

Cabinet – 13 March 2013

Regional Growth Fund: “Growing Key Sectors in the Black Country”

Portfolio: Councillor Adrian Andrew – Deputy Leader, Regeneration

Related portfolio: Councillor Towe - Finance & Personnel

Service: Regeneration - Development & Delivery

Wards: All

Key decision: Yes

Forward plan: Yes

1. Summary

- 1.1 Regional Growth Fund is a central government programme to help create private sector jobs particularly in areas that are dependent on the public sector for employment. Grants with a minimum threshold of over £1m are available to businesses for capital expenditure that will create or safeguard jobs. Recognising that only a small number of businesses would be able to meet the minimum project size, the Black Country Local Enterprise Partnership developed an application for approximately £11m of funding that could then be redistributed to smaller businesses across the Black Country.
- 1.2 Sandwell Council agreed to be the applicant and accountable body, including on behalf of all four Black Country local authorities, in the event that the bid was supported. The bid was successful and Sandwell Council received an offer from central government at the end of November 2012 with a deadline to accept by 19 April 2013. If this is not met, the money will return to central government.
- 1.3 Distribution of grants will be conditional upon each business delivering outputs, including new job creation. In order to determine business interest in the programme and to give credibility to the assumptions in the above application, businesses were invited to submit proposals to be funded if the application were successful. Five businesses in Walsall applied during this initial call for applications. These account for around £1.86m, or 29% of all of the initial applicants. These five businesses aim to safeguard and create 474 new jobs directly or in their supply chains over 7 years. There will be a further round to allocate the remaining balance of the £11m total.

- 1.4 There is a risk for Sandwell Council, as the grant applicant and accountable body, that should a business not deliver their agreed outputs, the grant could be “clawed back” by central government. In order to reduce the impact of this, a collaboration agreement (the ‘Collaboration Agreement’) will be entered into between all four Black Country local authorities.
- 1.5 Authority is now being sought for the Council to enter into the Black Country Regional Growth Fund Programme and the Collaboration Agreement that will govern - amongst other matters – clawback; in other words, how and in what amounts each local authority may be required to repay any of the grant funding.
- 1.6 The arrangements for clawback are different from those in the Black Country Property Improvement Programme Collaboration Agreement that was approved by Cabinet on 23rd January 2013. Instead of sharing the amount clawed back by central government in proportion to the amount of funding distributed in each local authority’s administrative area, this Collaboration Agreement states that each Party indemnifies Sandwell Council against any claw back as a result of errors the Party makes (clause 6.6).
- 1.7 Walsall Council will be able to control this exposure to claw back at three stages. An officers’ group will select projects following an investment appraisal and credit check. Recommend projects will be passed for approval by the Executive Director – Regeneration, before this shortlist is approved by the Black Country Local Enterprise Partnership Board. Businesses will then be sent a conditional offer letter at which stage they will need to commission their own due diligence. Following receipt of successful completion of due diligence, the project will be finally approved.
- 1.8 At the time of writing, central government has announced a fourth round of Regional Growth Fund. As the demand for grant from businesses currently exceeds the remaining funds in the Growing Key Sectors in the Black Country programme, the Black Country Local Enterprise Partnership Access to Finance Group is exploring the possibility of applying for further funds to extend the amount of grant available.

2. Recommendations

- 2.1 That Cabinet agrees to enter into the Growing Key Sectors in the Black Country Regional Growth Fund Programme Collaboration Agreement with Sandwell Council (attached as Appendix A).
- 2.2 That Cabinet delegate authority to the Executive Director – Regeneration to sign or authorise the sealing of the proposed Collaboration Agreement for the Black Country Regional Growth Fund Programme and any related contracts, deed or documents, to be entered into by Dudley, Sandwell, Wolverhampton and Walsall Councils.
- 2.3 That Cabinet agrees, as regards Sandwell Council’s costs of due diligence and monitoring the Black Country Regional Growth Fund Programme in

accordance with the conditions set by the Department of Business, Innovation and Skills, to the Council making:

- (i) a contribution of £10,000; and
- (ii) additional reasonable payments should Sandwell Council's costs be greater than £40,000.

3. Report detail

- 3.1 The Regional Growth Fund is a £2.6 billion fund operating across England from 2011 to 2016. It supports projects and programmes that lever private sector investment to create economic growth and sustainable employment in areas that are over-reliant on the public sector for employment. It has a minimum bid threshold of £1m.
- 3.2 Evidence from over 150 business visits conducted by Regeneration Services indicates that only a small handful of Walsall businesses have investment proposals that would be eligible for an application which meets the minimum threshold. Typically, businesses that contact Regeneration Services are in the manufacturing and engineering sectors with capital investment proposals of between £100,000 and £500,000 to acquire new or replacement machinery or to extend or refurbish premises.
- 3.3 Officers from the Black Country Local Enterprise Partnership, the four Black Country local authorities, the Manufacturing Advisory Service and the Black Country Chamber of Commerce meet regularly as the Black Country Access to Finance Officers' Group ('the Group'). The Group recognised that only a handful of businesses in the Black Country would have projects that would meet the minimum bid threshold. It therefore prepared an application direct to central government that would allow smaller amounts to be redistributed to businesses that are looking for grant funding to unlock capital investment that will meet the Regional Growth Fund's objectives.
- 3.4 Businesses were invited to present proposals to the Group on the understanding that the information would form a combined bid to central government. 23 businesses across the Black Country submitted proposals, including five from Walsall and the total value of the bids from those five Walsall-based businesses equates to approximately £1.86m. The intention is for a call for further proposals to be identified (following signature of the offer letter) for the remainder of the £11m in the programme. It is estimated that there will be a total of 1083 jobs created in the Black Country as a result.
- 3.5 Sandwell Council agreed to act as the accountable body for the bid and as such Sandwell Council will receive the funding from central government and directly enter into grant agreements with the successful businesses.
- 3.6 Sandwell Council received notification from the Department of Business, Innovation and Skills ("BIS") that its application had been successful in November 2012. The offer letter included a deadline of 19 April 2013. If the offer is not accepted by this date then the funding would be withdrawn.

- 3.7 Sandwell Council has prepared the Collaboration Agreement (Appendix A) that sets out how the grant will be managed, including governance arrangements over selection of projects, arrangements to manage disputes as well as the management of awarded grant funding clawback.
- 3.8 Should a project undertaken by a business within the Council's administrative area fail to meet its contracted outputs, there is a risk that BIS will seek to withhold further payment or require repayment of the grant allocated to Sandwell Council. The Collaboration Agreement obliges the Council to indemnify Sandwell Council against any claw back from BIS arising out of the negligence, default or breach by Walsall Council. This differs from the arrangements dealing with clawback for the Black Country Property improvement Programme as agreed by Cabinet in January 2013.
- 3.9 The Council will be able to control this exposure to claw back at three stages. An officers' group will select projects following an investment appraisal and credit check. Recommend projects will be passed for approval by the Executive Director – Regeneration, before this shortlist is approved by the Black Country Local Enterprise Partnership Board. Businesses will then be sent a conditional offer letter at which stage they will need to commission their own due diligence. Following receipt of successful completion of due diligence, the project will be finally approved.
- 3.10 The Collaboration Agreement refers to a contribution to be made by each of the four Black Country local authorities towards:
- (i) the costs of due diligence required by BIS
 - (ii) monitoring the grants.

Each local authority's contributions towards these will initially be capped at a maximum of £10,000 although in the event that such costs incurred by Sandwell Council exceed £40,000, then the draft Collaboration Agreement refers to each local authority making further reasonable contributions to Sandwell Council's expenditure.

- 3.11 At the time of writing, central government has announced a fourth round of Regional Growth Fund, again for projects with a minimum grant requirement of £1m. The deadline for any applications is 20th March 2013. The demand currently identified for grant from Walsall businesses alone in the Growing Key Sectors in the Black Country programme far exceeds the remaining £4.5m available across all of the Black Country. Therefore, the Group is exploring the possibility of applying for further funds through Round 4 of Regional Growth Fund to extend the amount of grant available. Sandwell Council has agreed to remain the applicant and accountable body. Should Sandwell Council make an application under round 4 and if it is successful, a further report to cabinet will be presented seeking approval to sign an addendum to the existing Collaboration Agreement later in 2013.

4. Council priorities

- 4.1 The five Walsall-based businesses propose that they will create and safeguard 474 jobs directly and in the supply chain over the next seven years as a result of receiving grants. This will clearly contribute towards the Council's aim of supporting residents to sustain and gain work as detailed in the Corporate Plan. This figure will rise should other Walsall businesses receive grants from the Black Country Regional Growth Fund Programme following any future call for further projects after approval.
- 4.2 Increased employment opportunities will potentially have a knock-on effect on community cohesion and on health and well-being as per the Council's objectives.
- 4.3 Due to State Aid limits on public funding of private businesses, the grants will cover a maximum of 35% of each project's total capital expenditure depending on the size and location of the business. Therefore, in addition to the grant funding, around £8.6m of private investment will be spent in Walsall on new equipment, machinery and refurbishment of property. This will improve the appearance of buildings and reduce carbon emissions from old and inefficient machinery.
- 4.4 The Regional Growth Fund will support capital investment that creates employment opportunities across the Black Country. It therefore aligns closely to the objectives set out in the Marmot Review, namely:
- Give every child the best start in life
 - Enable all young children young people and adults to maximise their capabilities and have control over their lives
 - Create fair employment and good work for all
 - Ensure a healthy standard of living for all
 - Create and develop healthy and sustainable communities

5. Risk management

- 5.1 A risk assessment detailing the risks that the recommendations will expose the Council and how their adverse impacts will be minimised has been prepared as part of the programme management documentation by Sandwell Council.
- 5.2 A risk of significant impact that the Council could face is having to pay money back to BIS through Sandwell Council as accountable body as a result of a business receiving a grant in Walsall failing to meet its agreed outputs. The Collaboration Agreement includes a clause that seeks to indemnify Sandwell Council against this risk by Walsall Council.
- 5.3 The exposure to this risk has been reduced by proposing to only make payments to businesses in arrears upon proof of defrayal from a bank

account, and on a quarterly basis. Companies will sign a contract with Sandwell Council on this basis.

- 5.4 The risk is further reduced by creating three stages at which the level of financial exposure can be assessed by representatives of the Council within the governance arrangements (detailed in Appendix A):
- (i) Applications from private sector businesses to the fund will be assessed in the first instance by the Black Country Local Enterprise Partnership's Access to Finance Officers Group. This comprises representation from each of the four Black Country local authorities, the Manufacturing Advisory Service, Black Country Chamber of Commerce and BIS. To avoid bias, local authority officers will not appraise bids from businesses planning to invest within their own local authority's boundary. The financial status of applicants will be assessed as part of the bid and allow businesses with incidents of default in their credit history to be avoided;
 - (ii) The projects selected by the above group for the Council's administrative areas will then be passed to the Council's Executive Director for Regeneration who will approve projects for funding on the basis of strategic fit with Walsall's economic policies and strategies;
 - (iii) The Black Country Local Enterprise Partnership Board will make the final approval of the list of projects for funding. Successful companies will then be sent a conditional offer letter at which point they will be invited to commission their own due diligence. Only following receipt of confirmation of successful completion of due diligence will grant claims be valid.

6. Financial implications

- 6.1 There is an immediate need to make up to £10,000 available until 2020 to cover the due diligence and monitoring costs referred to in section 7 of the collaboration agreement. Although these are capped at £10,000 in the first instance, the agreement refers to making reasonable additional payments should Sandwell Council's costs exceed £40,000.
- 6.2 The £10,000 contribution will come from either approved revenue budgets or contingencies.
- 6.3 Sandwell Council intends to appoint an external company to provide project management and monitoring in accordance with the grant agreement with BIS over its lifetime.
- 6.4 The Collaboration Agreement contains a clause (6.6) that obliges the Council to indemnify Sandwell Council against any clawback claimed by BIS as a result of a project in Walsall failing to meet its outputs over the life of the programme.

- 6.5 The programme - and therefore exposure to clawback as per paragraph 6.4 above - will last until 2020. Records will be kept by Sandwell Council and will be subject to the audit arrangements contained within the contract between Sandwell and the grant recipient.
- 6.6 The amount of grant funding allocated already within Walsall is £1.86m. As applications will be judged against a series of criteria including the ratio of jobs per £ of grant leverage of private sector investment and the skills levels of new jobs rather than location, there is a risk that all of the remaining £4.5m is secured by Walsall companies, which means that the maximum liability comes to a total of approximately £6.36m.
- 6.7 However, given the approval process as outlined in 5.4 above, the likelihood of being exposed to this level of risk is very low and the ability for Executive Directors and the Black Country LEP Board to override the recommendations on the officers' group has been built in to the decision-making process.

7. Legal implications

- 7.1 Paragraph 2.4 of the collaboration agreement states that the parties intend the agreement to be legally binding. Legal Services have been working closely with officers to ensure that all necessary legal processes are in place, including but not limited to the drafting of the Collaboration Agreement. Any further amendments required to the agreement will be drafted by Walsall's Legal Services team in conjunction with the other Black Country local authorities.

8. Property implications

There are no direct property implications as a result of approving the recommendations in this report as the fund is for private sector applicants only.

9. Staffing implications

- 9.1 The staff time to promote the fund to Walsall businesses, manage the project in respect of the risk and assisting Walsall businesses with monitoring requirements will be met by existing resources.

10. Equality implications

- 10.1 There are no specific equality implications associated with this report. However, an Equality Impact Assessment as part of Sandwell Council's management of the programme is on-going.

11. Consultation

Officers from Risk & Insurance, Finance, HRD and Legal Services were consulted in the drafting of this report.

Background papers

BIS (2012), Understanding the Regional Growth Fund.

<https://www.gov.uk/understanding-the-regional-growth-fund#what-is-the-regional-growth-fund>. Accessed 22nd January 2013.

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Tim Johnson
Executive Director
Regeneration

13 March 2013



Councillor Adrian Andrew
Deputy Leader
Portfolio holder – Regeneration

13 March 2013

DATE: _____ **2013**



- (1) SANDWELL METROPOLITAN BOROUGH COUNCIL**
- (2) WALSALL METROPOLITAN BOROUGH COUNCIL**
- (3) DUDLEY METROPOLITAN BOROUGH COUNCIL**
- (4) WOLVERHAMPTON CITY COUNCIL**

COLLABORATION AGREEMENT
in relation to

THE REGIONAL GROWTH FUND

Accountable Body	means SMBC;
Agreement	means this Collaboration Agreement;
Beneficiary	means an organisation that will be granted funding under the BCRGF;
BCRGF	means the Black Country Regional Growth Fund;
BIS	means the Department for Business, Innovation and Skills;
Commencement Date	means 19 December 2012;
Confidential Information	means commercial and technical information in whatever form acquired by a Party (whether directly or indirectly) concerning the another Party in consequence of this Agreement;
Data Protection Legislation	means the Data Protection Act 1998, the EU Data Protection Directive 95/46, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000, the Electronic Communications Data Protection Directive, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy including where applicable the guidance and codes of practice issued by the Information Commissioner;
EIR	means the Environmental Information Regulations 2004;
Force Majeure	means any circumstances beyond the reasonable control of either party (including, without limitation, any strike, lock-out or other form of industrial action);
FOIA	means the Freedom of Information Act 2000;
Funding Agreement	means the Funding Agreement to be entered into between SMBC and the Department for Business, Innovation and Skills, this will be based on the Offer Letter and will supersede the Offer Letter;
Intellectual Property Rights	means all patents, trade marks, copyright, moral rights, rights to prevent passing off, rights in designs, know how and all other intellectual or industrial property rights, in each case whether registered or unregistered and including applications or rights to apply for them and together with all extensions and renewals of them, and in each and every case all rights or forms of protection having equivalent or similar effect anywhere in the world;
IP Material	the Intellectual Property in the Material;

Lead Partner	means SMBC;
Material	means all data, text, graphics, images and other materials or documents created, used or supplied by a Council in connection with this Agreement unless before the first use or supply, the Council notifies the other Council that the data, text supplied is not to be covered by this definition;
Monitoring Procedures	means the monitoring procedures/requirements, audits and any other reporting, monitoring or audit processes required by BIS in relation to the Programme;
Objectives and Outputs	means the objectives and outputs set out in clause 3 together with such other objectives and outputs as are adopted by the Parties from time to time in accordance with this Agreement;
Offer Letter	means the letter or a similar revised or updated letter from BIS set out in Schedule 4;
Programme	means the programme as set out in Schedule 1;
Programme Manager	means an officer (Mark Connell) appointed by SMBC to fulfil the roles and duties as detailed in Schedule 5;
Regeneration Leads	means the senior officers who represent each of the parties at sub regional level on regeneration and economic development matters as defined and set out in Schedule 2 and 3;
RGF	means the Regional Growth Fund;
RGF Grant	means the £10,941,736 million (ten million, one hundred and sixty thousand, one hundred and five pounds) funding provided by BIS to be administered as the Black Country Regional Growth Fund in accordance with the Offer Letter.
SMBC	means Sandwell Metropolitan Borough Council;
Steering Group	means the group as defined and set out in Schedule 2 and 3.
VAT	means Value Added Tax;
Working Day	means any day that is not a Saturday, Sunday or public holiday in England.

1.2 In this Agreement:

1.2.1 the clause headings do not affect its interpretation;

1.2.2 words in the singular shall include the plural and vice versa;

- 1.2.3 unless otherwise indicated, references to clauses and Schedules are to clauses of and Schedules to this Agreement and references in a Schedule to a paragraph are to a paragraph of that Schedule;
- 1.2.4 references to any statute or statutory provision include references to all Acts of Parliament and all other legislation having legal effect in the United Kingdom;
- 1.2.5 any subsequent statutes directly or indirectly amending, consolidating, extending, replacing or re-enacting that statute and also include any orders, regulations, instruments or other subordinate legislation made under that statute;
- 1.2.6 a person includes a natural person, corporate or unincorporated body or organisation and their successors and permitted assigns;
- 1.2.7 'including' means 'including, without limitation';
- 1.2.8 if any provision is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of this Agreement is to be unaffected.

2 Commencement and Key Objectives

- 2.1 This Agreement shall continue in full force and effect from the Commencement Date unless terminated in accordance with clause 12.
- 2.2 The Parties agree to work together in accordance with this Agreement.
- 2.3 Without prejudice to the terms of this Agreement, the Parties agree that they will conduct their relationship in accordance with the following principles:
 - 2.3.1 Openness and Trust – the Parties will be open and trusting in their dealings with each other, make information and analysis available to each other;
 - 2.3.2 Confidentiality – the Parties will respect matters of commercial confidentiality and such other matters of a confidential or sensitive nature;
 - 2.3.3 Mutual Respect – the Parties and their members and officers will act in such a way as to foster a relationship of mutual trust and respect;
 - 2.3.4 Decision Making and Approvals – the Parties will take all necessary decisions acting reasonably and in good faith and each Party hereby represents to each other that it has obtained all the necessary consents sufficient to fulfil their obligations pursuant to this Agreement;
 - 2.3.5 Commitment – the Parties will ensure that those officers working on matters related to the Programme demonstrate their commitment to delivering the Programme through attendance at meetings, timely provision of information requested, a commitment to reach a consensus on matters requiring a joint decision.
- 2.4 This Agreement is legally binding.

3 Objectives and Outputs

The Parties agree to work together using the collaboration processes in Clause 4 and agree that the Objectives and Outputs of this Programme will include 596 indirect created jobs and 594 indirect safeguarded jobs together with such other outputs as the Parties may from time to time adopt following the collaboration processes set out in clause 4.

4 Collaboration

4.1 The Parties agree to work in a spirit of mutual co-operation to fulfil their agreed roles and responsibilities to achieve the Objectives and Outputs, and to put in resources to the extent set out in this Agreement.

4.2 Each Party shall:

4.2.1 carry out the tasks and contribute the resources and facilities respectively allotted to or required of it as part of the Programme, including but not limited to the responsibilities set out in Schedule 1;

4.2.2 co-operate with each other and do such acts, matters and things as may be necessary or desirable to implement the decisions of the Parties and in order to complete the Programme;

4.2.3 keep the other Parties fully informed of the progress of and of any matters relevant to the Programme and make available to the other party all relevant information, data, reports and opinions in relation to the Programme;

4.2.4 immediately notify the other Parties in writing if there is an unexpected problem which is likely to cause a material delay to achievement of any of the Programme's Objectives and Outputs or any particular stage of the Programme or any material increase in the costs of the Programme or if any party becomes aware of the action of any third party which threatens to affect adversely the progress of the Programme or the reasonable expectations of either party hereunder;

4.2.5 adopt the Governance Structure as set in Schedule 2; and

4.2.6 ensure that the appropriate officer attends the meetings and undertakes the roles and responsibilities as set out in Schedule 3.

5 Decision Making

In terms of the need for decisions to be taken for the purposes of the Programme, the Parties agree with the decision making process and governance structure as set out in Schedules 2 and 3.

6 Obligations

6.1 The Parties will read and take advice on the terms of the Offer Letter and Funding Agreement.

- 6.2 The Parties agree that they will be bound by the terms of the Offer Letter and Funding Agreement as if they were the “Grant Recipient” as referred to in the Offer Letter and Funding Agreement.
- 6.3 The Parties agree that they may be required to comply directly with the Funding Agreement.
- 6.4 The Parties agree to assist, co-operate and comply with the Monitoring Procedures and will work together to resolve or rectify any errors or irregularities identified during the Monitoring Procedures or otherwise.
- 6.5 Each Party shall be liable for any cost implications or irregularities or errors attributable primarily to it and identified during any Monitoring Procedures.
- 6.6 Each Party indemnifies the SMBC acting as the Lead Authority against any claw back from BIS arising out of the negligence, default or breach by such Party of this Agreement or the Funding Agreement.
- 6.7 Each Party indemnifies the others against all claims, liabilities, costs, expenses, damages or losses suffered by the others arising out of the negligence, default or breach by such Party of this Agreement or the Funding Agreement and each Party shall be responsible for maintaining sufficient insurance (where available) in respect of such liabilities under this Agreement.
- 6.8 Each party shall at all times take all reasonable steps to minimise and mitigate any loss for which the relevant Party is entitled to bring a claim against another pursuant to this Agreement.

7 Financial

- 7.1 Each Party will contribute towards the due diligence tasks not covered by the RGF Grant, any additional resources required and the ongoing monitoring of the grants as required by BIS.
- 7.2 Each Party's contribution as referred to in clause 7.1 will initially be capped at a maximum of £10,000 although the Parties agree and acknowledge that in the event that the costs incurred by SMBC are likely to exceed the combined total of such contributions then each Party will act reasonably in agreeing to pay further contributions to SMBC.
- 7.3 SMBC will invoice the other Parties in respect of their share of such costs and the Parties will pay any such invoices within 28 days of receipt.

8 Confidentiality

- 8.1 Each Party shall use all reasonable endeavours to keep in strict confidence, and shall bind all its employees and agents to keep in strict confidence, all Confidential Information and shall not, save as hereinafter provided, use or disclose any Confidential Information other than for the purposes of the Programme or as expressly permitted by this Agreement.
- 8.2 The foregoing restriction set out in clause 8.1 shall not apply to information which:

- 8.2.1 at the time of disclosure is generally available to the public;
 - 8.2.2 all or any of the Parties are obliged to release under the provisions of the Freedom of Information Act 2000;
 - 8.2.3 after disclosure becomes generally available to the public through no fault of the receiving Party;
 - 8.2.4 the receiving Party can show was in its possession prior to the disclosure and which was not acquired directly or indirectly from another Party; and
 - 8.2.5 the receiving Party can show was received by it after the time of disclosure from any Party without any obligation of confidentiality and which was not acquired directly or indirectly from the other Party.
- 8.3 The confidentiality obligations set out in this clause shall survive for a period of ten (10) years after the termination of the Programme.
- 8.4 Each Party shall impose the same confidentiality obligations set out in this clause upon its affiliates, consultants and other third parties who are in association with it and may have access to any Confidential Information during the term of this Agreement.

9 Intellectual Property

- 9.1 Each Party will retain all Intellectual Property in its IP Material.
- 9.2 Each Party will grant the other Parties a non-exclusive, perpetual, non-transferable and royalty-free licence to use, modify, amend and develop its IP Material for the Programme and any other purpose resulting from the Programme.
- 9.3 For the avoidance of doubt, any entity or person who is at the date of this Agreement a party to this Agreement and who has licensed any Intellectual Property under this Agreement will have a non-exclusive, perpetual right to continue to use the licensed Intellectual Property.
- 9.4 Each Party warrants that it has or will have the necessary rights to grant the licences as set out in clause 9.2 in respect of any IP Material to be licensed.
- 9.5 Each Party agrees to execute such further documents and take such actions or do such things as may be reasonably requested by any other Party (and at the expense of the Party making the request) to give full effect to the terms of this Agreement.

10 Warranties

Each Party warrants to the others that:

- (i) it has the necessary right and authority to enter into this Agreement; and
- (ii) its signatory is authorised and fully empowered to execute this Agreement on that Party's behalf.

11 Force Majeure

- 11.1 If a Party is affected by Force Majeure event it shall forthwith notify the other Parties of the nature and extent thereof.
- 11.2 No Party shall be deemed to be in breach of this Agreement, or otherwise be liable to the others, by reason of any delay in performance, or the non-performance, of any of its obligations hereunder, to the extent that such delay or non-performance is due to any Force Majeure event of which it has notified the other Parties; and the time for performance of that obligation shall be reasonably extended accordingly, upon the agreement of all Parties.
- 11.3 If the Force Majeure event in question prevails for a continuous period in excess of three (3) months, the Parties shall enter into discussions with a view to alleviating its effects, or to agreeing upon such alternative arrangements as may be fair and reasonable.

12 Duration and Termination

- 12.1 The provisions of this Agreement shall come into force on the Commencement Date and, subject to the provisions of clause 12.2 shall continue in force until SMBC's obligations under the Funding Agreement have been released. For the avoidance of doubt this shall be when BIS confirm completion of the Programme AND that all liability and obligations under the Programme have been discharged.
- 12.2 A Party other than SMBC may only withdraw from this Agreement by written notice to SMBC and the Regeneration Leads if the RGF funding is not granted or the Programme is terminated.
- 12.3 No relaxation, forbearance, delay or indulgence by any Party in enforcing any of the terms of this Agreement or the granting of time by any Party to any other shall prejudice, affect or restrict the rights and powers of that Party in relation to the other, nor shall any waiver by any Party of a breach of this Agreement be considered as a waiver of any subsequent breach of the same or any other provision.
- 12.4 The rights to terminate or withdraw from this Agreement given by this clause shall not prejudice any of the Parties' other rights or remedies in respect of the breach concerned (if any) or any other breach.

13 Publicity and Public Relations

- 13.1 The Parties will co-operate and consult with each other in respect of any matter involving public relations in so far as reasonably practicable having regard to the nature and urgency of the issue involved. The Parties acting through Steering Group and the Regeneration Leads may agree protocols for the handling of public relations from time to time.
- 13.2 For the avoidance of doubt the Parties shall comply with BIS publicity and public relations requirements as set out in the Offer Letter and Funding Agreement.

14 Disputes

- 14.1 If any dispute arises between the Parties arising out of the provisions of this Agreement the Parties shall endeavour to resolve the dispute by agreement as quickly as possible but if the dispute has not been resolved within ten (10) Working Days then either Party may request the other to participate in a meeting of their respective senior managers, in order to discuss the dispute and to agree a strategy to resolve it. The Parties shall then liaise in good faith to arrange and implement the meeting within ten (10) Working Days and shall exchange statements at least three (3) clear Working Days prior to the date of the meeting, setting out their respective views of the disputed issues.
- 14.2 If notwithstanding any steps taken by the Parties pursuant to clause 14.1, the dispute between them remains unresolved then at the request of any Party it shall be referred (in the absence of any express provision to the contrary) to an independent person appointed jointly by the Parties.
- 14.3 The independent person is to have at least 10 years relevant post qualification experience and his/her identity shall be agreed between the Parties.
- 14.4 If the Parties cannot agree on the independent person's identity, he or she is to be appointed at the request of any of the Parties by the president or chairperson for the time being of whichever of the following bodies is most appropriate having regard to the nature of the dispute:
- 14.4.1 The Royal Institution of Chartered Surveyors;
 - 14.4.2 The Institute of Chartered Accountants in England & Wales; or
 - 14.4.3 The Law Society of England and Wales.
- 14.5 The independent person is to act as arbitrator in accordance with the Arbitration Act 1996 and the costs of the arbitration shall be payable by the Parties in the proportions determined by the Independent Person.
- 14.6 Where costs of the independent person remain unpaid by the Party liable to pay them pursuant to this clause, the other party may discharge those costs and recover the sum so paid from the defaulting party as a debt on written demand.

15 Local Authority Powers

Nothing in this Agreement shall prejudice or affect any of the statutory rights powers obligations and duties for the time being vested in the Parties.

16 Notices and service

- 16.1 Any notice or other information required or authorised by this Agreement to be given by any Party to the other(s) shall be given by:
- 16.1.1 delivering the same by hand; or
 - 16.1.2 sending the same by first class post pre-paid registered post; or

16.1.3 sending the same by facsimile transmission,

to the other Party(s) at the address(es) given at the beginning of this Agreement or such other address as has been notified to the other Parties in writing.

16.2 Any notice or information sent by post in the manner provided by clause 16.1.2 which is not returned to the sender as undelivered shall be deemed to have been given on the second Working Day after the envelope containing it was so posted, and proof that the envelope containing any such notice or information was properly addressed, pre-paid, registered and posted, and that it has not been returned to the sender, shall be sufficient evidence that the notice or information has been duly given.

16.3 Any notice or information sent by facsimile transmission must be sent on a Working Day and shall be deemed to have been duly given on the date of transmission, provided that the sender delivers or sends a confirming copy to the recipient pursuant to clauses 16.1.1 or 16.1.2.

17 Freedom of Information

17.1 The Parties acknowledge that they are subject to the requirements of the code of practice on access to government information, the FOIA and the EIR and shall assist and cooperate with each other to enable the Parties to comply with their information disclosure obligations.

17.2 The Parties shall provide all necessary assistance as reasonably requested by the other Parties to enable the other Parties to respond to any requests for information that falls under the FOIA or the EIR and is related to the Programme ("Request for Information") within the time for compliance set out in section 10 of the FOIA or regulation 5 of the EIR.

17.3 The Party who received the initial Request for Information shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Agreement or any other agreement whether any information is exempt from disclosure in accordance with the provisions of the code of practice on access to government information, FOIA or the EIR.

17.4 The Parties shall ensure that all information produced in the course of this Agreement is retained for disclosure and shall permit the other Parties to inspect such records as requested from time to time.

18 Data Protection Legislation

With respect to the Parties' rights and obligations under this Agreement, the Parties agree to each comply with the obligations imposed on them by the Data Protection Legislation as a Data Controller and to ensure that Personal Data (as defined in the Data Protection Legislation) is processed only in accordance with their own policies on data protection, information security and retention of personal data to comply with their obligations under the Data Protection Legislation.

19 Equality Act 2010

The Parties agree to each comply with the obligations imposed on them by the Equality Act 2010.

20 General

- 20.1 This Agreement is personal to each of the Parties and no Party may assign, mortgage, charge or (except as otherwise provided in this Agreement) license any of its rights hereunder, or sub-contract or otherwise delegate any of its obligations hereunder, except with the written consent of all the other Parties.
- 20.2 Nothing in this Agreement shall create, or be deemed to create, a partnership, or the relationship of principal and agent, between the Parties.
- 20.3 The Parties will act in good faith towards each other in relation to the Programme and in achieving the Programme's Objectives and Outputs; and in complying with this Agreement and the and Offer Letter Funding Agreement.
- 20.4 If any provision of this Agreement is held by any competent authority to be invalid or unenforceable in whole or in part, this Agreement shall continue to be valid as to its other provisions and the remainder of the affected provision.
- 20.5 This Agreement, the Offer Letter, or the Funding Agreement and the documents referred to in these, constitutes the entire agreement and understanding of the Parties and supersedes any previous agreement between the parties relating to the subject matter of this Agreement.
- 20.6 Each of the Parties acknowledges and agrees that in entering into this Agreement, and the documents referred to in it, it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to this Agreement or not) other than as expressly set out in this Agreement. Nothing in this clause shall, however, operate to limit or exclude any liability for fraud.
- 20.7 All payments by any Party pursuant to this Agreement are exclusive of any applicable VAT except where expressed to the contrary, and if any such VAT is payable, the Party in question shall be additionally liable for such tax, which shall accordingly be shown on the relevant VAT invoice.
- 20.8 No variation to this Agreement or of any of the documents referred to in it shall be valid unless it is in writing and signed by and on behalf of all of the Parties.
- 20.9 Each Party shall from time to time do all such acts and execute all such documents as may be reasonably necessary to give effect to the provisions of this Agreement.
- 20.10 The Parties shall bear their own costs of and incidental to the preparation, execution and implementation of this Agreement.
- 20.11 No terms other than clauses 6, 7, 8, 9, 12, 14 and 20 shall survive expiry or termination of this Agreement unless expressly provided.

- 20.12 This Agreement shall be governed by and construed in accordance with the laws of England and Wales.
- 20.13 Unless expressly provided for in this Agreement no term of this Agreement is intended for the benefit of any third party and the Parties do not intend that any term of this Agreement, should be enforceable by a third party either under the Contracts (Rights of Third Parties) Act 1999 or otherwise.

This Agreement has been executed as a deed and is delivered on the date stated at the beginning of this Agreement.

Executed as a deed by **SANDWELL**)
METROPOLITAN BOROUGH AUTHORITY)
by affixing its Common Seal)

Executed as a deed by **WALSALL**)
METROPOLITAN BOROUGH COUNCIL)
by affixing its Common Seal)

Executed as a deed by **DUDLEY**)
METROPOLITAN BOROUGH COUNCIL)
by affixing its Common Seal)

Executed as a deed by **WOLVERHAMPTON**)
CITY COUNCIL)
by affixing its Common Seal)

SCHEDULE 1

PROJECT PLAN AND APPLICATION PROCESS

SCHEDULE 2

GOVERNANCE STRUCTURE

SCHEDULE 3

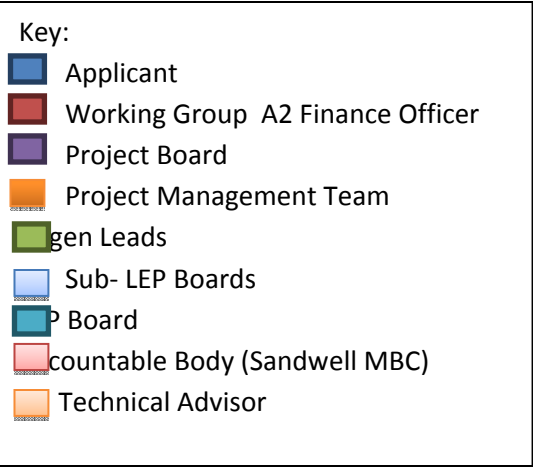
TERMS OF REFERENCE FOR DECISION MAKING BODIES

SCHEDULE 4

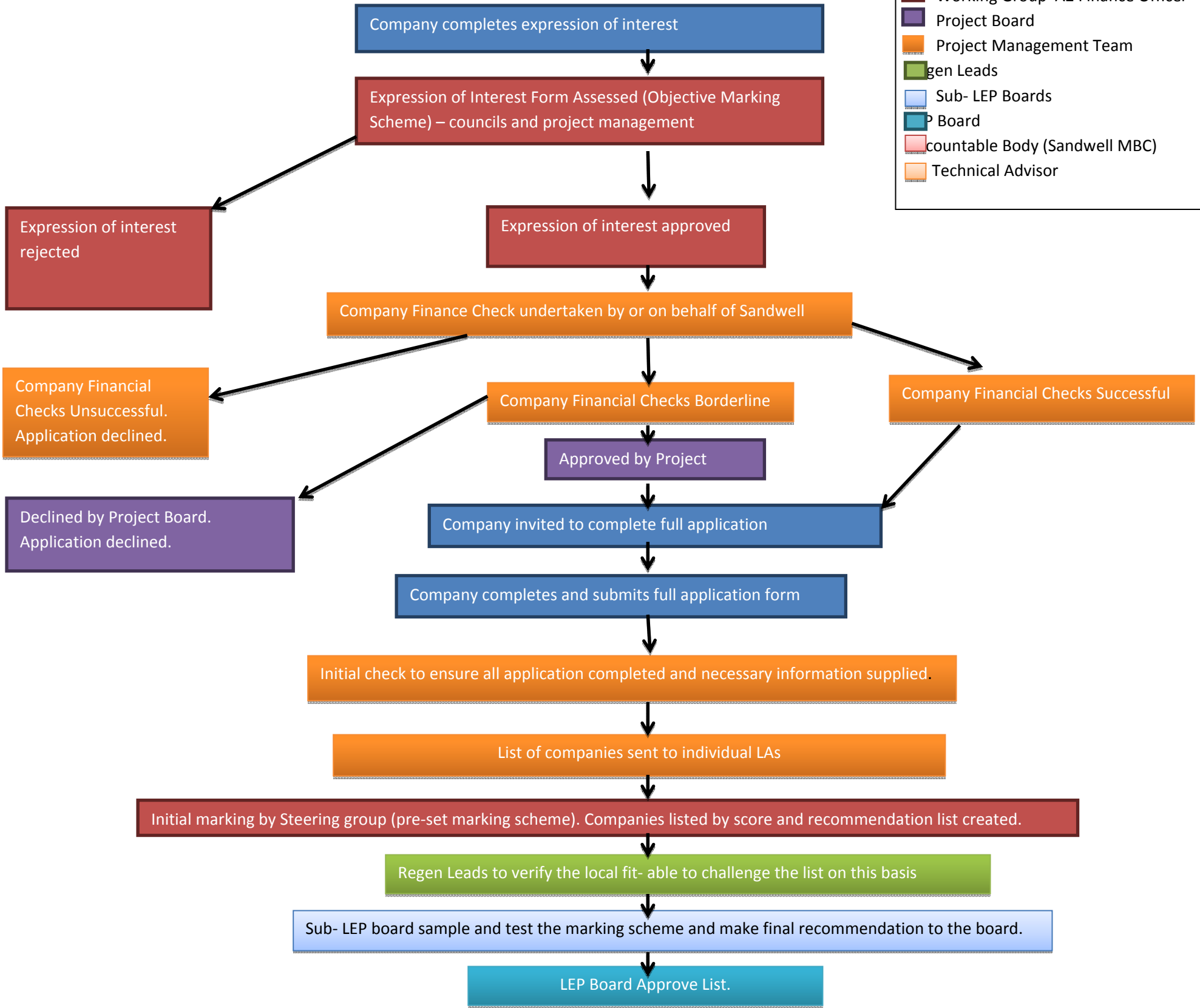
OFFER LETTER/FUNDING AGREEMENTS

SCHEDULE 5

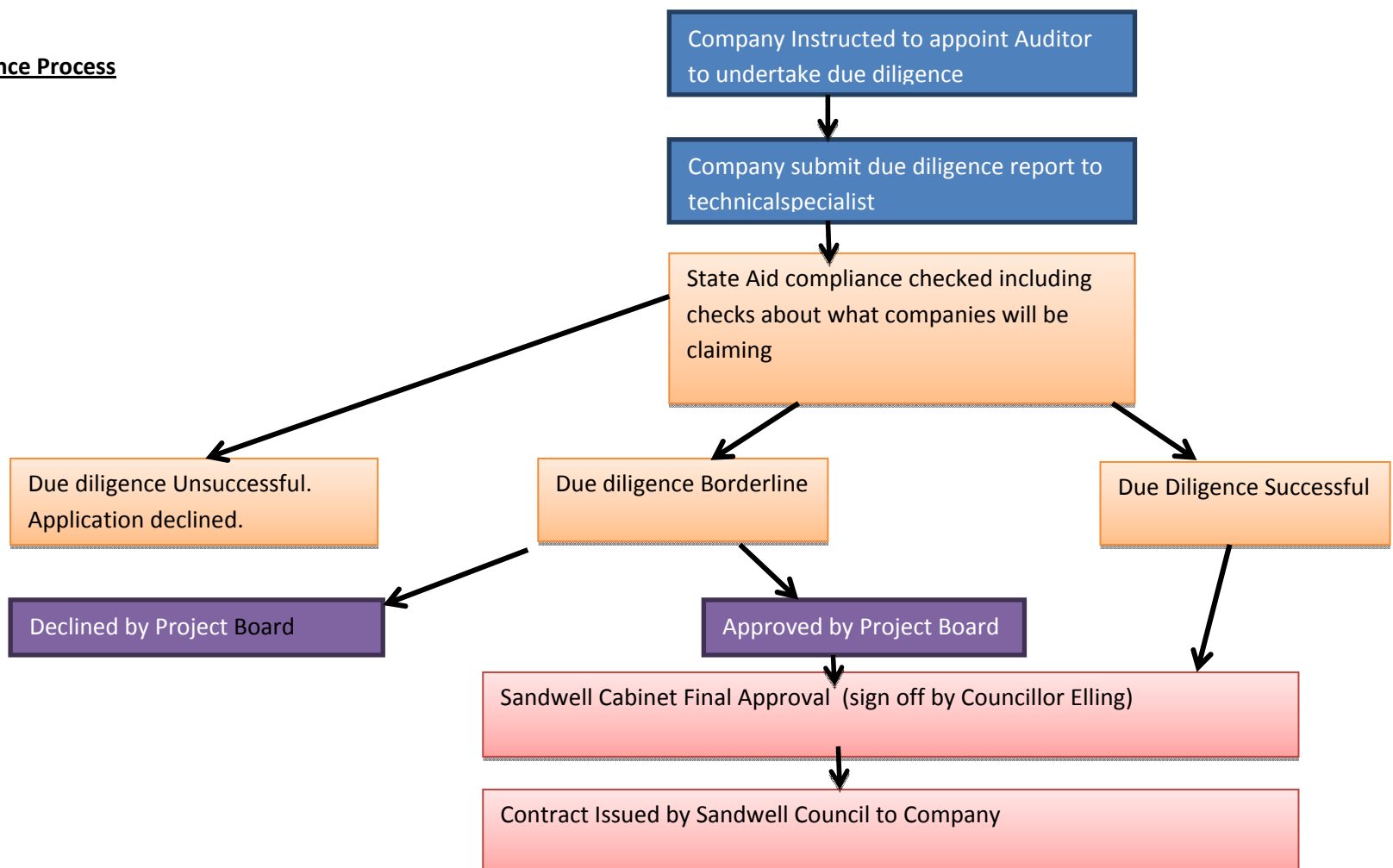
Programme Manager Job Description



Application Process

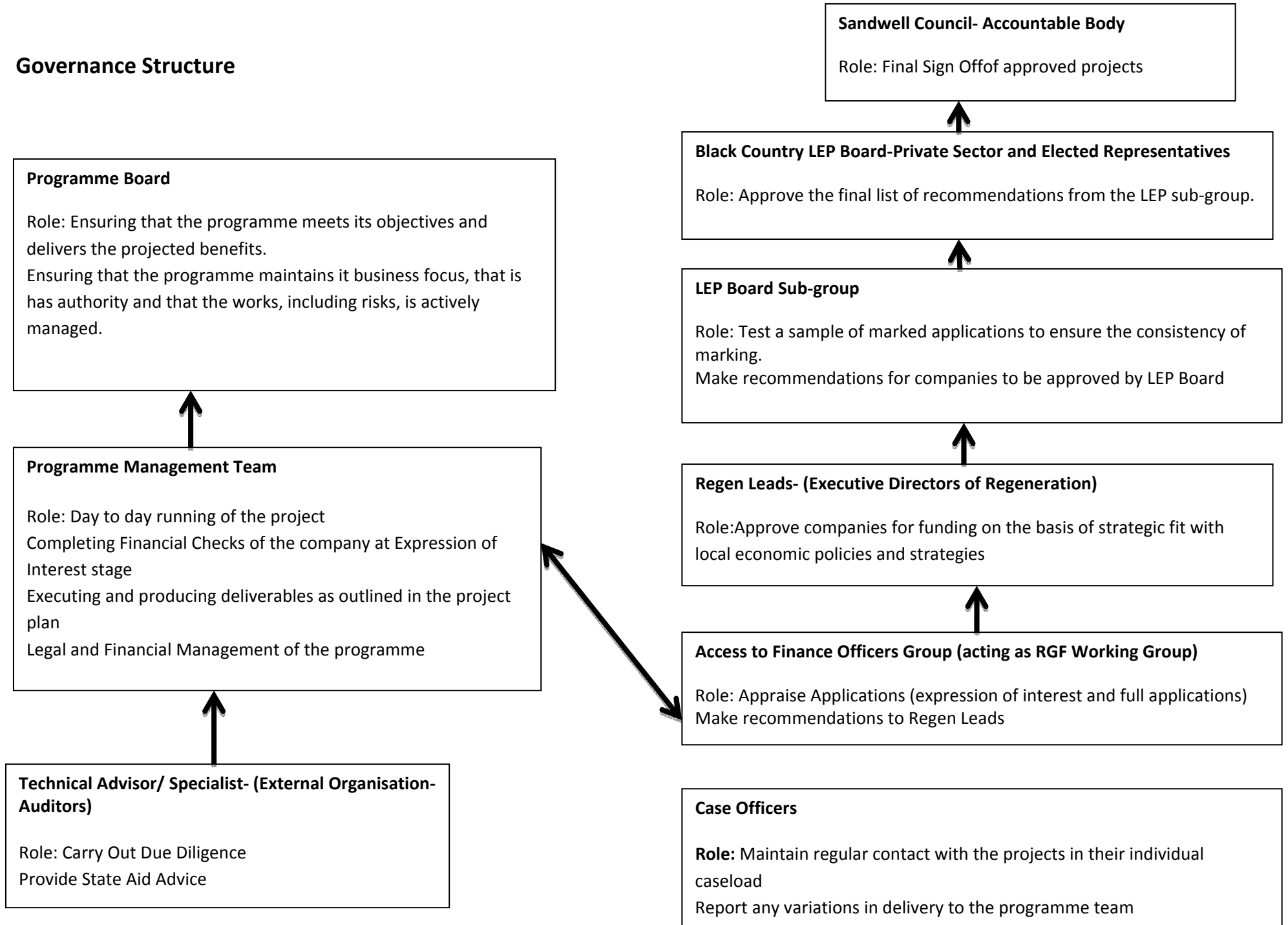


Due Diligence Process



No	Milestone	Programme Management Team	Programme Board	Access to Finance Officers Group	Reserved to Councils	LEP Board	Accountable Body	Indicative Date
1	Develop Investment Appraisal	x						
2	Promotion of the Programme			X		X		1/3/13
3	Expression of Interest and Full Application Develop	x						15/1/13
4	Expressions of Interest Assessed and decision taken as to who should and should not be approved			X				1/4/13
5	Undertaking financial checks on the company to determine 'successful', 'unsuccessful' and 'borderline' cases.	X						1/4/13
6	Approval/reject borderline financial checks		X					14/4/13
7	Initial check to ensure all application completed and necessary information supplied	X						15/5/13
8	Initial Assessment of full applications			x				21/5/13
9	Approve companies on the basis of local fit to strategies and policies				X			23/5/13
10	Sample and test initial assessment of applications					X		30/5/13
11	Final approval of applicants to be taken forward					X		5/6/13
12	Approve or reject borderline due diligence reports		X					Ongoing
13	Final Sign off of applicants to be funded						X	Ongoing
14	Contracts issued to successful applicants	X						Ongoing

Governance Structure



Roles and Responsibilities

Project Management Team- (Newly Formed)

Meet Weekly

Project Manager- Sandwell MBC- Chair

Project Support/ Team Leader- Sandwell MBC

Project Advisor – Black Country LEP (Sophie Thompson)

Legal Advisor – Sandwell MBC (Suzanne Burrell)

Financial Advisor-Sandwell MBC (Judith Wick)

Role

Day to day running of the project

Financial Checks of the company at Expression of Interest stage

Reviewing and updating the risk register- all amber and red risks escalated to the Project Board

Escalating Issues that cannot be resolved by the project team to the Project Board

Reviewing Work package reports (each successful applicant to be a work package)

Create the project plan

Sign off project management documentation

Develop the assessment and approval process

Develop governance process

Sign off of Application Forms/ Expression of Interest Form (from Legal and Financial Perspective)

Sign off Assessment Criteria (particularly from Legal and Financial Perspective)

Send list of applications to each of the partners (including each of the LAs)

Carry out initial financial checks on 'successful' applicants giving them 'approved' 'borderline' or 'unsuccessful' status. Send any borderline applications to the project board.

Executing and producing deliverables as outlined in the project plan

Setting and managing the budget, escalate up to the Project board where tolerances of 20% have been exceeded.

Project Board (Newly Formed)

Meeting every two month, or more as required.

Project Executive- Sandwell Council

Senior User- Existing Successful RGF Company

Senior Supplier-

Role

Ensuring that the programme meets its objectives and delivers the projected benefits.

Ensuring that the programme maintains its business focus, that it has authority and that the works, including risks, is actively managed.

Receive highlight reports

Sign off milestone tasks in project plan.

Determine whether borderline financial reports on 'successful' applicants should be approved or not.

Determine whether borderline due diligence reports on 'successful' applicants should be approved or not.

Resolve issues that have been escalated by the project management team.
Determine course of action if budget tolerances go beyond 20%.
Determine course of actions for risks that are amber or red.
Monitor and approve the progress of the project against the business case
Approve milestone tasks in the project plan and authorise any deviation to agreed stage plans.
Approve project documents including the PID, project plan risk register, exception reports and project closure documents, provided by the project manager.
Sign off completion of end stage reports and authorises the start of the next stage.
Authorise the implementation of contingency plans and funds.
Agree project closure.
Approve final cabinet report which list which companies are to be given conditional offer letter.

Steering Group- One Hour of Access to Finance Officers Group (Existing Group)

Meet every 2 month, or more frequently as required.

Chair- Sandwell MBC Paul Mountford

Sandwell MBC- Mark Connell

Black Country LEP (Sophie Thompson)

Dudley MBC (Wayne Langford)

Walsall MBC (Dan Carins/ Paul Nicholson)

Wolverhampton CC (Julia Buckley/ Heather Clark)

MAS (Rachel Eade)

Black Country Chamber (Charlotte Richie/ Gemma Hall)

University of Wolverhampton (Siobhan Clarke)

Role

Marketing the project to their members / clients.

Supporting companies completing applications case officer to declare an interest during the assessment of applications.

Advising on the design of Expression of Interest Form to be approved by the Project Management Team

Advising on the design Application Form to be approved by the Project Management Team

Advising on the design of initial assessment to be approved by the Project Management Team

Undertake initial expression of Interest Sift which would only include 'yes/no' assessment.

Undertake Stage one Appraisals- provide list of application listed by merit, based on GBI.

Case Officers

Feed into the Access to Finance Officers Group

Local Authority Officers

Rachel Eade- MAS

Role

Maintain regular contact with the projects in their individual caseload

Assist projects with any Council delivered regulatory services

Monitor delivery of "their" projects against an agreed set of milestones and spend/output targets

Report any variations in delivery to the programme team

Continue to monitor outputs for as long as necessary

Promote the programme in line with the agreed Black Country approach and communications strategy

Regen Leads (Existing Group)

Meets every 2 months.

Tim Johnson (Chair)

Nick Bubalo

Charles Green

Group meets every two months

Role

Black Country RGF to be standing item on the agenda.

Ensure that projects and companies have strategic fit with council's local economic policies and strategies (i.e. companies are from priority sectors or are Black Country strategic companies) Group has the scope to veto companies on the basis that there's no strategic fit, reasons for veto to be recorded in the minutes. On criteria provided by the Project Management Group

Approve list of 'recommended companies' on this basis.

LEP board sub- group (Existing Group)

Meet every two months, or as and when required

Simon Eastwood (Chair) LEP Board

Paul Brown -LEP Board

Ninder Johal-LEP Board

Judith Wick - Sandwell council

Programme Manager- Sandwell Council

Sophie Thompson-BCC

Role

Group currently exists as the LEP sub-group for the Growing places fund.

This group will 'test' a sample of at least three applications to verify the consistency of the marking scheme and either approve all projects on this basis or ask that all projects be remarked by the Access to Finance officers group.

Group has opportunity to undertake detailed assessment of all or any of the applications.

Make recommendations for companies to be approved

Approve final list of approved projects to go LEP Board.

LEP Board (Existing Group)

Meet monthly

Stewart Towe- Hadley Industries (Chair)

Councillor Mike Bird- Walsall MBC

Paul Brown- Ernst & Young

Councillor Darren Cooper- Sandwell MBC

Simon Eastwood- Carillion Plc.

Tim Hair- Chamberlin Plc.

Dr. Chris Handy- Accord Housing

Ninder Johal-Nachural Corporate Communications

Councillor Roger Lawrence – Wolverhampton CC

Peter Matthews- Black Country Metals

Prof. Ian Oakes- University of Wolverhampton

Councillor David Sparks- Dudley MBC
Vicki Wilkes- Phoenix Calibration & Services Ltd

Role

Approve the final list of recommendations from the LEP sub-group.
Able to request that sub-group undertakes further review of projects as necessary.

Accountable Body (Sandwell MCB)

Final Approval and Sign off of approved companies via councillorElling.

Case Ref: 01.09.07.01/1715C

Document Ref:

Nick Bubalo
Director for Regeneration & Economy
Sandwell Metropolitan Borough Council
PO Box 2374
Oldbury
West Midlands
B69 3DE

X January 2013

Dear Nick Bubalo

Regional Growth Fund Conditional Scheme Offer Letter

1. I am pleased to tell you that, subject to all the pre-conditions listed in paragraph 8 being fulfilled, the Secretary of State for Business, Innovation and Skills (also referred to as “We” or “Us” or “Our” or “Secretary of State” in this Scheme Offer Letter) will give Sandwell Metropolitan Borough Council (also referred to as “You” or “Your” in this Scheme Offer Letter) a grant of £10,941,736 (ten million, nine hundred and forty one thousand and seven hundred and thirty six pounds) as more particularly described below (“the Scheme Grant”) from the Regional Growth Fund (“RGF”) under Section 126 of the Housing Grant, Construction and Regeneration Act 1996 to deliver the “Scheme” as defined in paragraph 2 below. This offer is subject to the conditions set out in this letter and Schedules 1, 2, 3 and 4 attached. The funds provided under this Grant Offer Letter are also referred to as “State Funds”.

2. The Scheme is the scheme established in 2012 and is funded from the Regional Growth Fund and is designed to ensure the provision of State Funds to “Beneficiaries” as defined in paragraph 3 below, in support of projects that meet the objectives of the Regional Growth Fund, in particular in support of the creation of new, and safeguarding of existing, sustainable, private sector jobs in areas vulnerable to public sector job losses. Provision of State Funds to Beneficiaries (who are defined in paragraph 3 below) as Beneficiary Grants, as set out in Schedule 2, utilising the Scheme Grant made available to You by Us, must be made:

- a. on or before 31 December 2013, in compliance with the European Commission Regulation (EC) No 800 / 2008 of 6 August 2008 declaring certain categories of aid compatible with the common market in application of Articles 87 and 88 of the Treaty (General block exemption Regulation) (“GBER”);
- b. after 31 December 2013, in compliance with any European Commission Regulation which replaces the GBER with effect from its expiry on that date.

In each case You must ensure that any provision of State Funds is exempt from the notification requirement of Article 108(3) of the Treaty on the Functioning of the European Union. All references in this Scheme Offer Letter to the “Scheme” or the “Programme” are references to the

scheme as described in this paragraph, which, for the avoidance of doubt, also includes the description in the Schedules.

3. The third parties who are eligible to benefit from the Scheme shall be referred to in this Scheme Offer Letter as the “Beneficiaries” or “Beneficiary” and are:

- a. determined by You to have the potential to create new, and safeguard existing, private sector jobs with assistance from the Scheme; and
- b. located in the Dudley, Sandwell, Walsall and Wolverhampton local authority areas.

4. State Funds shall be held by You and separately accounted for in accordance with Your approved Treasury Management Strategy. Except as set out in Schedule 2 You will not receive any payment from Us for Your work in managing the Scheme. You are not entitled to:

- a. Retain any interest generated as a result of the provision of the State Funds. Instead, any such interest must be added to the Scheme Grant monies held and used for Beneficiary Grants or returned to Us if not disbursed to Beneficiaries.
- b. Retain any undisbursed State Funds at the end of the Scheme (which will be 31 March 2016, or the date on which all the State Funds has been disbursed to Beneficiaries if earlier, hereafter referred to as the “End Date”). You will return any remaining State Funds which has not been provided to Beneficiaries, together with any interest accrued on or before the End Date.
- c. Use the State Funds in any way other than as provided for in this Grant Offer Letter

Preliminary conditions

5. The availability of the Scheme Grant in paragraph 1 will be subject to Us concluding in Our absolute discretion that the following conditions have been satisfied:

- a. Receipt by Us of a satisfactory up-to-date Scheme Delivery Plan which covers (at a minimum) the issues set out in Schedule 1, and which demonstrates that You have a reasonable expectation of being able to provide Funding to Beneficiaries under the Scheme and achieve any milestones set either within this Scheme Offer Letter (including the Schedules) or the Scheme Delivery Plan;
- b. Receipt by Us of an investment appraisal manual agreed by Us;
- c. Receipt by Us of a Confirmatory Due Diligence Report. It must be in the form at Schedule 6 and its contents must be satisfactory to Us.
- d. Final approval received by Us from the Industrial Development Advisory Board and HM Treasury; and
- e. Receipt by Us of a copy of the draft Grant Offer Letter agreed in writing by Us;
- f. Receipt by Us of a copy of a Service Level Agreement or other document outlining the role of the scheme partners in its delivery;

Timetable for agreeing this offer

6. In order to take up your offer You will need to work to the following timeline:
 - a. You must agree the terms of this letter no later than 19 January 2013;
 - b. You must deliver a confirmatory due diligence report to us, in the form set out at Schedule 6, no later than 19 March 2013;
 - c. You must agree the terms of your Final Offer Letter no later than 19 April 2013.
7. We will use all reasonable endeavours to ensure you are able to meet these deadlines. However should any of these deadlines not be met due to a failing on your part, your offer of RGF support will be withdrawn.

Your Responsibilities as Accountable Body in relation to this Scheme

8. You shall:
 - a. ensure that You do everything which is necessary to ensure compliance with this Grant Offer Letter;
 - b. receive the State Funds and use it to provide funds to Beneficiaries for a Permitted Purpose.
9. You may be required to repay all or any of the grant as provided for in Schedule 4.
10. You must, at all times, comply with the Equality Act 2010.

Monitoring

11. Throughout the monitoring period (as defined in paragraph 1 of Schedule 2) a monitoring officer will liaise with You on a regular basis. Your monitoring officer will be Rebecca Pointon from the Project Delivery Team (PDT) in Birmingham . From time to time We may inspect the Project and may require additional information from You to enable Us to monitor its progress.
12. Your monitoring officer will attend, as an observer, all investment/appraisal board meetings held before the end of the Scheme.
13. The Scheme will be managed by a Manager appointed by You. This Scheme Manager will be responsible for the day-to-day management of the Scheme and for producing a quarterly report (the "Quarterly Monitoring Report") each quarter for the monitoring period (defined in paragraph 2 of Schedule 4) to update Us on progress with respect to Your Scheme Delivery Plan.

Records

14. You must ensure that Beneficiaries in receipt of a Beneficiary Grant, who receive State Funds, provide details to You of Outputs on employment creation/Safeguarding of Existing Positions and other deliverables (as defined in Schedule 3) as set out in the Beneficiary Agreement so that You can produce Quarterly Monitoring Reports and ensure that Your Claims can be certified by an Independent Accountant.
15. You must keep records for ten years in respect of the Scheme and in respect of any Scheme Grants or other payments made to Beneficiaries.

Conditions for transferring grant and how to claim

16. The grant will be paid quarterly in advance in instalments as set out in Schedule 3. You must credit these payments to an interest bearing account in Your name. Delivery costs shall be paid in arrears to You.

17. Schedule 4 sets out the information which must be included with each claim. Claims must be submitted with a Quarterly Monitoring Report and you are required to supply a confirmatory report from an Independent Accountant on an annual basis in the form set out in that Schedule. We normally pay each grant instalment, or tell You why the claim cannot be accepted, within 30 calendar days of receiving a fully documented claim.

Variation, withholding and repayment of grant

18. Schedule 4 sets out the circumstances in which We have the right to vary, and/or require repayment of part or all of the State Funds made available to You. You must read this Schedule and the other Schedules before signing the Acceptance. If any of the circumstances set out in Schedule 4 occurs or may occur, You must tell Us immediately so that We can discuss the best way forward with You.

Other assistance

19. It is understood that no other public financial assistance has been offered to You for the Scheme.

Freedom of Information

20. Nothing in this Grant Offer Letter and the Schedules to it shall prevent Us from disclosing any information whether or not relating to the Scheme which We in Our absolute discretion consider that We are required to disclose in order to comply with information requests from the National Audit Office, the Freedom of Information Act 2000, as amended, and/or the Environmental Information Regulations and any other statutory requirements whether or not existing at the date of this Scheme Offer Letter.

Publicity

21. You agree to participate in any publicity or advertisement organised by the Secretary of State or the Secretary of State's representatives and to the name of the Director or Scheme manager and relevant contact information being included in such publicity material or on relevant government Websites.

22. We normally publish the amount of RGF awarded and a brief description of the Scheme in the first quarter after the acceptance of this Offer Letter. If You propose to give any publicity for the Project prior to Our normal publicity arrangements, You must consult Us in sufficient time to enable Us to discuss the publicity with You.

23. You will not make or issue any press releases or make any announcement in relation to this Scheme, unless you (i) agree with Us the contents first and (ii) unless notified by Us not to do so, include in the press release / announcement a reasonably prominent statement that the Project is being supported by the Government's Regional Growth fund.

24. You shall at all times comply with any current publicity requirements (including any branding guidelines) for the Regional Growth Fund. Any publicity requirements will be available at www.bis.gov.uk/rgf.

Evaluation

25. You must provide such information as We from time to time reasonably require in order to evaluate the outcomes of the Project.

26. For the avoidance of doubt, paragraphs 21, 22, 23, 24, and 25 will continue to apply for 2 years after the end of the Monitoring Period (as defined in paragraph 1 of Schedule 2).

Withdrawal

28. If you decide to withdraw from your RGF offer at any time prior to payment of Grant, we ask that you notify us in writing of your intention, and give some indication as to the reason for doing so. Where you have already drawn down some or all of your award, You must on demand repay all payments of grant already paid to the company. A list of withdrawn projects and programmes (beneficiary only, no details of the bid) will be submitted to Parliament in quarterly Written Ministerial Statements and published through the Parliament website.

European Union

27. We are obliged to give the European Commission schedules of information on offers in certain industrial sectors. Very occasionally the European Commission queries an offer, in which case We are obliged to give them information about the offer. You may be required to co-operate with Us in the provision of such information.

28. The European Commission summary of information number for the Regional Growth Fund under the Commission Regulation (EC) No. 800/2008 of 6 August 2008 declaring certain categories of aid compatible with the common market in application of Article 87 and 88 of the Treaty (General block exemption Regulation) OJ L 214, 9.8.2008, p. 3., is SA.32538(2011/X).

Entire agreement

29. This Scheme Offer Letter and the Schedules to it constitute the entire agreement and understanding between Us and You with respect to all matters which are referred to and shall supersede any previous arrangement(s) between Us and You in relation to the matters referred to in this Scheme Offer Letter.

30. This offer is and all documents made under or in connection with it shall be governed by, and construed in accordance with, the laws of England. You hereby irrevocably submit to the jurisdiction of the English Courts and Your address for service in England is: Sandwell Metropolitan Borough Council, PO Box 2374, Oldbury, West Midlands, B69 3DE.

How to accept

- 31. This offer remains open until 23:59 on 19 January 2013. A Director or duly authorised signatory of Sandwell Metropolitan Borough Council should sign and date the Acceptance, return the whole document to me and keep a copy.
- 32. If You have queries on this letter or the Schedules, contact Lee Dobinson (Tel: 020 7215 6592) or Ruth Forbes (Tel: 0207 215 6518) who will be pleased to advise You.
- 33. Please note that variations to this Grant Offer Letter will be effective only if We agree them in writing.
- 34. Please acknowledge receipt of this letter.
- 35. I look forward to receiving Your Acceptance and wish You every success with this Scheme.

Yours sincerely

Dr Alex Wilson
On behalf of the Secretary of State

Acceptance

Note: If You give information that You know or suspect is untrue or misleading You may be committing an offence that could lead to prosecution.

I declare that the information in Black Country Local Enterprise Partnership’s application dated 13 June 2012 and any other information given in support of Black Country Local Enterprise Partnership’s application for funding under the Regional Growth Fund is correct to the best of my knowledge and belief.

In accepting this offer of funding, Sandwell Metropolitan Borough Council confirms that, other than those which have been declared in your application, there are no grants or other payments from any public authority (for example an institution of the European Communities, a Government Department, a local authority or any other partly or wholly publicly financed body or charitable fund) applied for, received or receivable in respect of any element of the Project for which funding is being provided under the terms of this Grant Offer Letter and its Schedules.

Sandwell Metropolitan Borough Council accepts the offer on the conditions set out in this Grant Offer Letter and its Schedules 1, 2, 3, 4 and 5. I have read carefully this Grant Offer Letter and its Schedules.

Signed: Date:

Print Name:

Director
On behalf of: Sandwell Metropolitan Borough Council

Data Protection Statement

1. The application form, claims for an instalment of Regional Growth Fund (when completed) and this acceptance form contain information that is personal data for the purposes of the Data Protection Act 1998 and in respect of which the Department is obliged to supply the following information:

- a. For the purposes of the Data Protection Act, Your contact is The Data Protection Officer, Department for Business, Innovation and Skills, V5 VIC3, 1 Victoria Street, London SW1H 0ET. Telephone 020 7215 6635; and
- b. The personal data that You have provided will be used for the purpose of administering this offer of State Funds. It may be given to any relevant government department or agency for this purpose and will not be disclosed to any other organisation for any other purpose other than in relation to cases of suspected fraud or where there is a statutory requirement for disclosure.

DRAFT - not legally binding

Schedule 1: Scheme Delivery Plan

1. You will provide a Scheme Delivery Plan on or around the date of this Scheme Offer Letter which will outline the dates of key milestones and the provision of the quarterly monitoring reports as more fully described in Schedule 2. The Scheme Delivery Plan will be agreed with Us and provide the basis for quarterly programme monitoring which will consist of an update of progress against milestones and an update of the risk register. The quarterly monitoring reports will consist of the information set out in Schedule 3. A drawdown request may also be submitted on or around the date of the submission of the Grant Scheme Delivery Plan.
2. At a minimum the Scheme Delivery Plan will describe:
 - a. An overview of the Scheme, including its objectives, how they align with Regional Growth Fund objectives and key programme strands
 - b. The systems and/or processes that You will put in place to ensure the correct utilisation of State Funds issued to Beneficiaries and how ongoing value for money will be achieved by the Scheme. In particular the systems for ensuring that grants are awarded on the basis of a robust appraisal process that will seek to identify the minimum amount of funding that will be needed by each Beneficiary for its project to proceed; and why this funding has not been secured through other sources;
 - c. Details of the systems and/or processes that will be put in place to record information related to the Scheme, in particular key metrics including, but not limited to:
 - i. State Funds transferred to You by Us and utilisation of those funds;
 - ii. Correlating information regarding the provision of Beneficiary Grants by You for a Permitted Purpose (as defined in paragraph 2 of Schedule 2) pursuant to the purposes of the Scheme;
 - iii. Location of businesses or other organisations who have become Beneficiaries under the Scheme;
 - iv. Information relating to employment created / safeguarded as a result of businesses or other organisations becoming Beneficiaries under the Scheme.
 - d. Details of how performance will be managed and money repaid and reallocated if a Beneficiary does not meet performance targets.
 - e. Arrangements for monitoring and evaluating the Scheme.
 - f. Details of the Programme governance arrangements for the Scheme's Investment Panel that will be put in place to ensure that the Scheme is managed effectively including details of the Programme SRO who will be expected to sign off Programme Scheme Quarterly Monitoring Reports.
 - g. Estimated quarterly grant draw down and expenditure profiles for the two RGF draw down years (2013/14 and 2014/15).
3. In addition, the Scheme Delivery Plan should include a quarterly schedule of the key delivery or decision points that could impact future stages or delivery of the Scheme, whether or not they trigger a Scheme Grant payment. Milestones and deliverables should include the processes surrounding, for example:

- a. Establishing an Investment Award Panel;
- b. Marketing the Fund;
- c. Receipt of applications;
- d. Assessment of applications;
- e. Other key performance indicators as defined in Schedule 4; and
- f. Estimated quarterly draw down of grant advances and expenditure profiles against the areas of eligible expenditure for the period up to 31 March 2015, splitting the total of these costs between those attributed to Beneficiaries located in (i) Assisted Areas and (ii) Non-Assisted Areas.

DRAFT - not legally binding

Schedule 2: The Programme

Definitions

1. For the purposes of this Scheme Offer Letter, the following definitions shall apply:
 - a. “Beneficiary Grant” means a grant to a Beneficiary supported by State Funds under the terms and conditions of this Scheme Offer Letter;
 - b. “Beneficiary Loan” means a loan to a Beneficiary supported by State Funds under the terms and conditions of this Scheme Offer Letter;
 - c. “Beneficiary Offer Letter” means the legally binding contract between You and the Beneficiary setting out the terms and conditions of the Beneficiary Grant or Beneficiary Loan to be made available by You under the Scheme to the Beneficiary;
 - d. “Monitoring Period” means the period from the date of this letter for Ten (10) years;
 - e. “Job Target” shall mean an aggregate number of 1445 indirect Full Time Jobs, either newly created or resulting from the Safeguarding of Existing Positions and connected to a Beneficiary grants, such Job Target to be calculated as an average number over the entire Monitoring Period;
 - f. “Full Time Job” means a job of 30 or more hours a week. Two part time jobs of 15 or more hours a week count as equivalent to one full time job;
 - g. “Safeguarding of Existing Positions” means a job which the Beneficiary has confirmed to you in writing would otherwise be lost within 12 months from the date which the Beneficiary would first receive funds under a Beneficiary Agreement, without the provision of such funds; and
 - h. “SME” means a small or medium sized enterprise as defined in Annex I of the GBER.
 - i. “Delivery Costs” are those costs associated with providing the full delivery programme, covering the following stages and activities:
 - Programme Management
 - Monitoring and Project Support
 - Technical Support
 - Legal Fees (including contracts)
 - Marketing
2. State Funds may only be given to a Beneficiary:
 - a. Where the provision of such funding is limited to and compatible with the following categories of aid as set out in GBER (a “Permitted Purpose”):
 - i. regional investment and employment aid;
 - ii. aid for newly created small enterprises;
 - iii. SME investment and employment aid;

- iv. aid for the creation of enterprises by female entrepreneurs;
 - v. aid for research, development and innovation;
 - vi. training aid; and
 - vii. aid for disadvantaged or disabled workers.
- b. On the basis of a robust award process, agreed with Us [incentive effect test for large companies]
 - c. Where grants given in respect of any single Beneficiary must in aggregate not exceed £999,999 over any period of 3 years.

Operation of the Scheme

- 3. You will draw down advances of State Funds from Us as specified in Schedule 3.
- 4. Potential Beneficiaries will apply to You for funds for economic growth projects (“Applications”). Applications from Potential Beneficiaries shall include at a minimum the following information:
 - a. sources and uses of funding;
 - b. the expected locations of the projects to be delivered by the Beneficiaries;
 - c. an estimate of the employment impact in terms of jobs created and jobs safeguarded by the provision of State Funds;
 - d. a project delivery plan.
- 5. Before providing State Funds to a Beneficiary, You will carry out:
 - a. a robust appraisal of the Application with regard to the objectives of the RGF, in particular the creation of sustainable private sector employment in areas and communities that are over dependent on the public sector;
 - b. verification that documentation prepared by the beneficiary demonstrates the incentive effect of the project to be carried out, by establishing one or more of the following criteria:
 - i. a material increase in the size of the project/activity due to the provision of State Funds;
 - ii. a material increase in the scope of the project/activity due to the provision of State Funds;
 - iii. a material increase in the total amount spent by the beneficiary on the project/activity due to the provision of State Funds;
 - iv. a material increase in the speed of completion of the project/activity concerned;
 - v. that the project would not have been carried out as such in the location concerned in the absence of the State Funds;
 - vi. If the beneficiary is not an SME confirm that the Applicant has analysed in an internal document the viability of the aided project or activity with aid and without aid and that

such internal document was submitted to You and that it contains a credible analysis and demonstration of the incentive effect of the aid as defined in Article 8 of the GBER.

6. We shall have unrestricted access to the appraisal documentation related to any Application.
7. If the appraisal is satisfactory you will draw up and agree a Grant Offer Letter with the Beneficiary.
8. When an Agreed Grant Offer Letter is in place you will make payment of funding in quarterly instalments ("Scheme Funding") to the Beneficiary in accordance with the terms of the relevant Agreed Grant Offer Letter. State Funds must not be paid out in advance of need but following initial private sector investment and the terms and conditions set out in the Grant Offer Letter having been met.

The terms and conditions of Scheme Funding

9. The terms and conditions for Scheme Funding advanced to a Beneficiary shall be set out in a Beneficiary Offer Letter that shall specify as a minimum:
 - a. a Job Target (the "Beneficiary Job Target") against which the performance of the Beneficiary can be assessed and that Scheme Funding will be suspended and the terminated if You, acting reasonably, do not believe that the Beneficiary Job Target will be met.
 - b. investment milestones against which State Funds can be drawn down;
 - c. that the Beneficiary must, at all times, comply with the Equalities Act 2010;
 - d. the State Aid notified scheme under which the award will be granted; and
 - e. the UK *vires* for the award.

Monitoring arrangements for Programme Beneficiaries

10. From the date that the first instalment of Scheme Funding is advanced and until a date at least two years after the last instalment of Scheme Funding is advanced, the Beneficiary must provide You with quarterly monitoring reports that, at a minimum, provides the following information:
 - a. investment defrayed against milestones;
 - b. progress towards delivering the Job Target; and
 - c. progress against non-financial indicators set out in Schedule 5 and the Project Delivery Plan of the beneficiary.
11. At least once a year, all claims by a beneficiary must be verified by a qualified accountant independent of the beneficiary, the project and its promoters.

Schedule 3: How to draw down State Funds

1. It is essential for Us to receive Your Quarterly Monitoring Reports, claims and appropriate payments within the relevant financial year and therefore without prejudice to Schedule 4:

- a. You must provide us with a Quarterly Monitoring Report by the fifteenth (15) day of the months of May, August, November and February throughout the Monitoring Period (as defined in paragraph 1 of Schedule 2);
- b. Quarterly Monitoring Reports may be accompanied by a claim for an installment of grant in that Quarter if you are entitled to make a claim in that Quarter.
- c. You will be paid an installment of grant up to the maximum provided in the relevant column 4 of Table A1, when You have satisfied the associated requirements in the relevant columns 2 of Table A1 and have made a claim which We have received before the relevant No obligation to pay date in the relevant columns 3 of Table A1.
- d. You will not be paid for expenses relating to a particular requirement in columns 2 of Table A1, where We do not receive the claim form before the relevant No obligation to pay date in the relevant columns 3 of Table A1. This applies even if You have completed the work before the No obligation to pay date in the relevant columns 3 of Table A1 or if You complete the work after that date.
- e. You may make up to four claims per year in respect of this grant. The deadline for receipt by Us for claims relating to Table A1 is the relevant No obligation to pay date listed in columns 3 of Table A1. The final Monitoring Report for the year should be submitted in February and must be followed by an annual report from an independent accountant (“the Accountant’s Report”) in this Schedule, submitted no later than the 14th of February of that financial year, confirming the supporting information provided with claims made during the preceding year up to and including the claims made in February. This condition will not apply where the final claim of that financial year is also the first claim. **Where you do not draw down some or all of your Maximum Grant for the year, this funding does not roll into the next year, it is lost.**
- f. We will withhold further instalments of grant and may request repayment of sums already paid if the Claims do not comply with the requirements of this Letter or if the Accountant’s Report is not received by Us or if We are not satisfied that the Report confirms the supporting information provided in relation to Your claims. Your final claim must also include an Accountant’s Report (as defined later in this Schedule). We will not make any payment in relation to your final claim if it is not accompanied with Accountant’s Report. **It is in Your financial interests to make regular claims in accordance with these dates, to reduce the risk of You not receiving grant funding.**

Table A1: Scheme Grant instalments

Date of claims (1)	Requirements for payment (2)	No obligation to pay date (3)	Maximum Grant (4)
15 May 2013	When You have provided a Quarterly Monitoring	20 February 2014	up to £8.024m

Date of claims (1)	Requirements for payment (2)	No obligation to pay date (3)	Maximum Grant (4)
15 August 2013 15 November 2013 15 February 2014	Report in which You have confirmed (i) the cumulative sums which have been paid to Beneficiaries in the form of a Beneficiary Grant; (ii) what You reasonably believe that the amount required to be paid in the form of a Beneficiary Grant for the next quarter will be; and (iii) that You reasonably believe that the Job Target will be met, you will be paid the amount required to be paid in the form of a Beneficiary Grant for the next quarter, provided this does not exceed Your Maximum Grant for the year as shown in Column 4 of this table.		
15 May 2014 15 August 2014 15 November 2014 15 February 2015	When You have provided a Quarterly Monitoring Report in which You have confirmed (i) the cumulative sums which have been paid to Beneficiaries in the form of a Beneficiary Grant; (ii) what You reasonably believe that the amount required to be paid in the form of a Beneficiary Grant for the next quarter will be; and (iii) that You reasonably believe that the Job Target will be met, You will be paid the amount required to be paid in the form of a Beneficiary Grant for the next quarter, provided this does not exceed Your Maximum Grant for the year as shown in Column 4 of this table.	20 February 2015	up to £5.11m

You can claim up to the amounts shown in Column 4 of Table A1, provided that the aggregate total grant claimed does not exceed the total award of £10941736, as detailed in paragraph 1 of this offer letter.

Quarterly Monitoring Reports

2. Quarterly Monitoring Reports should include at a minimum the following information:

Forecast impacts

- a. an estimate of the amount of State Funds to be granted in the following quarter;
- b. a summary of the estimates of employment impact reported by Beneficiaries to whom State Funds will be granted;

State Fund grants

- c. the actual amount of State Funds granted in the previous quarter – reported individually, broken down by State Aid category (as set out in Schedule 2), and in aggregate;
- d. the actual employment impacts of State Funds granted – reported individually, broken down by State Aid category (as set out in Schedule 2), and in aggregate;
- e. the names and postcodes of the beneficiaries
- f. an estimate of the amount of private sector investment that has occurred as a result of RGF awards – reported individually and in aggregate.

Income and costs

- g. the quarterly income:
 - i. from recoveries;
 - ii. from other revenue (e.g. interest received on non-utilised Scheme funding);

Claims

- 3. A claim for a Scheme Grant Instalment must be made in writing on headed paper signed by Nick Bubalo, a director of Sandwell Metropolitan Borough Council, stating:
 - a. the sum that You reasonably believe is the amount required to provide Scheme Funding for the following quarter;
 - b. that you reasonably believe that the Job Target will be met; and
 - c. confirming that the required terms and conditions as set out in this Scheme Offer Letter have been satisfied.
- 4. With each claim include a statement of the use of funds for the relevant cost centres.

The Accountant's Report

The Accountant's Report should be written on headed paper, dated and addressed to You and BIS. The report should be in the following form:

- 1. We have examined the enclosed claims from [the applicant] for the period from [date] to [date] in accordance with the terms and conditions of the engagement letter dated [date] and the scheme offer letter dated [date]. The claim has been prepared by and is the sole responsibility of the directors of [the applicant].
- 2. We have carried out a high level of assurance assignment by selecting a representative random sample of applications for Scheme Funding, including both successful and unsuccessful applications, that covers at least 10% of advances of Scheme Funding by value as reported on the claims by [the applicant] for the previous year (the "Random Sample") and performed the following tests:
 - a. we have traced the Random Sample to Applications to the Scheme;
 - b. we have examined the appraisals and due diligence associated with each Application in the Random Sample to check that they have been properly carried out in accordance with the terms and conditions of the scheme offer letter;
 - c. we have checked that Scheme Funding had properly advanced to the Beneficiaries;
 - d. we have identified the number of permanent full jobs reported by Beneficiaries;
- 3. We have confirmed the arithmetical accuracy of the schedules relating to the claim and agreed them to the appropriate supporting documentation. We have also checked whether the draw down claimed by [the applicant] has been calculated in accordance with the terms and conditions of the offer letter.

Statement of any errors and reservations/exceptions

4. [These, if any, should be clearly stated under this paragraph.]
5. Based on our examination as above and subject to the possible financial effect of any reservations or qualifications set out in paragraph 4, we report that based on our findings, in our opinion the claim for a portion of the Loan meets the conditions of the offer letter dated [date] and the Schedules. We confirm that during the period from [date] to [date]:
- a. [the applicant] advance £[amount] of Scheme Funding to participating Beneficiaries in accordance with the Grant Offer Letter and the Schedules;
 - b. that [the applicant] has maintained adequate records to enable me/us to report on this claim.
6. Our report is prepared solely for the confidential use of [the applicant], the Secretary of State for Business, Innovation and Skills (“BIS”) and solely for the purpose of verifying the grant claimed. It may not be relied upon by Sandwell Metropolitan Borough Council, or BIS for any other purpose whatsoever. Our report must not be recited or referred to in whole or in part in any other published document without our written permission. Our report must not be made available, copied or recited to any other party, save for any Minister who is a member of the UK Government, without our express written permission in every case except that Sandwell Metropolitan Borough Council or BIS may disclose the report where it has a statutory obligation to do so. Other than to Sandwell Metropolitan Borough Council and BIS, we neither owe nor accept any duty to any other party to whom this report may be disclosed.
7. The engagement to report on the claim is separate from, and unrelated to, the audit of the annual financial statements of Sandwell Metropolitan Borough Council and the report relates only to the matters specified and it does not extend to Sandwell Metropolitan Borough Council’s annual financial statements taken as a whole.

Name and signature of the reporting accountant

Date of the report

Name for enquiries

Schedule 4: Variation, Withholding and Repayment of Funding

1. We may vary or withhold any or all of the payments and / or require repayment of State Funds already drawn down by You if, at any time before the end of the Monitoring Period (as defined in paragraph 1 of Schedule 2):

- a. the arrangements for financing the Scheme are changed;
- b. in Our opinion, progress on the Scheme, including progress towards reaching the Job Target (as defined in paragraph 1 of Schedule 2), is not satisfactory;
- c. in Our opinion, the future of the Scheme is in jeopardy;
- d. in Our opinion, there is a significant change in the scale or nature of the Scheme;
- e. in Our opinion, any information You have given in relation to the Scheme changes substantially during implementation or is shown to be incorrect or misleading or any claim is based on misleading information
- f. You fail to comply with any conditions of this Grant Offer Letter; or
- g. in Our opinion, after 31 December 2013, it is not possible for State Funds to be provided to Beneficiaries, so as to achieve the milestones set in this Scheme Offer Letter or the Scheme Delivery Plan and the Job Target, in compliance with any European Regulation which replaces the GBER.

European Union

2. We may require repayment of State Funds already paid, together with interest from the date of payment, if We are required to do so as a result of a decision by the European Commission or as a result of any obligation arising under European Union law.

Schedule 5: Key Performance Indicators

1. The effectiveness of the Scheme will be assessed relative to the following key performance indicators:

Table A1: Employment (cumulative)

Jobs either newly created or resulting from the safeguarding of existing positions that in the absence of the scheme would be lost within a period of 12 months.

Year	FY13/1	FY14/1	FY15/1	FY16/1	FY17/1	FY18/1	FY19/2	FY20/2	FY21/2	FY22/2
	4	5	6	7	8	9	0	1	2	3
Employment Impact	897	1416	1461	1554	1635	1495	1478	1474	1506	1537

Table B1: Private sector Investment

Aggregate private sector investment by beneficiaries directly linked to the provision of RGF support.

Year	FY13/14	FY14/15	FY15/16	FY16/17	FY17/18	FY18/19	FY19/20	FY20/21	FY21/22
Private sector investment	£25.12m	£18.80m							

Table C1: Permitted costs

Expected spend on administration of the Scheme to be funded with RGF.

Year	FY13/14	FY14/15	FY15/16	FY16/17	FY17/18	FY18/19	FY19/20	FY20/21	FY21/22
Administrative costs	£0.018m	£0.1m	£0.1m						

Table D1: Supported businesses

Expected number of SMEs supported by the Scheme to be funded with RGF.

Year	FY13/14	FY14/15	FY15/16	FY16/17	FY17/18	FY18/19	FY19/20	FY20/21	FY21/22
Number of businesses	23	15							

Schedule 6: Confirmatory due diligence

1. Confirmatory due diligence shall be carried out by the RGF team. A satisfactory confirmatory diligence review must be completed in sufficient time that we can agree it or request further information as necessary to complete the review and finalise the terms of your offer by 19 April 2013. If you have not agreed your final terms by this date we will look to recycle your funding allocation. The due diligence review must be completed before a grant or loan award can be finalised.
2. The standard scope of confirmatory due diligence is defined below. Variations to this standard scope need to be agreed with Us in writing and will only be permitted when the requirement is not applicable or where it cannot be provided at a reasonable cost in the agreed timescales. It is in Your interests to ensure any substantive variations that may not be accepted by Us have been agreed by Us before We commence the due diligence review. Where We do not agree to the proposed variation in scope, We will insist a specific requirement contained in the scope is provided before the review can be completed.
3. Except where We subsequently agree otherwise in writing, the review We will undertake will be in the form:

Introduction

[Name of Firm] has examined the Regional Growth Fund application (“the RGF Application”) form from [name of company] (“the Company”) dated in accordance with the terms and conditions of the engagement letter dated [date] and the Conditional Grant Offer Letter dated [date].

Except as set out below, our report is prepared solely for the confidential use of the Company and the Secretary of State for Business Innovation and Skills (“BIS”) and solely for the purpose of submission to BIS in connection with the RGF application. It may not be relied upon by the Company or BIS for any other purpose whatsoever. Neither the Company nor BIS may rely on any oral or draft reports [name of firm] provides. The report will be released to Company and BIS on the basis that it shall not be made available, copied, recited or referred to in whole or in part in any other published document or to any other party without our written permission except where disclosure is to any other UK Central Government Department or where disclosure is required as a result of law or regulation, including an obligation arising out of European Community law or as a result of a decision by the European Commission. To the fullest extent permitted by law, except for the Company and BIS, the [name of firm], its partners and staff neither owe nor accept any duty to any other person (including, without limitation, any person who may use or refer to any of BIS’ publications) and shall not be liable for any loss, damage or expense of whatsoever nature which is caused by any person’s reliance on representations in this report.

Scheme delivery plan, management, financial reporting and internal controls

1. Undertake a high level review and comment on:
 - a. The programme delivery plan;
 - b. Corporate governance;
 - c. Financial management and governance including the robustness of the procedures of the investment framework and make up of the Investment Panel;

- d. Eligibility and investment criteria to be applied in appraisal of applications to the Scheme;
- e. Strengths and weaknesses of the programme management team including its:
 - i. technical ability to appraise applications to the Scheme;
 - ii. ability to test the reliability and deliverability of bid business cases; and
 - iii. ability to test the strategic fit of projects against the objectives of the Regional Growth Fund;
- f. The control environment and the degree of control and monitoring shown by senior management (such as regularity of board meetings, review and challenge of budgets);
- g. The resilience and robustness of the design of contractual arrangements between Sandwell Metropolitan Borough Council and Beneficiaries;
- h. Risk assessment and management procedures;
- i. Financial and management reporting procedures;
- j. Scheme evaluation procedures.

Review of credibility / accuracy of financial projections and timescales

2. Undertake a high level analysis and comment on whether Sandwell Metropolitan Borough Council has experience of delivering similar Scheme(s) and whether these were successfully executed or were there delays or difficulties in execution, Scheme failures, or budget overspends. What processes and controls the business has in place to mitigate such risks.

Management representations

3. The factual sections of the final report to be shown to the management of the company to confirm that, to the best of their knowledge, the facts, as stated, are accurate in all material respects, any opinions attributable to them are fairly stated and reasonably held, they have made available all significant information relevant to the final report of which they have knowledge and they are not aware of any material matters relevant to our terms of reference which have been excluded. The final report will comment on such management assurances.

Programme Manager Job Description

The Programme Manager has the authority to run the Programme on a day to day basis. The Programme Manager's prime responsibility is to ensure that the Programme produces the required outcomes within the specified constraints of time and cost. The Programme Manager is also responsible for the Programme producing results capable of achieving the benefits defined in the business case.

Specific Programme Manager Tasks

- Attend:
 - Programme Board
 - Regens Lead
 - Working Group (Access to Finance Officers Group)
 - LEP Sub-group
- Manage and direct work of technical specialists and state aid expert.
- Direct and monitor the work of the case officers.
- Provide update reports to the LEP Board, Working Group and Programme Board
- Monitor the programme profile to ensure that programme remains on track, particularly at year end.

Generic Programme Management Tasks

- Manage the tasks as outlined in the Programme plan
- Direct and motivate the Programme team
- Plan and monitor the Programme
- Agree and manage any delegation of responsibilities.
- Produce the Programme Initiation Document
- Prepare Programme, stage and, if necessary, Exception Plans in conjunction with Programme Team and agree them with the programme board.
- Manage the risks, including the development of contingency plans
- Take responsibility for overall progress and use of resources and initiate corrective action where necessary
- Be responsible for change control and any required configuration management
- Prepare and report to the programme board through highlight reports and end stage reports.
- Prepare:
 - The Lessons learnt log
 - Any follow-on Action required
- Identify and obtain any support and advice required for the management, planning and control of the programme
- Be responsible for Programme administration