

# Report to Economic Growth Scrutiny Panel

Agenda  
Item:

**A.4**

Meeting Date: 17 October 2019  
Portfolio: Leader  
Key Decision: Yes: Recorded in the Notice Ref:KD19/19  
Within Policy and  
Budget Framework  
Public / Private Public

Title: BORDERLANDS COLLABORATION AGREEMENT  
Report of: Corporate Director of Economic Development  
Report Number: ED.33/19

## **Purpose / Summary:**

The report outlines the provisions of the Collaboration Agreement, which sets out the Governance structure to facilitate the relationships between the five participating local authorities in the Borderlands Partnership in order to effectively manage the delivery of the Borderlands Inclusive Growth Deal. The Chairman of the Economic Growth Scrutiny Panel requested that the report be submitted to the Panel to allow Members to have a better understanding of the Collaboration Agreement and enable stronger scrutiny of the subject going forward.

## **Recommendations:**

That the Panel receive the report.

## **Tracking**

Executive:	
Scrutiny:	
Council:	

**Report to Executive**

**Agenda  
Item:**

Meeting Date: 14 October 2019  
 Portfolio: Leader  
 Key Decision: Yes: Recorded in the Notice Ref: KD19/19  
 Within Policy and Budget Framework No  
 Public / Private Public

Title: BORDERLANDS COLLABORATION AGREEMENT  
 Report of: Corporate Director of Economic Development  
 Report Number: ED33/19

**Purpose / Summary:**

The report outlines the provisions of the Collaboration Agreement, which sets out the Governance structure to facilitate the relationships between the five participating local authorities in the Borderlands Partnership in order to effectively manage the delivery of the Borderlands Inclusive Growth Deal.

**Recommendations:**

**It is recommended that the Executive**

1. Consider and endorse the proposed governance structure and provisions set out in the Collaboration Agreement (attached at Appendix 1) and recommend it to Council for approval.
2. Council be requested to delegate authority to the Corporate Director of Governance and Regulatory Services to approve any subsequent amendments following consultation with the Corporate Director of Economic Development and the Leader. For the avoidance of doubt, if any change is, in the opinion of the Leader, significant or substantial, this delegation will not apply.

**Tracking**

Executive:	14 October 2019
Scrutiny:	
Council:	

## **1. BACKGROUND**

- 1.1 The Borderlands Partnership ('the Partnership') comprises of five participating local authorities: Carlisle City Council, Cumbria County Council, Dumfries and Galloway Council, Northumberland County Council and Scottish Borders Council. Since 2014 the Partnership has been working to develop a joint strategy to secure investment for priority projects that will accelerate economic growth for the benefit of individuals, businesses and communities across the region.
- 1.2 The Partnership submitted the proposal for the Borderlands Inclusive Growth Deal ('the Growth Deal') to both UK and Scottish Governments in September 2018. In March 2019, both Governments confirmed their funding commitment to the Deal.
- 1.3 The Heads of Terms announcement for the Growth Deal was made on 1<sup>st</sup> July 2019. This includes a commitment to a £350m package of projects and programmes, but the release of funding is conditional on business cases being approved and agreement of a Final Deal.
- 1.4 To reach Final Deal, it is understood that the following needs to be in place:
  - a) Approved business cases
  - b) Governance arrangements
  - c) Implementation Plan
  - d) Financial Plan
  - e) Monitoring and Evaluation Framework
  - f) Communications Protocol

## **2. PROPOSALS**

- 2.1 The Partnership have been working with the legal firm Burness Paul on the development of a Collaboration Agreement that will provide the governance structure to facilitate the relationships between the five participating local authorities.
- 2.2 The Collaboration Agreement will commit the five participating local authorities to work together in setting the strategy and exercising oversight and overall control in relation to delivery of the Growth Deal and in doing so, to give effect to decisions taken at each of the various levels within the governance structure.
  - 2.2.1 The Draft Collaboration Agreement is provided as Appendix 1. The Agreement is based on the governance framework set out in Section 2 and covers the main constituent elements of the governance structure at the strategic, programme management and delivery levels:

### **Strategic structure**

- Borderlands Partnership Board
- Economic Forum
- Chief Executives' Group
- Finance Directors' Group
- Economic Development Directors' Group

#### Programme Management structure

- Programme Management Office
- The Accountable Bodies

#### Delivery structure

- Programme Boards
- Project Delivery Board

2.3 The Collaboration Agreement places decision-making at the strategic level with the Partnership Board, consisting of the Leaders of the five participating local authorities plus one individual nominated by the Economic Forum. Decision-making by the Partnership Board will also be supported by the Chief Executives', Finance Directors' and Economic Development Directors' groups.

2.4 At the programme management level, the Programme Management Office ('PMO') will be responsible for supporting the programme governance, project processes and day to day management of the Growth Deal programme. The PMO will report to the strategic decision-making structure and escalate to the Partnership Board any major issues such as serious cost overruns on projects. As the Partnership is a non-statutory body, an accountable body is required to manage funding from Scottish and UK governments. Dumfries and Galloway Council will have the role of accountable body as regards the Scottish Government funds and Northumberland County Council will have the role of accountable body as regards the UK Government funds.

2.5 Governance at the delivery level will comprise of Programme Boards and Project Delivery Boards. The Programme Boards will have representation from key public and private sector partners and will manage the delivery of the six overarching key programmes (Digital, Energy, Place, Business, Skills & Innovation and Infrastructure) and will report to the strategic decision-making structure. The Project Delivery Boards will report to the programme management structure and will oversee delivery of discrete projects such as the Innerleithen Mountain Bike Innovation Centre, Carlisle Station Gateway and Citadels, Chapelcross, and Berwick Theatre and Conference Centre.

### **3. CONSULTATION**

3.1 The Chief Executives and Leaders of all five participating local authorities have been involved in preparation of the Collaboration Agreement.

2.2 The provisions of the Collaboration Agreement have also been considered by this Council internally, involving the Corporate Director of Governance and Regulatory Services, the Corporate Director of Finance and Resources, the Corporate Director of Economic Development and the Legal Services Manager.

#### **4. CONCLUSION AND REASONS FOR RECOMMENDATIONS**

- 4.1 The Partnership considers that the benefits of the Growth Deal will only be maximised if the five participating local authorities collaborate with each other in performing the tasks associated with oversight and delivery.
- 4.2 The Scottish and UK Governments require the establishment of a sound governance structure as part of the assurance framework in order to reach Full Deal. The Borderland Partnership authorities intend that this Collaboration Agreement should fulfil this requirement.
- 4.3 The provisions and framework set by this Collaboration Agreement represents the best means of ensuring that a robust governance framework is in place with regards to oversight and delivery of the Growth Deal. On this basis it is recommended that the Executive:
- Consider and endorse the proposed governance structure and provisions set out in the Collaboration Agreement (attached at Appendix 1) and recommend it to Council for approval.
  - Council be requested to delegate authority to the Corporate Director of Governance and Regulatory Services to approve any subsequent amendments following consultation with the Corporate Director of Economic Development and the Leader. For the avoidance of doubt, if any change is, in the opinion of the Leader, significant or substantial, this delegation will not apply.

#### **5. CONTRIBUTION TO THE CARLISLE PLAN PRIORITIES**

- 5.1 The Growth Deal and its component programmes and projects contribute to all five of the Carlisle Plan priorities:
- P1: Supporting business growth and skills development to improve opportunities and economic prospects for the people of Carlisle
- P2: Further develop sports, arts and cultural facilities to support the health and well-being of our residents
- P3: Improving the quality of our local environment and green spaces so that everyone can enjoy living, working and visiting Carlisle
- P4: Address current and future housing needs to protect and improve residents' quality of life
- P5: Promoting Carlisle regionally, nationally and internationally as a place with much to offer - full of opportunities and potential.

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**Appendices  
attached to report:**

**Appendix 1 – Draft Borderlands Collaboration Agreement**

**Note: in compliance with section 100d of the Local Government Act 1972 the report has been prepared in part from the following papers:**

- None

## **CORPORATE IMPLICATIONS:**

**LEGAL –** The proposed Collaboration Agreement is pursuant to section 1 of the Localism Act 2011 which provides that the Council, subject to some limitations, has the power to do anything that individuals generally may do, such power being known as the ‘general power of competence’.

**FINANCE –** This collaboration agreement sets out the governance arrangements to support the Borderlands Growth Deal and details the relationships between the respective partners. In terms of any future financial support required from the Council for the individual projects, these projects are still subject to detailed business cases and therefore no funding has, as yet, been included within the MTFP. Contributions to support the PMO and the Council’s Borderland Project Officer have been included with the budget on a non-recurring basis, and any additional resources will have to be considered as part of the 2020/21 budget process.

**EQUALITY –**

**INFORMATION GOVERNANCE –**



**COLLABORATION AGREEMENT**

**among**

**CARLISLE CITY COUNCIL**

**CUMBRIA COUNTY COUNCIL**

**DUMFRIES AND GALLOWAY COUNCIL**

**NORTHUMBERLAND COUNTY COUNCIL**

**and**

**SCOTTISH BORDERS COUNCIL**

**BORDERLANDS INCLUSIVE GROWTH DEAL**

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## **COLLABORATION AGREEMENT**

**among**

- (1) **CARLISLE CITY COUNCIL** established under the Local Government Act 1972 and having its principal office at Civic Centre, Carlisle, Cumbria, CA3 8QG (“**CaCC**”);
- (2) **CUMBRIA COUNTY COUNCIL** established under the Local Government Act 1972 and having its principal office at Cumbria House, 117 Botchergate, Carlisle CA1 1RD (“**CuCC**”);
- (3) **DUMFRIES AND GALLOWAY COUNCIL** established under the Local Government etc. (Scotland) Act 1994 and having its principal office at Council Offices, English Street, Dumfries, DG1 2DD (“**DGC**”); and
- (4) **NORTHUMBERLAND COUNTY COUNCIL** established under the Local Government Act 1972 and having its principal office at County Hall, Morpeth, NE61 2EF (“**NCC**”); and
- (5) **SCOTTISH BORDERS COUNCIL** established under the Local Government etc. (Scotland) Act 1994 and having its principal office at Council Headquarters, Newtown St Boswells, Melrose, Scottish Borders, TD6 0SA (“**SBC**”)

(CaCC, CuCC, DGC, NCC and SBC being together referred to as the “**Participating Authorities**”)

### **BACKGROUND:**

- (A) The Participating Authorities have been working in partnership to develop proposals for a Growth Deal (known as the “Borderlands Inclusive Growth Deal”) to unlock the potential for sustainable and inclusive economic growth across the combined area served by the Participating Authorities.
- (B) The Participating Authorities consider that the benefits of the Growth Deal, in promoting and improving the well-being of the respective areas served by the Participating Authorities (and the people within those areas), will only be maximised if they collaborate with each other in performing the public tasks associated with oversight and delivery of the Growth Deal; and they consider that collaboration, under the framework set by this Agreement, represents the best means to maximise the impact of the Growth Deal in achieving the objectives (which they have in common) underlying their participation in the Growth Deal.
- (C) It is anticipated that the formal documentation to put the Growth Deal in place [will be signed shortly]; and it is therefore appropriate that the provisions governing the collaborative arrangements among the Participating Authorities with regard to

oversight and delivery of the Growth Deal should be recorded in a formal Collaboration Agreement, in the interests of ensuring that a robust governance framework is in place.

- (D) The Participating Authorities intend that this Collaboration Agreement should fulfil the requirement to establish a sound governance structure as part of the Growth Deal Monitoring and Reporting Framework (as defined below) to be overseen by the Scottish City Region and Growth Deal Delivery Board.
- (E) CaCC, CuCC and NCC (in exercise of their powers under section 1 of the Localism Act 2011) and DGC and SBC (in exercise of their powers under section 20 of the Local Government in Scotland Act 2003) wish to enter into this Collaboration Agreement accordingly.

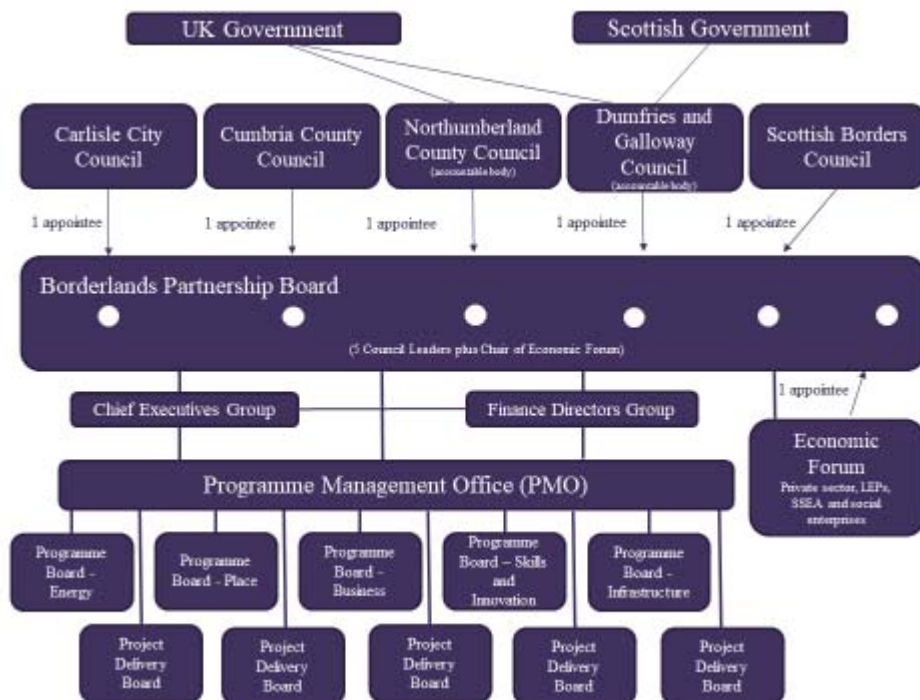
**IT IS AGREED** as follows:

## 1 DEFINITIONS AND INTERPRETATION

- 1.1 The definitions and principles of interpretation set out in Part 1 of the schedule annexed to this Collaboration Agreement shall apply throughout this Collaboration Agreement and throughout the Schedule.

## 2 GOVERNANCE FRAMEWORK

The governance framework in respect of the Growth Deal will involve the following elements:



### **3 PARTNERSHIP BOARD**

- 3.1 The composition of the Partnership Board shall be as prescribed in Part 2A of the Schedule.
- 3.2 The remit of the Partnership Board is to provide strategic direction and exercise high level oversight and overall control, serving as the forum for joint decision-making at the highest level within the governance framework set by this Collaboration Agreement (but subject to clause 3.4) in relation to the delivery of the Growth Deal; in particular, the Partnership Board shall:
- 3.2.1 ensure that the delivery of the Growth Deal is carried out in a manner which aligns with the strategic objectives underlying the Growth Deal and so as to maximise impact in terms of furtherance of those objectives;
  - 3.2.2 retain a watching brief regarding changes in the wider environment, with a view to revisiting and refining the strategic objectives underlying the Growth Deal and/or the approaches taken to delivery, as required;
  - 3.2.3 receive reports from the Chief Executives' Group and the Finance Directors' Group and (through such reports) monitor and evaluate, at high level, progress with the Growth Deal Projects, as well as the impact of the Growth Deal in furthering the strategic objectives underlying the Growth Deal;
  - 3.2.4 exercise oversight at high level in relation to the use of the Growth Deal Programme Budget, and in particular to ensure that such funds are used in accordance with the conditions attaching to the Growth Deal Programme Budget and in line with principles of best value;
  - 3.2.5 ensure that there is full compliance at all times with the Monitoring and Reporting Framework;
  - 3.2.6 maintain an overview in relation to key risks associated with delivery of the Growth Deal, and ensure that proactive steps are taken to manage and mitigate such risks;
  - 3.2.7 ensure (to the extent that it is able to do so) that sufficient resources are made available within the PMO to enable the PMO to carry out its functions effectively and in a manner which allows delivery of the Growth Deal Projects to proceed in line with anticipated timescales;
  - 3.2.8 monitor the effectiveness of the Economic Forum, the Programme Boards and the Project Delivery Boards in carrying out their respective functions;
  - 3.2.9 seek to resolve any dispute or difference which may arise among the Participating Authorities from time to time in relation to any aspect of the Growth Deal (but without prejudice to the provisions of clause 19 (dispute resolution));
  - 3.2.10 retain a watching brief regarding other projects, initiatives and strategic developments outside the Growth Deal and, to the extent that it is able to do so, seek to ensure that:

- 3.2.10.1 the delivery of the Growth Deal aligns with the delivery such other projects and initiatives and with such other strategic developments; and
  - 3.2.10.2 the delivery of such other projects and initiatives, and the advancement of such other strategic developments, align with the delivery of the Growth Deal;
- 3.2.11 promote the Growth Deal; and
- 3.2.12 explore other areas for potential collaboration between and among the Participating Authorities; and
- 3.2.13 have such other roles and responsibilities as are referred to under the heading “Remit” in Part 2A of the Schedule.
- 3.3 In carrying out its work, the Partnership Board shall give due consideration to reports and recommendations issued by the Chief Executives’ Group and Finance Directors’ Group from time to time; as well as taking full account of reports and recommendations issued by the PMO, the Economic Forum, the Programme Boards and the Project Delivery Boards.
- 3.4 Subject to clause 3.5.5, the Partnership Board shall have no authority to implement, or direct the implementation of, any matter of the nature referred to in clause 3.5, without the prior written approval of each of the Participating Authorities.
- 3.5 The matters to which clause 3.4 shall apply are as follows:
  - 3.5.1 any financial commitments beyond those encompassed within the Growth Deal;
  - 3.5.2 any change in the PMO Host Employer or the Accountable Bodies;
  - 3.5.3 any amendments to this Collaboration Agreement or the Monitoring and Reporting Framework;
  - 3.5.4 any matter which would result in an Accountable Body being in breach of its obligations and/or legal duties under and in relation to the Growth Deal and/or the Monitoring and Reporting Framework;
  - 3.5.5 any matter outside of the Growth Deal which is wholly funded by a Participating Authority or Participating Authorities using funding which falls outside the Growth Deal Programme Budget; and
  - 3.5.6 any other matter where the Participating Authorities agree in writing that it should apply.
- 3.6 The proceedings of the Partnership Board shall be governed by the rules of procedure set out in Part 2B of the Schedule.
- 4 ECONOMIC FORUM**
- 4.1 The composition of the Economic Forum shall be as prescribed in Part 3A of the Schedule.

- 4.2 The remit of the Economic Forum is to provide an opportunity for wider stakeholders – with a particular focus on economic development agencies and the business community (including social enterprises) – to contribute towards maximising the impact of the Growth Deal in stimulating inclusive economic growth within the area served by the Growth Deal; in particular, the Economic Forum shall:
- 4.2.1 champion, co-ordinate and offer advice to the Partnership Board on priorities for skills, business growth and regeneration, and ensure that these are delivered in alignment with local needs and aspirations whilst delivering against the Growth Deal priorities;
  - 4.2.2 maintain appropriate channels of communication and escalate decisions as necessary with third party organisations;
  - 4.2.3 advise the Partnership Board on how best to engage with the business community regarding the Growth Deal;
  - 4.2.4 advise on economic priorities for the business communities across the Borderlands Region; and
  - 4.2.5 utilise business networks to promote and support the successful delivery of Growth Deal Projects.
- 4.3 The Chair of the Economic Forum shall, in addition to his/her functions in chairing meetings of the Economic Forum and taking the role of spokesperson in relation to communications issued on behalf of the Economic Forum, serve as a member of the Partnership Board.
- 4.4 The Chair of the Economic Forum (or, if he/she is unavailable, his/her substitute) will have the following remit, in his/her capacity as a member of the Partnership Board:
- 4.4.1 he/she must carry to the Partnership Board the perspectives of all of the members of the Economic Forum, not just her/his own views (or the interests of the specific industry grouping from which he/she was drawn);
  - 4.4.2 similarly, he/she is expected to convey to the Partnership Board any special interests or issues of concern arising from the different geographies falling within the Borderlands Region;
  - 4.4.3 he/she must convey to the Partnership Board the consensus or majority view (identified as such) reached by the Economic Forum in its own deliberations.
- 4.5 The proceedings of the Economic Forum shall be governed by the rules of procedure set out in Part 3B of the Schedule.

## **5 CHIEF EXECUTIVES' GROUP**

- 5.1 The composition of the Chief Executives' Group shall be as prescribed in Part 4A of the Schedule.
- 5.2 The Chief Executives' Group shall:
- 5.2.1 support the Partnership Board in overseeing the delivery of the Growth Deal;

- 5.2.2 exercise oversight and direction in relation to the work of the PMO, including management of the PMO (primarily through management of the Growth Deal Manager) and monitoring its performance in carrying out its work;
  - 5.2.3 highlight to the Partnership Board key issues (whether for noting or decision) arising from the reports and recommendations issued from time to time by the PMO, and provide appropriate guidance and recommendations to the Partnership Board in relation to issues of that nature; and
  - 5.2.4 provide leadership in key themes and priorities of the Growth Deal in furtherance of and consistent with the policies and directions issued by the Partnership Board from time to time.
- 5.3 The Chief Executives' Group shall, at least five Business Days prior to each meeting of the Partnership Board, issue to the Partnership Board a report which shall describe in detail and provide commentary and recommendations regarding the work in delivery of the Growth Deal carried out since the period covered by the preceding report (or, in the case of the first meeting of the Partnership Board, since the date of this Agreement).
- 5.4 The proceedings of the Chief Executives' Group shall be governed by the rules of procedure set out in Part 4B of the Schedule.

## **6 FINANCE DIRECTORS' GROUP**

- 6.1 The composition of the Finance Directors' Group shall be as prescribed in Part 5A of the Schedule.
- 6.2 The remit of the Finance Directors' Group shall be to ensure financial probity, and address issues of risk and assurance, in relation to the delivery of the Growth Deal; in particular, the Finance Directors' Group shall:
- 6.2.1 support the PMO, the Chief Executives' Group and the Partnership Board in overseeing the Growth Deal's finances;
  - 6.2.2 support the Partnership Board in ensuring that financial plans are set having regard to, and in alignment with, the business cases approved by the UK Government and Scottish Government from time to time;
  - 6.2.3 ensure that the sums expended from the Growth Deal Programme Budget accord with the financial plan approved by the Partnership Board from time to time;
  - 6.2.4 consider quarterly financial reports, and escalate any significant risks to the Partnership Board through the Chief Executives' Group and, where the Finance Directors' Group considers it appropriate, directly to the Partnership Board;
  - 6.2.5 collate financial information across the various Growth Deal Projects, including performance against budget;
  - 6.2.6 take a proactive approach to the management of cash flow in respect of the Growth Deal as a whole;



- 6.2.7 provide financial information to the Accountable Bodies, in a manner which enables the Accountable Bodies to fulfil their respective responsibilities in this regard to the UK Government and/or (as applicable) the Scottish Government;
- 6.2.8 have such other roles and responsibilities as are referred to under the heading “Remit” in Part 5A of the Schedule
- 6.3 The proceedings of the Finance Directors’ Group shall be governed by the rules of procedure set out in Part 5B of the Schedule.
- 7 PROGRAMME MANAGEMENT OFFICE**
- 7.1 The composition of the PMO, as at the date of this Agreement, is as specified in Part 6 of the Schedule.
- 7.2 The Partnership Board shall keep the composition of the PMO under review, and shall recommend to the respective Participating Authorities such adjustments to the composition of the PMO as the Partnership Board may consider appropriate from time to time, whether to reflect changes in the volume of work requiring to be dealt with by the PMO as the Growth Deal progresses, the need for additional specialist expertise within the PMO, or otherwise.
- 7.3 Each of the Participating Authorities confirms that it recognises the significance of the PMO resource as a key factor in determining the pace at which delivery of the Growth Deal can proceed; and each of the Participating Authorities commits to giving due consideration to any request from the Partnership Board from time to time for additional resource within the PMO.
- 7.4 The PMO shall:
  - 7.4.1 act as the primary point of contact of the Participating Authorities with Scottish and UK Governments in respect of the Growth Deal;
  - 7.4.2 act as the primary point of contact between the decision making structures within the overall governance framework of the Growth Deal and the Accountable Bodies;
  - 7.4.3 manage the Growth Deal Operating Budget and report to the Chief Executives’ Group, the Finance Directors’ Group and the Accountable Bodies regarding performance against the Growth Deal Operating Budget (including appropriate explanations in relation to any variance as against the amount or timing of anticipated spend from that budget);
  - 7.4.4 manage the Growth Deal Programme Budget and report to the Chief Executives’ Group, the Finance Directors’ Group and the Accountable Bodies regarding performance against the Growth Deal Programme Budget (including appropriate explanations in relation to any variance as against the amount or timing of anticipated spend from that budget);
  - 7.4.5 have responsibility for overseeing and co-ordinating delivery of the Growth Deal Projects by the respective Delivery Partners;
  - 7.4.6 report to the Chief Executives’ Group, and through the Chief Executives’ Group to the Partnership Board;



- 7.4.7 liaise with and support the Finance Directors' Group, as appropriate;
- 7.4.8 provide administrative and secretariat support to the Partnership Board, the Economic Forum, the Chief Executives' Group, the Finance Directors' Group, the Programme Boards and the Project Boards, including the preparation, circulation and, where appropriate, publication of reports, agendas and minutes;
- 7.4.9 convey strategic decisions from the Partnership Board to the Economic Forum, the Programme Boards and the Project Boards;
- 7.4.10 give effect to decisions of the Partnership Board by putting in place funding agreements (in the name of the relevant Accountable Body), and transfers of funding, to Delivery Partners (including the preparation of legal agreements and co-ordinating their issue, execution and delivery by the relevant Accountable Body);
- 7.4.11 within delegated limits and in accordance with the PMO Host Employer's regulations, manage the procurement and appointment of external consultants to be funded by the Growth Deal Operating Budget, and (where requested on behalf of the relevant Delivery Partner) in relation to individual Growth Deal Projects;
- 7.4.12 escalate to the Finance Directors' Group and Chief Executives' Group (for onward referral to the Partnership Board and Accountable Bodies, where appropriate) any major issues such as serious cost overruns on Growth Deal Projects, which require a strategic view given the potential impact on the overall Growth Deal;
- 7.4.13 highlight at an early stage any issues of concern regarding performance on the part of individual Delivery Partners, so that appropriate remedial steps can be taken;
- 7.4.14 carry out an ongoing monitoring and recording role, assessing progress and spend across the respective Growth Deal Projects, which role shall include (without limitation):
  - 7.4.14.1 procuring, establishing and maintaining the Growth Deal management database to record all information relating to the Growth Deal which requires to be gathered and retained for the purposes of the Monitoring and Reporting Framework;
  - 7.4.14.2 maintaining and archiving all documentation relating to the Growth Deal ;
  - 7.4.14.3 providing appropriate post-approval support to Growth Deal Projects (e.g. arranging project inception visits);
  - 7.4.14.4 managing and undertaking the project claims and monitoring process in respect of Growth Deal Projects, including:
    - (a) processing Growth Deal Project claims and preparing such claims for approval and payment by the relevant Accountable Body in accordance with the approved payment procedures; and

(b) preparing Growth Deal Project reporting for Accountable Bodies for onward reporting to the UK and Scottish Governments and the Partnership Board;

7.4.14.5 managing and operating the frameworks and mechanisms (as determined from time to time by the Chief Executives' Group) in relation to financial management, risk management, programme, project and performance management in respect of the Growth Deal as a whole, including (without limitation) those expressly provided for under the Monitoring and Reporting Framework);

7.4.14.6 acting as the principal liaison with Programme Boards and Project Delivery Boards, and providing technical support to Delivery Partners and the Programme Boards as required (a) to develop the business case for programmes and projects (b) to co-ordinate the submission of such programme and project business cases to the UK and Scottish Governments; and generally ensuring efficient and co-ordinated delivery across the various strands represented by the overall Growth Deal;

7.4.14.7 managing communications (under the direction of the Chief Executives' Group as regards key messages), including the preparation and posting of material on the Growth Deal website and the issue of updates via social media; and

7.4.14.8 assisting with the implementation of stakeholder engagement strategies.

7.5 In carrying out its role, the PMO must use every effort to secure that decision-making at Partnership Board level is based on reliable, comprehensive and unbiased information; and similarly that decisions taken at Partnership Board level are implemented efficiently, effectively and without bias.

7.6 The staffing and operation of the PMO shall be governed by the provisions set out in Part 7 of the Schedule.

## **8 PROGRAMME BOARDS**

8.1 The number of Programme Boards, and the core focus of each Programme Board, shall be as determined from time to time by the Partnership Board.

8.2 The composition of each of the Programme Boards shall be as prescribed from time to time by the Partnership Board.

8.3 Each of the Programme Boards has the role of providing strategic direction and leadership (in line with the policies and directions issued by the Partnership Board and Chief Executives' Group from time to time) for the programme assigned to it, with the purpose of ensuring effective management and development of that programme, including the delivery of the overall masterplan for that programme.

8.4 Within that overall role, the specific remit for each of the Programme Boards shall be as determined by the Partnership Board from time to time.

- 8.5 Each of the Programme Boards shall, in carrying out its role, give effect to the directions, strategies and policies set by the Partnership Board from time to time.
- 8.6 For the avoidance of doubt, the Partnership Board may (at its discretion) introduce an additional Programme Board, merge two or more Programme Boards and/or disband any Programme Board at any time.

## **9 PROJECT DELIVERY BOARDS**

- 9.1 The number of Project Delivery Boards, and the core focus of each Project Delivery Board, shall be determined from time to time by the Partnership Board, in line with the relevant proposals for each Project in the form approved through the OBC Process.
- 9.2 The composition of each of the Project Delivery Boards shall be in accordance with the requirements of the relevant Project approval obtained through the OBC Process; and, subject to complying with such requirements, shall be as prescribed from time to time by the Participating Authority or Participating Authorities delivering the Project.
- 9.3 Each of the Project Delivery Boards has the general role of overseeing the delivery of the Growth Deal Project or Projects assigned to it; within that overall role, the specific remit for each of the Project Delivery Boards shall be as determined by the Partnership Board from time to time.
- 9.4 Each of the Project Delivery Boards shall, in carrying out its role, give effect to the directions, strategies and policies set by the Partnership Board from time to time.
- 9.5 For the avoidance of doubt, the Partnership Board may (subject to any new Project or a change to an existing Project or Projects being approved through the OBC Process) introduce an additional Project Delivery Board, merge two or more Project Delivery Boards and/or disband any Project Delivery Board at any time.

## **10 STAKEHOLDER ENGAGEMENT**

- 10.1 The Participating Authorities acknowledge that stakeholder engagement is a key consideration in the context of the Growth Deal; the key mechanisms by which stakeholder engagement will be achieved are as follows:
- 10.1.1 by the holding of engagement events across the Borderlands Region, as appropriate;
  - 10.1.2 by providing regular communications about the progress of the Growth Deal using a variety of media;
  - 10.1.3 through involvement where appropriate in the Programme Boards and Project Delivery Boards;
  - 10.1.4 through the holding of meetings with individuals and groups of stakeholders as considered appropriate for the implementation of the Growth Deal.

## **11 ACCOUNTABLE BODIES**

- 11.1 Dumfries and Galloway Council will have the role of accountable body as regards (a) the Scottish Government funding for the Growth Deal and (b) that part of the UK Government funding which relates to Growth Deal Projects physically located in Scotland.
- 11.2 Northumberland County Council will have the role of accountable body as regards that part of the UK Government funding which relates to Growth Deal projects physically located in England.
- 11.3 The role of the Accountable Bodies shall include:
  - 11.3.1 entering into legal agreements with the UK and Scottish Governments in respect of the Growth Deal;
  - 11.3.2 reporting to UK and Scottish Governments in accordance with the Monitoring and Reporting Framework.
- 11.4 The Participating Authorities acknowledge and agree that the following key principles shall apply as regards the two Accountable Bodies:
  - 11.4.1 the Accountable Body in each case will require to have confidence in the overall governance structure, to ensure that decision-making can be approached in a balanced and equitable way while respecting the responsibilities attaching to certain of the Participating Authorities as Accountable Bodies;
  - 11.4.2 the risks associated with the role of Accountable Body (vis-à-vis the Scottish and UK Governments) should be shared by all five Participating Authorities in accordance with clause 11.18;
  - 11.4.3 the transfer of Growth Deal funding from an Accountable Body through to the Participating Authority or Participating Authorities (or a Delivery Partner outwith the five Participating Authorities, if the funding is not routed through a Participating Authority) who is/are delivering a given Growth Deal Project will be dealt with via a grant mechanism or such other arrangement as may be agreed in writing among the Participating Authorities from time to time; and on the basis that the terms and conditions of the grant (or other arrangement) will be set out in a funding agreement between the relevant Accountable Body and the relevant Delivery Partner.
- 11.5 The Participating Authorities acknowledge and agree that a key part of the role of the Chief Executives Group, the PMO and the Finance Directors' Group shall be to support the Accountable Bodies in fulfilling their responsibilities as the accountable bodies in respect of the Growth Deal Programme Budget, including their responsibilities relating to monitoring, reporting and evaluation.
- 11.6 For the avoidance of doubt, the grant conditions associated with the provision of funding out of the Growth Deal Programme Budget to a Project Delivery Partner shall include:
  - 11.6.1 all relevant conditions attaching to the provision of the relevant funds by the UK Government and/or (as the case may be) the Scottish Government to enable the Accountable Bodies to comply with those conditions; and

- 11.6.2 such other conditions as may be approved by the Chief Executives' Group from time to time.
- 11.7 In any case where a single Growth Deal Project receives funding from both Accountable Bodies, the grant arrangements in respect of that Growth Deal Project shall be structured in such a way as to ensure that the relevant checks and balances take account of any differences which may apply under each strand of funding; subject to that, however, there should be commonality in the grant arrangements so far as possible.
- 11.8 Each Accountable Body shall maintain a separate account within its financial ledger to which all grant funding and other income relating to the Growth Deal shall be credited, and out of which all grant funding advanced to Delivery Partners for the purpose of delivery of Growth Deal Projects shall be debited.
- 11.9 Claims for payment out of the Growth Deal Programme Budget shall be submitted by a Delivery Partner to the PMO in the form of the Borderlands Growth Deal Grant Claim Form for review, assessment and processing by the PMO prior to forwarding to the Accountable Body for authorisation and payment; and (subject to clause 11.10) providing in each case the Accountable Body is satisfied, acting reasonably, that the Borderlands Growth Deal Grant Claim Form has been validly completed and includes all of the information required under the Monitoring and Reporting Framework and the claim is valid (by reference to the provisions of this Agreement, the provisions of the relevant funding agreement between the Accountable Body and the relevant Delivery Partner and such recommendations as the Chief Executives' Group may issue from time to time), the claim shall be paid by the Accountable Body to the relevant Delivery Partner in accordance with such timetable as may be approved from time to time by the Chief Executives' Group.
- 11.10 In the event of any dispute between the Delivery Partner which has submitted the claim and the Accountable Body in relation to the validity of a claim under clause 11.9, the matter will be determined by the Chief Executives' Group; the Accountable Body shall be bound to give effect to any such determination by the Chief Executives' Group accordingly (but on the basis, for the avoidance of doubt, that the indemnities under clause 11.20 shall apply).
- 11.11 The Accountable Bodies will draw down funds from the Scottish Government and UK Government on the following basis:
- 11.11.1 for Growth Deal Projects approved by the UK Government and/or Scottish Government prior to the signing of the Growth Deal, the grant will be paid via a section 31 Grant Determination by the UK Government to Northumberland County Council, as the Accountable Body for England and/or via grant-in-aid by the Scottish Government to Dumfries and Galloway Council, as the Accountable Body for Scotland; and on the basis that the profile of payments will reflect when grant is required by the Project Delivery Partner as indicated in the full business case (for the avoidance of doubt, no grant will be paid to Accountable Bodies in advance of need);
- 11.11.2 upon finalisation of the Growth Deal, grant monies will be paid to Accountable Bodies under the conditions of an Annual Grant Offer Letter, and on the basis that the profile of grant payments will reflect the multi year profile agreed for the Growth Deal

- 11.12 The Chief Executives' Group, supported by the PMO and the Finance Directors' Group, will be responsible for monitoring the financial expenditure associated with delivery of Growth Deal Projects, and in particular determining whether the expenditure in respect of any budget head exceeds the level for that budget head set in the financial projections for the relevant period set out in the relevant Business Case (including any adjusted version adopted from time to time where such adjusted version has the approval of the Chief Executives' Group).
- 11.13 In the event of the PMO becoming aware of any actual or prospective expenditure which causes or is likely to cause the level for any such budget head to be exceeded, the PMO shall notify the Chief Executives' Group, the Accountable Bodies and the Finance Directors' Group, who will review options for addressing the situation and thereafter issue appropriate directions to the relevant Delivery Partner.
- 11.14 Without prejudice to the provisions of clause 11.12, each Accountable Body shall maintain accurate and complete accounting records in respect of the Growth Deal Programme Budget and shall prepare and submit to the Chief Executives' Group (through the PMO) monthly financial reports in such form as the Chief Executives' Group may reasonably require; such financial reports will include up to date information on income and expenditure budgets and financial projections in respect of the Growth Deal Projects.
- 11.15 Each Accountable Body shall seek to manage cash flow in respect of the Growth Deal so as to minimise the amount of any cash shortfall and/or the period for which any such cash shortfall subsists; if particular cash flow difficulties emerge which cannot be fully managed on that basis, the Accountable Body will escalate the matter to the Chief Executives' Group as soon as reasonably practicable.
- 11.16 In order to minimise any cash shortfalls within the Accountable Bodies, as a principle, grant will be paid in arrears, based on defrayed expenditure, to Delivery Partners; on an exceptional basis, however, and where need can be justified, grant may be paid in advance to Delivery Partners which are not Participating Authorities.
- 11.17 If Accountable Bodies are required to borrow to facilitate cashflow in accordance with clause 11.16, the borrowing shall be undertaken at Public Works Loan Board rates, and the cost of borrowing shall form part of the Growth Deal Operating Costs.
- 11.18 Each Participating Authority located in Scotland (a "**Scottish Participating Authority**") shall indemnify the Accountable Body located in Scotland in respect of any loss or liability incurred by that Accountable Body or any claim against that Accountable Body (including the costs of defending any such claim, and any award of expenses) to the extent that that loss, liability or claim arises out of, or in connection with, any breach by that Scottish Participating Authority of its obligations under this Agreement or its obligations under any funding agreement (in respect of sums advanced from the Growth Deal Programme Budget) between that Accountable Body and that Scottish Participating Authority;
- 11.19 Each Participating Authority located in England (an "**English Participating Authority**") shall indemnify the Accountable Body located in England in respect of any loss or liability incurred by that Accountable Body or any claim against that Accountable Body (including the costs of defending any such claim, and any award of expenses) to the extent that that loss, liability or claim arises out of, or in connection with, any breach by that English Participating Authority of its obligations under this Agreement or its obligations under any funding agreement (in respect of



sums advanced from the Growth Deal Programme Budget) between that Accountable Body and that Scottish Participating Authority;; and

- 11.20 The Participating Authorities acknowledge and agree (without prejudice to the provisions of clauses 11.18 and 11.19) that any loss, liability or claim arising out of, or in connection with, the Accountable Bodies complying with their obligations under this Agreement in giving effect to joint decisions made within the governance framework set by this Collaboration Agreement should be shared among all Participating Authorities in the proportions set out in clause 12.1; and each of the Participating Authorities undertakes to indemnify each Accountable Body in respect of any such loss, liability or claim (including the costs of defending any such claim, and any award of expenses) to the extent required to give effect to that principle.

## **12 GROWTH DEAL OPERATING COSTS**

- 12.1 The Growth Deal Operating Costs shall be borne by the Participating Authorities in the following proportions:

12.1.1 CaCC and CuCC (jointly) – 34.9%;

12.1.2 DGC – 24.3%;

12.1.3 NCC – 22.2%; and

12.1.4 SBC – 18.6%.

- 12.2 The following arrangements shall apply:

12.2.1 The PMO shall, not later than 31 October in each Financial Year, submit to the Chief Executives' Group a draft Growth Deal Operating Budget covering the five-year period commencing from the start of the immediately following Financial Year.

12.2.2 Following review of that draft Growth Deal Operating Budget, the Chief Executives' Group may decide to:

12.2.2.1 require the PMO to amend the draft Growth Deal Operating Budget and, thereafter, approve the revised draft Growth Deal Operating Budget; or

12.2.2.2 approve the draft Growth Deal Operating Budget without amendment.

12.2.3 The Chief Executives' Group shall, no later than 30 November in each Financial Year, submit the draft Growth Deal Operating Budget (as approved by the Chief Executives' Group), together with a calculation of the amount of the contribution to be made by each Participating Authority (in accordance with the proportions set out in clause 12.1), for approval by each of the Participating Authorities.

12.2.4 The Growth Deal Operating Budget shall be approved by each of the Participating Authorities in advance of each Financial Year during the period of this Agreement.

12.2.5 Each Participating Authority shall contribute its share (calculated in accordance with clause 12.1 above) of the Growth Deal Operating Budget to the PMO Host Employer in quarterly instalments payable on:

12.2.5.1 1 April;

12.2.5.2 1 July;

12.2.5.3 1 October; and

12.2.5.4 1 January in that Financial Year.

12.3 Where the PMO becomes aware of a variance from the Growth Deal Operating Budget in the form approved under paragraph 12.2.4:

12.3.1 in the event of an overspend position, the PMO shall report the matter to the Chief Executives' Group, the Finance Directors' Group and the Accountable Bodies as soon as possible (including all appropriate information to explain the overspend position), and on the basis that the Chief Executives' Group will then review options for addressing the situation and thereafter issue appropriate directions to the Participating Authorities;

12.3.2 in the event of an underspend position, the PMO shall report the matter to the Chief Executives' Group, the Finance Directors' Group and the Accountable Bodies as soon as possible, and on the basis that the underspend will be retained by the PMO and rolled forward to the following Financial Year, and will be taken into account when setting each Participating Authority's financial contribution for the next Financial Year.

## **13 CONTRACTS RELATING TO OVERALL GROWTH DEAL**

13.1 Where contracts relating to the overall Growth Deal are to be entered into, the arrangements shall be governed by the provisions set out in Part 8 of the Schedule.

## **14 OPPORTUNITIES FOR COLLABORATION**

14.1 The Participating Authorities confirm that it is their intention to explore, through the Partnership Board and Chief Executives' Group, other opportunities for collaboration, where it is felt that such collaboration would deliver significant benefits across the Borderlands Region.

## **15 INSURANCE**

15.1 The Participating Authorities will ensure that the conditions attaching to the provision to Delivery Partners of funding from the Growth Deal Programme Budget require the Delivery Partner in each case:

15.1.1 to ensure that all contracts for the provision of works or services in relation to each Growth Deal Project require the relevant contractor or service provider to maintain adequate insurance against all normal commercial risks, and provide evidence of that insurance;

15.1.2 to monitor compliance by the relevant contractor or service provider with the requirements referred to in paragraph 15.1.1;



15.1.3 to take such steps, in the event of any circumstances where a claim may be made under any insurance policy of the nature referred to in paragraph 15.1.1, as the PMO may reasonably request to pursue any claim under the insurances referred to in paragraph 15.1.1;

15.1.4 to apply the proceeds of any insurance of the nature referred to in paragraph 15.1.1 toward reinstatement (unless the PMO otherwise requests).

## **16 DATA SHARING**

16.1 The Participating Authorities agree that, as soon as reasonably practicable after the date of this Agreement, they shall develop, agree and put in place appropriate agreements and protocols regarding the holding, processing and transfer of confidential, commercial and/or sensitive information and data relating to the Growth Deal among the Participating Authorities, the UK Government, Scottish Government and others, which agreement and protocols shall meet the requirements of the Data Protection Laws and will enable the Accountable Bodies to comply with their obligations under the Monitoring and Reporting Framework.

## **17 ACCESS TO FINANCIAL AND OTHER INFORMATION**

17.1 Without prejudice to the provisions of clause 20 (disclosure of information), the Participating Authorities shall each be entitled to examine all accounting and other records relating to the delivery of the Growth Deal, and to be supplied with all relative information, including management accounts, budgets and management reports (including explanations of variances against budget and programme), accounts in respect of each Financial Year and such other financial and other information relating to the Growth Deal as each of the Participating Authorities may reasonably require to keep itself properly informed in respect of the delivery of the Growth Deal.

17.2 The provisions of clause 17.1 shall (without limiting its applicability to the Participating Authorities themselves) apply so as to allow each Accountable Body to satisfy obligations to the Scottish and UK Governments as regards compliance with the Monitoring and Reporting Framework and (as appropriate) internal and external auditing.

## **18 INDEMNITIES – GENERAL PROVISIONS**

18.1 Each Participating Authority (an “**Indemnified Participating Authority**”) which incurs a loss or liability, or receives a claim, of a nature which may fall within an indemnity contained in this Agreement:

18.1.1 shall intimate the loss or liability, or the relevant claim, to the other Participating Authority (the “**Indemnifying Participating Authority**”) as soon as reasonably practicable after the loss, liability or claim becomes known to the Indemnified Participating Authority, providing to the Indemnifying Participating Authority all such information and evidence in respect of the loss, liability or claim as is reasonably available to the Indemnified Participating Authority;

18.1.2 shall (in the case of a claim) take such steps to resist or defend the claim as the Indemnifying Participating Authority may reasonably request or (if the Indemnifying Participating Authority so elects) allow the Indemnifying Participating Authority the conduct of any defence and/or negotiations in

respect of the claim (subject in either case to the Indemnifying Participating Authority indemnifying the Indemnified Participating Authority in respect of any liability (including reasonable legal expenses on a solicitor/client basis and any award of expenses) which the Indemnified Participating Authority may thereby incur);

18.1.3 shall keep the Indemnifying Participating Authority closely apprised of all developments relating to the relevant loss, liability or claim (including any insurance claim that may be pursued in connection with the relevant occurrence);

18.1.4 shall not (in the case of a claim), compromise any such claim, or take any step which would prejudice the defence of such claim, without (in each such case) the prior written consent of the Indemnifying Participating Authority (such consent not to be unreasonably withheld) except in circumstances where the taking of such steps is required by law;

18.1.5 take all reasonable steps available to it to mitigate such loss or liability.

## **19 DISPUTE RESOLUTION**

19.1 Subject to clause 19.2, in the event that any disagreement arises as between any of the Participating Authorities in relation to any matters arising out of or in connection with this Agreement, the point or points at issue will be referred to the chief executive (or such other senior executive or senior officer as each Participating Authority may intimate in writing to the other Participating Authorities from time to time) of each of the Participating Authorities (or, as the case may be, such of the Participating Authorities as may be affected by the disagreement in question); following such referral, the chief executives (or other executives/officers) to which the referral has been made shall meet, as soon as reasonably practicable and in any event within 14 days, to discuss the points at issue and shall reach a resolution;

19.2 For the avoidance of doubt, clause 19.1 shall not apply;

19.2.1 in relation to a decision of the Partnership Board, where that decision (a) was made at a duly convened and quorate meeting of the Partnership Board (b) was taken in accordance with the provisions of Part 2B of the Schedule and (c) fell within the powers conferred on the Partnership Board under this Agreement (and, for the avoidance of doubt, taking account of the restrictions on such powers imposed by this Agreement); or

19.2.2 in relation to a decision of the PMO, where that decision fell within the powers conferred on the PMO under this Agreement (and, for the avoidance of doubt, taking account of the restrictions on such powers imposed by this Agreement and any relevant scheme of delegation); or

19.2.3 in relation to an instruction issued or proposed to be issued by the Growth Deal Manager, where that instruction falls within the relevant scheme of delegation.

## **20 DISCLOSURE OF INFORMATION**

20.1 Subject to clauses 20.2 and 20.3, the Participating Authorities undertake to one another that they themselves will not at any time (whether during the period when they are a party to this Agreement or after that period) use or divulge or communicate

to any person (other than to officers, employees or professional advisers of that Participating Authority whose province it is to know the same) any Confidential Information concerning the financial position, contractual arrangements, or other affairs of any of the other Participating Authorities or otherwise relating to the Growth Deal which may come or may have come to its knowledge through the individuals appointed by it to the Partnership Board or the Chief Executives' Group or the Finance Directors' Group or the PMO, or through any other participation in the Growth Deal; and they shall use all reasonable endeavours to prevent the use, publication or disclosure of any such Confidential Information concerning such matters.

20.2 The provisions of clause 20.1 shall not apply:

20.2.1 in relation to any disclosure required by law;

20.2.2 in relation to any disclosure required by a regulatory authority or organisation of which the Participating Authority making the disclosure is a member or which is empowered by law or custom to regulate that Participating Authority;

20.2.3 in relation to any information which is in the public domain;

20.2.4 in relation to any disclosure which is necessary to enable a Participating Authority to enforce its rights or defend its position in relation to any action or claim brought against it under this Agreement;

20.2.5 in relation to any use of information by a Participating Authority, to the extent that such use is required to enable that Participating Authority to take the steps which it is to undertake under a Growth Deal Programme Contract; and

20.2.6 in relation to any disclosure of information by a Participating Authority to a Delivery Partner (including a Delivery Partner which is not a Participating Authority), to the extent that such disclosure is required to enable that Delivery Partner to take the steps which it is to undertake in delivering a Growth Deal Project in accordance with the terms and conditions of grant funding entered into by that Delivery Partner in respect of that Growth Deal Project.

20.3 Any member of the Partnership Board shall, unless otherwise determined by resolution of the Partnership Board in respect of any particular matter, be entitled to disclose any information and provide copies of relevant documents and materials regarding the Growth Deal and its financial position, contractual arrangements, or other affairs, to the officers and/or employees of the Participating Authority which appointed him/her whose province it is to know the same.

20.4 Each of the Participating Authorities shall use reasonable endeavours to procure that any of its officers, employees, members, contractors, sub-contractors or advisers who receives any information in relation to the Growth Deal is made aware of the obligations as to confidentiality imposed by clauses 20.1 to 20.3.

20.5 Each Participating Authority acknowledges that the other Participating Authorities are subject to the requirements of FOI Legislation and the EI Regulations; and each Participating Authority shall assist and cooperate with the other Participating

Authorities (at its own expense) to enable the other Participating Authorities to comply with the associated obligations with regard to disclosure of Information.

- 20.6 Where a Participating Authority receives a Request for Information in relation to Information which it is holding on behalf of another Participating Authority, it shall:
- 20.6.1 transfer the Request for Information to that other Participating Authority as soon as practicable after receipt and in any event within two Business Days of receiving the Request for Information;
  - 20.6.2 provide that other Participating Authority with a copy of all Information in its possession or power in the form that the other Participating Authority reasonably requires within five Business Days of the other Participating Authority requesting that Information; and
  - 20.6.3 provide all necessary assistance as reasonably requested by that other Participating Authority to enable the other Participating Authority to respond to the Request for Information within the time for compliance prescribed by FOI Legislation or the EI Regulations, where applicable.
- 20.7 Where a Participating Authority receives a Request for Information which relates to this Agreement, it shall inform the other Participating Authorities of the Request for Information as soon as practicable after receipt and in any event within two Business Days of receiving the Request for Information.
- 20.8 If any of the Participating Authorities determines that Information (including Confidential Information) must be disclosed pursuant to a Request for Information of the nature referred to in clause 20.5, it shall notify the other Participating Authorities of that decision at least two Business Days before disclosure.
- 20.9 Each Participating Authority shall be responsible for determining at its absolute discretion:
- 20.9.1 whether any Information is exempt from disclosure under FOI Legislation; and
  - 20.9.2 the Information to be disclosed in response to a Request for Information,
- without incurring any liability to the other Participating Authorities for any decision to publish or withhold any Information from disclosure.
- 20.10 Each Participating Authority acknowledges that the other Participating Authorities may be obliged under FOI Legislation or the EI Regulations to disclose Information:
- 20.10.1 without consulting with the other Participating Authorities, or
  - 20.10.2 following consultation with the other Participating Authorities and having taken their views into account.
- 20.11 Each Participating Authority acknowledges that any lists provided by it to any other Participating Authority identifying Information which is to be taken to be Confidential Information, are of indicative value only; and that the other Participating Authority may nevertheless be obliged to disclose Confidential Information in accordance with clause 20.10.

## **21 GUIDING PRINCIPLES AND GENERAL CO-OPERATION**

- 21.1 In taking forward the Growth Deal, each Participating Authority undertakes:
- 21.1.1 to respond promptly to any request reasonably made to it by any of the other Participating Authorities for approval, information, evidence and/or assistance in relation to the Growth Deal;
  - 21.1.2 to operate on the basis of openness and transparency;
  - 21.1.3 to respect the rights and obligations of each of the other Participating Authorities;
  - 21.1.4 to make available such personnel as shall reasonably be required to comply with its obligations under this Agreement and under any other legal documentation associated with the Growth Deal, in a prompt and efficient manner;
  - 21.1.5 to use all reasonable endeavours to make its representatives available to attend meetings of the Partnership Board, the Chief Executives' Group, and the Finance Directors' Group, all as scheduled from time to time;
  - 21.1.6 to cooperate with the other Participating Authorities, and act in fairness and in good faith to assist each of the other Participating Authorities in performing its obligations under this Agreement and/or under other legal documentation associated with the Growth Deal;
  - 21.1.7 not to use (and to use reasonable endeavours to ensure that none of its contractors, suppliers or consultants use) any trademark, trade name or logo of any of the other Participating Authorities without first obtaining that Participating Authority's written consent for such use;
  - 21.1.8 to align any of its PR and/or marketing exercises that relate to the Growth Deal, or elements within the Growth Deal, with the PR and/or marketing strategies and initiatives set by the Partnership Board from time to time;
  - 21.1.9 execute all such documents and take all such other steps as may be reasonably necessary or appropriate to give full force and effect to the provisions of this Agreement;
  - 21.1.10 wherever possible, to disclose to the other Participating Authorities (who shall be subject to the duties of confidentiality under clause 20) any emerging policies or actions that could have a significant impact on the Growth Deal.
- 21.2 Each of the Participating Authorities acknowledges and agrees that (without prejudice to any principle of law requiring it to preserve its discretion in the exercise of certain statutory functions) it shall facilitate the taking of all steps contemplated by this Agreement, and that in a manner which secures the most effective and timely delivery of the Growth Deal; without prejudice to the generality of the preceding provisions of this clause, nothing in this Agreement will be taken to contractually bind any of the Participating Authorities in relation to any decision to be made by any of the Participating Authorities in its capacity as planning authority, building control authority, licensing authority or in any similar capacity

## **22 WARRANTIES**

Each of the Participating Authorities warrants and represents to the others that it has all necessary power and authority to enter into and perform its obligations under this Agreement and that this Agreement constitutes valid obligations binding upon it in accordance with its terms.

## **23 THIS AGREEMENT NOT TO CONSTITUTE A PARTNERSHIP**

None of the provisions of this Agreement shall operate so as to create a partnership or (except so far as expressly provided for in this Agreement) any relationship of agency between or among the Participating Authorities; none of the Participating Authorities has any authority by virtue of this Agreement (except so far as expressly provided for in this Agreement) to bind or commit or otherwise act on behalf of the others in any way.

## **24 DURATION**

- 24.1 This Agreement shall (subject to clauses 24.2, 24.3 and 24.5) commence on the Commencement Date and shall continue in force (unless the Participating Authorities otherwise agree in writing) until the fifteenth anniversary of the date of written approval by UK Government of the Growth Deal financial plan.
- 24.2 Where any of the Participating Authorities has validly exercised a right to terminate its involvement in the Growth Deal (for example, as a consequence of local government reorganisation), that Participating Authority shall be taken to be no longer a party to this Agreement with effect from the time of such termination; if that occurs, the remaining Participating Authorities shall continue to be bound by the provisions of this Agreement.
- 24.3 Where the UK Government and/or Scottish Government terminates the Growth Deal, this Agreement shall terminate.
- 24.4 Termination of this Agreement shall be without prejudice to any right or remedy of any of the Participating Authorities in respect of any breach of the provisions of this Agreement which occurred prior to such termination.
- 24.5 Without prejudice to the provisions of clause 24.4, clauses 11.18 and 18.1 shall survive the expiry or termination of this Agreement for a period of 6 years.

## **25 ASSIGNATION/ASSIGNMENT**

None of the Participating Authorities shall assign, or purport to assign, or grant any security over, or otherwise deal with, any of its rights or obligations under this Agreement.

## **26 WAIVER**

- 26.1 The failure of any Participating Authority to insist upon strict performance of any provision of this Agreement, or the failure of any Participating Authority to exercise any right or remedy to which it is entitled under this Agreement, shall not constitute a waiver of that provision, right or remedy; and shall not prejudice the ability of that Participating Authority to enforce that provision in accordance with its terms, or to exercise that right or remedy, on any future occasion.



- 26.2 No waiver of any of the provisions of this Agreement shall be effective unless it is expressly stated to be a waiver, identifies the specific provision(s) to which it relates, and is communicated to the other Participating Authorities in writing, signed by a duly authorised representative of the Participating Authority which is waiving the relevant provision(s).

## **27 AMENDMENTS TO THIS AGREEMENT**

- 27.1 This Agreement shall not be varied or amended unless such variation or amendment is recorded in a written document, duly signed by a duly authorised representative of each Participating Authority, on its behalf.

## **28 EXTERNAL COMMUNICATIONS**

- 28.1 Except as required by law or any regulatory authority, no announcement or other publicity relating to any matter referred to in this Agreement shall be made or issued by or on behalf of any of the Participating Authorities otherwise than in accordance with the communications protocol in the form approved by the Partnership Board from time to time.

## **29 SEVERABILITY**

- 29.1 If any of the provisions of this Agreement is found by a court or other competent authority to be void or unenforceable, it shall be deemed to be deleted from this Agreement and the remaining provisions shall continue in full force and effect.
- 29.2 In the circumstances referred to in clause 29.1, the Participating Authorities shall negotiate in good faith in order to agree the terms of a mutually satisfactory provision to be substituted for the provision found to be void or unenforceable.

## **30 REVIEW PROCESS**

- 30.1 The Participating Authorities shall, at or around each anniversary of the Commencement Date, carry out a review of the governance framework for the Growth Deal, to take account of practical experience in working with the governance framework, anticipated future developments and/or other changes in the wider environment.
- 30.2 Following each review under clause 30.1, the Participating Authorities shall enter into discussions in good faith, with a view to identifying at high level any amendments which ought to be made to the governance framework and thereafter the detailed adjustments to be made to this Agreement; and the Participating Authorities shall then enter into a Supplemental Agreement to amend this Agreement accordingly.
- 30.3 The Participating Authorities acknowledge that if the outcome of any review indicates changes to the governance structure of a nature which could reasonably be considered material in the context of the approvals given by the UK Government and Scottish Governments in respect of this Agreement, any proposed amendments to this Agreement shall not be progressed without the prior written approval of both the UK Government and the Scottish Government.

## **31 ENTIRE AGREEMENT**

31.1 This Agreement and the documentation to be entered into in pursuance of this Agreement constitute the entire agreement and understanding between the Participating Authorities in relation to the matters dealt with in this Agreement, and supersede and cancel all previous negotiations, commitments or agreements between the Participating Authorities with regard to such matters.

31.2 Each Participating Authority confirms that it has not relied upon any representation, warranty or undertaking by any of the other Participating Authorities in relation to any of the matters dealt with in this Agreement or any of the documents referred to in clause 31.1, save for any representation, warranty or undertaking expressly set out in those documents.

## **32 NOTICES**

32.1 All notices and notifications under this Agreement shall be given or issued by letter or by other written document, or other visible electronic means.

32.2 A notice or notification under this Agreement shall (subject to clauses 32.3 and 32.4) be deemed to be duly given:

32.2.1 in the case of a letter or other written document, when delivered;

32.2.2 in the case of other visible electronic means (provided that any relevant answerback has been received) when despatched;

to the Participating Authority to which it is given, addressed to that Participating Authority at the address last intimated in writing to the Participating Authority giving the notice.

32.3 A notice or notification which is delivered, or (in the case of other visible electronic means) despatched, outwith business hours shall be deemed to be duly given during business hours on the Business Day which next follows.

32.4 A notice sent by first class recorded delivery post (or equivalent postal service) shall be deemed to have been delivered during business hours on the Business Day following the date of posting; in proving that a notice was given, it shall be sufficient to prove that an envelope containing the notice was duly addressed and posted in accordance with clause 32.2.

32.5 For the purposes of clauses 32.3 and 32.4, “business hours” shall mean the period between 9.00 a.m. and 5.00 p.m. on a Business Day.

32.6 Unless and until some other address or contact name is supplied in pursuance of clause 32.2, the respective addresses and contact names for the respective parties are as follows:

	Participating Authority	Contact name	Address
32.6.1	CaCC	Chief Executive	Civic Centre, Rickergate, Carlisle, Cumbria CA3 8QG



32.6.2	CuCC	Chief Executive	Cumbria House, 117 Botchergate, Carlisle CA1 1RD
32.6.3	DGC	Chief Executive	Council Offices, English Street, Dumfries DG1 2DD
32.6.4	NCC	Chief Executive	County Hall, Morpeth NE61 2EF
32.6.5	SBC	Chief Executive	Council Headquarters, Newtown St Boswells, Melrose, Scottish Borders TD6 0SA

### 33 COSTS

All legal fees and other expenses incurred in the preparation, negotiation and execution of this Agreement shall be met by the Participating Authority by whom they were incurred.

**34        GOVERNING LAW AND JURISDICTION**

- 34.1        This Agreement is governed by and shall be construed in accordance with Scots law.
- 34.2        The Participating Authorities hereby submit to the exclusive jurisdiction of the Scottish courts.

IN WITNESS WHEREOF this Agreement, consisting of this and the [] preceding pages together with the Schedule in 8 parts annexed, is executed as follows:

SIGNED for and on behalf of  
CARLISLE CITY COUNCIL

at

on

by

\_\_\_\_\_  
Print Full Name

\_\_\_\_\_  
Authorised Signatory

before this witness

\_\_\_\_\_  
Print Full Name

\_\_\_\_\_  
Witness

Address

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

SIGNED for and on behalf of  
CUMBRIA COUNTY COUNCIL

at

on

by

\_\_\_\_\_  
Print Full Name

\_\_\_\_\_  
Authorised Signatory

before this witness

\_\_\_\_\_  
Print Full Name

\_\_\_\_\_  
Witness

Address

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

SIGNED for and on behalf of  
DUMFRIES AND GALLOWAY  
COUNCIL

at

on

by

\_\_\_\_\_

Print Full Name

\_\_\_\_\_

Authorised Signatory

before this witness

\_\_\_\_\_

Print Full Name

\_\_\_\_\_

Witness

Address

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

SIGNED for and on behalf of  
NORTHUMBERLAND COUNTY  
COUNCIL

at

on

by

\_\_\_\_\_

Print Full Name

\_\_\_\_\_

Authorised Signatory

before this witness

\_\_\_\_\_

Print Full Name

\_\_\_\_\_

Witness

Address

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

SIGNED for and on behalf of  
SCOTTISH BORDERS COUNCIL

at

on

by

\_\_\_\_\_  
Print Full Name

\_\_\_\_\_  
Authorised Signatory

before this witness

\_\_\_\_\_  
Print Full Name

\_\_\_\_\_  
Witness

Address

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

This is the Schedule referred to in the preceding Collaboration Agreement among Carlisle City Council, Cumbria County Council, Dumfries and Galloway Council, Northumberland County Council and Scottish Borders Council

## **SCHEDULE**

### **SCHEDULE PART 1 – DEFINITIONS & INTERPRETATION**

1. Unless the context otherwise requires, the following expressions will have the following meanings assigned to them:

**“Accountable Body”** means a Participating Authority who has the role of accountable body in respect of Growth Deal funding from the UK Government and (where applicable) the Scottish Government, as referred to in clauses 11.1 and 11.2; **“Accountable Bodies”** shall be construed accordingly;

**“Agreement”** means this Schedule and the Collaboration Agreement to which this Schedule is annexed;

**“Borderlands Growth Deal Grant Claim Form”** means a grant claim form (in accordance with the template grant claim form prepared by the PMO and approved from time to time by the Partnership Board) used by a Delivery Partner for the purposes of claiming grant funding from an Accountable Body in respect of a Growth Deal Project;

**“Borderlands Region”** means that geographical area which comprises the respective areas served by the Participating Authorities taken together;

**“Business Day”** means a day which is not a Saturday or Sunday or a public holiday in Scotland or in England;

**“Chief Executives’ Group”** means the group constituted in accordance with clause 5;

**“Commencement Date”** means the last date of execution of this Agreement;

**“Confidential Information”** means information, the disclosure of which would constitute an actionable breach of confidence, which has either been designated as confidential by any Participating Authority in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including commercially sensitive information, information which relates to the operations, affairs, properties, assets, policies, practices, intellectual property rights, know-how, personnel, contractors and advisers of any Participating Authority; and all personal data and sensitive personal data within the meaning of the Data Protection Laws;

**“Data Protection Laws”** means all applicable laws, statutes, bye-laws, regulations, orders or rules of court relating to the processing of personal data and/or privacy (including, but not limited to: (a) Regulation (EU) 2016/679 (the **“GDPR”**); (b) the Data Protection Act 2018; (c) the Privacy and Electronic Communications (EC Directive) Regulations 2003; and (d) any data protection and privacy laws enacted in replacement of (a), (b) or (c) and/or as a result of the GDPR ceasing to have direct effect in the UK (in each case as amended, updated or re-enacted from time to time), and all applicable guidance and codes of practice issued by the Information Commissioner and/or any other relevant regulatory body from time to time;

**“Delivery Partner”** means, in relation to a given Growth Deal Project, the Participating Authority (or other body) which is accountable to the Partnership Board for the successful delivery of that Growth Deal Project and which receives financial support from the Growth Deal Programme Budget in relation to that Growth Deal Project accordingly;

**“EI Regulations”** means, insofar as applicable in each case, the Environmental Information Regulations 2004 and the Environmental Information (Scotland) Regulations 2004 and any other legislation made in connection with either of those sets of regulations from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or the Scottish Information Commissioner from time to time in relation to such regulations or other legislation;

**“Economic Forum”** means the forum constituted in accordance with clause 4;

**“FOI Legislation”** means, insofar as applicable in each case, the Freedom of Information Act 2000 and the Freedom of Information (Scotland) Act 2002 and any subordinate legislation made under either of those Acts from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or the Scottish Information Commissioner from time to time in relation to such legislation;

**“Finance Directors’ Group”** means the group constituted in accordance with clause 6;

**“Financial Year”** means the period from 1 April in one calendar year to 31 March in the following calendar year, subject to the qualification that the first Financial Year shall be taken to be the period from the date of this Agreement to 31 March 2020;

**“Growth Deal”** means the Borderlands Inclusive Growth Deal agreed between the Participating Authorities, the UK Government and the Scottish Government;

**“Growth Deal Manager”** means the individual so designated from time to time by the Chief Executives’ Group with responsibility for day-to-day management of the PMO;



**“Growth Deal Operating Budget”** means the five-year budget approved annually by the Participating Authorities (as amended, supplemented and/or replaced by agreement of the Participating Authorities from time to time) under clause 12.2, in respect of the Growth Deal Operating Costs;

**“Growth Deal Operating Costs”** means (a) the employment costs associated with the PMO; (b) costs (additional to PMO employment costs) incurred in managing the Growth Deal Operating Budget; (c) costs (additional to PMO employment costs) incurred in carrying out the responsibilities and tasks of an Accountable Body; and (where applicable) (d) the interest payments and other costs associated with borrowings of the nature referred to in clause 11.17;

**“Growth Deal Operating Funds”** means those funds held by an Accountable Body which are contributed by Participating Authorities to meet the Growth Deal Operating Costs, together with interest obtained by the Accountable Body from holding those funds and funding from other sources, which are allocated from time to time to meet Growth Deal Operating Costs;

**“Growth Deal Programme Budget”** means funds contributed to the Growth Deal from time to time by the UK Government and the Scottish Government, or (as the context requires) the balance of such funds remaining from time to time;

**“Growth Deal Programme Contracts”** means contracts with service providers (which may include a Participating Authority, if the Chief Executives’ Group consider appropriate in any given case) for the supply of consultancy, research or other support (a) to inform decisions of the Partnership Board, the Chief Executives’ Group, the Finance Directors’ Group or the PMO under this Agreement or (b) to ensure appropriate monitoring and control in relation to the use of the Growth Deal Programme Budget or (c) to measure the impact of the Growth Deal in stimulating inclusive economic growth across the Borderlands Region; **“Growth Deal Programme Contract”** shall be construed accordingly;

**“Growth Deal Project”** means an individual project or programme falling within the Growth Deal which has been approved through the OBC Process;

**“Information”** means: (a) information as defined in FOI Legislation; and (b) environmental information as defined in the EI Regulations, where applicable;

**“Intellectual Property Rights”** means all patents, trademarks, registered designs (and any applications for any of those), copyright, semi-conductor topography rights, database rights, unregistered design rights, rights in and to trade names, business names, domain names, product names and logos, databases, inventions, discoveries and any other intellectual or industrial property rights in each and every part of the world together with all applications, renewals, revisions and extensions;

**“Monitoring and Reporting Framework”** means the monitoring, general oversight and reporting framework for the Growth Deal, in the form approved by the UK Government and Scottish Government (including any adjustments or additional provisions which may be introduced, with such approval, from time to time);

**“Nominated Contracting Party”** means, in relation to a given Growth Deal Programme Contract, the Participating Authority which is identified as the local authority which is to have the role of contracting party in relation to that contract;

**“OBC Process”** means the process of obtaining the approval of the Scottish Government and UK Government in respect of a business case for a proposed Growth Deal Project;

**“PMO”** means the programme management office staff team constituted in accordance with clause 7 ;

**“PMO Host Employer”** means the Participating Authority which is designated (by agreement in writing among the Participating Authorities) from time to time as the local authority which is to have the role of host employer in relation to the PMO;

**“Participating Authorities”** has the meaning given to that expression in the Collaboration Agreement to which this Schedule is annexed; **“Participating Authority”** shall be construed accordingly;

**“Partnership Board”** means the board constituted in accordance with clause 3;

**“Programme Board”** means a board constituted in accordance with clause 8;

**“Project Delivery Board”** means a board constituted in accordance with clause 9;

**“Request for Information”** means a request for Information within the meaning set out in FOI Legislation or the EI Regulations, where applicable; or any apparent request for information under FOI Legislation or the EI Regulations, where applicable.

2. Clause headings are included in this Agreement for ease of reference only and shall not affect the interpretation of this Agreement.

3. References to clauses and paragraphs and to the Schedule are (unless otherwise stated) references to the clauses and paragraphs of, and the Schedule to, this Agreement.

4. Where the context so admits or requires, words denoting the singular include the plural and vice versa.

5. References to statutory provisions shall be construed as references to those provisions as replaced, amended or re-enacted from time to time (whether before or

after the date of this Agreement) and shall include any provisions of which they are re-enactments (whether with or without modification) and any subordinate legislation made under such provisions.

## **SCHEDULE PART 2A - COMPOSITION AND REMIT OF THE PARTNERSHIP BOARD**

### **Composition**

1.1 The Partnership Board will comprise:

- the Leader of each Participating Authority; and
- the Chair of the Economic Forum;

but on the understanding that, as referred to in Part 2B of this Schedule, each Participating Authority, and the Economic Forum, shall be entitled to nominate a substitute with power to attend and vote in place of the individuals referred to above.

1.2 Until such time as the Economic Forum has been established, the Leaders of the Participating Authorities shall be entitled to co-opt up to 2 private sector representatives to be members of the Partnership Board; such co-opted members of the Partnership Board shall automatically cease to be members of the Partnership Board upon the establishment of the Economic Forum and the appointment of its Chair.

### **Remit**

2.1 The remit of the Partnership Board is to provide strategic direction and exercise high level oversight and overall control, serving as the forum for joint decision-making at the highest level within the governance framework set by this Collaboration Agreement (but subject to clause 3.4 of the Agreement) in relation to the delivery of the Growth Deal; in particular, the Partnership Board shall:

- ensure that the delivery of the Growth Deal is carried out in a manner which aligns with the strategic objectives underlying the Growth Deal (as set out in the response to the UK Government consultation) and so as to maximise impact in terms of furtherance of those objectives;
- retain a watching brief regarding changes in the wider environment, with a view to revisiting and refining the strategic objectives underlying the Growth Deal and/or the approaches taken to delivery, as required;
- receive reports from the Chief Executives' Group and the Finance Directors' Group and, through such reports, monitor and evaluate, at high level, progress with the Growth Deal Projects, as well as the impact of the Growth Deal in furthering the strategic objectives underlying the Growth Deal;

- exercise oversight at high level in relation to the use of Growth Deal Programme Budget, and in particular to ensure that such funds are used in accordance with the conditions attaching to Growth Deal Programme Budget and in line with principles of best value;
- ensure that there is full compliance at all times with the Monitoring and Reporting Framework;
- maintain an overview in relation to key risks associated with delivery of the Growth Deal, and ensure that proactive steps are taken to manage and mitigate such risks;
- ensure (to the extent that it is able to do so) that sufficient resources are made available within the PMO to enable the PMO to carry out its functions effectively and in a manner which allows delivery of the Growth Deal Projects to proceed in line with anticipated timescales;
- monitor the effectiveness of the Economic Forum, the Programme Boards and the Project Delivery Boards in carrying out their respective functions;
- seek to resolve any dispute or difference which may arise among the Participating Authorities from time to time in relation to any aspect of the Growth Deal (but without prejudice to the provisions of clause 19 of the Agreement (dispute resolution));
- retain a watching brief regarding other projects, initiatives and strategic developments outside the Growth Deal and, to the extent that it is able to do so, seek to ensure that:
  - the delivery of Growth Deal projects aligns with the delivery such other projects; and
  - the delivery of such other projects aligns with the delivery of the Growth Deal projects;
  - promote the Growth Deal; and
  - explore other areas for potential collaboration between and among the Participating Authorities.

2.2 Without prejudice to the preceding generality, and by way of illustration only, the remit of the Partnership Board shall include the following roles and responsibilities; in particular, the Partnership Board shall:

- provide strategic direction and oversight of the Growth Deal Programme Budget including the overall strategy and commissioning of proposals;
- approve business cases for projects and programmes within the Growth Deal for submission to UK and Scottish Governments – to include approval at each stage of

the business case process (Strategic Outline Business Case, Outline Business Case and Full Business Case);

- determine priorities for investment of the Growth Deal Programme Budget including any decisions regarding the reallocation of funding within the Growth Deal Programme Budget;
- where decision making on business cases is delegated by UK and/or Scottish Government, be responsible for such decisions;
- approve the terms of reference for sub-groups operating under the remit of the Partnership Board and approve any delegated authority of such sub-groups;
- approve the financial plan prepared by the PMO (and which has been endorsed by the Finance Directors' Group);
- approve monitoring and evaluation reports for submission to UK and Scottish Governments;
- maintain oversight of Growth Deal programme risks.

## **SCHEDULE PART 2B – RULES OF PROCEDURE FOR THE PARTNERSHIP BOARD**

### **Chairs**

- 1 A co-Chair approach shall apply in relation to the Partnership Board – with one Chair being the Leader of a Scottish Participating Authority and the other Chair being the Leader of an English Participating Authority.
- 2 The first co-Chairs will be the Leaders of the two Accountable Bodies.
- 3 The co-Chairs shall rotate among the Participating Authorities on an annual basis, with effect from the commencement of each Financial Year (but following the principle that one Chair should be the Leader of a Scottish Participating Authority and the other Chair should be the Leader of an English Participating Authority); and with the order (after the first Financial Year) being as follows:
  - 3.1 Scottish Borders Council and Carlisle City Council;
  - 3.2 Dumfries and Galloway Council and Cumbria County Council;
  - 3.3 Scottish Borders Council and Northumberland County Council;and so on.
- 4 For the avoidance of doubt, the office of co-Chair will not be a salaried position.
- 5 The role of the co-Chairs will be:
  - 5.1 to ensure the efficient conduct of each meeting of the Partnership Board; and
  - 5.2 to act as a spokesperson in relation to the Growth Deal, and particularly as regards strategic matters.
- 6 The chair of a meeting of the Partnership Board shall be:
  - 6.1 where the physical location of a meeting is specified in the meeting notice as being in England (irrespective of any right to participate in the meeting by electronic means), the then current co-Chair from an English Participating Authority; or
  - 6.2 where the physical location of a meeting is specified in the meeting notice as being in Scotland (irrespective of any right to participate in the meeting by electronic means), the then current co-Chair from a Scottish Participating Authority.



- 7 If the relevant co-Chair is unwilling to act as chairperson of a meeting of the Partnership Board or is not present within 15 minutes after the time appointed for a meeting, the other co-Chair of the Partnership Board shall act as chair of that meeting.
- 8 If neither of the co-Chairs is willing to act as chairperson of a meeting of the Partnership Board or is not present within 15 minutes after the time appointed for a meeting, the meeting shall appoint another member of the Partnership Board (who must be a Leader of a Participating Authority and not her/his substitute) to act as chairperson of the meeting.

### **Substitutes**

- 9 Any Participating Authority may appoint another individual as a substitute for its Leader, to attend and participate in decision-making (including power to vote) at meetings of the Partnership Board at which the Leader is not present.
- 10 The Economic Forum may appoint another individual as a substitute for the Chair of the Economic Forum, to attend and participate in decision-making (including power to vote) at meetings of the Partnership Board at which the Chair of the Economic Forum is not present.
- 11 The substitutes appointed by each of the Participating Authorities and the Economic Forum shall, in the interests of continuity, be appointed on an annual basis, or as otherwise agreed by the Participating Authorities.
- 12 For the avoidance of doubt, the Leaders of the Participating Authorities, and the Chair of the Economic Forum, are expected to use every effort to attend meetings of the Partnership Board in person (including for this purpose participation by conference telephone or video conferencing facilities); attendance by substitutes should be considered only in exceptional circumstances.

### **Quorum**

- 13 A meeting of the Partnership Board will not proceed unless at least one representative of each of the Participating Authorities is present; a substitute appointed under paragraph 9 or 10 shall, if the member who appointed him/her is not present, be counted in determining whether a quorum is present.
- 14 A member of the Partnership Board (or a substitute appointed under paragraph 9 or 10) may participate in a meeting of the Partnership Board via conference telephone or video conference facilities; he/she will then be deemed to be present in determining whether a quorum is present.

## **Attendance by others**

15 The UK and Scottish Governments shall each have the right to appoint one or more representatives to attend all or any part of any meeting of the Partnership Board as an observer and/or to contribute information and advice to the discussions at any meeting of the Partnership Board; for the avoidance of doubt, an individual attending a meeting of the Partnership Board in that capacity shall not have any voting rights.

16 The Partnership Board may, at its discretion, invite:

16.1 representatives of stakeholder bodies (which may include the relevant Local Enterprise Partnerships and the South of Scotland Enterprise Agency)

16.2 any or all of the members of the Chief Executives' Group or Finance Directors' Group;

16.3 the Chair of any or all of the Programme Boards;

16.4 any member of the PMO; and/or

16.5 any other individuals

to attend all or any part of any meeting of the Partnership Board as an observer and/or to contribute information and advice to the discussions at any meeting of the Partnership Board; for the avoidance of doubt, an individual attending a meeting of the Partnership Board in any such capacity shall not have any voting rights.

## **Decision-making**

17 The Partnership Board will use its best efforts to operate by broad consensus; should broad consensus on any issue not be achievable, decisions of the Partnership Board will be made by a majority of votes cast.

18 For the avoidance of doubt, an individual participating in a meeting of the Partnership Board via conference telephone or video conference facilities will be entitled to vote via such facilities.

19 Where a vote is taken, each of the members of the Partnership Board (or, where a member is not participating in the meeting, his/her substitute) shall have one vote.

20 If an equality of votes arises in relation to any matter put to the vote at a meeting of the Partnership Board, the chairperson of the meeting will not have a casting vote.

### **Duty to act in the best interests of the Growth Deal**

- 21 In carrying out their functions, members of the Partnership Board shall recognise and give effect to the principle that each member of the Partnership Board should take decisions in his/her capacity as a member of the Partnership Board in such a way as he/she considers will best promote the overall success of the Growth Deal and in a manner which best furthers the collective interests of the Participating Authorities in that regard.
- 22 Each Participating Authority recognises and agrees that the Leader of that Participating Authority, when carrying out his/her functions as a member of the Partnership Board, is required to act in accordance with the provisions of paragraph 21; and undertakes to respect that principle in the context of any discussions between that Participating Authority and the Leader regarding any aspect of the Growth Deal.

### **Confidentiality and code of conduct**

- 23 Each member of the Partnership Board shall, as an individual, be required to sign a non-disclosure agreement reflecting the terms of clause 20 of the Agreement and a code of conduct (in each case, in the form approved by the Chief Executives' Group), to confirm that he/she understands her/his responsibilities as a member of the Partnership Board.

### **Frequency and location of meetings**

- 24 Meetings of the Partnership Board will be held on a quarterly basis, with additional meetings as deemed appropriate by the co-Chairs of the Partnership Board.
- 25 The first meeting of the Partnership Board shall be held at the offices of the English co-Chair of the Partnership Board and the second meeting shall be held at the offices of the Scottish co-Chair of the Partnership Board. Subsequent meetings of the Partnership Board shall be held on a rotating basis between the offices of the English co-Chair of the Partnership Board and the offices of the Scottish co-Chair of the Partnership Board, or at such other location as the Partnership Board may agree.

### **Support**

- 26 The responsibility for supporting the Partnership Board will rest with the PMO.
- 27 In arranging Partnership Board meetings, the PMO shall use reasonable endeavours to arrange a date, time of day and location which facilitate attendance by members of the Partnership Board.
- 28 The PMO will, without prejudice to its other duties, prepare and collate the papers and documentation required for each Partnership Board meeting and arrange the time and location of each Partnership Board meeting.

- 29 A full set of papers (including an agenda) will be issued by the PMO to all Partnership Board members at least five Business Days before each meeting of the Partnership Board.
- 30 Any Partnership Board member wishing to submit a paper for discussion at a meeting of the Partnership Board shall ensure that the PMO has received it at least five Business Days before the papers are due to be issued.
- 31 Papers may be issued outwith the normal timescale at the discretion of the co-Chairs of the Partnership Board, but Partnership Board members may decide not to consider any papers if they feel that they have had insufficient time to study those papers in advance of the Partnership Board meeting at which those papers were to be discussed; this applies particularly to papers tabled on the day of the meeting, which will not normally be considered.

#### **Access to meetings**

- 32 Meetings of the Partnership Board will (subject to paragraph 33) be open to the public.
- 33 If the chairperson of a meeting of the Partnership Board so determines (having regard to legislative principles applicable to meetings of the Participating Authorities), the public may be excluded from any parts of the meeting at which matters deemed confidential by the chairperson are to be discussed.

#### **Recording of decisions**

- 34 A list of action points arising from each meeting of the Partnership Board will be circulated by the PMO to all Partnership Board members, and to all members of the Chief Executives' Group, within 2 Business Days after the meeting.
- 35 Minutes of each meeting of the Partnership Board will be circulated by the PMO to all those individuals referred to in paragraph 34, within 5 Business Days after the meeting.
- 36 Any comments on minutes of Partnership Board meetings, or suggestions for amendment of such minutes, should be notified within 5 Business Days of receipt of the minutes to the PMO and to all other recipients of the minutes, for consideration (and, if considered appropriate, adoption) by the Partnership Board at its next meeting.
- 37 Minutes of meetings of the Partnership Board shall (subject to paragraph 38) be made available for public review by way of the Growth Deal website.
- 38 The co-Chairs may determine that any parts of the minutes of a Partnership Board meeting which contain confidential material should be redacted in the versions made available for public review under paragraph 37.



## **SCHEDULE PART 3A - COMPOSITION AND REMIT OF THE ECONOMIC FORUM**

### **Composition**

1.1 The Economic Forum shall comprise a maximum of 10 representatives, with 2 of such representatives being appointed by each Participating Authority.

1.2 A Participating Authority may, by notice to the chair of the Economic Forum, remove any representative appointed by that Participating Authority as a member of the Economic Forum and, subject to the maximum of 2 representatives being appointed by each Participating Authority, appoint another representative in her/his place.

### **Remit**

2.1 The remit of the Economic Forum is to provide an opportunity for wider stakeholders – with a particular focus on economic development agencies and the business community (including social enterprises) – to contribute towards maximising the impact of the Growth Deal in stimulating inclusive economic growth within the area served by the Growth Deal; in particular, the Economic Forum shall:

- champion, co-ordinate and offer advice to the Partnership Board on priorities for skills, business growth and regeneration and ensure that these are delivered in alignment with local needs and aspirations whilst delivering against the Growth Deal priorities;
- maintain appropriate channels of communication and escalate decisions as necessary with third party organisations;
- advise the Partnership Board on how best to engage with the business community regarding the Growth Deal;
- advise on economic priorities for the business communities across the Borderlands Region; and
- utilise business networks to promote and support the successful delivery of Growth Deal Projects and programmes.

## **SCHEDULE PART 3B – RULES OF PROCEDURE FOR THE ECONOMIC FORUM**

### **Chair**

- 1 The members of the Economic Forum shall appoint one of their number as Chair of the Economic Forum.
- 2 The Chair shall rotate among the representatives appointed by each of the Participating Authorities on an annual basis, with effect from the commencement of each Financial Year (but following the principle that the first Chair should be a representative appointed by an English Participating Authority, the second Chair a representative appointed by a Scottish Participating Authority; and in subsequent years, the Chair shall rotate between a representative appointed by an English Participating Authority and a representative appointed by a Scottish Participating Authority).
- 3 For the avoidance of doubt, the office of Chair will not be a salaried position.
- 4 The role of the Chair will be:
  - 4.1 to act as a member of the Partnership Board;
  - 4.2 to ensure the efficient conduct of each meeting of the Economic Forum; and
  - 4.3 to act as the Economic Forum's spokesperson in relation to the Growth Deal, and particularly as regards engagement with the business community.
- 5 If the Chair is unwilling to act as chairperson of a meeting of the Economic Forum or is not present within 15 minutes after the time appointed for a meeting, the meeting shall appoint another member of the Economic Forum to act as chairperson of the meeting.

### **Substitutes**

- 6 Members of the Economic Forum shall not be entitled to appoint substitutes to attend meetings which they are unable to attend.

### **Quorum**

- 7 A meeting of the Economic Forum will not proceed unless at least one representative appointed by each of the Participating Authorities is present.
- 8 A member of the Economic Forum may participate in a meeting of the Economic Forum via conference telephone or video conference facilities; he/she will then be deemed to be present in determining whether a quorum is present.

### **Attendance by others**

- 9      The UK and Scottish Governments shall each have the right to appoint one or more representatives to attend all or any part of any meeting of the Economic Forum as an observer and/or to contribute information and advice to the discussions at any meeting of the Economic Forum; for the avoidance of doubt, an individual attending a meeting of the Economic Forum in that capacity shall not have any voting rights.
- 10     The Economic Forum may, at its discretion, invite any individual to attend all or any part of any meeting of the Economic Forum as an observer and/or to contribute information and advice to the discussions at any meeting of the Economic Forum; for the avoidance of doubt, an individual attending a meeting of the Economic Forum in any such capacity shall not have any voting rights.

### **Decision-making**

- 11     The Economic Forum will use its best efforts to operate by broad consensus; should broad consensus on any issue not be achievable, decisions of the Economic Forum will be made by a majority of votes cast.
- 12     For the avoidance of doubt, an individual participating in a meeting of the Economic Forum via conference telephone or video conference facilities will be entitled to vote via such facilities.
- 13     Where a vote is taken, each of the members of the Economic Forum shall have one vote.
- 14     If an equality of votes arises in relation to any matter put to the vote at a meeting of the Economic Forum, the chairperson of the meeting will not have a casting vote.

### **Duty to act in the best interests of the Growth Deal**

- 15     In carrying out their functions, members of the Economic Forum shall recognise and give effect to the principle that each member of the Economic Forum should take decisions in his/her capacity as a member of the Economic Forum in such a way as he/she considers will best promote the overall success of the Growth Deal and in a manner which best furthers the collective interests of the Participating Authorities in that regard.

### **Frequency of meetings**

- 16     Meetings of the Economic Forum will be held on a quarterly basis, with additional meetings as deemed appropriate by the Chair of the Economic Forum.



## **Support**

- 17 The responsibility for supporting the Economic Forum will rest with the PMO.
- 18 In arranging Economic Forum meetings, the PMO shall use reasonable endeavours to arrange a date, time of day and location which facilitate attendance by members of the Economic Forum.
- 19 The PMO will, without prejudice to its other duties, prepare and collate the papers and documentation required for each Economic Forum meeting and arrange the time and location of each Economic Forum meeting.
- 20 A full set of papers (including an agenda) will be issued by the PMO to all Economic Forum members at least five Business Days before each meeting of the Economic Forum.
- 21 Any Economic Forum member wishing to submit a paper for discussion at a meeting of the Economic Forum shall ensure that the PMO has received it at least five Business Days before the papers are due to be issued.
- 22 Papers may be issued outwith the normal timescale at the discretion of the Chair of the Economic Forum, but Economic Forum members may decide not to consider any papers if they feel that they have had insufficient time to study those papers in advance of the Economic Forum meeting at which those papers were to be discussed; this applies particularly to papers tabled on the day of the meeting, which will not normally be considered.

## **Access to meetings**

- 23 Meetings of the Economic Forum will (subject to paragraph 24) be open to the public.
- 24 If the chairperson of a meeting of the Economic Forum so determines (having regard to legislative principles applicable to meetings of the Participating Authorities), the public may be excluded from any parts of the meeting at which matters deemed confidential by the chairperson are to be discussed.

## **Recording of decisions**

- 25 A list of action points arising from each meeting of the Economic Forum will be circulated by the PMO to all Economic Forum members, within 2 Business Days after the meeting.
- 26 Minutes of each meeting of the Economic Forum will be circulated by the PMO to all those individuals referred to in paragraph 25, within 5 Business Days after the meeting.

- 27 Any comments on minutes of Economic Forum meetings, or suggestions for amendment of such minutes, should be notified within 5 Business Days of receipt of the minutes to the PMO and to all other recipients of the minutes, for consideration (and, if considered appropriate, adoption) by the Economic Forum at its next meeting.
- 28 Minutes of meetings of the Economic Forum shall (subject to paragraph 29) be made available for public review by way of the Growth Deal website.
- 29 The Chair may determine that any parts of the minutes of a Economic Forum meeting which contain confidential material should be redacted in the versions made available for public review under paragraph 28.

## **SCHEDULE PART 4A – COMPOSITION AND REMIT OF THE CHIEF EXECUTIVES’ GROUP**

### **Composition**

1. The Chief Executives’ Group will comprise the Chief Executive of each of the Participating Authorities, but on the understanding that, as referred in Part 4B of this Schedule, each Participating Authority shall be entitled to nominate a substitute with power to attend and vote in place of the Chief Executive of that Participating Authority.

### **Remit**

2 The Chief Executives’ Group shall:

- support the Partnership Board in overseeing the delivery of the Growth Deal and ensure that it is aligned towards achieving its inclusive growth ambitions;
- exercise oversight and direction in relation to the work of the PMO, including management of the PMO and monitoring its performance in carrying out its work;
- highlight to the Partnership Board key issues (whether for noting or decision) arising from the reports and recommendations issued from time to time by the PMO, and provide appropriate guidance and recommendations to the Partnership Board in relation to issues of that nature; and
- provide leadership in key themes and priorities of the Growth Deal in furtherance of and consistent with the policies and directions issued by the Partnership Board.

## **SCHEDULE PART 4B – RULES OF PROCEDURE FOR THE CHIEF EXECUTIVES’ GROUP**

### **Chair**

- 1 A co-Chair approach shall apply in relation to the Chief Executives’ Group – with one Chair being a chief executive of a Scottish Participating Authority and the other Chair being a chief executive of an English Participating Authority.
- 2 The co-Chairs shall rotate among the chief executives of each of the Participating Authorities on an annual basis, with effect from the commencement of each Financial Year, but following the principle that each co-Chair must always be a chief executive of a Participating Authority whose Leader, at the relevant time, holds the office of co-Chair of the Partnership Board.
- 3 For the avoidance of doubt, the office of Chair will not be a salaried position.
- 4 The role of the Chair will be:
  - 4.1 to ensure the efficient conduct of each meeting of the Chief Executives’ Group; and
  - 4.2 to act as the Chief Executives’ Group’s representative as regards communications with the Partnership Board, the Economic Forum, the Finance Directors’ Group and the PMO.
- 5 The chair of a meeting of the Chief Executives’ Group shall be:
  - 5.1 where the physical location of a meeting is specified in the meeting notice as being in England (irrespective of any right to participate in the meeting by electronic means), the then current co-Chair from an English Participating Authority; or
  - 5.2 where the physical location of a meeting is specified in the meeting notice as being in Scotland (irrespective of any right to participate in the meeting by electronic means), the then current co-Chair from a Scottish Participating Authority.
- 6 If neither of the co-Chairs is willing to act as chairperson of a meeting of the Chief Executives’ Group or is not present within 15 minutes after the time appointed for a meeting, the meeting shall appoint another member of the Chief Executives’ Group (who must be a chief executive of a Participating Authority and not her/his substitute) to act as chairperson of the meeting.

### **Substitutes**

- 7 Any Participating Authority may appoint another individual as a substitute for its chief executive, to attend and participate in decision-making (including power to vote) at meetings of the Chief Executives' Group at which the chief executive is not present.
- 8 The substitute appointed by each of the Participating Authorities shall, in the interests of continuity, be appointed on an annual basis, or as otherwise agreed among the Participating Authorities.
- 9 For the avoidance of doubt, the chief executives of the Participating Authorities are expected to use every effort to attend meetings of the Chief Executives' Group in person (including for this purpose participation by conference telephone or video conferencing facilities); attendance by substitutes should be considered only in exceptional circumstances.

### **Quorum**

- 10 Subject to paragraph 10, a meeting of the Chief Executives' Group will not proceed unless the chief executive or her/his substitute (appointed in accordance with paragraphs 6 and 7) of each of the Participating Authorities is present.
- 11 A meeting of the Chief Executives' Group may proceed despite the absence of a chief executive of a Participating Authority (and her/his appointed substitute) if that Participating Authority agrees in writing that the meeting can proceed without her/his attendance.
- 12 A member of the Chief Executives' Group may participate in a meeting of the Chief Executives' Group via conference telephone or video conference facilities; he/she will then be deemed to be present in determining whether a quorum is present.

### **Attendance by others**

- 13 The UK and Scottish Governments shall each have the right to appoint one or more representatives to attend all or any part of any meeting of the Chief Executives' Group as an observer and/or to contribute information and advice to the discussions at any meeting of the Chief Executives' Group; for the avoidance of doubt, an individual attending a meeting of the Chief Executives' Group in any such capacity shall not have any voting rights.
- 14 The Chief Executives' Group may, at its discretion, invite any individual to attend all or any part of any meeting of the Chief Executives' Group as an observer and/or to contribute information and advice to the discussions at any meeting of the Chief Executives' Group; for the avoidance of doubt, an individual attending a meeting of the Chief Executives' Group in any such capacity shall not have any voting rights.

### **Decision-making**

- 15 The Chief Executives' Group will use its best efforts to operate by broad consensus; should broad consensus on any issue not be achievable, decisions of the Chief Executives' Group will be made by a majority of votes cast.
- 16 For the avoidance of doubt, an individual participating in a meeting of the Chief Executives' Group via conference telephone or video conference facilities will be entitled to vote via such facilities.
- 17 Where a vote is taken, each of the members of the Chief Executives' Group shall have one vote.
- 18 If an equality of votes arises in relation to any matter put to the vote at a meeting of the Chief Executives' Group, the chairperson of the meeting will not have a casting vote.

#### **Duty to act in the best interests of the Growth Deal**

- 19 In carrying out their functions, members of the Chief Executives' Group shall recognise and give effect to the principle that each member of the Chief Executives' Group should take decisions in his/her capacity as a member of the Chief Executives' Group in such a way as he/she considers will best promote the overall success of the Growth Deal and in a manner which best furthers the collective interests of the Participating Authorities in that regard.
- 20 Each Participating Authority recognises and agrees that the chief executive of that Participating Authority, when carrying out his/her functions as a member of the Chief Executives' Group, is required to act in accordance with the provisions of paragraph 18; and undertakes to respect that principle in the context of any discussions between that Participating Authority and the chief executive regarding any aspect of the Growth Deal.

#### **Frequency of meetings**

- 21 Meetings of the Chief Executives' Group will be held on a quarterly basis, with additional meetings as deemed appropriate by the Chair of the Chief Executives' Group.

#### **Support**

- 22 The responsibility for supporting the Chief Executives' Group will rest with the PMO.
- 23 In arranging Chief Executives' Group meetings, the PMO shall use reasonable endeavours to arrange a date, time of day and location which facilitate attendance by members of the Chief Executives' Group.

- 24 The PMO will, without prejudice to its other duties, prepare and collate the papers and documentation required for each Chief Executives' Group meeting and arrange the time and location of each Chief Executives' Group meeting.
- 25 A full set of papers (including an agenda) will be issued by the PMO to all Chief Executives' Group members at least five Business Days before each meeting of the Chief Executives' Group.
- 26 Any Chief Executives' Group member wishing to submit a paper for discussion at a meeting of the Chief Executives' Group shall ensure that the PMO has received it at least five Business Days before the papers are due to be issued.
- 27 Papers may be issued outwith the normal timescale at the discretion of the Chair of the Chief Executives' Group, but Chief Executives' Group members may decide not to consider any papers if they feel that they have had insufficient time to study those papers in advance of the Chief Executives' Group meeting at which those papers were to be discussed; this applies particularly to papers tabled on the day of the meeting, which will not normally be considered.

#### **Access to meetings**

- 28 Meetings of the Chief Executives' Group will not be open to the public.

#### **Recording of decisions**

- 29 A list of action points arising from each meeting of the Chief Executives' Group will be circulated by the PMO to all Chief Executives' Group members, within 2 Business Days after the meeting.
- 30 Minutes of each meeting of the Chief Executives' Group will be circulated by the PMO to all those individuals referred to in paragraph 28, within 5 Business Days after the meeting.
- 31 Any comments on minutes of Chief Executives' Group meetings, or suggestions for amendment of such minutes, should be notified within 5 Business Days of receipt of the minutes to the PMO and to all other recipients of the minutes, for consideration (and, if considered appropriate, adoption) by the Chief Executives' Group at its next meeting.
- 32 Minutes of meetings of the Chief Executives' Group shall not be made available for public review by way of the Growth Deal website.

## **SCHEDULE PART 5A – COMPOSITION AND REMIT OF THE FINANCE DIRECTORS’ GROUP**

### **Composition**

1. The Finance Directors’ Group shall comprise:
  - the Finance Director of each of the Participating Authorities; and
  - an individual from the PMO.

### **Remit**

2.1 The remit of the Finance Directors’ Group shall be to ensure financial probity, and address issues of risk and assurance, in relation to the delivery of the Growth Deal; in particular, the Finance Directors’ Group shall:

- support the PMO, the Chief Executives’ Group and the Partnership Board in overseeing the Growth Deal's finances;
- support the Partnership Board in ensuring that financial plans are set having regard to, and in alignment with, the business cases approved by the UK Government and Scottish Government from time to time;
- ensure that the expenditure from the Growth Deal Programme Budget is in line with the financial plan approved by the Partnership Board from time to time;
- consider quarterly financial reports, and escalate any significant risks to the Partnership Board through the Chief Executives’ Group;
- collate financial information across the various projects and initiatives which are being delivered from time to time as part of the Growth Deal, including performance against budget;
- take a proactive approach to the management of cash flow in respect of the Growth Deal as a whole;
- provide financial information to the Accountable Bodies, in a manner which enables the Accountable Bodies to fulfil their respective responsibilities in this regard to the UK Government and/or (as applicable) the Scottish Government.

2.2 Without prejudice to the preceding generality, and by way of illustration only, the remit of the Finance Directors’ Group shall include the following roles and responsibilities; in particular, the Finance Directors’ Group shall:



- approve the Growth Deal Operating Budget and Growth Deal Programme Budget; and
- approve the Growth Deal financial plan (to be agreed with the UK and Scottish Governments) and the annual updates to the Growth Deal financial plan;
- approve cashflow needs for the Growth Deal as set out in the Growth Deal financial plan and the Growth Deal Operating Budget and the Growth Deal Programme Budget

## **SCHEDULE PART 5B – RULES OF PROCEDURE FOR THE FINANCE DIRECTORS’ GROUP**

### **Chair**

- 1 A co-Chair approach shall apply in relation to the Finance Directors’ Group – with one Chair being a finance director of a Scottish Participating Authority and the other Chair being a finance director of an English Participating Authority.
- 2 The co-Chairs shall rotate among the finance directors of each of the Participating Authorities on an annual basis, with effect from the commencement of each Financial Year, but following the principle that each co-Chair must always be a finance director of a Participating Authority whose Leader, at the relevant time, holds the office of co-Chair of the Partnership Board.
- 3 For the avoidance of doubt, the office of Chair will not be a salaried position.
- 4 The chair of a meeting of the Finance Directors’ Group shall be:
  - 4.1 where the physical location of a meeting is specified in the meeting notice as being in England (irrespective of any right to participate in the meeting by electronic means), the then current co-Chair from an English Participating Authority; or
  - 4.2 where the physical location of a meeting is specified in the meeting notice as being in Scotland (irrespective of any right to participate in the meeting by electronic means), the then current co-Chair from a Scottish Participating Authority.
- 5 If neither of the co-Chairs is willing to act as chairperson of a meeting of the Finance Directors’ Group or is not present within 15 minutes after the time appointed for a meeting, the meeting shall appoint another member of the Finance Directors’ Group (who must be a finance director of a Participating Authority and not her/his substitute) to act as chairperson of the meeting.

### **Substitutes**

- 6 Any Participating Authority may appoint another individual as a substitute for its finance director, to attend and participate in decision-making (including power to vote) at meetings of the Finance Directors’ Group at which the finance director is not present.
- 7 The substitute appointed by each of the Participating Authorities shall, in the interests of continuity, be appointed on an annual basis, or as otherwise agreed among the Participating Authorities.

- 8 For the avoidance of doubt, the finance directors of the Participating Authorities are expected to use every effort to attend meetings of the Finance Directors' Group in person (including for this purpose participation by conference telephone or video conferencing facilities); attendance by substitutes should be considered only in exceptional circumstances.

### **Quorum**

- 9 Subject to paragraph 10, a meeting of the Finance Directors' Group will not proceed unless the finance director or her/his substitute (appointed in accordance with paragraphs 6 and 7) of each of the Participating Authorities is present.
- 10 A meeting of the Finance Directors' Group may proceed despite the absence of the finance director of a Participating Authority (and her/his appointed substitute) if that Participating Authority agrees in writing that the meeting can proceed without her/his attendance.
- 11 A member of the Finance Directors' Group may participate in a meeting of the Finance Directors' Group via conference telephone or video conference facilities; he/she will then be deemed to be present in determining whether a quorum is present.

### **Attendance by others**

- 12 The UK and Scottish Governments shall each have the right to appoint one or more representatives to attend all or any part of any meeting of the Finance Directors' Group as an observer and/or to contribute information and advice to the discussions at any meeting of the Finance Directors' Group; for the avoidance of doubt, an individual attending a meeting of the Finance Directors' Group in that capacity shall not have any voting rights.
- 13 The Finance Directors' Group may, at its discretion, invite any individual to attend all or any part of any meeting of the Finance Directors' Group as an observer and/or to contribute information and advice to the discussions at any meeting of the Finance Directors' Group; for the avoidance of doubt, an individual attending a meeting of the Finance Directors' Group in any such capacity shall not have any voting rights.

### **Decision-making**

- 14 The Finance Directors' Group will use its best efforts to operate by broad consensus; should broad consensus on any issue not be achievable, decisions of the Finance Directors' Group will be made by a majority of votes cast.
- 15 For the avoidance of doubt, an individual participating in a meeting of the Finance Directors' Group via conference telephone or video conference facilities will be entitled to vote via such facilities.

- 16 Where a vote is taken, each of the members of the Finance Directors' Group shall have one vote.
- 17 If an equality of votes arises in relation to any matter put to the vote at a meeting of the Finance Directors' Group, the chairperson of the meeting will not have a casting vote.

#### **Duty to act in the best interests of the Growth Deal**

- 18 In carrying out their functions, members of the Finance Directors' Group shall recognise and give effect to the principle that each member of the Finance Directors' Group should take decisions in his/her capacity as a member of the Finance Directors' Group in such a way as he/she considers will best promote the overall success of the Growth Deal and in a manner which best furthers the collective interests of the Participating Authorities in that regard.
- 19 Each Participating Authority recognises and agrees that the finance director of that Participating Authority, when carrying out his/her functions as a member of the Finance Directors' Group, is required to act in accordance with the provisions of paragraph 18; and undertakes to respect that principle in the context of any discussions between that Participating Authority and the finance director regarding any aspect of the Growth Deal.

#### **Frequency of meetings**

- 20 Meetings of the Finance Directors' Group will be held on a quarterly basis, with additional meetings as deemed appropriate by the Chair of the Finance Directors' Group.
- 21 The timing of quarterly meetings should align with the deadlines for quarterly reporting in accordance with the Monitoring and Reporting Framework and the timing of drawdown of funding from UK and Scottish Governments.

#### **Support**

- 22 The responsibility for supporting the Finance Directors' Group will rest with the PMO.
- 23 In arranging Finance Directors' Group meetings, the PMO shall use reasonable endeavours to arrange a date, time of day and location which facilitate attendance by members of the Finance Directors' Group.
- 24 The PMO will, without prejudice to its other duties, prepare and collate the papers and documentation required for each Finance Directors' Group meeting and arrange the time and location of each Finance Directors' Group meeting.

- 25 A full set of papers (including an agenda) will be issued by the PMO to all Finance Directors' Group members at least five Business Days before each meeting of the Finance Directors' Group.
- 26 Any Finance Directors' Group member wishing to submit a paper for discussion at a meeting of the Finance Directors' Group shall ensure that the PMO has received it at least five Business Days before the papers are due to be issued.
- 27 Papers may be issued outwith the normal timescale at the discretion of the Chair of the Finance Directors' Group, but Finance Directors' Group members may decide not to consider any papers if they feel that they have had insufficient time to study those papers in advance of the Finance Directors' Group meeting at which those papers were to be discussed; this applies particularly to papers tabled on the day of the meeting, which will not normally be considered.

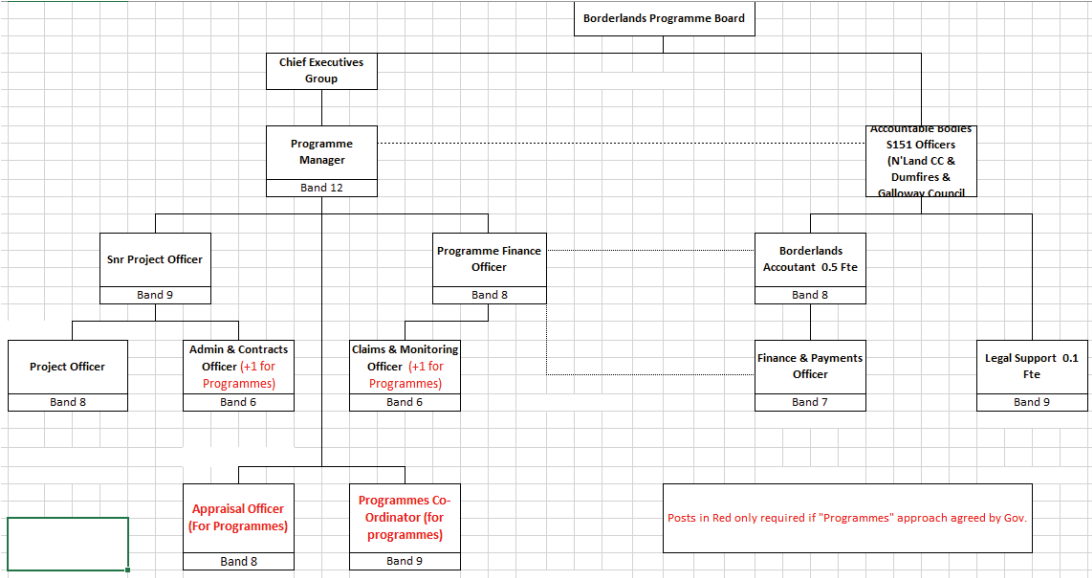
#### **Access to meetings**

- 28 Meetings of the Finance Directors' Group will not be open to the public.

#### **Recording of decisions**

- 29 A list of action points arising from each meeting of the Finance Directors' Group will be circulated by the PMO to all Finance Directors' Group members, within 2 Business Days after the meeting.
- 30 Minutes of each meeting of the Finance Directors' Group will be circulated by the PMO to all those individuals referred to in paragraph 29, within 5 Business Days after the meeting.
- 31 Any comments on minutes of Finance Directors' Group meetings, or suggestions for amendment of such minutes, should be notified within 5 Business Days of receipt of the minutes to the PMO and to all other recipients of the minutes, for consideration (and, if considered appropriate, adoption) by the Finance Directors' Group at its next meeting.
- 32 Minutes of meetings of the Finance Directors' Group shall not be made available for public review by way of the Growth Deal website.

# **SCHEDULE PART 6 – INITIAL COMPOSITION OF THE PROJECT MANAGEMENT OFFICE**



Rates of pay of individuals within the PMO will be set at the pay rate of the PMO Host Employer for the relevant grade.

## **SCHEDULE PART 7 – PROJECT MANAGEMENT OFFICE STAFFING AND OPERATING ARRANGEMENTS**

- 1.1 Where an officer has been appointed by a Participating Authority as a member of the PMO, the Participating Authority which is his/her employer shall ensure (through the reallocation of work to other employees as appropriate) that his/her other commitments are such that he/she is able to devote an appropriate amount of time to his/her work as a member of the PMO.
- 1.2 In the event that any member of the PMO ceases to be able to devote the requisite time to supporting the Growth Deal (or where that is anticipated to occur shortly), the Participating Authority which is his/her employer shall advise the Chief Executives' Group (who will in turn escalate this to the Partnership Board, where they consider that to be appropriate); and wherever possible shall seek to identify another officer who might provide similar support to the Growth Deal in his/her place.
- 1.3 The area or areas in which each member of the PMO is expected to provide support to the Growth Deal, and the extent of the contribution expected of him/her, shall be as determined by the Chief Executives' Group from time to time.
- 1.4 In carrying out their work in implementing the Growth Deal, all members of the PMO shall give effect to the policies set from time to time by the Partnership Board, and to the directions and instructions issued from time to time by the Chief Executives' Group; each of the Participating Authorities shall instruct each of its employees/officers who are members of the PMO accordingly.
- 1.5 One of the members of the PMO shall be designated as the "**Growth Deal Manager**", or such other title as the Participating Authorities may determine from time to time, and he/she shall be responsible for day to day management of the PMO, acting in accordance with the scheme of delegation prescribed by the Chief Executives' Group from time to time.
- 1.6 The job descriptions (or (a) in the case of employees seconded to the PMO, their role and remit in the course of their secondment or (b) in the case of employees of the PMO Host Employer only partly engaged on Growth Deal work, their role and remit in the course of that work), shall be as determined from time to time by the Chief Executives' Group.
- 1.7 All members of the PMO who are to have the status of employees in respect of the Growth Deal shall be employed by the PMO Host Employer on such rates of pay, and on such other terms and conditions, which are the same as those set from time to time by the PMO Host Employer for its other employees of the equivalent grade.
- 1.8 All members of the PMO who are to have the status of secondees in respect of the Growth Deal shall be managed and supervised by the PMO Host Employer in accordance with such provisions (which shall be intimated to each seconded immediately upon commencement of the secondment) as the Chief Executives' Group may prescribe from time to time.
- 1.9 The PMO Host Employer shall not:

- 1.9.1 make any alteration to the rate of pay or other terms and conditions of employment of any of the individuals comprised in the PMO; or
- 1.9.2 make any alteration to the provisions governing secondment of any of the individuals comprised in the PMO;
- without (in each such case) the prior approval of the Chief Executives' Group.
- 1.10 Notwithstanding the provisions of paragraph 1.4 of this Part 7 of the Schedule, there shall be no obligation to give effect to any policy, direction or instruction set or issued by the Chief Executives' Group if the implementation of that policy, direction or instruction would expose the PMO Host Employer (or any other Participating Authority who is the employer of any individual seconded to the PMO) to any significant risk of legal liability (whether under employment law, health and safety regulations, Data Protection Laws or otherwise).
- 1.11 Except insofar as the Chief Executives' Group may otherwise determine, each of the individuals comprised in the PMO shall devote the whole of his/her time during the hours of work specified in his/her contract of employment, or (as the case may be) specified in the relevant secondment agreement, to the work associated with the Growth Deal.
- 1.12 The PMO Host Employer shall ensure that the terms and conditions of employment (or, in the case of secondees, the provisions governing secondment) in respect of each member of the PMO contain provisions to the effect that all such Intellectual Property Rights as may be acquired by him/her in the course of his/her work in relation to the Growth Deal shall vest in the PMO Host Employer and that (if so required by the Chief Executives' Group) he/she shall execute and deliver a formal assignation or assignment (in such terms as the Chief Executives' Group may reasonably prescribe) assigning any such intellectual property rights (for nil or nominal consideration) to the PMO Host Employer; the PMO Host Employer shall enforce such provisions accordingly, in accordance with such directions as may be issued from time to time by the Chief Executives' Group.
- 1.13 In relation to each post comprised in the PMO (and including any occasion on which any such post falls vacant), the PMO Host Employer shall take such steps (which may include, for the avoidance of doubt, the involvement of a panel comprised of such individuals as the Chief Executives' Group may nominate) in relation to the process of recruitment, interview and selection as the Chief Executives' Group may prescribe.
- 1.14 The members of the PMO shall be accommodated in such premises as may be agreed from time to time between the Chief Executives' Group and the PMO Host Employer.
- 1.15 The PMO Host Employer shall be responsible for ensuring a safe and appropriate working environment for the PMO and for the provision of all appropriate fixtures and fittings, furniture, equipment, office supplies, ICT links and other facilities and services (including reasonable accommodation for meetings) for the members of the PMO, in accordance with such arrangements as may be approved by the Chief Executives' Group from time to time.
- 1.16 For the avoidance of doubt, the PMO Host Employer shall be responsible (to the exclusion of the members of the Chief Executives' Group and any bodies other than the PMO Host Employer which appoint individuals as members of the Chief Executives' Group) for ensuring compliance with all requirements under health and safety legislation which apply in relation to the members of the PMO.



- 1.17 The PMO Host Employer will be responsible for maintaining all appropriate insurances in respect of the work carried out by the members of the PMO and of the nature of employers' liability insurance (but extending to the secondees) in respect of the PMO itself; the PMO Host Employer shall:
- 1.17.1 comply with all reasonable directions issued from time to time by the Chief Executives' Group with regard to the insurances which it is to maintain under this paragraph;
  - 1.17.2 provide the Chief Executives' Group on request with a copy of the policy documents relating to such insurances, together with evidence that the premiums have been paid and that the insurances are in force.
- 1.18 All properly vouched expenditure incurred from time to time by the PMO Host Employer in respect of:
- 1.18.1 payments to the relevant employer in respect of secondees appointed to the PMO;
  - 1.18.2 the accommodation, facilities and services referred to in paragraph 1.14 of this Part 7 of the Schedule; and
  - 1.18.3 the insurances referred to in paragraph 1.17 of this Part 7 of the Schedule,
- shall be reimbursed to the PMO Host Employer out of the Growth Deal Operating Funds.
- 1.19 The Parties acknowledge and agree that the conduct and performance of all individuals employed in relation to the Growth Deal or seconded to the Growth Deal shall be kept under review by the Chief Executives' Group; the PMO Host Employer undertakes to implement all such disciplinary procedures and take all such other steps available to it in its capacity as an employer (or, as the case may be, available to it under the agreement with the employer of the relevant individual, in the case of a seconded) in respect of misconduct or failure in performance or other breaches of the terms and conditions of employment (or, as the case may be, the provisions relating to the secondment) of the members of the PMO as the Chief Executives' Group may direct from time to time.
- 1.20 Any sums payable (whether in respect of an award from an employment tribunal or court, the costs of contesting any application to an employment tribunal or court, or otherwise) in respect of any claim or application to an employment tribunal or court by any employee or seconded forming part of the PMO under employment law or any legislation relating to discrimination shall (subject to paragraph 1.21 of this Part 7 of the Schedule) be reimbursed to the PMO Host Employer out of the Growth Deal Operating Funds except insofar as the relevant claim or application is referable to any act or default (otherwise than in pursuance of a direction by the Chief Executives' Group) on the part of the PMO Host Employer.
- 1.21 With reference to the provisions of paragraph 1.20 of this Part 7 of the Schedule:
- 1.21.1 the PMO Host Employer shall advise the Chief Executives' Group promptly in writing upon becoming aware of any event or circumstances which might reasonably be expected to give rise to a claim or application falling within the provisions of paragraph 1.20 of this Part 7 of the Schedule or upon receipt of intimation of any such claim or application;

- 1.21.2 the PMO Host Employer shall not admit liability in respect of any such claim or application, or compromise or settle any such claim or application, or take any other step which might prejudice the ability to resist such claim or application, without (in each such case) the prior approval of the Chief Executives' Group;
- 1.21.3 the PMO Host Employer shall (subject to being indemnified out of the Growth Deal Programme Budget in respect of any liability which it may thereby incur) take all such steps to resist, compromise or settle any such claim or application as the Chief Executives' Group may direct from time to time.
- 1.22 The Parties agree that (subject to paragraph 1.23 of this Part 7 of the Schedule) the PMO Host Employer shall (except (a) as otherwise determined by the Chief Executives' Group; or (b) where Intellectual Property Rights are to be held by the Nominated Contracting Party in accordance with paragraph 1.9 of Part 8 of the Schedule) hold all Intellectual Property Rights in relation to any materials prepared by the PMO relating to the Growth Deal; the Parties shall take all such steps as the Chief Executives' Group may direct from time to time to give effect to the preceding provisions of this paragraph.
- 1.23 The PMO Host Employer shall, if so directed by the Chief Executives' Group, grant an appropriate licence to any Participating Authority or third party which is taking forward the delivery of any Growth Deal Project, authorising that Participating Authority or other third party to make use of any Intellectual Property Rights of the nature referred to in paragraph 1.22 of this Part 7 of the Schedule to the extent reasonably required to facilitate the delivery of that project.

## **SCHEDULE PART 8 – CONTRACTS RELATING TO OVERALL GROWTH DEAL**

- 1.1 Where the Chief Executives' Group (or the PMO, within the scope of their delegated authority) determine from time to time that it would be appropriate for a Growth Deal Programme Contract to be entered into, they shall identify one of the Participating Authorities as the body which should take the role of contracting party in relation to that contract.
- 1.2 A Nominated Contracting Party shall take such steps in relation to the Growth Deal Programme Contract as may be appropriate, in accordance with such directions as the Chief Executives' Group (or, as the case may be, the PMO) may issue from time to time.
- 1.3 Without prejudice to the provisions of paragraph 1.1 of this Part 8 of the Schedule, the Nominated Contracting Party shall take such steps in relation to procurement (including the issue of invitations to tender, the assessment of tender submissions, the selection of consultants and contractors, and obtaining any necessary funder approvals) in respect of the proposed Growth Deal Programme Contract as the Chief Executives' Group may direct from time to time.
- 1.4 All properly vouched payments falling due under a Growth Deal Programme Contract shall be reimbursed to the Nominated Contracting Party out of the Growth Deal Programme Budget in accordance with clause 11 of the Agreement.
- 1.5 The Nominated Contracting Party shall:
  - 1.5.1 take all reasonable steps to comply with its obligations under any Growth Deal Programme Contract;
  - 1.5.2 advise the Chief Executives' Group without delay upon receipt of any notice or intimation which it may receive under any Growth Deal Programme Contract;
  - 1.5.3 take all such steps with regard to the issue of any instruction, consent or approval, or the exercise of any option, in respect of any Growth Deal Programme Contract in accordance with the directions issued from time to time by the Chief Executives' Group;
  - 1.5.4 take all such steps directed towards enforcement of the obligations of the other party or parties to each Growth Deal Programme Contract (or, as the case may be, directed towards contesting any claim made by any other such party or parties) in each case in accordance with the directions issued from time to time by the Chief Executives' Group; and
  - 1.5.5 generally take all such steps in respect of each Growth Deal Programme Contract as the Chief Executives' Group may reasonably direct from time to time.
- 1.6 The Nominated Contracting Party shall not take any step (other than the making of payments to the relevant party or parties as they fall due, and such other steps as may be required for compliance with its obligations) under any Growth Deal Programme Contract otherwise than:

- 1.6.1 in accordance with a direction issued by the Chief Executives' Group; or
- 1.6.2 in circumstances where the failure or delay on the part of the Nominated Contracting Party in taking that step could expose the Nominated Contracting Party to a significant risk of legal liability.
- 1.7 The Chief Executives' Group may delegate such of its powers under paragraphs 1.1 to 1.6 of this Part 8 of the Schedule as it thinks fit (either generally or in relation to any particular Growth Deal Programme Contract or Growth Deal Programme Contracts) to a member or members of the PMO; in that event, references in those clauses to a direction by the Chief Executives' Group shall be interpreted as a direction by the relevant member or members of the PMO.
- 1.8 The Chief Executives' Group, shall, in issuing directions to the Nominated Contracting Party under paragraphs 1.1 to 1.7 of this Part 8 of the Schedule, seek wherever appropriate to ensure that appropriate rights of recourse against the relevant contractor or consultant are available to any party which will be relying upon the work carried out under the relevant Growth Deal Programme Contract, whether through the issue by the contractor or consultant of collateral warranties or otherwise.
- 1.9 The Parties agree that (subject to paragraph 1.10 of this Part 8 of the Schedule) the Nominated Contracting Party shall (except as otherwise determined by the Chief Executives' Group) hold all Intellectual Property Rights in relation to any materials prepared by the PMO, any contractor or consultant or any other party engaged in respect of the carrying out of any Growth Deal Programme Contract, or otherwise relating to the Growth Deal; the Parties shall take all such steps as the Chief Executives' Group may direct from time to time to give effect to the preceding provisions of this paragraph.
- 1.10 The Nominated Contracting Party shall, if so directed by the Chief Executives' Group, grant an appropriate licence to any Participating Authority or third party which is taking forward the delivery of any Growth Deal Project, authorising that Participating Authority or other third party to make use of any Intellectual Property Rights of the nature referred to in paragraph 1.9 of this Part 8 of the Schedule to the extent reasonably required to facilitate the delivery of that project.