

**TO: EXECUTIVE MEMBER FOR CHILDREN, YOUNG PEOPLE AND LEARNING  
11<sup>TH</sup> DECEMBER 2017**

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**REVISED CONSORTIUM AGREEMENT FOR THE SOUTH EAST GRID FOR LEARNING  
Director of Children Young People and Learning**

**1 PURPOSE OF REPORT**

- 1.1 To gain approval for the signing of the revised Consortium Agreement for SE Grid for Learning (SEGfL).

**2 EXECUTIVE SUMMARY**

- 2.1 The SEGfL, the Regional Broadband Consortium for SE England was first established in 2000 with Bracknell Forest Council as its Lead Authority providing accommodation and finance, HR and other support services.
- 2.2 At its meeting on 25<sup>th</sup> May 2017 the SEGfL Steering Group agreed that Orbis, a partnership established between East Sussex, Surrey and Brighton and Hove Councils should replace Bracknell Forest Council as the Lead Authority. The new Agreement will come into force on 1<sup>st</sup> January 2018, subject to signing of the Deed of Agreement by all Consortium members. The background to the decision is set out in the Supporting Information.
- 2.3 The revised Agreement (attached) represents a variation to the SEGfL Consortium Agreement entered in to by the Consortium Members and others on 18 January 2005 and sets out the arrangements for the future operation of the Consortium.
- 2.4 The Agreement was drawn up by East Sussex County Council following legal advice from Browne Jacobson and has been scrutinised by the Council solicitors to ensure that, as the former Lead Authority, the Council's interests are protected.
- 2.5 Under the terms of the Agreement, East Sussex Council will assume responsibility for the finances of the Consortium and for the employment of the Consortium Manager, the only remaining member of staff. While it remains in membership the Council will continue to be responsible for a proportionate share of any liabilities, or receive a proportionate share of any funds remaining in the event of the Consortium being brought to an end.

**3 RECOMMENDATIONS**

- 3.1 That the Consortium Agreement be approved for signature by the Borough Solicitor.**

**4 REASONS FOR RECOMMENDATIONS**

- 4.1 Historically SEGfL has had two main sources of funding: membership charges paid by Consortium Members and a management fee payable by service providers under a Framework Agreement negotiated by the Consortium. Income from the Framework Agreement will cease on 1<sup>st</sup> April 2018 and the purpose of the change of Lead Authority is to allow SEGfL to develop its service offer and explore offering services directly to schools and groups of schools.

## **5 ALTERNATIVE OPTIONS CONSIDERED**

- 5.1 SEGfL considered a number of other options, such as partnership with another Regional Broadband Consortium or a commercial supplier but these had not progressed due to reservations from some members. All member authorities were asked whether they wished to take on the role of Lead Authority and there was no interest other than from Orbis.

## **6 SUPPORTING INFORMATION**

### **6.1 Background**

Like other RBCs, SEGfL was originally established in 2000 principally to provide internet services to schools. Initially this was centrally funded through LAs by a grant from central government. Subsequently funding was delegated to schools but schools in a number of member authorities continued to purchase services through their LA to benefit from prices negotiated with suppliers under SEGfL Framework Agreements.

- 6.2 When SEGfL was established in 2000 there were 17 LA members, of these currently 12 members remain.

- 6.3 As noted in 4.1 above, the SEGfL has two main sources of funding: a management fee payable by service providers under the Framework Agreement and membership charges from LAs. These generated £70,000 and £78,000 respectively in 2016-17 and have helped the SEGfL to consistently generate a surplus. The SEGfL Steering Committee has intentionally sustained high levels of reserves during this transitional period and as at 31 March 2017 unallocated reserves stood at £160,032.

- 6.4 In the past, as the lead authority for SEGfL, the Council has recovered the cost of providing support services, such as Finance and HR as well as charging for accommodation and the cost of meetings held at the Education Centre. This has been sufficient to fully fund the annual cost of membership, currently £6000 p.a. Depending on the outcome of current negotiations for the sale of Easthampstead Park Conference Centre, it is intended that Consortium meetings will continue to be held at the Education Centre for which a charge will be made.

### **6.5 The changing market**

The current Framework agreement expired in October 2017 although call-off contracts will continue to operate for several years. The number of authorities choosing to purchase broadband services through the agreement has decreased significantly over time and currently only three LAs take advantage of this service. This has implications for likely future income from any new agreement as the management fee is based on the number of Authorities purchasing services.

- 6.6 The estimated cost of letting a new Framework Agreement is c. £80,000. In the light of the cost and reduced interest on the part of both service providers and LAs, it was agreed that SEGfL will not seek to tender for a new Framework Agreement when the current agreement expires. SEGfL is currently considering alternative arrangements for offering broadband services to schools.

- 6.7 As a result of the changing role of LAs, the growth in the number of academies and other budget pressures, a number of smaller LAs, including Windsor and Maidenhead and Slough, Isle of Wight and Portsmouth have ceased their membership.

6.8 The future loss of the management fee associated with the Framework Agreement and reducing income from LA membership lead the Steering Group to review the future of the consortium as it is unsustainable in its current form. SEGfL has already developed a range of other services<sup>1</sup> but income from these is currently low, c. £3,000 in 2016-17. It would be possible to develop this offer, including offering services to individual schools or groups of schools, however this would require significant increases in support and infrastructure.

6.9 Future service delivery model

A number of alternative ways in which increased support and infrastructure might be provided were explored, including merger with SWGf, an arrangement with JISCOM, the commercial arm of JISC (the Joint Information Services Committee) or another commercial partner, and a partnership with Orbis, a business services partnership established between East Sussex, Surrey and Brighton and Hove Councils. These options were discussed by Steering Group in July 2016 and it was agreed that the expression of interest by Orbis should be pursued. Bracknell Forest indicated that it would be happy to relinquish the role of Lead Authority, if required.

6.10 The main benefits of the relationship with Orbis are seen to be:

- Orbis represents existing historical members who understand the function and values of the SEGfL and is keen to maintain them;
- Orbis does not wish to alter the Consortium operating agreement, and would desire to maintain decision and change process within the current steering group model;
- Orbis offers a simple migration platform to a similar organisation, enabling the SEGfL to retain its function and delivery;
- Orbis is a public sector organisation and will not be seeking a financial output from the group;
- Orbis offers a geographically suitable working offer for existing employees, allowing staff to be retained as part of the migration;
- Orbis contains a suite of business support functions, which would become accessible to SEGfL *at reduced or no cost*;
- Orbis offers commercial and development support functions which can be accessed to develop new and existing services;
- Orbis is committed to allocating staff and resource wherever possible to ensure that SEGfL continues to function whilst there remains a shared desire for the consortium to operate;
- Both Orbis and SEGfL maintain similar values as organisations.

6.11 In addition to indicating that it is prepared to underwrite SEGfL while a new service model is developed, Orbis has also indicated that support costs are likely to reduce. Should it decide to remain a member, the Council would share in this benefit.

6.12 Following further investigation, in November 2016 the Steering Group accepted an expression of interest from Orbis and in January 2017 agreed that subject to due diligence by Orbis' Financial team, the acceptance of the business case by the Orbis Board and the agreement of all members, one of the Orbis members should replace Bracknell Forest Council as the Lead Authority. These conditions were subsequently met and it was agreed that East Sussex would take on the role of Lead Authority.

6.13 Implications for BFC: legal implications and risk

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<sup>1</sup> Including learning resources available through the Education Network (NEN), advice and consultancy, training on e-safety and information security and other procurement agreements for hardware and software

The current legal agreement dates back to the establishment of SEGfL in 2000, with minor amendments in 2005 and many of its provisions no longer apply. Although under the Agreement the cost of any claim against SEGfL would be shared amongst the members, as lead authority the Council would bear the additional burden of managing the process.

- 6.14 In the short term Orbis has indicated that it is willing to underwrite SEGfL while a new service model is developed. Under the new Agreement, the financial risk is shared by members on the basis of size with small LAs, including the Council, liable to 4.76% of any costs. The principle risk would arise from a decision to disband the consortium. At the Council's suggestion the Steering Group has always maintained reserves sufficient to meet such costs (currently £50,000), including redundancy costs of staff.
- 6.15 The only other risk likely to arise is in the event of an individual or organisation bringing a legal case against the consortium. This would be likely to be met from insurances. In the event of the consortium being wound up, any monies not spent will be divided amongst the members as per the share allocation in the Deed.
- 6.16 Staffing Implications and TUPE  
The SEGfL Office Manager voluntarily left the service on 31st March. In the short term she has continued to provide office support on a casual basis. As a result only one member of staff, the Consortium Manager will transfer to East Sussex.
- 6.17 Financial implications for the Council  
In 2016-17 SEGfL made a net contribution to the Council of £15,320 excluding the cost of SEGfL Membership which was re-charged to schools as part of the Schools Broadband Service. This does not include the cost of services provided to SEGfL by the Council. In 2017-18 this is projected to fall to £10,990 allowing for loss of income after SEGfL relocate to East Sussex from the beginning of 2018.
- 6.18 Moving forward, the loss of income will present the Department with a cost pressure which relevant cost centres will need to seek to manage within their existing resources.
- 6.19 Furthermore, with schools no longer funding the council's subscription fee, continued membership will present another cost pressure, currently at £6,000. Until the benefits to the Council from the new arrangement are confirmed, it is recommended to defer a decision on future membership.
- 6.20 Use of accumulated reserves  
As set out above, as at 31 March 2017, the SEGfL had accumulated a surplus balance of £160,032. The 2017-18 budget plan provides for a reduction of £10,000 in reserves to £150,000. In the longer term a further significant reduction is anticipated in 2018-19 when the consortium will no longer be in receipt of the management fee.
- 6.21 In the event of the Consortium being wound up the Consortium Agreement provides for any accumulated surplus to be redistributed to members in proportion to their share allocations. There is no provision for any funds to be redistributed to member authorities, or former members, during the lifetime of the Agreement.
- 6.22 Other issues  
The above information does not take account of the benefits obtained through SEGfL membership by the LA or its schools, including discounts on the cost of

hardware/software purchased through purchasing arrangements, advice and training and access to online learning resources through the Education Network (NEN).

## **7 ADVICE RECEIVED FROM STATUTORY AND OTHER OFFICERS**

### Borough Solicitor

- 7.1 There are no specific legal implications arising from this report.

### Borough Treasurer

- 7.2 The Borough Treasurer is satisfied that no significant financial implications arise from this proposal. Should the Department seek to continue membership of the agreement, sufficient funding would need to be identified.

### Human Resources

- 7.3 As indicated in this report, there is one member of staff who will transfer to East Sussex County Council under TUPE regulations. Consultation has taken place with the staff member in line with the Council's statutory obligations. Proposed measures, such as the change of office location/flexible working, have been raised and agreed with the staff member and East Sussex during the period of consultation. The current proposed transfer date of 1 January 2018 is achievable as all the TUPE obligations have been fulfilled.

### Equalities Impact Assessment

- 7.4 Not applicable

### Strategic Risk Management Issues

- 7.5 The risks to the authority are set out in the supporting information in paragraph 6.12ff.

## **8 CONSULTATION**

### Principal Groups Consulted

- 8.1 All members of SEGfL have been informed of the discussions with potential partners and latterly with Orbis through meetings of the Steering Group.

### Method of Consultation

- 8.2 Papers presented at meetings of the Steering Group.

### Representations Received

- 8.3 The decision to replace the Council as Lead Authority was unanimous, with LAs not represented at the meeting confirming their agreement outside the meeting.

### Background Papers

*Broadband and Internet Services to Schools, report to DMT 15<sup>th</sup> November 2016*  
*Orbis Business Case, January 2017*

*SE Grid for Learning: Change of Lead Authority, report to DMT 27<sup>th</sup> June 2017*

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