

**TITLE OF REPORT: Enterprise Zone: Business Rate Growth Income Pooling Agreement**

**REPORT OF: Mike Barker, Strategic Director, Corporate Services and Governance**

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### **Purpose of the report**

1. This report seeks approval to enter into an overarching Business Rates Growth Income (BRGI) Pooling Agreement with the North East Combined Authority (NECA) in its current role as the accountable body of the North East Local Enterprise Partnership (North East LEP). This BRGI Pooling Agreement sets out the BRGI pooling arrangements for Enterprise Zones in the NELEP area over the 25 year BRGI period for each site, with a final date of the agreement running to 31 March 2043. It is anticipated that this overarching agreement will enable the individual funding agreements required to implement each approval of funding to be simplified and thereby accelerate the process of approval and subsequent development of the sites.

### **Background**

2. There are now 20 Enterprise Zone (EZ) sites approved in the North East Local Enterprise Zone (North East LEP) area, with at least 1 site in each local authority area, as listed in Appendix A. Ten Round 1 sites became operational in April 2013; nine Round 2 sites became operational in April 2017; and one will become operational in April 2018. The Council has 1 enterprise zone site in its area, this is Follingsby Park.
3. The granting of Enterprise Zone status to these employment sites by the Government means that businesses who occupy the sites can receive benefits of either discounted business rates or enterprise capital allowances for a limited period and within European state aid rules. The Government also allows 100% of BRGI to be kept to fund infrastructure and intervention costs needed to develop the sites over a 25 year period, which is paid to the North East LEP each year. In most cases, infrastructure costs occur at the start of the period and this will require borrowing to fund the works. The North East LEP will approve the capital and financing costs to be funded from pooled Business Rates Growth Income (BRGI) and determine the use of any BRGI surplus after costs have been met.

## Proposals

4. Each of the seven Local Authorities in the North East LEP area have been asked to enter into an overarching agreement in order to provide a transparent and consistent approach for:
  - the treatment of pooled Business Rates Growth Income across the North East LEP area;
  - the financing of site intervention costs;
  - the funding of eligible revenue costs;
  - the operation of a performance incentive arrangement aimed at accelerating development, and maximising BRGI;
  - the treatment of any net surplus after all costs have been funded; and
  - the treatment of any borrowing costs that cannot be funded from the BRGI pool in the unlikely event of a shortfall in total pooled income resulting in a net deficit.

## Recommendations

5. It is recommended that Cabinet:
  - (i) agrees to enter into the overarching Enterprise Zone Pooled Business Rate Income Agreement with the North East LEP and its accountable body NECA;
  - (ii) notes that the existing round 1 funding agreements will be replaced with new agreements consistent with the new overarching BRGI agreement (Newcastle: North Tyneside: Northumberland and Sunderland); and
  - (iii) delegates authority to the Council's Strategic Director, Corporate Services and Governance to complete the necessary legal documentation, following consultation with the Strategic Director, Corporate Resources and the Chief Executive.

For the following reason:

To provide a regional framework to enable the Council and other local authorities to pursue economic growth objectives in relation to Enterprise Zones.

### Policy Context

1. The proposal will align with Vision 2030, in particular in particular Prosperous Gateshead, and the Sustainable Gateshead big idea within the Sustainable Community Strategy, Vision 2030, by seeking to accelerate economic growth and job creation.

### Background

#### Round 1 Enterprise Zones

2. The initial ten Round 1 Enterprise Zone sites proposed by four Local Authorities and submitted for approval by the LEP in 2011 were formally approved by Government in 2012, with a 25 year Business Rate Retention period starting on 1 April 2013 and ending on 31 March 2038.
3. Ten sites were submitted and approved, clustered in three areas –
  - A19 Ultra Low Carbon Vehicle Corridor
  - North Bank of Tyne
  - Port of Blyth
4. The original proposals envisaged that borrowing would be undertaken to fund the up-front infrastructure costs and that this would then be financed by the Business Rate Growth Income (BRGI) retained over a 25 year period.
5. A funding protocol developed by the Local Authority Treasurers set out that borrowing and approved revenue costs would be met from pooled Business Rate Growth Income over the period as a priority, before the net surplus could be determined and allocated by the LEP. It was also proposed that grants be accessed where possible to minimise external borrowing costs and risk, and to maximising the net surplus.
6. The North East LEP decided that rather than undertake expensive external borrowing, it would authorise the use £21.026m of its own North East Investment Fund (NEIF) to finance the first of the infrastructure works needed in three Local Authority areas. This 'internal loan' would be repaid to the NEIF from the BRGI from the Enterprise Zone sites. The LEP has also made temporary use of Local Growth Fund grants to defer the need to carry out actual external borrowing. This has meant that no external borrowing has been carried out to date, which has minimised the costs falling on the Enterprise Zone account and this has therefore maximised the potential BRGI surplus.
7. In the next few years the temporary use of internal funds will need to be transferred back to the NEIF and to Local Growth Funded projects. This will mean an element of refinancing, using internal funds or external borrowing.

The existing Round 1 legal agreements already in place will be revised to reflect the new arrangements and will make clear whether the refinancing will be carried out the individual local authority or by NECA as the accountable body for the North East LEP, where this is possible.

8. In overall terms the pace of development on the Round 1 sites has been slower than initially envisaged and BRGI income is lower than initially expected. This was reflected in a revised set of BRGI projections made when the Enterprise Zone Funding Model was updated by DTZ in November 2014. A revised prudent estimate of income projections is being updated and will be included in a refreshed Model, based upon information provided by each local authority, which is expected to be finalised in March 2018. It is estimated that the EZ pooled business rate income account should produce a net surplus over the round 1 and round 2 sites, recently estimated at over £150million over the life of the Enterprise Zone in cash terms.
9. It is now expected that external borrowing will need to be undertaken by all round 1 local authorities in order to finance newly approved infrastructure works. The replacement of the existing funding agreements will make it clear how the repayment of the internal loans from the NEIF and the repayment of the temporary use of Local Growth Fund grants is to be financed. The North East LEP has no borrowing powers itself and NECA, its current accountable body, can make use of other internal funds but can currently only borrow for transport infrastructure. Borrowing for economic development purposes would need to be undertaken by each local authority.

### Round 2 Enterprise Zones

10. Ten new Enterprise Zone sites were proposed by the Local Authorities and submitted for approval by the North East LEP in 2015 and were formally approved by Government in 2016, with a 25 year Business Rate Retention period starting on 1 April 2017 and ending on 31 March 2042 for nine sites. The BRGI retention period for the IAMP site will commence a year later on 1st April 2018 and is expected to end on 31 March 2043 (the final date in this agreement), following formal approval of its red line boundary area by the Government before 31 March 2018.
11. Infrastructure costs estimated to be around £90m will need to be funded by borrowing agreements by each council, with the North East LEP agreeing the level of the infrastructure costs to be funded. Each funding agreement will set out the annual amount of BRGI income that each council will receive to cover its borrowing costs. This will enable each council to use its prudential borrowing powers to finance the infrastructure works required on their own enterprise zone sites. The level of infrastructure costs will be subject to the approval of the North East LEP following the submission of final business cases. Several business cases are expected to be received for consideration by the North East LEP Board in November 2017, January 2018 and March 2018.

12. The intention is to complete the refresh of the Enterprise Zone Financial Model taking account of the updated information from the North East LEP approvals in November 2018 and January 2018. This would also include the business cases submitted by the end of February 2018, with the results being reported to the North East LEP Board for approval in March 2018. A full refresh of the Enterprise Zone Model is proposed to take place every third year, with periodic and annual update reports to the LEP Board. These will monitor progress with site development, job creation and the financial performance of the Enterprise Zone account.

#### Use of the EZ Surplus and Incentivising Performance and Accelerating Development

13. The North East LEP will determine how any net surplus on the Enterprise Zone account is to be allocated. In consideration for the use of the North East LEPs NEIF and LGF funds and to help provide a secure medium term plan position for the LEP Core team, the North East LEP Board agreed in 2015 that if necessary up to £500k a year could be used to support the costs of the team, which would be subject to approval on a rolling three year basis provide that a net surplus on the Enterprise Zone account was still projected to occur.
14. In May 2017 the North East LEP Board considered and approved a proposal that Councils be eligible to use a ring-fenced element of their surplus as a performance reward incentive - as a result of achieving jobs and higher levels of BRGI on their sites. This would give a clear financial incentive to councils to accelerate development and income generation in their own Enterprise Zones. They would be able to apply this ring-fenced surplus to finance significant economic projects (that are in line with guidance to be issued by the LEP) that help with the achievement of the Strategic Economic Plan objectives.
15. The incentive would allow Local Authorities to determine the use of 50% of any income in excess of a Baseline Income Target and 25% of income generated between 80% and 100% of a Baseline Income Target. This would include a 10% incentive to deliver the agreed outputs (e.g. jobs and developed floor space) in the Enterprise Zone areas. The Baseline Income Target will be set out in the individual funding agreements and will be based upon a prudent estimate of income from each site after deducting a 10% contingency from Round 1 site BRGI already being received and a 15% contingency from BRGI from potential new buildings on the sites.

#### Financial Benefits of Enterprise Zones to Councils

16. Since the Government started to Localise Business Rate Income, councils have been able to retain a proportion of business rate growth over their whole area. Currently councils can retain 50% of the Business Rates growth across their whole area and it is possible that after 2020 councils may be able to retain a higher percentage – possibly up to 100%. However this is not certain and councils are likely to only retain the benefit of any

growth for a relatively short period of time – possibly from one to five years before the grant system is reset. While some growth may be retained for a second period (until the next reset) it is uncertain how much could be retained and indications are that it could be a relatively low percentage. The level of any retained growth is uncertain and it is therefore difficult to use this income to justify the funding of prudential borrowing to carry out infrastructure works.

17. In Enterprise Zones, the certainty of the retention of income over 25 years brings a significant additional retained income benefit to the area. The income can be used to justify prudential borrowing for capital infrastructure works. In addition to the benefits of job creation and economic growth, Councils benefit from:
  - the funding of capital infrastructure works in their area;
  - the potential for a performance reward incentive; and
  - the potential to benefit from the allocation of any net surplus by the North East LEP or its successor body in the future.
18. The proposed pooled BRGI arrangements should put in place favourable cash flow arrangements that should avoid additional costs of Enterprise Zones impacting on the revenue accounts of councils in the short and medium term.

#### The need for an Overarching Legal Agreement

19. The current approach of completing a detailed legal agreement for each site funding application has resulted in several agreements which vary in their terms, content and format and have taken considerable time and effort from the North East LEP and each council to complete. There is now a need to complete another 15 funding agreements for Round 1 and 2 sites. An overarching Business Rate Pooling Agreement, with simpler site-specific funding agreements would help provide a level of consistency and equity across all councils and should help accelerate the completion of the new funding agreements and help accelerate development.
20. The Enterprise Zone funding principles and arrangements have been developed since 2012 and have been subject to change over the last few years for a variety of reason. There is now a need for transparency, consistency; and greater certainty about the treatment of income and expenditure and the financing of infrastructure works and the treatment of any surplus in the short, medium and long term for up to 25 years into the future.
21. With the potential for councils to be carrying out significant prudential borrowing over the next few years in order to fund infrastructure works, it is necessary to be clear exactly how the borrowing is to be funded and exactly where the risk of repaying the borrowing falls in the event of income from a particular site being less than that needed to cover the costs relating to that site. The proposed approach to manage and minimise this borrowing risk is to extend the principle of pooling income across all Round 1 and 2 Enterprise Zone sites to cover borrowing costs.

22. A formal agreement is needed between the North East LEP; its accountable body NECA and each of the local authorities that can be operated over the whole life of the agreement by council officers over the next 25 years and is capable of dealing with any changes to the parties to the agreement over time through novation and residual body arrangements.

### Key Elements in the Agreement

23. The Business Rates Pooling Agreement covers the following key elements:
- clarification of the arrangement for the payment of pooled Business Rate Income each year to the North East LEP or its accountable body, including the calculation of income to be paid and the timing of the payment in May after the year end;
  - the process for the approval of new interventions;
  - the treatment of existing funding arrangements for Round 1 sites;
  - the treatment of borrowing and the funding of borrowing costs;
  - arrangement for utilising the pooled BRGI;
  - the treatment of any BRGI deficit, which will fall to be met proportionately by those councils that have not generated their expected income and have a deficit on their own account, in the event of any net deficit remaining over the whole period;
  - reporting arrangements; and
  - standard terms to be included in the funding agreements that will sit below the pooled BRGI agreement.

### Potential Impact on Objectives

24. Entering into the Business Rate Pooling Agreement should contribute to the acceleration of the development of Enterprise Zone sites and help to achieve of the North East LEP Strategic Economic Plan objectives, in particular those relating to job creation and employment.

### **Consultation**

25. The following have been consulted in producing this report.
- Leader and Cabinet and support Members for Economy.
  - Corporate Resources.

### **Alternative options**

26. The alternative option would be to refrain from entering into the Pooling Agreement and to seek to proceed with development of the Follingsby Enterprise Zone in ad hoc arrangements with North East LEP and the developer outside of the pooling arrangement. That option would be less financially beneficial to the Council because, outside of the pooling arrangement, the Council would keep only 50% of BRGI as opposed to

100% and because there would be resets to the baseline against which BRGI is calculated further reducing the amount of BRGI to be retained by the Council.

## **Implications of recommended options**

### **27. Resources**

- a) Financial Implications** – The Strategic Director, Corporate Resources confirms that:

The Enterprise Zone scheme transfers the costs, risks and rewards of development from participating local authorities to NECA, with NECA providing any infrastructure funding and refunding any other costs incurred by participating councils.

If Gateshead's Enterprise Zone generates annual surpluses (once all costs are accounted for), the profit-sharing mechanism means that a proportion of this income will be shared with the Council.

However, a long-term risk also remains, as an overall deficit in the Council's Enterprise Zone in March 2043 will result in a payment being required from the Council to NECA.

- b) Human Resources Implications** - There are no human resource implications arising directly from this report.

- c) Property Implications** – There are no property implications arising directly from this report.

- 25. Risk Management Implications** – The Business Rates Pooling Agreement aims to minimise the risks associated with the ability to fund the borrowing costs on individual sites through a pooling of income from all Round 1 and 2 Enterprise sites.

- 26. Equality and Diversity Implications** – There are no equality and diversity implications directly arising from this report.

- 27. Crime and Disorder Implications** – There are no crime and disorder implications arising from this report.

- 28. Health Implications** – There are no health implications directly arising from this report.

- 29. Sustainability Implications** - There are no sustainability implications directly arising from this report.

- 30. Area and Ward Implications** – There are no area and ward implications arising from this report.



31. **Background information** – Enterprise Zone Reports to the LEP and NECA Boards; the draft Legal agreement.

## APPENDIX 2

### List of Enterprise Zone Sites

#### Round 1 Enterprise Zone Sites

Local Authority	Enterprise Zone Site	Existing Funding Agreement to be replaced	New Funding Agreement
Newcastle	North Bank of Tyne	Yes	Yes
North Tyneside	North Bank of Tyne : Swans North Bank of Tyne : Port of Tyne site	Yes	Possibly Yes
Northumberland	Bates Commissioners Quay Dunn Cow East Sleekburn	Yes Yes Yes	Yes
Sunderland	A19 Corridor sites 1,2 and 3	Yes	

#### Round 2 Enterprise Zone Sites

Local Authority	Enterprise Zone Site	New Funding Agreement
Durham	Jade (originally Hawthorn)	Yes
Gateshead	Follingsby	Yes
Newcastle	North Bank of Tyne – Extension Newcastle International Airport	Yes Yes
Northumberland	Ashwood, Ashington Fairmoor, Morpeth Ramparts, Berwick	Yes Yes Yes
South Tyneside	Holborn Riverside – Phase 1 Holborn Riverside – Phase 1 IAMP (jointly with Sunderland)	Yes Yes Yes
Sunderland	Port of Sunderland IAMP (jointly with South Tyneside)	Yes Yes

## **APPENDIX 3**

### **Draft Legal Agreement**

**Dated** \_\_\_\_\_ **2017**

**(1) The North East LEP**

**(2) The Durham, Gateshead, Newcastle upon Tyne, North Tyneside, Northumberland, South Tyneside and Sunderland Combined Authority**

**(3) The County Council of Durham**

**(4) Gateshead Metropolitan Borough Council**

**(5) The Council of the City of Newcastle upon Tyne**

**(6) The Council of the Borough of North Tyneside**

**(7) Northumberland County Council**

**(8) South Tyneside Metropolitan Borough Council**

**and**

**(9) The Council of the City of Sunderland**

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**Business Rates Growth Income Pooling Agreement**

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**This Agreement** is dated

2017

**Between**

- (1) **The North East Local Enterprise Partnership** of 1 St James Gate, Newcastle upon Tyne, NE1 4AD ("**NELEP**")
- (2) **The Durham, Gateshead, Newcastle upon Tyne, North Tyneside, Northumberland, South Tyneside and Sunderland Combined Authority** of Quadrant, Cobalt Business Park, The Silverlink North, North Tyneside, NE27 0BY (the "**NECA**").
- (3) **The County Council of Durham** whose principal office is at County Hall, Durham, County Durham DH1 5UL ("**Durham**")
- (4) **Gateshead Metropolitan Borough Council** of Gateshead Council, 1st Floor, Civic Centre, Gateshead, NE8 1HH ("**Gateshead**")
- (5) **The Council of the City of Newcastle upon Tyne** of PO Box 690, Newcastle upon Tyne, NE1 8QH ("**Newcastle**")
- (6) **The Council of the Borough of North Tyneside** of Quadrant, The Silverlink North, Cobalt Business Park, North Tyneside, NE27 0BY ("**North Tyneside**")
- (7) **Northumberland County Council** of County Hall, Morpeth, Northumberland, NE61 2EF ("**Northumberland**");
- (8) **South Tyneside Metropolitan Borough Council** of Town Hall and Civic Offices, Westoe Road, South Shields NE33 2RL ("**South Tyneside**")
- (9) **The Council of the City of Sunderland** of Civic centre, Burdon Road, Sunderland SR2 7DN ("**Sunderland**").

**Background:**

- (1) NECA is the accountable body for NELEP.
- (2) Various sites in the NELEP region are designated as Enterprise Zones. The focus of the Enterprise Zones is to develop difficult sites for commercial occupation and create additional jobs to help meet the North East Strategic Economic Plan ("**SEP**") objectives. The key focus of the Enterprise Zone sites is the creation of jobs in the NELEP region to help achieve the objectives in the SEP.
- (3) The infrastructure required for Round 1 Enterprise Zone sites is estimated to be around £64million, with infrastructure costs for Round 2 Enterprise Zone Sites estimated at around £90m. It is expected that most of the Round 1 costs yet to be incurred and all of the Round 2 infrastructure costs will be funded by internal or external borrowing by the constituent local authorities. It is expected that the Round 1 costs incurred prior to the date of this agreement will be funded by internal or external borrowing by NECA as the accountable body for the North East LEP. The annual cost of borrowing, whether undertaken by the local authorities or by NECA is to be met by payments funded from pooled BRGI.
- (4) Each of the Councils has agreed to pay all BRGI from the Zones within the boundary of each Council, to NECA on behalf of NELEP. The Pooled BRGI shall be utilised by

NELEP in accordance with the terms of this agreement which shall include, inter alia, funding Intervention Borrowing Costs. It is anticipated that Surplus Pooled BRGI shall be utilised to fund activity aimed at achieving the SEP objectives, as agreed by NELEP.

- (5) NELEP is responsible for the management of the Enterprise Zone finances. For the Round 1 Enterprise Zone sites NELEP has made funding available pursuant to certain of the Councils Existing Funding Agreements as detailed within this agreement. Any borrowing in respect of this funding shall be managed by NECA (on behalf of NELEP), however the risk of borrowing whether undertaken by NECA or the relevant Council should it elect to do so, shall remain with the relevant Council under the terms of this agreement and shall be repaid by the relevant Council in accordance with the terms of this agreement. with the Intervention Borrowing Costs arising from such repayment being paid to the relevant Council by NELEP in accordance with the terms of this agreement.
- (6) For the Round 2 Sites and the Round 2 IAMP Sites any borrowing required will be detailed within the Funding Agreement. The risk of borrowing, whether undertaken by the relevant Council or a Council Area Beneficiary, shall remain with the relevant Council and shall be repaid by the relevant Council in accordance with its terms provided that the Intervention Borrowing Costs arising from any such repayment shall be paid to the relevant Council or Council Area Beneficiary in accordance with the terms of the relevant Funding Agreement subject always to the terms of this agreement.
- (7) This agreement shall supersede the terms of the Existing BRGI Agreements.
- (8) The NELEP Board has consented to the entry into this agreement.

**NOW IT IS HEREBY AGREED** as follows:-

### **Interpretation**

The following definitions and rules of interpretation apply in this agreement.

Definitions:

- |  |  |
|--|--|
| "Aggregate BRGI Payments"                      | means the total amount of BRGI paid to NELEP or NECA by a Council pursuant to the terms of this agreement;   |
| "Aggregate Funded Intervention Costs Payments" | means the total amount of the payments made to a Council in respect of Approved Proposed Intervention Borrowing Costs and the Approved Final Intervention Borrowing Costs (without double counting) including, for the avoidance of doubt, the Existing Funding whether or not the same has been funded by BRGI receipts already paid; |
| "Anticipated Pooled BRGI"                      | means the Pooled BRGI projected by NELEP and NECA in the period from which the Anticipated Pooled BRGI is calculated to the Final Date;  |
| "Applicant Council"                            | means a Council which has submitted a Business   |

Case to NELEP for an Intervention;

"Approved Intervention Borrowing Costs" Proposed means the Proposed Intervention Borrowing Costs approved by NELEP and NECA in writing pursuant to the terms of this agreement and which, in respect of each Round 1 Council, for the purposes of this agreement, shall include Existing Funding Intervention Borrowing Costs;

"Approved Intervention Borrowing Costs Schedule" Proposed means a schedule detailing the payments to be made to the relevant Council or Council Area Beneficiary in specified amounts upon specified dates to meet the Approved Proposed Intervention Borrowing Costs a copy of which is to be attached to the Funding Agreement – Specific Terms;

"Approved Final Intervention Borrowing Costs" means the amount of the Final Intervention Borrowing Costs for an Intervention which are approved by NELEP and NECA in writing following submission of the Final Intervention Costs to NELEP and NECA pursuant to the terms of this agreement and which, in respect of each Round 1 Council, for the purposes of this agreement, shall include, Existing Funding Intervention Borrowing Costs;

"Approved Final Intervention Borrowing Costs Schedule" means a schedule detailing the payments to be made to the relevant Council or Council Area Beneficiary in specified amounts upon specified dates to meet the Approved Final Intervention Borrowing Costs;

"Approved Revenue Costs" means revenue costs in respect of an Intervention which are identified in the relevant Business Case and/or in the Funding Agreement Specific Terms and which have been approved in writing by NELEP,

"Balance Surplus Pooled BRGI" means, in the opinion of NELEP and NECA, the amount of the Surplus Pooled BRGI held by NELEP and/or NECA from time to time following the payment of all monies to be paid under clause 6.1 and clause 6.2 and taking into account the payments to be made and the BRGI likely to be received;

"Billing Authority" means the person or persons either:  
(a) responsible for the collection of; and/or  
(b) who are entitled to or will retain  
the national non-domestic rates derived from the Zones;

"BRGI"	<p>means business rates growth income, being the aggregate of: -</p> <ul style="list-style-type: none"> <li>(a) in respect of Round 1 Sites, the increase in Business Rates from the baseline for the Zones as recorded at 31 December 2011 and submitted to the Department for Communities and Local Government for the purpose of The Local Government Act 2012;</li> <li>(b) in respect of Round 2 Sites, the increase in Business Rates from the baseline for the Zones as recorded at 31 March 2016 and submitted to the Department for Communities and Local Government for the purpose of The Local Government Act 2012;</li> <li>(c) in respect of any other site which forms part of a Zone, the increase in Business Rates from the baseline for that Zone as recorded and submitted to the Department for Communities and Local Government for the purpose of The Local Government Act 2012</li> </ul> <p>in each case the relevant baseline being as detailed in the Specific Terms and being the <b>"Increased Business Rates"</b>; and</p> <ul style="list-style-type: none"> <li>(d) any amounts received in lieu of or reimbursement of Increased Business Rates or otherwise received by way of grant payable to the relevant Council for revenue forgone as a result of relief granted from Business Rates, including but not limited to, grants for small business rates relief payable under s31 Local Government Act 2003;</li> </ul>
"BRGI Payment Date"	means the 31 May in each year from the date of this agreement to 31 May;
"BRGI Period"	means each annual period commencing upon 1 April in each year to 31 March in the following year;
"BRGI Target"	means the target for BRGI for each Zone as determined by NECA (through the NECA Leadership Board);
"Business Case"	means a business case detailing the proposed Intervention in form and substance satisfactory to

NELEP and shall include but not be limited to the Current Business Cases;

- "Business Rates" means national non-domestic business rates derived from the Zones within the boundary of such Council which can be retained by the Billing Authority and which are received by and/or are payable to the Billing Authority;
- "Council" means any of Durham, Gateshead, Newcastle upon Tyne, North Tyneside, Northumberland, South Tyneside and Sunderland (and 'Councils' means more than one of them);
- "Council Area Beneficiary" means, in respect of each Council, a party or parties (not being the Council) undertaking an Intervention situated on a Zone within that Council's local area and in the case of:
- (a) North Tyneside shall include Kier Property Development Limited; and
  - (b) Sunderland shall include Vantec Europe Limited;
- "Deficit Amount" means the amount by which the Aggregate Funded Intervention Costs paid to a Deficit Council exceeds the Aggregate BRGI Payments received from that Council;
- "Deficit Council" means a Council whose Aggregate Funded Intervention Costs paid to that Council exceed the Aggregate BRGI Payments received from that Council;
- "Deficit Share" means such percentage share of the Overall Deficit that is equal to the relevant Deficit Council's Deficit Amount as against the aggregate total of each Deficit Council's Deficit Amount;
- "Existing BRGI Agreements" means: -
- (a) in respect of Newcastle,
    - (i) the provisions of clause 3.7 and clause 7 of the funding agreement made between (1) NECA and (2) Newcastle dated 31 March 2016;
  - (b) in respect of North Tyneside:
    - (i) the provisions of clause 3.7 and 8 of the funding agreement made between (1) NECA and (2) North



Tyneside dated 17 July 2014;

- (ii) the business rates agreement made between (1) Sunderland (as the then accountable body for NELEP) and (2) North Tyneside dated 17 July 2014;
- (iii) the provisions of clause 3.7 and 8 of the funding agreement made between (1) NECA and (2) North Tyneside dated 27 March 2015;
- (iv) the letter from North Tyneside to NECA dated March 2015;
- (v) the grant offer letter and funding agreement made between (1) NECA and (2) Kier Property Development Limited dated 31 March 2015

(c) in the case of Northumberland:

- (i) the business rates agreement made between (1) Sunderland (as the then accountable body for NELEP) and (2) Northumberland dated 25 February 2014;
- (ii) the provisions of clause 7.1 of the funding agreement made between (1) Sunderland (as the then accountable body for NELEP) and (2) Northumberland dated 20 February 2014
- (iii) the provisions of clause 7.1 of the funding agreement made between (1) Sunderland (as the then accountable body for NELEP) (2) NECA and (3) Northumberland dated 20 October 2014;
- (iv) the provisions of clause 7.1 of the funding agreement made between (1) NECA and (2) Northumberland dated 9 October 2015; and
- (v) the letter from Northumberland to NECA and Sunderland (as the then accountable body for NELEP) dated 15 May 2015.

(d) in the case of Sunderland: -

- (i) the provisions of clause 7.1 of the funding agreement made between (1) NECA (as the accountable body for NELEP) and (2) Sunderland dated [20 October 2014;
- (ii) the provisions of the amendment to the funding agreement made between (1) NECA (as the accountable body for NELEP) and (2) Sunderland dated 29 march 2016
- (iii) the grant offer letter dated 27 March 2015 and funding agreement dated 31 March 2015 made between (1) NECA (as the accountable body for NELEP) and (2) Vantec Europe Limited;

"Existing Funding"

means: -

- (a) in respect of Newcastle, £1,648,000, being the amount made available under the terms of the funding agreement made between (1) NECA and (2) Newcastle dated 31 March 2016;
- (b) in respect of North Tyneside:
  - (i) £3,780,445, being the amount made available under the terms of the funding agreement made between (1) NECA and (2) North Tyneside dated 17 July2014;
  - (ii) £2,100,000, being the amount made available under the terms of the funding agreement made between (1) NECA and (2) North Tyneside dated 27 March 2015;
  - (iii) £1,899,509, being the amount made available under the terms of the funding agreement made between (1) NECA and (2) Kier dated xxx
- (c) in the case of Northumberland:
  - (i) £3,799,237, being the amount made available under the terms of the funding agreement made

between (1) Sunderland (as the then accountable body for NELEP) and (2) Northumberland dated 20 February 2014;

(ii) £600,000, being the amount made available under the terms of the funding agreement made between (1) Sunderland (as the then accountable body for NELEP) (2) NECA and (3) Northumberland dated 20 October 2014;

(iii) £xxx, being the amount made available under the terms of the funding agreement made between (1) NECA and (2) Northumberland dated 9 October 2015; and

(d) in the case of Sunderland: -

(i) £4,000,000, being the amount made available under the terms of the funding agreement made between (1) NECA and (2) Sunderland dated 20 October 2014;

(ii) £3,894,807 being the amount made available under the terms of the amended funding agreement made between (1) NECA and (2) Sunderland dated 29 March 2016;

(iii) the provisions of clause 7.1 of the funding agreement made between (1) NECA (as the accountable body for NELEP) and (2) Vantec Europe Limited dated 31 March 2015;

"Existing Agreements"

Funding means: -

(a) in respect of Newcastle, the funding agreement made between (1) NECA and (2) Newcastle dated 31 March 2016;

(b) in respect of North Tyneside:

(i) the funding agreement made between (1) NECA and (2) North Tyneside dated 17 July 2014;

(ii) the funding agreement made between (1) NECA and (2) North

Tyneside dated 27 March 2015;

(iii) the funding agreement made between (1) NECA and (2) Kier dated xxx

(c) in the case of Northumberland:

(i) the funding agreement made between (1) Sunderland (as the then accountable body for NELEP) and (2) Northumberland dated 20 February 2014

(ii) the funding agreement made between (1) Sunderland (as the then accountable body for NELEP) (2) NECA and (3) Northumberland dated 20 October 2014;

(iii) the funding agreement made between (1) NECA and (2) Northumberland dated 9 October 2015; and

(d) in the case of Sunderland: -

(i) the funding agreement made between (1) NECA (as the accountable body for NELEP) and (2) Northumberland dated 20 October 2014

(ii) the amended funding agreement made between (1) NECA (as the accountable body for NELEP) and (2) Sunderland dated 29 March 2016

(iii) the funding agreement made between (1) NECA (as the accountable body for NELEP) and (2) Vantec Europe Limited dated 31 March 2015;

"Existing Funding Intervention means:  
Borrowing Cost"

(a) the costs to the relevant Round 1 Council of repaying the Existing Funding which is to be repaid by the relevant Round 1 Council pursuant to the terms of this agreement which shall include interest and capital as approved by NECA and NELEP in writing; and/or

- (b) the costs to NECA of undertaking internal and/or external borrowing to refinance the Existing Funding made available to the relevant Round 1 Council or that Round 1 Council's Council Area Beneficiary pursuant to the terms of this agreement; and/or
- (c) to the extent that the Existing Funding has not been repaid by the relevant Round 1 Council and/or refinanced by NECA by way of undertaking internal and/or external borrowing pursuant to the terms of this agreement, an amount equal to the Existing Funding paid to that Round 1 Council or that Round 1 Council's Council Area Beneficiary;

"Final Date"		means 31 March 2043;
"Final Intervention Borrowing Costs"		means, following completion of an Intervention, the total amount of the Intervention Borrowing Cost;
"Final Reconciliation Statement"		means a statement as at the Final Date detailing the Aggregate BRGI Payments received from each Council and the Aggregate Funded Intervention Costs Payments paid to that Council and confirming: <ul style="list-style-type: none"> <li>(a) those Councils where the Aggregate Funded Intervention Costs are in excess of the Aggregate BRGI Payments and the amount of such excess; and</li> <li>(b) those Councils to which a performance Reward incentive has or will be paid;</li> </ul>
"Funding Agreement"		means an agreement which shall comprise the Funding Agreement Specific Terms and the Funding Agreement Standard Terms and which shall include a Proposed Intervention Borrowing Costs Schedule;
"Funding Agreement Specific Terms"		means the specific terms detailing, inter alia, the terms upon which NELEP and/or NECA shall make funds available to the relevant Council to meet the Intervention Borrowing Costs in respect of an Intervention which shall be on substantially the terms set out in Schedule 1 to this agreement;
"Funding Agreement Standard Terms"		means the standard terms detailing, inter alia, the terms upon which NELEP and/or NECA shall make funds available to the relevant Council to

meet the Intervention Borrowing Costs which shall be on substantially the terms set out in Schedule 2 to this agreement;

"Internal Intervention Borrowing Costs"	means the amount made available by the Council or Council Area Beneficiary in respect of the Intervention together with an amount equal to the interest and / or fees which would have accrued upon such amount if the Council or Council Area Beneficiary had borrowed such funds upon terms, including but not limited to the length of the loan term approved by NELEP;
"Intervention"	means a project or number of projects being undertaken or to be undertaken by a Council or, where appropriate, by a Council Area Beneficiary, on a Zone within that Council's local area;
"Intervention Approval Date"	means the date upon which the Intervention is approved by NELEP and for which NELEP has agreed to fund the Intervention Borrowing Costs;
"Intervention Borrowing Costs"	means the sum equivalent to the costs to the Council or Council Area Beneficiary of repaying the monies made available to it to fund the Intervention, which shall include interest and capital amounts to be repaid, and in the case of the Round 1 Councils in respect of the Round 1 Sites, the Existing Funding Intervention Borrowing Costs;
"Intervention Completion Date"	in respect of each Approved Intervention, has the meaning given to it in the Funding Agreement Specific Terms applicable to that Approved Intervention;
"Intervention Documents"	in respect of each Approved Intervention, has the meaning given to it in the Funding Agreement Specific Terms applicable to that Approved Intervention;
"Intervention Funding"	means details of how the Intervention Borrowing Costs are to be funded including details of the source of funding, or if funds are being made available by the Council, confirmation that this is the case;
"LGF"	means the Local Growth Fund (LGF) Programme;
"NECA Leadership Board"	means strategic decision-making body of NECA;
"NELEP"	means the North East Local Enterprise Partnership, and to the extent legally necessary, NECA, as its accountable body;

"Overall Deficit"		means the amount by which the Aggregate Funded Intervention Costs paid to each Council exceed the Aggregate BRGI Payments received from each Council;
"Performance Incentive"	Reward	means the performance reward incentive scheme with reference to the BRGI Target, the terms of which are documented in Schedule 3 as such scheme is updated or amended from time to time;
"Pooled BRGI"		means the BRGI received by NELEP or NECA pursuant to the terms of this agreement and which is held by either of them from time to time;
"Proposed Borrowing Costs"	Intervention	means the anticipated Intervention Borrowing Costs;
"Round 1"		the first round of funding made available across Enterprise Zones at the Round 1 Sites from 2012;
"Round 1 Councils"		means each of Newcastle, Northumberland, North Tyneside and Sunderland;
"Round 1 Date"		means 31 March 2037;
"Round 1 Reconciliation Statement"	Reconciliation	a statement as at the Round 1 Date detailing the Aggregate BRGI Payments received from each Council and the Aggregate Funded Intervention Costs Payments paid to that Council and confirming those Councils where the Aggregate Funded Intervention Costs are in excess of the Aggregate BRGI Payments and the amount of such excess;
"Round 1 Sites"		<ul style="list-style-type: none"> <li>(a) in the case of Newcastle: <ul style="list-style-type: none"> <li>(i) Neptune.</li> </ul> </li> <li>(b) in the case of North Tyneside: <ul style="list-style-type: none"> <li>(i) Swan Hunter;</li> <li>(ii) Port of Tyne</li> </ul> </li> <li>(c) In the case of Northumberland: <ul style="list-style-type: none"> <li>(i) Dun Cow Quay;</li> <li>(ii) Commissioners Quay;</li> <li>(iii) East Sleekburn and Wimbourne Quay; and</li> </ul> </li> </ul>

	(iv) Bates;
	(d) In the case of Sunderland, the A19 Corridor, Phases 1, 2 and 3,  as more particularly defined on the plans annexed to this agreement at Annexure 1;
"Round 2"	means the second round of funding made available across Enterprise Zones at the Round 2 Sites from 2017;
"Round 2 Councils"	means each of Durham, Gateshead, Newcastle, Northumberland, South Tyneside and Sunderland;
"Round 2 Date"	means 31 March 2042;
"Round 2 IAMP Site"	means the International Advanced Manufacturing Park as more particularly defined on the plan annexed to this agreement at Annexure 3;
"Round 2 Sites"	<p>(a) In the case of Durham, Jade Business Park (formerly Hawthorne Prestige Business Park);</p> <p>(b) In the case of Gateshead, Follingsby Business Park, Gateshead;</p> <p>(c) In the case of Newcastle,</p> <p style="padding-left: 40px;">(i) Newcastle International Airport Business Park, Newcastle;</p> <p style="padding-left: 40px;">(ii) North Bank of the Tyne extension;</p> <p>(d) In the case of Northumberland:</p> <p style="padding-left: 40px;">(i) Ramparts Business Park, Berwick;</p> <p style="padding-left: 40px;">(ii) Fairmoor, Morpeth;</p> <p style="padding-left: 40px;">(iii) Ashwood Business Park, Ashington;</p> <p>(e) In the case of Sunderland</p> <p style="padding-left: 40px;">(i) Port of Sunderland, Sunderland;</p> <p>(f) In the case of South Tyneside, Holborn Riverside, Phase 1 and 2, South Shields.</p> <p>as more particularly defined on the plans annexed to this agreement at Annexure 2 and, for</p>



	the avoidance of doubt, excluding the Round 2 IAMP Site;
"Surplus Payment"	means the amount by which the Approved Proposed Intervention Borrowing Costs received by the relevant Council exceeds the Approved Final Intervention Borrowing Costs;
"Surplus Pooled BRGI"	means, in the opinion of NELEP and NECA, the amount of the Pooled BRGI held by NELEP and/or NECA from time to time following the payment of all monies to be paid under clause 6.1 and taking into account the payments to be made and the BRGI likely to be received;
"Surplus Anticipated Pooled BRGI"	means in the opinion of NELEP and NECA, the Anticipated Pooled BRGI taking into account all payments to be made under the terms of this agreement;
"Total Commitment"	in respect of each Approved Intervention, has the meaning given to it in the Funding Agreement Specific Terms applicable to that Approved Intervention;
"Zones"	means all sites designated as enterprise zones from time to time by NELEP within the North East Local Enterprise Partnership area within the boundary of each Council (or any successor body to each Council) which shall include but not be limited to the Round 1 Sites, the Round 2 Sites and the Round 2 IAMP Site.

Clause headings shall not affect the interpretation of this agreement.

The Schedules and Annexures form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the Schedules and Annexures.

Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular and a reference to one gender shall include a reference to the other genders.

Any words following the terms "including", "include" or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

Any reference in this agreement to:

"writing" or "written" includes fax but not e-mail

"person" includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and a reference to any person shall include that party's successors, assigns and transferees

any condition, sub-condition, paragraph, schedule, appendix or section heading is, except where it is expressly stated to the contrary, a reference to such condition, sub-condition, paragraph, schedule, appendix or section heading of this agreement.

this agreement or to any other document shall include (except where expressly stated otherwise) any variation, amendment or supplement to such document to the extent that such variation, amendment or supplement is not prohibited under the terms of this agreement.

any enactment, order, regulation or similar instrument shall (except where expressly stated otherwise) be construed as a reference to the enactment, order, regulation or instrument (including any EU instrument) as amended, replaced, consolidated or re-enacted.

### **BRGI Pooling**

Each of the Round 1 Councils severally covenant to pay (or, in the case of any Council, where the relevant Billing Authority is not that Council in any area, that Council shall procure the payment by the relevant Billing Authority of) an amount equal to the BRGI received by it from the Round 1 Sites in each BRGI Period to NECA on behalf of NELEP on each BRGI Payment Date occurring in the period to the Round 1 Date.

Each of the Round 2 Councils severally covenant to pay (or, in the case of any Council, where the relevant Billing Authority is not that Council in any area, that Council shall procure the payment by the relevant Billing Authority of) an amount equal to the BRGI received by it from the Round 2 Sites in each BRGI Period to NECA on behalf of NELEP on each BRGI Payment Date occurring in the period to the Round 2 Date.

Each of South Tyneside and Sunderland severally covenant to pay (or, in the case of any Council, where the relevant Billing Authority is not that Council in any area, that Council shall procure the payment by the relevant Billing Authority of) an amount equal to the BRGI received by it from the Round 2 IAMP Site in each BRGI Period to NECA on behalf of NELEP on each BRGI Payment Date occurring in the period to the Final Date.

Where any BRGI is owing in any BRGI Period but is not received by the BRGI Payment Date it shall be deemed to be a ("**Late Receipt BRGI**") and the relevant Council shall pay, (or, where the relevant Billing Authority is not the Council in any area, shall procure the payment by the Relevant Billing Authority of) an amount equal to Late Receipt BRGI within 30 days of receipt of a notice that there is a Late Receipt BRGI..

If any Council fails to make a payment due to NECA on behalf of NELEP under this agreement by the BRGI Payment Date, then the relevant Council shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause will accrue each day at 2% a year above the Bank of England's base rate from time to time, but at 2% a year for any period when that base rate is below 0%.

### **New Interventions**

Where a new Intervention is proposed the Applicant Council will submit a Business Case to NELEP which NELEP shall evaluate and submit to the NELEP Board and the NECA Leadership Board for approval.

If the Business Case is approved by both the NELEP Board and the NECA Leadership Board, a Funding Agreement will be produced and, subject to agreement of the same, shall be executed by the parties thereto. The Funding Agreement shall contain a schedule of Approved Proposed Intervention Borrowing Costs.

Subject to clause 5, it is acknowledged by each Council that NECA and/or NELEP may enter into a Funding Agreement in respect of an Intervention with a Council Area Beneficiary.

### **Existing Funding Agreements**

Each of the Round 1 Councils severally agrees that:

the Existing Funding (to the extent that it has not been funded by BRGI receipts already paid) will be refinanced if this becomes necessary as determined by NECA as the accountable body for NELEP, either by:

- 4.1.1.1 NECA undertaking internal and/or external borrowing in relation to the funding provided under the Existing Funding Agreements; or
- 4.1.1.2 the Council electing to repay to NECA on behalf of NELEP an amount equal to the Existing Funding (less any BRGI already paid and used to pay for the Existing Funding) paid to it under the Existing Funding Agreements through borrowing or use of that Council's own reserves,

provided that each Round 1 Council acknowledges that:

- 4.1.1.3 where any Existing Funding is not refinanced in accordance with the provisions of this clause 0.2an amount equal to the Existing Funding paid to that Round 1 Council or a Council Area Beneficiary will form part of the Existing Funding Borrowing Costs; and
- 4.1.1.4 Existing Funding Borrowing Costs will form part of the Approved Proposed Intervention Borrowing Costs and the Approved Final Intervention Borrowing Costs for the purposes of this agreement.

4.2 Each Round 1 Council hereby confirms that no further funds may be drawn under the terms of the Existing Funding Agreements.

## **5 Council and Council Area Beneficiary Borrowing**

5.1 Each Council agrees that Intervention Borrowing Costs shall be funded by way of:

- 5.1.1 borrowing by the Council;
- 5.1.2 Council use of internal reserves;
- 5.1.3 third party funding / borrowing;
- 5.1.4 NECA / NELEP undertaking borrowing where permitted; or
- 5.1.5 a combination of the above.

Each Council also acknowledges that, subject to clause 5.2 where NELEP or NECA borrow funding for an Intervention and make the same available to a Council or Council Area Beneficiary for the purposes of an Intervention any such amounts shall form part of the Intervention Borrowing Costs of the Council in whose local area the relevant Intervention is situated for the purposes of this agreement.

- 5.2 Provided that the relevant Council is a party to the Funding Agreement or has otherwise provided its consent in writing to the relevant Approved Proposed Intervention Borrowing Costs Schedule in respect of the Intervention, and the Funding Agreement is entered into with a Council Area Beneficiary, the Council in whose local area the Intervention is being undertaken by that Council Area Beneficiary, shall be ultimately responsible for the funding made available under such Funding Agreement including, without limitation, all interest thereon, and such funding shall form part of the Approved Proposed Intervention Borrowing Costs and the Approved Final Intervention Borrowing Costs in respect of that Council for the purposes of this agreement.
- 5.3 It is acknowledged that a risk sharing agreement may be entered into between the relevant Council and the relevant Council Area Beneficiary in relation to the risk of the funding provided that the contents of such agreement or any other arrangement between the Council and the relevant Council Area Beneficiary shall not affect the rights of NECA and NELEP against the relevant Council under this agreement or the relevant Council Area Beneficiary in respect of the Funding Agreement
- 5.4 Each Applicant Council shall confirm, or where the Intervention is being undertaken by a Council Area Beneficiary shall procure that such Council Area Beneficiary shall confirm, the proposed source of Intervention Funding to NELEP and NECA as soon as reasonably practicable following the Intervention Approval Date and prior to completion of Funding Agreement, NELEP and NECA shall approve the Proposed Intervention Borrowing Costs.
- 5.5 Upon the earlier of (i) completion of the Intervention in accordance with the Intervention Documents or (ii) the Intervention Completion Date, the relevant Council shall or where the Intervention is being undertaken by a Council Area Beneficiary shall procure that such Council Area Beneficiary party shall provide, a schedule of the Final Intervention Borrowing Costs for approval by NELEP and NECA. If the schedule is approved by NELEP and NECA the schedule shall be deemed to be the Approved Final Intervention Borrowing Costs Schedule. If the schedule is not provided when due or is not approved by NELEP and NECA the Council or, where the Intervention is being undertaken by a Council Area Beneficiary, the Council shall procure that such Council Area Beneficiary, and NELEP and NECA shall, at the request of either the Council, or NELEP or NECA negotiate in good faith with a view to agreeing an amended Approved Final Intervention Borrowing Costs Schedule provided that if no such agreed revised Approved Final Intervention Costs Schedule is reached within 30 days of such request, NELEP and/or NECA may issue a revised Approved Final Intervention Borrowing Costs Schedule which, once received by the relevant Council or Council Area Beneficiary shall be the Approved Final Intervention Borrowing Costs Schedule for the purposes of this agreement and the Funding Agreement.
- 5.6 Each Council acknowledges that:
  - 5.6.1 following such time as the Approved Final Intervention Borrowing Costs Schedule is received by the relevant Council or Council Area Beneficiary no further payments shall be made under any Approved Proposed

Intervention Borrowing Costs Schedule in respect of the same Intervention and the terms of the Approved Final Intervention Borrowing Costs Schedule shall supersede each existing Approved Proposed Intervention Borrowing Costs Schedule;

- 5.6.2 the Approved Final Intervention Borrowing Costs shall not exceed the Total Commitment;
  - 5.6.3 in the event of any failure by a Council to comply with the provisions of this agreement, NELEP and NECA shall not be obliged to make any payment to that Council or Council Area Beneficiary undertaking the Intervention under the terms of any Funding Agreement;
  - 5.6.4 in the event of any Event of Default (as defined in the Funding Agreement) under a Funding Agreement, the relevant Council or, where the Intervention is being undertaken by a Council Area Beneficiary, the Council shall procure that such Council Area Beneficiary, and NELEP and NECA shall, at the request of either NELEP or NECA negotiate in good faith with a view to agreeing an amended Approved Proposed Intervention Borrowing Costs Schedule to reflect the revised funding requirements of the Intervention Borrowing Costs, provided that if no such agreed revised Approved Proposed Intervention Costs Schedule is reached within 30 days of NELEP and/or NECA's request, NELEP and/or NECA may issue a revised Approved Proposed Intervention Borrowing Costs Schedule reflecting the revised funding requirements of the Intervention Borrowing Costs which, once received by the relevant Council or Council Area Beneficiary shall replace the existing Approved Proposed Intervention Borrowing Costs Schedule and shall be the Approved Proposed Intervention Borrowing Costs Schedule for the purposes of this agreement and the Funding Agreement.
- 5.7 In accordance with the terms of the Funding Agreement, where any Council has received payments in respect of the Approved Proposed Intervention Borrowing Costs in respect of any Intervention and the Approved Final Intervention Borrowing Costs in respect of that Intervention are less than the Approved Proposed Intervention Borrowing Costs that Council shall repay the Surplus Payment to NELEP or, if requested by NELEP to NECA, within 20 Business Days of the circulation of the Approved Final Intervention Borrowing Costs Schedule.
- 5.8 If any Council fails to make a payment due to NECA on behalf of NELEP under the provisions of clause 5.7 of this agreement by the due date, then the relevant Council shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause will accrue each day at 2% a year above the Bank of England's base rate from time to time, but at 2% a year for any period when that base rate is below 0%.

## **6 Utilisation of Pooled BRGI**

- 6.1 It is agreed between the Councils, NELEP and NECA that the Pooled BRGI shall be held by NECA or by such other person as NELEP and NECA shall agree and shall be utilised as follows: -
  - 6.1.1 firstly, to fund Approved Revenue Costs;

- 6.1.2 secondly, to the extent that all Approved Revenue Costs have been paid, to make payment of monies due to each Council, to the extent an Intervention is not completed, under Approved Proposed Intervention Borrowing Costs Schedules and, following completion of an Intervention, under Approved Final Intervention Borrowing Costs Schedules.
- 6.2 It is agreed between the Councils, NELEP and NECA that the Surplus Pooled BRGI shall be utilised as follows:
- 6.2.1 firstly, to satisfy monies required to make payments in respect of the Performance Reward Incentive;
- 6.2.2 secondly, to the extent that the payments due under clause 6.2.1 have been made, a sum of up to £500,000 per [*financial year*] shall be retained by NELEP to meet its operational costs. Such retention shall only be made where NELEP reasonably believes that there is and will continue to be sufficient Surplus Pooled BRGI to meet all payments due under clause 6.2.1 in that financial year; and
- 6.2.3 thirdly to repay £ allocated by the NEIF to fund the North Bank of Tyne Wet Berth investment previously approved by the North East LEP on xxx
- 6.3 It is agreed between the Councils, NELEP and NECA that the Balance Surplus Pooled BRGI shall be utilised as NELEP shall determine following consultation with the Councils.

## **7 BRGI Deficit**

- 7.1 It is acknowledged and agreed by each Council, that each Council shall be ultimately responsible for all borrowing undertaken by it and on its behalf and notwithstanding any other provision of this agreement, NELEP and/or NECA shall only be obliged to make a payment to any Council or any Council Area Beneficiary under the terms of this agreement or any Funding Agreement to the extent that such payments can be met from Pooled BRGI, or, where payments cannot be met from Pooled BRGI, at the discretion of NELEP and NECA can be met from unrestricted funds held by NELEP and/or NECA in an amount of no more than an amount equal to Anticipated Pooled BRGI.
- 7.2 As soon as reasonably practicable following the Round 1 Date, NELEP and/or NECA shall prepare the Round 1 Reconciliation Statement and shall send a copy of the Round 1 Reconciliation Statement to each Council.
- 7.3 As soon as reasonably practicable following the Final Date, NELEP and/or NECA shall prepare the Final Reconciliation Statement and shall send a copy of the Final Reconciliation Statement to each Council.
- 7.4 Where, at the Final Date, the Aggregate Funded Intervention Costs paid to each Council exceed the Aggregate BRGI Payments received from each Council, each Deficit Council shall pay to NECA (on behalf of the NELEP) an amount equal to its Deficit Share.
- 7.5 The Deficit Share payable in accordance with clause 7.4 shall be treated as Pooled BRGI and shall be paid to each Council which is not a Deficit Council in respect of Approved Final Intervention Borrowing Costs which are either yet to be paid or which

have been paid by that Council and not met by NELEP and/or NECA in accordance with the terms of this agreement and the relevant Funding Agreements.

## **8 Projected BRGI Review and Monitoring.**

8.1 As soon as reasonably practicable following each BRGI Payment Date, NELEP and NECA shall provide a statement to the each of the Councils confirming: -

- 8.1.1 the aggregate of the BRGI Payments received in that BRGI Period;
- 8.1.2 the amount of the Pooled BRGI and an estimate of the Surplus BRGI and the Balance Surplus BRGI at that date; and
- 8.1.3 the projected BRGI Payments for the following BRGI Periods on the basis that the level of projected BRGI Payments shall be reviewed by NELEP and NECA at least once in each 3 year period.

## **9 Representations and Warranties**

9.1 Each Council represents and warrants on behalf of itself only:

- 9.1.1 it is the person entitled to collect the Business Rates derived from the Zones in its area;
- 9.1.2 it has approved the payment of all BRGI accruing from the relevant Zones until the relevant date to be paid to the NELEP in accordance with the terms of this agreement;
- 9.1.3 its payment obligations under this agreement shall rank and will always rank at least equally and rateably in all respects with all its other unsecured and unsubordinated indebtedness other than indebtedness preferred by operation of law in the event of its insolvency;
- 9.1.4 it is a statutory corporation duly incorporated under the laws of England and Wales (including, without limitation, the Local Government Act 1972) and has statutory power (which it has duly exercised) and has the corporate power to own its assets and to carry on the business which it conducts or proposes to conduct;
- 9.1.5 it:
  - (a) has the power to enter into and to exercise its rights and perform its obligations under this agreement; and
  - (b) has taken all necessary action to authorise the execution by it of and the performance by it of its obligations under this agreement;
- 9.1.6 its obligations under this agreement constitute its legal, valid and binding obligations, enforceable in accordance with its terms;
- 9.1.7 the execution, delivery and performance by it of this agreement do not:
  - (a) insofar as it is aware contravene any applicable law or directive or any judgment, order or decree of any court having jurisdiction over it;

- (b) conflict with, or result in any breach of any of the terms of, or constitute a default under, any agreement or other instrument to which it is a party or any licence or other authorisation to which it is subject or by which it or any of its property is bound; or
  - (c) contravene or conflict with its constitutional documents;
- 9.1.8 all consents, required by it in connection with the execution, delivery, issue, validity or enforceability of this agreement have been obtained and have not been withdrawn;

## **10 Covenants**

10.1 Each Council severally covenants with NELEP and NECA that it shall:-

- 10.1.1 use all reasonable endeavours to minimise the cost of external borrowing in respect of any Intervention by using temporary grant funding where this is possible and by investigating ways of reducing interest costs;
- 10.1.2 comply with the terms and conditions applicable to any Intervention Funding and each Funding Agreement to which it is a party;
- 10.1.3 not create any Encumbrance enter into any agreements with any person in respect of its rights as Billing Authority to receive the Business Rates in respect of the Zones or to assign or transfer any right to receive the same;
- 10.1.4 notify NELEP and NECA immediately where there is or has been:
  - (a) any change in its financial circumstances which has or might have a material adverse effect upon the ability of the Council to perform and comply with its obligations under this agreement and each Funding Agreement to which it is a party; and
  - (b) an anticipated reduction BRGI from that notified to NELEP and NECA of more than 5% in respect of each itemised amount.

## **11 Reporting**

11.1 Each Council shall:

- 11.1.1 comply with the terms of all reporting obligations in each Funding Agreement to which it is a party; and
- 11.1.2 provide confirmation in writing to NELEP and NECA (in form and substance required by and acceptable to NELEP and NECA) following the end of each BRGI Period in which it is obliged to pay BRGI to NELEP under this agreement and prior to 30 April in that year details of the BRGI to be paid to NELEP in that BRGI Period a forecast for the likely BRGI to be paid to NELEP in the next BRGI Period agreement.

## **12 Existing BRGI Agreements**

From the date of this agreement, this agreement shall supersede the provisions of each of the Existing BRGI Agreements.



### **13 Miscellaneous**

- 13.1 In the event of any conflict between the terms of this agreement and the terms of a Funding Agreement the terms of this agreement shall prevail.
- 13.2 Each Council shall procure that all payments to be made to NELEP and/or NECA by it or BRGI shall be paid in Pounds Sterling in immediately available cleared funds to NELEP and/or NECA into such bank account as NELEP and/or NECA shall notify to the relevant Council from time to time.
- 13.3 Each Council shall procure that all payments it makes (or which it is obliged to procure) under or in connection with this agreement shall be made without set-off or counterclaim, free and clear of and without any deduction or withholding, including, without limitation, for or on account of all taxes except for taxes which must be deducted by law.

### **14 Costs**

Each party shall pay its own costs in connection with the negotiation, preparation, and execution of this agreement, and all documents ancillary to it.

### **15 Successor and Assignees**

- 15.1 NELEP may assign, transfer or subcontract any or all of its rights and obligations under this agreement to any successor or successors and each of the NECA and each Council shall enter into such documentation as is required by NELEP to effect such assignment, transfer or subcontract.
- 15.2 NECA may assign, transfer or subcontract any or all of its rights and obligations under this agreement to any successor or successors and each of the NECA and each Council shall enter into such documentation as is required by NELEP to effect such assignment, transfer or subcontract.
- 15.3 None of the Councils shall assign, transfer or subcontract any or all of their rights and obligations under this agreement to any person without the prior written consent of NELEP and NECA.
- 15.4 Each Council shall procure that if it ceases to be a Billing Authority in respect of the Zones in their area that the succeeding Billing Authority shall adhere to the terms of this agreement by way of a deed of adherence in form and substance satisfactory to NELEP and NECA.

### **16 Termination**

This agreement may not be terminated by any Council without the prior written consent of NELEP and NECA.

### **17 Variation and Waiver**

- 17.1 No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 17.2 No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No

single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

**18 Severance**

If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this agreement. If any provision or part-provision of this agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

**19 No partnership or agency**

Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

**20 Further assurance**

Each Council shall, and shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute and deliver such documents and perform such acts as may be required for the purpose of giving full effect to this agreement.

**21 Notices**

21.1 Any notice or other communication given to a party under or in connection with this agreement shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service to the address detailed on page 1 of this agreement or such other address as either party shall notify the other in writing; or

21.2 Any notice or communication shall be deemed to have been received:

21.2.1 if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;

21.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service.

**22 Counterparts**

This agreement may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

**23 Third party rights**

Except in the case of NELEP who shall have the right to enforce the terms of this agreement, a person who is not a party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

**24 Governing law and Jurisdiction**

This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

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

**NELEP**

[NELEP Execution Clause]

**NECA**

The Common Seal of )  
**The Durham, Gateshead, Newcastle** )  
**upon Tyne, North Tyneside,** )  
**Northumberland, South Tyneside** )  
**and Sunderland Combined Authority** )  
was hereunto affixed in the presence of: )

Authorised Signatory .....

**DURHAM**

The Seal of )  
**The County Council of Durham** )  
was hereunto affixed in the presence of: )

Authorised Signatory .....

**GATESHEAD**

The Seal of )  
**Gateshead Metropolitan Borough** )  
**Council** )  
was hereunto affixed in the presence of: )

Authorised Signatory .....

**NEWCASTLE**

The Common Seal of )  
**The Council of the City of** )  
**Newcastle upon Tyne** )  
was hereunto affixed in the presence of: )

Authorised Signatory .....

**NORTH TYNESIDE**

Executed as a Deed by affixing the )  
common seal of )  
**the Council of the Borough of** )  
**North Tyneside** )  
)

Authorised Signatory .....

**NORTHUMBERLAND**

The Seal of )  
**Northumberland County Council** )  
was hereunto affixed in the presence of: )

Authorised Signatory .....

**SOUTH TYNESIDE**

The Seal of )  
**South Tyneside Metropolitan Borough** )  
**Council** )  
was hereunto affixed in the presence of: )

Authorised Signatory .....

**SUNDERLAND**

The Seal of )  
**The Council of the City of Sunderland** )  
was hereunto affixed in the presence of: )

Authorised Signatory .....

**SCHEDULE 1 - Funding Agreement – Specific Terms**

**SCHEDULE 2 - Funding Agreement – Standard Terms**

**SCHEDULE 3 – Performance Reward Incentive**



## **Annexure 1**

## **Annexure 2**

### **Annexure 3**