
by NORTH WEST LEICESTERSHIRE DISTRICT COUNCIL

Authorised Signatory

EXECUTED as a DEED
by OADBY AND WIGSTON BOROUGH COUNCIL

Witness to the Seal