

BUSINESS GROWTH AND RECOVERY THEMATIC BOARD

25 March 2021

Confidentiality AND NON-DISCLOSURE AGREEMENTS

Purpose of Report

This report outlines to members the proposal for procedures to ensure commercial confidentiality for applicant businesses for business growth projects. The Board is being asked to support the proposal and agree in principle to entering into Non-Disclosure Agreements in relation to the business of the Board.

Freedom of Information

The paper will be available under the Combined Authority Publication Scheme

Recommendations

Members are requested to:

- 1) Agree that members of the Board should enter into Non-Disclosure agreements prior to receiving confidential information
- 2) Agree that Local Authority partners should enter into separate Non-Disclosure Agreements with applicant businesses prior to the Combined Authority releasing Confidential Information to them.

1. Introduction

- 1.1** The Business Growth and Recovery Thematic Board's remit includes the power to approve funding applications for business recovery projects. In order to properly assess the benefits and risks of approving funding the Board will need to review financial information about the business applying for support. In the case of businesses applying for recovery support this information is likely to be highly sensitive and prejudicial to their short- and medium-term prospects if released to the public domain.
- 1.2** In order to protect their interest's applicant businesses will only release their financial information subject to a legally binding Non-disclosure agreements with the Authority. As a result, the Authority will require the consent of the business to disclose the information to third parties including members of the Board. Businesses have indicated that they will only consent to the further dissemination of confidential information if they can be assured it will not be disclosed.
- 1.3** In order to effectively support Business Growth and Recovery it will from time to time be desirable to share confidential information with other third parties, for example partner local authorities, again this information may only be shared with the consent of the disclosing

business and consent is likely to only be granted in the event that there is an enforceable obligation to keep the information confidential.

2. Proposal and justification

- 2.1** It is proposed that Board members enter into a Non-Disclosure Agreement with the Authority agreeing not to disclose confidential information received from the Authority. The agreement will only apply to information which is already confidential and will not prevent the disclosure of non-confidential information. This route is proposed to offer the applicant's the comfort that their information will remain confidential whilst, ensuring members are only required to enter into a single agreement which will cover all confidential information they will receive through membership of the board. A copy of the proposed agreement is annexed to this report.
- 2.2** It is further proposed that Board Members approve a policy of before sharing any confidential information with a third party that the third party and the disclosing company enter into a direct non-disclosure agreement between themselves. This policy will ensure that any breach of confidentiality by the third party will be a matter between them and the disclosing business and not attract any liability to the Authority.

3. Consideration of alternative approaches

- 3.1** Alternative 1 – Do nothing – If no further non-disclosure agreements are entered into and the applicant business refuses to allow the disclosure of its confidential information on that basis the consequence will either be that the Board would have to make decisions without all of the relevant information available to it or the applicant business withdraws its application. Either of these consequences is unsatisfactory as it risks the board being unable to support the businesses most in need of recovery assistance.
- 3.2** Alternative 2 – Enter into separate Non-Disclosure Agreements with each applicant business – This would likely be the preferred route of the applicant businesses, however it is considered unsatisfactory to the Authority as firstly it would be administratively unwieldy potentially requiring each board member to sign up to a number of agreements before each meeting. Secondly this would put the decision to enforce the agreement against board members in the hands of the applicant business rather than the Authority
- 3.3** Alternative 3 – The Authority enters into a general Non-Disclosure agreement with Local Authority partners – This is considered to be unsatisfactory because the LA will not have a direct legal relationship of confidentiality with the third parties, meaning if there is a breach of confidentiality by the primary risk will be on the Authority.

4. Implications

4.1 Financial

None as a result of this paper

4.2 Legal

The Non-Disclosure agreements will be legally binding agreement not to disclose Confidential Information.

4.3 Risk Management

There is a risk to the MCA in sharing information covered by an NDA. This paper is seeking to clarify options that will positively enable the Board to fulfil its responsibilities for scrutinizing deals and decision making. Whilst ensuring information covered by an NDA, is effectively managed and steps are in place to protect the Authority from Legal Challenge should restricted information be disclosed.

4.4 Equality, Diversity and Social Inclusion

None as a result of this paper.

5. Communications

5.1 Subject to the discussion and agreement, the outcome will need inclusion in the risk management strategy and potentially the Assurance Framework.

6. Appendices/Annexes

6.1 Appendix 1: Business Recovery and Growth Board Confidentiality DRAFT

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Background papers used in the preparation of this report are available for inspection at: 11 Broad Street West, Sheffield S1 2BQ

Other sources and references: