

West of England Growth Incentive City Region Deal Business Rates Pooling Principles Agreement

THIS AGREEMENT is made the _____ day of _____ 2015

BETWEEN

BATH AND NORTH EAST SOMERSET COUNCIL (B&NES) of

AND

BRISTOL CITY COUNCIL (Bristol) of City Hall, College Green, Bristol, BS1 5TR

AND

NORTH SOMERSET COUNCIL (NS) of

AND

SOUTH GLOUCESTERSHIRE COUNCIL (SGC) of

(Together referred to as the '4UAs')

WHEREAS

- A The City Region Deal between the West of England (WoE) and Central Government provides a licensed exemption from the effects of the resets and levies of the national local government finance system in five enterprise areas over 25 years, enabling the West of England (WoE) to retain 100% of growth in business rates against an agreed baseline in the EAs (and EZ for 25 years starting from 2013).
- B The Letter of Comfort being the letter received by the 4 Unitary Authorities and Local Enterprise Partnership from the Rt Hon Greg Clark MP on the 13th December 2013.
- C The Local Authorities will pool the business rates growth from the five Enterprise Areas and the Enterprise Zone. The pooled business rates growth will be used for three primary purposes. The first call on the Business Rate Pool will be to 'repay' each local authority what it would have had under the national local government finance system (tier 1). Secondly, payments up to the value of £500m will be made to the Economic Development Fund (tier 2). Thirdly, payments to each Unitary Authority to mitigate local demographic and service pressures arising from additional growth will be made (tier 3). This payment will be made on a ratio of 5:1 (tier 2:tier3).
- D The 4UAs will implement the principles of the Business Rate Pool through a Business Rates Pool Board (the "Board") and have agreed to establish this Agreement (the Agreement) to meet the Business Rate Pool objectives and to define each authority's commitment to the Pool, its operation and its governance.

IT IS HEREBY agreed as follows –

1 Definitions and Interpretation

1.1 In this Agreement unless the context otherwise requires the following expressions have the following meanings –

“**Actual Retained Amount**” means a UA’s actual amount retained in respect of the Enterprise Zone and actual amount retained in respect of New Development Deal areas for their Growth Incentive Area as determined and submitted on the NNDR3 form to DCLG.

“**Agreement**” means this Agreement comprising the terms and conditions together with its Schedules.

“**AB**” means the accountable body taking on the responsibilities set out in clause 7.

“**Baseline**” is an amount specified in The Non-Domestic Rating (Designated Areas) Regulations 2014 representing existing non-domestic rating income in each EA and specified in the Non Domestic Rating (Designated Areas) Regulations 2013 for the EZ, which is to be uplifted each year in accordance with the respective Regulations..

“**The Board**” means the Business Rates Pool Board whose functions are more particularly set out in Schedule A.

“**BRRS**” means the Business Rates Retention Scheme introduced by the Department for Communities and Local Government in April 2013.

“**Commencement Date**” means the 1 April 2014.

“**Constitution**” means the constitution governing the powers and operation of the Board as set out in Schedule A.

“**Distribution Categories**” means Tier 1, Tier 2, Tier 3, management charge, and the contingency reserve as defined in Section 5 of Schedule B.

“**EA**” means the five Enterprise Areas at (1) J21 North Somerset; (2) Avonmouth & Severnside; (3) Bath City Riverside; (4) Filton; and (5) Emerson’s Green.

“**EDF**” means the Economic Development Fund created from a contribution from the Business Rates Pool, which is intended to deliver an investment programme designed to maximize economic returns in the West of England.

“**EDF Commitments**” means an Eligible Scheme having obtained Full Approval and the Management Charge (as further defined under the Agreement for the Operation and Administration of the Economic Development Fund).

“**EZ**” means the Enterprise Zone at Temple Quarter Bristol.

“**Final Payment**” means the distribution of all remaining Pool funds at end of this agreement.

“**Forecast Retained Amount**” means a UA’s forecast amount retained in respect of Enterprise Zones and forecast amount retained in respect of New Development

Deal areas for their Growth Incentive Area as determined and submitted on the NNDR1 form to DCLG.

“Forecast Growth Amount” means the differential figure between the Forecast Retained Amount and the Baseline.

“Forecast Payment Profile” means the 25 year payment profile of the EDF based on profiled cost of projects agreed to be funded from the EDF as updated from time to time.

“Forecast Share” means the forecasted contribution each UA will make to the Pool

“Growth Amount” means the final net contribution to the Pool by a UA following reconciliation between the Forecast Retained Amount and the Actual Retained Amount.

“Growth Incentive Area” or “GIA” means the fiscal area of the EAs and the EZs together.

“Management Charge” means the charge payable from the Pool to the Accountable Body in respect of the costs incurred by the AB in the performance of its obligations as Accountable Body, as more particularly described as clause 7 and Schedule B, paragraph 6.

“National Rate Retention Scheme” means the National Local Government Finance System

“New Development Deal areas” means the Enterprise Areas

“Pool” means the Business Rates Pool containing the business rates collected from the GIAs by each of the 4UAs [including the growth element].

“Pool objectives” means the objectives of the Board, as set out in Schedule A, paragraph 2.1.

“Schemes” means an infrastructure or flagship project or revenue scheme proposed by a Sponsor UA for consideration of financial support by the EDF.

“Tier 1” means a payment made pursuant to paragraph 7 Schedule B.

“Tier 2” means payments made pursuant to paragraph 10 Schedule B

“Tier 2 Schedule” means a summary of the estimated maximum fund available for Tier 2 distribution for the current financial year, and a summary of the forecasted Tier 2 funds available for distribution for future financial years.

“Tier 3” means payments made pursuant to paragraph 11 Schedule B

“West of England” or “WoE” means the combined areas of the 4UAs.

“West of England Joint Scrutiny Committee” means the West of England Joint Scrutiny Committee as described in Schedule A.

2 Term

- 2.1 This Agreement shall come into effect on the 1st April 2014 and shall continue in force for a term of 25 years unless terminated earlier in accordance with its terms.
- 2.2 For the avoidance of doubt the Parties acknowledge that the Agreement will cease to have effect in respect of the EZ on 31 March 2038 (when the EZ will cease to exist).

3 General Principles

- 3.1 The 4UAs will retain their own decision making powers and co-operate in good faith for the duration of this Agreement to endeavour to procure the successful implementation of the Pool objectives.
- 3.2 The 4UAs agree to mitigate as far as possible the risks associated with this Agreement.
- 3.3 The West of England Joint Scrutiny Committee, established by the 4UAs for scrutinising WoE initiatives will have the function set out in Schedule A.
- 3.4 The AB is not left with any unforeseen costs or liabilities. Any such costs or liabilities shall be split equally between the 4UAs or will fall to individual UAs as set out in this Agreement.

4 Status of this Agreement

- 4.1 The 4UAs agree that this shall be a binding contractual relationship and mutual commitments between them created by this Agreement shall from the date hereof be construed accordingly.

5 The Business Rates Pool Board

- 5.1 The Board shall have the power to make decisions relating to the Pool in accordance with Schedule A to this Agreement:
- 5.2 Each UA will appoint as its primary representative the s.151 Officer (or substitute) and confirms that it has delegated all necessary powers to that representative.
- 5.3 The 4UAs agree to keep the membership of the Board under review and any changes to the membership or constitution shall only be by unanimous agreement of the 4UAs.

6 Operating principles

- 6.1 The 4UAs each agree to act in accordance with the operating principles set out in Schedule B to this Agreement.

7 Accountable Body

- 7.1 The 4UAs agree to South Gloucestershire Council being the Accountable Body (AB) with the responsibilities set out in this Clause 7 and further agree to delegate all necessary powers to the AB to operate the Pool on behalf of the 4UAs.
- 7.2 The AB shall

- a) administer the Pool on behalf of the Board, ensuring its decisions comply with financial, legal, audit and other regulatory requirements.
- b) ensure (through its S151 Officer) that pooled funds are allocated correctly in making payments to Central Government if required, the EDF and the 4UAs in accordance with the decisions of the Board.
- c) Arrange audits pursuant to clause 10.
- d) secure the completion of any legal agreements and accounting and audit arrangements required to support the operation of the Pool.
- e) lead on the provision of information required by Pool members in preparing their annual statements of account in relation to the activities and resources of the Pool.
- f) be the single point of liaison with Central Government its agencies or other relevant third parties and complete all formal Pool returns to Central Government on behalf of the Board.
- g) prepare quarterly monitoring reports (or as otherwise agreed by the Board) and an annual report on the Board's activities as set out in clause 11.2 and to include a review of the governance arrangements and relevant methodology.

7.3 The AB shall use reasonable endeavours to ensure that:

7.3.1 the 4UAs adhere to the provisions of this Agreement; and

7.3.2 all decisions relating to the subject matter of this Agreement are made in accordance with its terms.

7.4 Subject to paragraph 6 in Schedule B, the AB will be responsible for its costs in performing its obligations as AB, including but not to be limited to: -

- Direct staffing costs (financial and administration), including any lifecycle and post-termination payments.
- Specialist advice particularly financial and legal
- Allocation of overheads e.g. systems, IT, telecoms, HR etc.
- Transaction charges e.g. bank fees, payment fees etc.
- Statutory costs as appropriate e.g. audit fees, taxes
- Ensuring compliance with governance and decision making arrangements
- Any other costs or expenses identified and agreed by the Board

7.5.1 The AB shall be entitled to levy an annual 'management charge' as set out in Schedule B.

7.5.2 The management charge for the first year shall be £50k.

7.5.3 The management charge will be reviewed annually having regard to the actual costs properly and reasonably incurred by the AB.

7.5.4 The AB shall reimburse any relevant costs properly and reasonably incurred by another UA on behalf of the UA's and/or the Pool, as agreed by the Board in advance of them being incurred.

7.6 The AB shall use reasonable endeavours to keep the management charge to a minimum. The Board shall keep the management charge under review.

8 UA Responsibilities

8.1 To assist the AB in fulfilling its responsibilities, each UA shall,:

- a) Make payments to the AB on time and in accordance with the schedule of payments,
- b) Provide accurate, timely information to the AB to enable all formal Pool returns to central government to be completed,
- c) Inform the AB, as soon as is practicable, of any intelligence that may impact on the resources of the Pool either in the current year or in future years,
- d) Provide such information as the Board agree is reasonable and necessary to monitor and forecast the Pool's resources within the timescales agreed'

9 Liabilities, Immunity and Indemnities

9.1 In performing their obligations under this Agreement, officers of the 4UAs shall be deemed to be working on behalf of their own Authority even where the particular matter under consideration relates to or also relates to another UA.

9.2 In consequence of the above, and save for any unlawful act, that involvement shall be treated as falling within the statutory immunity provided by Section 265 of the Public Health Act 1875, as amended, in respect of their actions or omissions regarding the functions, objectives and operation of the Board.

9.3 Each UA shall indemnify the other UAs in respect of any damages, costs, claims, expenses, interest or other liability that reasonably arises as a direct result of:

9.3.1 Any breach of this Agreement; or

9.3.2 Any decision taken without prior approval of the Board that causes an increase in the costs of administering the Pool

10 Compliance Assurance

10.1 The AB shall establish arrangements for independent audit of the implementation and operation of this agreement. For the purpose of clarity this could be the AB's appointed external auditor. This audit shall be carried out by a qualified auditor independent of any of the 4UAs. The first such audit to be carried out before December 2015 and thereafter annually unless otherwise determined by the Board.

11 Monitoring

11.1 The UAs external and internal auditors will have rights to request access to data, documents and personnel in relation to the operation and balances of the Pool. Such access will be provided by the AB acting reasonably as assisted by the other UAs as needs require and in line with Data Protection legislation.

11.2 The AB will provide to the Board:

- 11.2.1 a summary of balances held on a quarterly basis or as otherwise requested by the Board.
- 11.2.2 a reconciliation of the business rates collected and distributed to each UA according to the Distribution Categories on a quarterly basis or as otherwise requested by the Board.
- 11.2.3 Summaries in accordance with the Tier 2 Schedule:
 - a) a summary of the estimated fund available for Tier 2 distribution, for the current financial year.
 - b) a summary of the forecasted Tier 2 funds available for distribution for future financial years.

12 Dispute Resolution

- 12.1 Where there is any dispute between two or more of the UAs relating to any aspect of this Agreement, it shall be referred to the Board.
- 12.2 If the dispute cannot be resolved at the Board within [30 days] of being referred, it shall be escalated to the next meeting or a special meeting, where required, of the Chief Executives (or most senior officer) of the 4UAs for final determination.

13 Withdrawal from the Pool

- 13.1 Membership of the Pool is voluntary and a UA may elect to leave the Pool at any time, subject to providing 12 months' written notice to the Board to expire by 31 March in any year.
- 13.2 If a UA elects to withdraw from the Pool, it shall not be entitled to any assets of the Pool from the date that its membership ceases other than
 - a) in accordance with Clause 15 and 17 or
 - b) in accordance with Clause 13.5 (abandoned projects), or
 - c) repayment of any contributions made to the Contingency Reserve (established under Paragraph 9 Schedule B), or
 - d) repayment of any contributions made and set aside for the Tier 3 payments (under paragraph 11 of Schedule B).
- 13.3 If a UA elects to withdraw from the Pool, it shall only be entitled to its Tier 1 and any Tier 3 payments calculated on growth amounts contributed up to 31 March of the year of withdrawal and adjusted for any NNDR3 outturn adjustments.
- 13.4 Any approved Tier 2 EDF allocations to the withdrawing party will cease from the date of withdrawal and the UA shall not be entitled to any further Tier 2 EDF allocations from the date of withdrawal.
- 13.5 Notwithstanding withdrawal, the withdrawing party shall continue to make payments into the Pool (in accordance with the provisions of this Agreement), as it would otherwise be obliged to make, in order to contribute toward EDF Commitments (as defined in clause 1) as at the date of withdrawal. In the event that any EDF

Commitments are subsequently abandoned, the withdrawing party shall be entitled to repayment of its relevant contribution.

14 Dissolution of the Pool

14.1 A decision to dissolve the Pool will be effective:

14.1.1 where all of the 4UAs remain members of the Pool, by the unanimous agreement of the 4UAs;

14.1.2 where there are three UAs remaining as members of the Pool, by the unanimous agreement of all three UAs; or

14.1.3 where there are two UAs remaining as members of the Pool, by the withdrawal of one of the UAs, or by the agreement of the two remaining UAs.

15 Compensation payable on Dissolution of the Pool

15.1 If the Pool is dissolved in accordance with clause 14, its assets including funds available in the contingency reserve will first be used in accordance with clause 15.2, and thereafter be distributed to each UA in proportion to the contribution each UA has made to the Pool in cash terms prior to the date of such dissolution.

15.2 Any Tier 2 payments required to meet EDF Commitments up to the maximum of that held within the Pool.

15.3 For the avoidance of doubt there shall be no other payments to the EDF if the Pool is dissolved before Tier 2 payments up to the value of £500m has been made.

16 Termination of this agreement

16.1 Subject to clause 16.2 this Agreement will expire on 31st March 2039 or on the revocation of the Non-Domestic Rating (Designated Areas) Regulations 2014 (or on the expiry of any variation or extension thereto which render the Agreement ineffective) whichever is the earlier.

16.2 This Agreement shall continue beyond 31 March 2039 for the purpose only of securing final settlement of any payments due to or from the Pool from and to any UA in accordance with its provisions.

17 Treatment of balances

17.1 At the expiry of this Agreement, any remaining balances held by the Pool shall be distributed as a Final Payment subject to Paragraph 15 above..

18 Variation of this Agreement

18.1 Any variation to this Agreement shall only be valid if it is in writing and subject to unanimous agreement of the 4 UAs.

19 Assignment

19.1 Save as may be imposed as part of any re-organisation of local government, neither UA may assign, subcontract or transfer its rights or obligations under this Agreement.

IN WITNESS hereof the 4UAs hereto have executed this Agreement as a Deed the day and year first written

The Common Seal of **Bath and North East**)
Somerset Council was affixed hereto in the)
presence of the undersigned authorised signatory)

Authorised Signatory

The Common Seal of **Bristol City Council**)
was affixed hereto in the presence of the)
undersigned authorised signatory)

Authorised Signatory

The Common Seal of **North Somerset Council**)
was affixed hereto in the presence of the)
undersigned authorised signatory)

Authorised Signatory

The Common Seal of **South Gloucestershire**)
Council was affixed hereto in the presence of)
the undersigned authorised signatory)

Director

Director/Secretary

Business Rates Pool Board

Constitution

This Constitution has been approved by Bath and North East Somerset Council, Bristol City Council, North East Somerset Council, and South Gloucestershire Council (“the 4UAs”) as the Constitution of the Business Rates Pool Board

1 Establishment of the Business Rates Pool Board

- 1.1 The Board shall be known as the “West of England Business Rates Pool Board (The Board)”.
- 1.2 The Board shall discharge its functions in the manner set out in this Constitution

2 Pool Objectives

- 2.1 The functions and objectives of the Board are to
 - 2.1.1 to ensure that no UA is worse off within the Pool than if it were not, unless the UA has withdrawn from the Pool
 - 2.1.2 to ensure that the Pool remains financially sustainable in order to meet its future liabilities
 - 2.1.3 to calculate payments under Tier 1, 2, and 3 in line with any agreed policy
 - 2.1.4 to keep under review, and approve any disbursements from the Contingency Reserve, and manage any risk to the Pool; and
 - 2.1.5 to take the necessary decisions to identify and direct the release of funding by the AB from the Pool to any UA and the EDF
 - 2.1.6 to determine the frequency of compliance audits
- 2.2 The Board will operate within these agreed parameters. Any changes to the policy in which the Board operates will require approval by the 4 UAs as per the relevant delegation. Regular reports on the operation, monitoring and performance of the Pool will be made available to each UA and the LEP.
- 2.3 The Board cannot require the Accountable Body to act in a manner which contradicts the fiduciary duties of the Accountable Body’s S151 Officer.

3 Membership of and Appointment to the Board

- 3.1 The Board shall comprise four voting members, one being appointed by each of the 4UAs. In appointing representatives to the Board, each UA will appoint its section 151 Officer.
- 3.2 All notifications of appointments to the Board shall be in writing by the Chief Executive of the relevant UA.

- 3.3 Each UA may appoint an alternate (or substitute) member of the Board with voting rights in the absence of its S151 Officer.
- 3.4 Each UA shall ensure that its Board representative is an officer of the UA
- 3.5 The UAs shall agree to the appointment of an appropriate officer from one of the UA's (with responsibility for economic development) as a non-voting member of the Board.
- 3.6 The West of England Local Enterprise Partnership Board may appoint one representative as a non-voting member of the Board.
- 3.7 The Board may either (a) request other officers to attend Board meetings as required, from time to time, subject to the approval of the relevant UA (whose consent shall not be unreasonably withheld) or (b) secure advice from other sources where felt necessary and appropriate.

4 Chair and Vice-Chair of the Board

- 4.1 At the first meeting of the Board and thereafter at its annual meeting the Board shall elect a Chair from among the voting members of the Board.
- 4.2 The Chair and Vice Chair shall each hold office until –
 - 4.2.1 A new Chair or Vice Chair is elected in accordance with Paragraph 4.1 above,
 - 4.2.2 They cease to be a member of the Board, or
 - 4.2.3 They resign from the office of Chair or Vice-Chair.
- 4.3 Where the office of Chair or Vice-Chair of the Board becomes vacant, the Board shall at its next meeting elect a Chair or Vice Chair (as the case may be).
- 4.4 Where, at any meeting or part of a meeting of the Board, both the Chair and Vice Chair are absent or unable to act as Chair the Board shall elect one of the local authority members to preside for the balance of that meeting.

5 Secretary to the Board

- 5.1 The Secretary shall support the Board.
- 5.2 The Secretary shall be an officer of one of the local authority 4UAs, appointed by the AB for this purpose.
- 5.3 The functions of the Secretary shall be –
 - To maintain a record of membership of the Board
 - To maintain the Board Forward Plan of agenda items
 - To summon meetings of the Board in accordance with paragraph 6 below
 - To prepare and send out the agenda for meetings of the Board in consultation with the Chair
 - To keep a record of the proceedings of the Board
 - To take such administrative action as may be necessary to give effect to decisions of the Board
 - Such other functions as may be determined by the Board

- Maintain a register of Board member interests

6 Convening Meetings of the Board

- 6.1 Meetings of the Board shall be held each quarter or as otherwise required in accordance with this Agreement.
- 6.2 Meetings of the Board shall be at such times, dates and places as the UAs shall agree from time to time.
- 6.3 If any UA requires the discussion by the Board of an urgent matter relating to this Agreement and within the functions of the Board, the UA shall notify the Secretary who shall liaise with the Chair to arrange an urgent meeting of the Board to address the relevant matter.
- 6.4 The Secretary shall prepare and circulate to all UAs the agenda for any meeting of the Board after consulting where practical, the Chair.

7 Procedure at Meetings of the Board

- 7.1 The Board shall, unless the member presiding at a meeting determines otherwise, conduct its business in accordance with the Rules of the AB for meetings except in so far as may be specified to the contrary in this Constitution.
- 7.2 A meeting of the Board shall be inquorate and shall not be able to discharge any business unless there are present at least three voting members. Substitutes must be authorised to vote.
- 7.3 The Board shall work on a principle of consensus, and decisions shall be determined by unanimity in voting, subject to the required quorum of three voting members being present. No decision may be taken which has a significant/material impact on any UA without that UA being present and voting in favour.
- 7.4 The Board shall comply with the Code of Recommended Practice for Local Authorities on Data Transparency.
- 7.5 Board decisions shall be reported to each UA as soon as possible, and in any event within 10 working days.

8 Attendance at Board Meetings

- 8.1 Notwithstanding that a meeting or part of a meeting of the Board may not be open to the press and public, the officers specified in Paragraph 8.2 below of each appointing UA shall be entitled, in person or by another officer nominated by that officer, to attend all, and all parts, of such meetings, unless the particular officer has a conflict of interest as a result of a personal interest in the matter under consideration.
- 8.2 The following are the officers who shall have a right of attendance in accordance with clause 8.1
- the Chief Executive or equivalent of any of the appointing 4UAs
 - the Director of Corporate Resources or equivalent / Chief Finance Officer to any of the appointing 4UAs
 - the Monitoring Officer to any of the appointing 4UAs

9 Amendment of this Constitution

- 9.1 This Constitution can only be amended by the unanimous written agreement of all 4UAs.

10 West of England Joint Scrutiny Committee

- 10.1 Three council members have been nominated by each of the four participating Authorities (Bristol City Council, Bath & NE Somerset, South Gloucestershire and North Somerset) to meet jointly as the West of England Joint Scrutiny Committee. It will conduct the overview and scrutiny function on their behalf of the Pool and the operation of this Agreement.
- 10.2 The Joint Scrutiny Committee will have the right to receive an annual report on the performance of the Pool and in particular a summary of balances held and the value of business rates collected and distributed according to the Distribution Categories during that financial year.

Operating Principles of the Business Rate Pool (Pool)

1. Collection of Business Rates (Forecasting)

- 1.1 In respect of the period commencing 31 January 2014 and on each anniversary thereafter, each UA will provide, within 14 calendar days of submitting its NNDR1 form to DCLG, a copy of its signed NNDR1 form to the Accountable Body.
- 1.2 Following receipt of each UA's NNDR1, the Accountable Body will prepare a draft schedule of payments in a format to be agreed by the Board and setting out the relevant amounts due to and due from the Accountable Body. The draft schedule of payments will be agreed by the Board at a meeting to be held before the 1 April of the relevant year.

Amounts due to the Pool:

- 1.3 Each UA will retain the lower of the Forecast Retained Amount and the Baseline. Where the Forecast Retained Amount is greater than the Baseline, the differential figure will be committed to the Pool and be known as the Forecast Growth Amount. 1/12 of the Forecast Growth Amount will be paid to the Pool on the first banking day of each month.
- 1.4 As the EZ was created in April 2013, a year earlier than the EA's, the forecast growth amount from the EZ for the year 2013/14 will form part of the schedule of payments to be paid into the pool by Bristol City Council on the Pool's commencement.
- 1.5 The Business Rates within the GIA that are exempt from levies or similar deductions under the national rate retention scheme (for example renewable energy projects) shall be retained in full by the UA concerned.

Amounts due from the Pool

- 1.6 The Tier 1 payment calculated under Paragraph 7 below.
- 1.7 An adjustment will be made to the Tier 1 payment for discretionary rate relief awarded under the Localism Act. This shall be the responsibility of, and funded by, the relevant UA unless the relief is as part of an incentive to be paid for from the EDF and that has been through the EDF approvals process. For the avoidance of doubt, no adjustment will be made for non-Localism Act discretionary relief awarded.
- 1.8 An adjustment will be made to the Tier 1 calculation for EZ discounts awarded if these are retained in full by Bristol subject to the application of the Tier 1 distribution formula in paragraph 7.
- 1.9 The amount due to the Pool is calculated after mandatory and discretionary relief. For those reliefs awarded as a result of changes in Government Policy, the UA will receive new burdens income in compensation. New burdens income received will not be taken into account by the Accountable Body when calculating an authority's no worse off position. This can be amended by the Board as necessary.
- 1.10 The schedule of payments will also show the amounts due to/from the Fire Authority. Refer Paragraph 13.

2. Reconciliation

- 2.1 Each September subsequent to the end of the financial year and submission of the certified NNDR3 form to DCLG, a reconciliation will take place between the Forecast Retained Amount and the Actual Retained Amount.
- 2.2 If there is a shortfall, the relevant UA will pay that sum to the AB within 10 working days of the deadline submission date of the certified NNDR3 submission to DCLG, and if there has been an overpayment to the Pool, the Pool will refund the relevant UA. The final net contribution will be known as the Growth Amount.

3. Accounting adjustments (Appeals provision)

- 3.1 The Forecast and Actual Retained Amounts are the net amounts receivable by the authority from ratepayers after taking account of transitional adjustments, empty property rate, mandatory and discretionary reliefs and adjustments for provisions for bad debts and for losses on appeals..
- 3.2 The provision for losses on appeal within each GIA will be calculated by all 4 UAs using Valuation Office data and statistical information on a consistent basis to be agreed by designated officers from all 4 UAs.
- 3.3 The provision for bad and doubtful debts will be calculated by each UA in accordance with proper practices and will be subject to external audit. If the auditor does not certify the provision on the grounds that the UA has not acted diligently, any such amounts will be funded in full by the respective UA and an adjustment will be made to the final Tier 1 calculation to reflect this.

4. National Local Government Finance System

- 4.1 Areas of the relevant billing authorities which fall outside of the Growth Incentive Area boundaries are subject to the full operation of the national business rates retention scheme.
- 4.2 Business rates inside the Growth Incentive Area boundaries up to the Baseline(s) as set out in the Regulations will be part of the authority's income calculation for levy / safety net. Whereas business rates above the Baseline(s) will not be subject to the levy or safety net.

5. Distribution of Business Rates (Distribution Categories)

- 5.1 Paragraphs 5.2 to 5.4 below set out the order in which funds in the Pool are made available for distribution.
- 5.2 Management charges and Tier 1 payments are to be made monthly in line with agreed forecast as may be amended by the Board based on in year monitoring reports and actual performance.
- 5.3 Tier 2 payments are made in accordance with paragraph 10 and the Tier 2 Schedule.
- 5.4 Tier 3 payments can be made no more than twice a year by majority agreement of the Board in line with the agreed formula in paragraph 11.6.

6. Management Charge

- 6.1 In accordance with paragraph 7.5.1 to 7.6 of the Main Body of this Agreement, the Accountable Body will be paid the costs of undertaking the administration of the Pool, including where relevant Treasury management and reporting/monitoring of the Pool. This will be charged at the actual costs incurred by the Accountable Body and shall be agreed and kept under review (and amended from time to time) by the Board.
- 6.2 If there are not sufficient funds in the Pool to pay the charge, any unrecovered costs in relation to the Management Charge in each year owed to the Accountable Body will be divided equally between the 4UAs and invoiced at the end of that year.

7. Tier 1

- 7.1 The intent of the Tier 1 distribution is to ensure that no one UA is worse off under the pooling system than it would have been without pooling on a year by year basis. The formula below is how the Tier 1 payment will be calculated only if the UA has triggered the application of the authority levy under the National Resource System in that year. Tier 1 payments will otherwise be calculated excluding the application of Authority Levy element in the formula below.
- 7.2 The Tier 1 payment only relates to the Growth Incentive Area and is defined as:

$$\text{Tier 1 Payment} = (A \times B) \text{ minus } ((A \times B) \times C) + A \times D$$

Where:

A = Growth Amount

B = 49%

C = Authority Levy

D = 1%

Where the Authority Levy at the date of this Agreement is:

Unitary Authority	Levy
Bath and North East Somerset	31.39%
Bristol City	9.76%
North Somerset	0
South Gloucestershire	47.40%

- 7.3 This table shall be updated at the Business Rates reset dates to take account of the revised Levy amount as part of the National Resource System. If there are insufficient funds to pay the Tier 1 payment due in full, a partial payment may be made, and any amounts owing credited to the subsequent period. The table will also be updated to reflect any other material changes to the National Resource System if they occur to stay within the principle of the 'no worse off' position. A Tier 1 payment will be made to Bristol in respect of the EZ unless otherwise agreed by the Board.

7.4 The Tier 1 payment as calculated above is then subject to a number of adjustments as set out under paragraphs 1.9 and 1.10 above.

8. Treatment of resetting of rates and other changes to the National Business Rates Approach

8.1 If there are changes to the National Resource System, the overriding principle is that the Tier 1 repayment should recompense each UA for what they would have received under the revised National Resource System without the City Deal. However, due to there being potential outstanding liabilities on the Pool on which a UA may be dependent, any adjustment to the Tier 1 payment is subject to Board approval

9. Contingency Reserve

9.1 After Tier 1 payments have been made, 5% of the last 3 years Growth Amounts may be held in a Contingency Reserve and may be distributed as determined by the Board.

9.2 The contingency may be used to smooth the profile of Tier 2 payments to the EDF in the event of a significant loss in rates from within one or more of the individual UAs designated areas.

9.3 The Board will keep this under review and may change it from time to time to meet anticipated risk.

10. Tier 2

10.1 After the Management Charge and Tier 1 payments have been made, and subject to the annual reconciliation and the Contingency Reserve, the remainder of funds are available to the Economic Development Fund (EDF) up to a maximum of £500m (including financing charges) for Tier 2 payments (and in line with Tier 3 payments below).

10.2 The Board will determine a maximum amount for distribution under Tier 2 each year, in addition to a forecasted indicative figure for future years (in accordance with the Tier 2 Schedule). This amount will be available to be drawn down for the EDF on the basis of commitments made to schemes up to the maximum of £500m.

10.3 The EDF Accountable Body will pass the schedules for payment relating to those schemes that have been determined and approved by the LEP to the Accountable Body, 14 calendar days before the first schedule payment is due, in order that it may make authorised payments to the 4UAs for the agreed scheme costs.

10.4 The EDF Accountable Body will provide the Board with a quarterly (or as agreed by the Board) Forecast Payment Profile of commitments made to schemes up to the maximum of the Tier 2 available sum for each year (paragraph 10.2) and totalling a maximum of £500m over the 25 years, as schemes are approved through the EDF approval process.

10.5 Where the agreed 25 year Forecast Payment Profile exceeds £500m, no further sums can be committed to the EDF without agreement from each UA.

10.6 This payment will be made in proportion to a ratio of 5:1 (for every £5 Tier 2 payment there will be a £1 Tier 3 payment). This arrangement can only be changed with the unanimous agreement of the Board.

10.7 When:

- a) Tier 2 payments reach £500m and therefore Tier 3 payments are being forecast to be made in accordance with 11.5 (or where such Tier 3 payments are made if not forecast in advance); and
- b) Scheme/s are proposed by a Sponsor UA for EDF support that cannot be currently funded by the EDF due to the Forecast Payment Profile being at or exceeding £500m

the Board will meet to consider the removal of the £500m maximum to allow further funding of the EDF to support Schemes and report its conclusions to the Chief Executives of the 4 UAs for determination of the appropriate course of action.

11. Tier 3

11.1 Tier 3 relates to a payment to each UA to mitigate local demographic and service pressures arising from economic growth.

11.2 This payment will be made in proportion to a ratio of 5:1 (for every £5 Tier 2 payment there will be a £1 Tier 3 payment). This arrangement can only be changed with the unanimous agreement of the Board.

11.3 To support cash flow in the early years and prioritise investment in unlocking the growth sites earlier, Tier 3 payment will not be paid in the first 5 years of the deal (subject to 11.4). It will start in year 6 with the equivalent amounts due from years 1 to 5 being recovered over the following 5 years on top of the normal payments.

11.4 Flexibility will be maintained by the Board to determine whether Tier 3 payments should begin earlier than year 6 once the detailed schemes and requirements of the EDF are more fully developed.

11.5 Once the full Tier 2 payment has been made (£500m) any surplus sums over and above this will become a Tier 3 payment to further mitigate the impact of growth.

11.6

- (i) The ratio of Tier 2 payments to Tier 3 payments shall be 5:1 (i.e. for every £5 paid to the EDF, a maximum of £1 is available for Tier 3 payments), until the committed £500m is paid to the EDF. It is the intention that Tier 3 payments are made on this 5:1 basis. This ratio can only be changed with the unanimous agreement of the Board.
- (ii) The principle of the distribution formula is to partially reward the UAs for delivering economic growth in their parts of the Growth Incentive Area and partially to compensate the UAs for any changes to the demographic pressures in their boundaries as a result of growth in another part of the Growth Incentive Area. Tier 3 payments can only be made at a 5:1 ratio to Tier 2 payments up until the £500m committed to the EDF has been fulfilled (i.e. for every £5 paid to the EDF, £1 is available for Tier 3 payments). If there is a request [from the LEP or any UA] to contribute more to the EDF (and less into tier 3), i.e. change the ratio of tier2: Tier 3 payments, then a unanimous Board decision is required.
- (iii) The total available Tier 3 Interim Payments are to be split into the following proportions:

1. 50% - Growth Incentive Proportion
 2. 50% - Demographic Pressure Proportion
1. The Growth Incentive Proportion is distributed to the 4UAs according to the following formula:

(A/B)

Where:

A = the UA Growth Amount contributed since the last Interim Payment less Tier 1 payments received since the last Interim Payment

B = Total Growth Amount since the last Interim Payment less total Tier 1 payments made since the last Interim Payment

2. The Demographic Pressure Proportion is distributed to the 4UAs according to the following formula:

(C/D)

Where:

C = increase in housing numbers in the UA since the last Interim Payment

D = increase in housing numbers in the 4 UAs since the last Interim Payment

12. Tier 2 and tier 3 payments

- 12.1 Tier 2 payments will be made as stated in paragraph 10.
- 12.2 Tier 3 payments will be made as stated in paragraph 11.
- 12.3 Payments will be made when there are sufficient funds in the Pool to cover Forecast Payment Profile.
- 12.3 Any change made to the Tier 3 payments distribution formula stated in paragraph 11 can only be made with unanimous Board approval, such approval requiring unanimous decision of the Board with all members being present.
- 12.5 If there is negative growth in housing numbers in any one UA, the relevant figure in relation to that UA's housing number growth for the calculation of both C and D will be zero.
- 12.6 The measure of housing numbers at any one point will be the change in dwellings recorded on the council tax valuation lists. The figure used will be that provided by authorities on the Council Tax Base form submitted to DCLG in the preceding year from the proposed payment date.

13. Fire Authority

13.1 Each UA will be responsible for its own payments to the fire authority from the Tier 1 payments it receives - (AxD) in the Tier 1 calculation under 7.2.

14. Treasury

14.1 The treasury function shall be provided by the Accountable Body. The Treasury Management Strategy of the Accountable Body, (which will be at a minimum in accordance with the CIPFA Code of Practice), shall be followed in the operation of the Pool and the management of surplus balances. The funds shall be held in separately named account(s) from the remainder of the Accountable Body's business. All interest receivable is credited to the Pool at the average rate achieved by AB on an annual basis.

14.2 The AB shall not permit the Pool to go into deficit nor shall it take out loans on behalf of the Pool or the other UAs save for interim funding of the Management Charge where there are insufficient funds in the Pool to settle the invoices. .

14.3 The AB will not be solely liable for any loss arising from invested sums provided it has operated within its Treasury Management policies. Any such loss will borne by the Pool first, thereafter across the 4UAs [in proportion to the contribution each UA has made to the Pool in cash terms prior to the date of such a loss].

15. Audit

15.1 Audit of the Pool will form part of the normal internal and external audit arrangements of the Accountable Body, and will be reported to each UA's Section 151 officer as part of the monitoring arrangements.