

## Derby Enterprise Growth Fund Investment Panel Terms of Reference

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### Introduction to the Fund

These Terms of Reference set out to cover procedures for Derby Enterprise Growth Fund (DEGF), D2 Enterprise Growth Fund (D2EGF) and Derbyshire Business Support Grant Scheme (DBSGS) – “the Fund”.

- The Derby Enterprise Growth Fund (DEGF) is a grant and loan scheme designed to assist the expansion of companies (including social enterprises) in Derby and the surrounding area to create sustainable new jobs. This fund enables businesses to invest in projects that would not otherwise happen and was created from an initial £20m investment from the Government’s Regional Growth Fund. Derby City Council is the accountable body for this fund. This contract is held with the Department for Business, Energy and Industrial Strategy (BEIS), overseen and monitored by the Ministry of Housing, Communities and Local Government (MHCLG).
- D2 Enterprise Growth Fund (D2EGF) is a linked scheme providing grant funding for SMEs across Derbyshire, with match funding from the European Union secured by D2N2 Local Enterprise Partnership. D2EGF is accountable to MHCLG via the Managing Partner EMB.
- Derbyshire Business Support Grant Scheme (DBSGS) has been developed under one of the Government’s business rate retention pilot programmes. Resources gathered from business rate income pooled by the separate Council’s in Derbyshire will be invested into a small business support grant scheme for the whole of the county. Derbyshire County Council is the accountable body for DBSGS, managed at the discretion of the D2 Chief Executive Group on behalf of the D2 Joint Committee in agreement with the designated Section 151 Officer.

### Purpose of the Panel

To oversee the successful establishment, delivery and performance management of the Fund and to make recommendations to the appropriate formal decision makers as detailed below.

### Responsibilities of the Panel

1. To oversee the successful establishment, management, implementation and evaluation of the Fund and ensure adherence to Fund requirements as stipulated in the Scheme Offer Letter/s.
2. To approve the establishment and undertake periodic reviews of procedures, systems and tools to be used in the delivery of the Fund.



3. To review, inspect and endorse applications to the Fund, and make recommendations to the appropriate formal decision maker.
4. To approve the investment policy and process for the re-investment of loan repayments within the DEGF monitoring period (until March 2020)
5. To undertake a ranking process for determining bids in the event that demand for support exceeds supply within the monitoring period.
6. To ensure that all decisions and recommendations offer value for money and return on investment and make recommendations regarding the level of due diligence and contracting requirements of applicants considered -who meet the schemes criteria.
7. To review and recommend monitoring reports prepared by officers to the appropriate formal decision maker, to include information about actual vs target performance against committed and defrayed expenditure, milestones, outputs and outcomes, for onward submission to Government.
8. To review and recommend to the appropriate formal decision maker any pre-contract variations.
9. To review and recommend to the appropriate formal decision maker any suspensions or significant variations to contracts with beneficiary businesses and determine what action to take following any exception reports provided as necessary. For the purposes of clarity, significant variations shall be those where the level of risk attached to project funding is considered to significantly increase – e.g. requests for capital repayment holidays or changes to the original terms. Day to day management of the loan/grant portfolio (including low value variations) shall be dealt with by Derby City Council officers in accordance with the appropriate Scheme of Delegation. Where urgent action is required to safeguard the position of the Fund e.g. in the event of winding up petitions, liquidation or administration or other events outside of the Council's control, Derby City Council Cabinet has delegated authority to senior officers to take such steps as are necessary to protect the Fund's position.

### Panel Membership

Panel members will be selected on the basis of their skills and abilities to inform investment recommendations. The following organisations shall be represented on the panel. Individual panel members are expected to attend in person and may not nominate another named individual representative to take their place if they are unable to attend panel meetings.

Organisation	Role/Contribution to Investment Panel
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<b>Formal Decision Makers</b>	
Derby City Council – Cabinet Member	Chair of the Panel – (Formal decision maker for executive decisions in respect of DEGF, and aspects of D2EGF and DBSGS relating to Derby City Council)
Derbyshire County Council – Cabinet Member	Vice-chair – (Formal decision maker for executive decisions in respect of aspects of D2EGF and DBSGS relating to Derbyshire County Council)
<b>Consultative Panel Members</b>	
Derby Renaissance Board	Ensuring fit with Derby Economic Growth Strategy and strategic merits of the project
University of Derby	Innovation & knowledge transfer perspective and strategic merits of the project
East Midlands Chamber of Commerce	Commercial perspective on viability of proposals and level of risk attached to investment; knowledge of local business community
Representative from the Rural Community	To ensure the rural community is fully represented and the issues and challenges faced / support required heard.
Local bank/s and/or accountancy practice/s	Commercial perspective on viability of proposals and level of risk attached to investment; financial advice and input into decision about whether RGF is funder of last resort; knowledge of local business community
Independent member/s	To provide input from business community and or prospective applicants/recipients

### Facilitation of the Panel

The Panel will be facilitated by Derby City Council. Recommendations to the Panel will be made by the Fund Manager and their team or other individuals from time-to-time as may be required. The Panel will therefore be supported by the following City Council officers:

<b>Title</b>	<b>Role</b>
Senior Fund Manager	Marketing the Fund; liaison with applicants; negotiation of terms; production of reports and



	provision of recommendations; overseeing the production of the Funds evaluation Managing the Fund in accordance with Derby City Council's Scheme of Delegation and the direction of the formal decision makers.
DEGF Manager / D2EGF Manager	As above Ensuring Robust and effective programme management and monitoring systems and procedures are in place for the RGF Programme (DEGF), ERDF programme (D2EGF) and DBSGS as a whole.
Commercial Finance Manager	All of the above where required, and to undertake internal Due Diligence and overview of the contracting procedures together with checklist sign off.
Programme Accountant	Verification of financial reports and annual audits

### Appointment of Panel Chair / Vice Chair

The Chair of the Panel will be the Derby City Council Cabinet Member.

The Vice Chair will be nominated by Derbyshire County Council.

### Panel Meetings

Meetings must take place at a frequency required to expedite timely decisions as determined by the flow of applications. This shall generally be bi-monthly, but may be more or less frequent.

If the Chair is unable to attend then attempts shall be made to re-schedule the meeting to enable the Chair to be present.

At least five (or 50% of) panel members must be present in order for a meeting to be quorate, including either the Chair or Vice-Chair. If meetings have to be cancelled then an alternative date should be found within two weeks of the original date. If a meeting proceeds without a quorum of panel members, recommendations can only be ratified following endorsement of provisional decisions by a quorum of members.

DBSGS applications less than £20,000 will be considered and recommended by five designated panel members via 'virtual committee' (to include the Derby City Council Cabinet member and the Derbyshire County Council Cabinet member).

### Decision making

Any recommendations that fall within the Key Decision thresholds of the authority responsible for making the decision will be escalated to the next available Council Cabinet meeting in order for the recommendation to be considered. (The responsible authority may opt to use its urgency provisions to expedite consideration of the recommendation if necessary).

Any recommendations that fall outside of the Key Decision thresholds but above the thresholds for officer approval at the authority responsible for making the decision will be escalated to the next available Council Cabinet or Cabinet Member Meeting in order for the recommendation to be considered. (The responsible authority may opt to use its urgency provisions to expedite consideration of the recommendation if necessary).

Any recommendations that fall within the thresholds for an officer delegated decision at the authority responsible for making the decision will be taken by the appropriate officer following the meeting, in accordance with the relevant authority's delegated decision-making arrangements.

If urgent meetings are required then the Fund Manager can request additional meetings, giving at least 5 working days notice.

Panel recommendations necessary between meetings may be reached via email, subject to a quorum of members approving such a recommendation. The normal approval processes detailed above will then apply..

Meeting notes and a schedule of decisions will be taken at every meeting and for every decision.

### **Conflicts / Declarations of Interest**

At the commencement of each meeting and prior to each item, panel members (including consultative members) must declare any financial or a clear and substantial pecuniary or personal interest relating to any of the agenda items.

Panel members must leave the meeting if they have declared an interest.

All declarations of interest will be recorded in a document held by the Accountable Body for the Fund. This document shall also record where declarations were considered prejudicial and panel members were absented from the meeting.

### **Reporting**

Where a significant change to a project or project risk has been highlighted by officers from the accountable body, an exemption report with recommendations will be escalated to the Investment Panel. In exceptional circumstances this may also be achieved by e mail subject to a quorum of members approving such a recommendation.



### Confidentiality and Non Disclosure Agreement

Investment Panel members will be required to sign a confidentiality and non disclosure agreement (Annex 1) to be reviewed periodically at the discretion of the Fund Management Team. They will be required to adhere to the terms of the confidentiality and non disclosure agreement for all information which is shared at all times.

## ANNEX 1: CONFIDENTIALITY AND NON DISCLOSURE AGREEMENT

### DEFINITIONS

In this Agreement, the following words shall have the following meanings:

**Customer** means any applicant to or beneficiary of the Derby Enterprise Growth Fund (“the Fund”)

DEGF includes all funds managed by the DEGF Fund Management team currently DEGF, D2EGF and DBSGS.

**Panel member** means any member of the Fund’s Investment Panel including observers and advisors

**Confidential Information** means any information relating to the business of the Customer which is not publicly available, which possesses a quality of confidence or has commercial value in relation to the business of the Customer, being:

- Patentable ideas; and/or
- Business plans; and/or
- Company information; and/or
- Financial information; and/or
- Project information
- Due Diligence and Contracting considerations.

**Customer Information** means Confidential Information owned by the Customer or Derby City Council and disclosed to Panel members.

### 1. Panel Members’ Obligations

- 1.1. Panel members undertake to respect and preserve the confidentiality of the Customer Information (subject to clause 1.3 below).
- 1.2. Panel members shall not without the prior written consent of the Customer:
  - 1.2.1. communicate, or otherwise make available, the Customer Information to any third party; or
  - 1.2.2. use the Customer Information for any commercial, industrial or other purpose whatsoever other than in connection with the terms of reference of the Panel; or
  - 1.2.3. copy, adapt, or otherwise reproduce the Customer information save as strictly necessary in connection with the terms of reference of the Panel.



- 1.3. The obligations contained in this clause 1.2 shall not apply or shall cease to apply to such part of the Customer Information as:
- 1.3.1. has become public knowledge other than through the fault of a Panel member to whom it has been disclosed; or
  - 1.3.2. was already known to the Panel member prior to disclosure to him/her by the Customer; or
  - 1.3.3. has been received from a third party who neither acquired it in confidence from the Customer, nor owed the Customer a duty of confidence in respect of it.

## 2. PROPERTY RIGHTS

The Customer Information and all related documentation are proprietary to the Customer or Derby City Council. Panel members acknowledge that any disclosure pursuant to this agreement shall not confer on any other party any intellectual property or other rights in relation to the Customer Information.

## 3. GENERAL

- 3.1. No variation of this agreement shall be effective unless it is in writing and signed by the Panel member.
- 3.2. **In writing** includes faxes but not e-mail or any other form of electronic communication except where expressly provided to the contrary.
- 3.3. This agreement shall be interpreted and construed in accordance with English law. However, either party may enforce the agreement in the courts of any jurisdiction having competence to issue an injunction directly enforceable against such party.

This agreement has been entered into on [DATE].....

Signed by.....  
[Panel member]