

NORTHWEST DEVELOPMENT AGENCY

and

HALTON BOROUGH COUNCIL

FUNDING AGREEMENT

relating to

**WIDNES WATERFRONT
ECONOMIC DEVELOPMENT ZONE**

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- (6) Exit Report**
- (7) Halton People into Jobs**

This Agreement is made this _____ day of _____ 2006

BETWEEN

- (1) **NORTHWEST DEVELOPMENT AGENCY** of Renaissance House P.O. Box 37 Centre Park, Warrington, Cheshire, WA1 1XB (“the Agency”, which includes any statutory successors);
- (2) **HALTON BOROUGH COUNCIL** whose principal office is at Municipal Building, Kingsway, Widnes, Cheshire, WA8 7QF (“the Applicant”);

WHEREAS:

- (A) We are awarding this grant because the aims and objectives of the Scheme support the Strategic Programme Objectives within the Agency’s current Corporate Plan
- (B) The Agency, in exercise of its powers pursuant to the Regional Development Agencies Act 1998, agrees to make funding available in the total sum not exceeding the “Maximum Sum” for the purpose of financially assisting “the Scheme” on the following terms and conditions and the Applicant accepts the funding on the following terms and conditions.

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement unless the context otherwise requires the following words and expressions shall have the following meanings:

- “Act of Circumvention”** means any act or omission of the Applicant or transaction or series of transactions, entered into by the Applicant with any person or persons with the principal or sole purpose to avoid payment which could otherwise fall due to the Agency
- “Annual Performance Plan”** means the plan agreed with the Agency on an annual basis detailing planned expenditure and how the Scheme will be delivered for the year ahead.

“Approvals Board”	means a board constituted by the Applicant to control the Scheme and review the Projects which shall comprise at least one representative of the Agency
“Base Interest Rate”	means the base rate of Barclays Bank plc (or such other bank as the Agency may stipulate) from time to time (or such other rate as the Agency shall determine if such base rate shall not be readily ascertainable at any time or times)
“Bowers Business Park Site”	means Bowers Business Park Site shaded red on Plan 2
“Branding Guide”	means the Agency’s brochure entitled “branding and publicity requirements – A guide for partners delivering Northwest Development Agency funded activities” (a copy of which has been supplied to the Applicant on or prior to the date of this Agreement or is available from the Agency upon request from the Applicant) as amended or replaced from time to time by the Agency and notified to the Applicant
“BREEAM”	means the Building Research Establishment Environmental Assessment Method
“Derelict Land Grant Clawback Sum”	the amount paid by the Applicant to English Partnerships by way of Derelict Land Grant Clawback following disposal or disposals of the Bower Business Park Site.
“Consents”	includes any approval, authorisation, consent, exemption, licence, permit, permission or registration by of or from any governmental or other authority or any other person including consents required from any landlord, any adjoining owner or any mortgagee or from the local planning authority in relation to the Scheme and/or the Projects or any part thereof or otherwise required to enable the same to be

	lawfully carried out and maintained
“Contract Manager”	Emily Smith of the Agency, being the contract manager appointed by the Agency in relation to this Agreement or his replacement from time to time notified to the Applicant
“England’s Northwest Brand”	means “The England’s Northwest brand” in the manner and style and together with the accompanying graphic design as identified on page 01 of the Branding Guide and as more particularly described within the Branding Guide
“End Date”	means the date six years after the date of completion of the Scheme
“Event of Default”	means any of the events or circumstances described in clause 8.1
“Halton People into Jobs Project”	means the project as more particularly described in the business plan annexed as Annexure 7
“Intellectual Property Rights”	means all patents, know-how, registered trade marks, registered designs, utility models, applications and rights to apply for any of the foregoing unregistered design rights, unregistered trade marks, rights to prevent passing off for unfair competition and copyright, database rights, topography rights and any other rights in any invention discovery or process in each case in the United Kingdom and all other countries in the world and together with all renewals and extensions
“Longstop Date”	means the 1 st October 2010 Provided Always that the Agency may in its absolute discretion (but without any obligation so to do) from time to time extend the period within which the Scheme is to be carried out and completed by giving notice in writing to the Applicant fixing a revised Longstop Date (whether or not the

Longstop Date previously determined has passed) and upon the giving of such notice any such revised Longstop Date shall be substituted for the date previously fixed hereunder

“Maximum Sum”

means (subject to **clause 7.4**) £5,597,792.00 (five million, five hundred and ninety seven thousand and ninety-two pounds) being the maximum amount of funding to be provided by the Agency (and for the avoidance of doubt, this sum includes a figure of £85,200.00 (eighty five thousand, two hundred pounds) relating to the independent appraisals required pursuant to **clause 5.14.3**)

“Monitoring and Evaluation Plan” means the monitoring and evaluation plan annexed to this Agreement as **Annexure 1**

“NWDA Logo” means “The NWDA logo” in the manner and style and together with the accompanying graphic design as identified on page 01 of the Branding Guide and as more particularly described within the Branding Guide

“the Plans” means the plans numbered **1** and **2** annexed to this Agreement as **Annexure 2**

“the Projects” the projects to be carried out under the umbrella of the Scheme as more particularly described in the project proformas **Schedule 1** with such additional Projects as are approved from time to time in accordance with the provisions of this Agreement

“Project Grant Funding Agreements” means a grant funding agreement in a form acceptable to the Agency (in its absolute discretion) provided that for the avoidance of doubt the said agreements shall contain clawback provisions in the form comprised in **Schedule 2** (mutatis mutandis)

“Proposal”	means the proposal for funding for the Scheme submitted to and approved by the Agency in writing
“Public Sector Financial Assistance”	means any funding received or receivable by the Applicant from public sector bodies including for this purpose funding from the European Commission, government bodies (whether national or local) or bodies in receipt of lottery funds from the National Lottery Distribution Fund pursuant to the National Lotteries Acts 1993 and 1998
“Publicity Material”	means all publicity material produced in any form of media whatsoever (including, for the avoidance of doubt, materials appearing on the internet or otherwise in electronic form) and including press releases, announcements, marketing materials, signs and promotional materials produced for or associated with the Scheme
“Qualifying Expenditure”	means costs which the Agency is satisfied have been reasonably and properly incurred and paid by the Applicant in completing the Scheme and for the avoidance of doubt does not include any site purchase costs, professional or statutory fees, finance charges, marketing costs or value added tax and where any costs relate to both construction works and professional fees (including design) then the proportion thereof attributable to professional fees shall be excluded from the Qualifying Expenditure (the amount of such proportion to be determined by the Agency)
“the Scheme”	means the regeneration of the Site , the provision of business premises and infrastructure works through the carrying out of the Projects and as more particularly described in the Proposal

“Scheme Manager”	Derek Sutton of being the project manager appointed by the Applicant for the Scheme or his replacement from time to time notified to and approved by the Agency in writing
“Single Programme Guidelines”	means the Single Programme Guidelines of the Agency annexed hereto as Annexure 5 (as amended and notified to the Applicant from time to time)
“the Site”	means land known as Widnes Waterfront shown for the purposes of identification only edged in red on Plan 1
“Speculative Development”	means any development which is not identified in the project proformas in Schedule 1 or approved in the Annual Performance Plan
“Start Date”	means the date on which any works under the Scheme have commenced by the carrying out of a material operation on the Site as defined in Section 56(4) of the Town & Country Planning Act 1990
“Sustainable Development”	means social progress which recognises the needs of everyone, effective protection of the environment, prudent use of natural resources and economic development that is inclusive, efficient and stable
“Working Day”	means any day other than a Saturday Sunday or a day which is a bank holiday in England

1.2 Interpretation

In this Agreement:

1.2.1 references to:

1.2.1.1 any statute or any section thereof or legislation generally include any statutory extension or modification, amendment or re-enactment of such statutes and include all instruments, orders, bye-laws and regulations for the time being

made, issued or given thereunder or deriving validity therefrom, and all other legislation of the European Community that is directly applicable to the United Kingdom;

1.2.1.2 any clause, sub-clause, paragraph, sub-paragraph or schedule without further designation shall be construed as a reference to the clause, sub-clause, paragraph, sub-paragraph or schedule to this Agreement so numbered;

1.2.1.3 the Site or any part thereof includes any estate or interest therein;

1.2.1.4 a disposal includes the transfer or the grant of any estate or interest (including for the avoidance of doubt the grant of a lease) in the Site or any part thereof and (save where reference is made herein to the completion of a disposal or disposals) includes any contract therefor and “dispose” shall be construed accordingly;

1.2.1.5 this Agreement includes any variations hereto made from time to time and any agreement expressed to be supplemental hereto;

1.2.1.6 “including” shall be construed so as not to limit the generality of any words or expressions in connection with which it is used;

1.2.2 words importing one gender shall include both genders and the singular shall include the plural and vice versa;

1.2.3 the Schedules and Annexes form part of this Agreement and have the same force and effect as if expressly set out in the body of this Agreement;

1.2.4 the headings in this Agreement will not affect its interpretation;

1.2.5 where the expression “the Scheme” is used in this Agreement, it shall also be construed to refer to a Project which forms part of the Scheme unless the context indicates otherwise.

2. ROLES OF THE AGENCY AND THE APPLICANT

The Applicant shall undertake and complete the Scheme in accordance with the provisions of this Agreement and subject thereto the Agency shall provide funding for the Scheme upon and subject to the terms of this Agreement

3. THE APPLICANT’S REPRESENTATIONS AND WARRANTIES

The Applicant warrants, represents and undertakes to the Agency that:

- 3.1 the Applicant is validly existing and has full power to enter into and perform this Agreement, the execution of this Agreement by the Applicant has been validly authorised and the obligations expressed as being assumed by the Applicant under this Agreement constitute valid legal and binding obligations of the Applicant enforceable against the Applicant in accordance with their terms;
- 3.2 neither the execution of this Agreement by the Applicant nor the performance or observation of any of its obligations under it will :–
 - 3.2.1 conflict with or result in any breach of any law or enactment or any deed, agreement or other instrument, obligation or duty to which the Applicant is bound save that this clause shall not operate to fetter the exercise of the Council’s statutory powers nor constrain or prevent the Council’s compliance with its statutory duties; or
 - 3.2.2 cause any limitation (otherwise than as set out in this Agreement) on any of the powers whatsoever of the Applicant;
- 3.3 the Applicant is not in default under any law or enactment or under any deed agreement or other instrument or obligation by which it is bound so as to affect adversely its ability to perform its obligations under this Agreement;
- 3.4 all consents, required in connection with the execution, delivery, issue, validity or enforceability of this Agreement have been obtained and have not been withdrawn;
- 3.5 the Applicant is not under any statutory obligation to undertake the Scheme or any part thereof;
- 3.6 no civil or criminal litigation or administrative or arbitration proceeding before any court, tribunal, Government authority or arbitrator is presently taking place, pending or (to the knowledge, information and belief of the Applicant) threatened against, or against any of the assets of, the Applicant which might have a material adverse effect on its business, assets, condition or operations or might affect adversely its ability to perform its obligations under this Agreement;
- 3.7 all information documents and accounts of the Applicant supplied to the Agency for its appraisal of the Scheme for the purposes of this Agreement including the Proposal are true complete and accurate and no change has occurred since the date on which such information was supplied which renders the same untrue or misleading in any respect and that there has been no material adverse change in the business, assets,

finances operations affairs or prospects of the Applicant since such information documents and accounts was provided;

- 3.8 the Applicant has disclosed in writing to the Agency all information which would or might reasonably be thought to influence the Agency in awarding and/or paying any funding to the Applicant or the amount thereof;
- 3.9 no person having any charge, lien, encumbrance or other form of security over the Site or any other assets of the Applicant has enforced or given notice of its intention to enforce such security nor has the Applicant done or omitted to do anything which would or might reasonably be expected to cause any person to enforce or exercise its rights to enforce such security;
- 3.10 the Applicant is not aware, after due diligent and careful enquiry, of anything which materially threatens the success or successful completion of the Scheme;
- 3.11. no Event of Default has occurred;
- 3.12 the warranties and representations in **clauses 3.1 – 3.11** above will be deemed to be repeated by the Applicant when each claim for an instalment of funding is submitted pursuant to **Clause 7** as if made with reference to the facts and circumstances existing at such date.

4. CONDITIONS

- 4.1 The Applicant shall not make any claim for funding from the Agency unless the Applicant is satisfied that all the conditions specified in **clause 4.4** have been met in full. The Agency shall not pay any funding to the Applicant unless it is satisfied that the conditions specified in **clause 4.4** have been met in full.
- 4.2 The Agency may, in its absolute discretion, and on such terms as it may specify, agree to pay funding to the Applicant before the conditions in **clause 4.4** have been met in full, but if the Agency does so, this will not prejudice its rights to refuse to pay any further funding until those conditions are met or to exercise its rights to require repayment in accordance with the provisions of this Agreement of the whole or any part of the funding previously paid to the Applicant.
- 4.3 If any of the conditions specified in **clause 4.4** have not been fully complied with by the date 3 months from the date of this Agreement or such later date as the Agency may in its absolute discretion agree (whether or not any previous date fixed hereunder has passed) the Agency may by notice in writing to the Applicant terminate this

Agreement and all sums paid under this Agreement shall forthwith be repaid to the Agency within 20 Working Days of the date of receipt of notice in writing..

4.4 The conditions mentioned in **clause 4.1** are as follows:

4.4.1 the Agency being satisfied that the Applicant has (and will continue to have) sufficient funding (whether from its own resources or otherwise) to complete Scheme by the Longstop Date;

4.4.2 the Agency having received any other evidence as the Agency may in its absolute discretion require that the representations and warranties by the Applicant in this Agreement are true complete and accurate in all material respects and are not misleading;

4.4.3 the Applicant has submitted the first Annual Performance Plan for the year 2006/2007 to the Agency for approval.

4.4.4 the Agency being satisfied that the Approvals Board has been constituted and their terms of reference have been approved by the Agency;

5. THE APPLICANT'S OBLIGATIONS

The Applicant agrees with the Agency that:

5.1 Forecast Outputs and Outcomes

5.1.1 it shall procure that the outputs and milestones detailed in the Monitoring and Evaluation Plan are achieved in accordance within the timescales set out in the Monitoring and Evaluation Plan.

5.1.2 it shall use all reasonable endeavours to ensure that the outcomes detailed in the Monitoring and Evaluation Plan are achieved within the timescales set out in the Monitoring and Evaluation Plan.

5.2 Commencement

5.2.1 the Start Date shall occur within 3 months of the date of this Agreement.

5.2.2 it warrants to the Agency that the obligations of the Applicant under this Agreement shall be performed by appropriately qualified and trained personnel with reasonable skill, care and diligence and to such high standards of quality as it is reasonable for the Agency to expect in all the circumstances. The Applicant acknowledges that the Agency will be relying upon the Applicant's

skill, expertise and experience in the performance of the Scheme and also upon the accuracy of all representations or statements made and the advice given by the Applicant in connection with the performance of the Scheme and the accuracy of any documents conceived, originated, made or developed by the Applicant as part of this Agreement. The Applicant warrants that any goods or works supplied or procured by the Applicant forming a part of the Scheme will be of good and suitable quality and that all services will be provided with due skill and care.

5.3 Completion

it shall

- 5.3.1 procure that the completion of the Scheme has been achieved by the Longstop Date;
- 5.3.2 give 14 days prior written notice to the Agency of the date when it anticipates that the completion of the Scheme will occur;
- 5.3.3 immediately following the issue by any architect of a final certificate of practical completion in respect of any works carried out under any Project furnish a copy thereof to the Agency.

5.4 Consents

it shall:

- 5.4.1 not carry out any work upon the Site without having obtained all necessary Consents for that work and in particular (but without prejudice to the generality of the foregoing) shall not carry out any work constituting development for which planning permission is required under the Town and Country Planning Act 1990 without having obtained detailed planning consent for that work, and shall if requested by the Agency produce to it such documents or copy documents as the Agency may require to demonstrate satisfaction of its obligations under this paragraph;
- 5.4.2 at all times throughout the Scheme comply or procure compliance with all Consents;
- 5.4.3 prior to the submission of any planning application, submit to the Agency copies of all plans and drawings to be submitted to the local planning authority

and shall obtain the prior written consent of the Agency to the design and layout of any works and the said planning application;

- 5.4.4 use all reasonable endeavours to ensure that the planning and operation of the Scheme reflect the principles of Sustainable Development with the aim of ensuring sustainability within the North West region;
- 5.4.5 ensure that any works carried out as part of the Scheme comply with BREEAM and any buildings constructed have a “very good” BREEAM certificate issued within six months of practical completion.

5.5 Public procurement

- 5.5.1 it shall comply with all applicable European Union procurement legislation and any implementing measures and any other legislation rules and regulations in connection with the procurement of any works or any services in respect of which funding is to be provided by the Agency and shall promptly provide to the Agency any information which the Agency may request in order to satisfy itself that the Applicant has done so.
- 5.5.2 all procurement of works, equipment, goods and services shall be based on value for money. In determining how this requirement should be met, the Applicant must take account of public sector accountability and probity, and shall document the decision making process.

5.6 Applicant’s contractors and employees

it shall:

- 5.6.1 include in its contracts with suppliers or contractors engaged for the purposes of the Scheme a written condition undertaking to make payment for the supply of their goods and/or services within 30 days of receipt of the supplier’s or contractor’s invoice (provided that such goods and/or services have been supplied in accordance with the terms and conditions of the relevant contract);
- 5.6.2 use all reasonable endeavours to ensure that its employees are not claiming any government benefit, where payment of such benefit is precluded due to earnings. The Applicant shall further use all reasonable endeavours to ensure that it’s employees who are not EC nationals are legally entitled to be resident in the United Kingdom and, where applicable, have a work permit;

5.6.3 take all reasonable steps to satisfy itself that its employees suppliers and contractors (and their employees) are suitable and competent in all respects to perform necessary work or tasks in relation to the Scheme;

5.6.4 the Applicant shall immediately notify the Agency of any claim brought against the Applicant arising out of or relating to the Scheme, including (without limitation) any claim made against any supplier or contractor of which the Applicant receives notification.

5.7 Legislation

in carrying out its obligations under this Agreement the Applicant shall (and shall procure that its employees, agents suppliers and contractors shall) comply in all respects with all relevant legislation (including for the avoidance of doubt any relevant European Directives) and, in this regard:

5.7.1 evidence shall be provided to the Agency on request of a policy covering equal opportunities so that there is no unfair discrimination on the grounds of colour, race, creed, nationality or any other unjustifiable basis directly or indirectly in relation to the implementation of the Scheme and evidence shall be provided as to the implementation of this policy;

5.7.2 it shall comply with all relevant requirements contained in or having effect under any legislation relating to health, safety and welfare at work.

5.8 Material Alteration of the Scheme

the Applicant shall not without the prior written consent of the Agency, make any material alteration to the Scheme.

5.9 Insurance

at all times during the carrying out of the Scheme it shall in respect of land in the Applicant's ownership or control, other than adopted highways and associated landscaped areas, and only during the period of such ownership or control:

5.9.1 maintain or procure that there are maintained full and proper insurance policies including (but without prejudice to the generality of the foregoing) policies in respect of damage loss or destruction of all buildings upon the Site and all works undertaken in carrying out any works and all unfixed goods and materials in connection with such works for in every case the full reinstatement or replacement costs thereof from time to time together with employer's

liability insurance and public liability insurance to a minimum cover of such amount as is required by law from time to time (or such greater cover as may be required by the Agency);

- 5.9.2 if requested, supply evidence of such insurance policies to the satisfaction of the Agency before commencing any works and at any time thereafter;
- 5.9.3 if any building upon the Site or any works forming part of the Scheme or any materials or goods required to undertake such works are destroyed or damaged (other than as necessary as part of the carrying out of the works), procure the rebuilding, reinstatement or replacement of such building, work, goods or materials in accordance with the provisions of this Agreement as soon as reasonably practicable and if the insurance proceeds shall be insufficient the Applicant shall make up any deficiency out of its own monies;
- 5.9.4 not do or omit to do or permit anything to be done or omitted to be done which may in respect of any policy or policies of insurance of the Applicant render any such policy or policies of insurance void or voidable or any policy or policies taken out by any individual applicant under the Project;

5.10 Notification by the Applicant

it shall forthwith notify the Agency in writing:

- 5.10.1 in the event of any material change in the information on costs (whether actual or estimated) of carrying out the Scheme provided for the appraisal of funding or if any event arises which materially affects the continued accuracy of such information;
- 5.10.2 in the event of the receipt by it of any other Public Sector Financial Assistance, or the offer of same, in respect of the Scheme;
- 5.10.3 of any event which might adversely affect the carrying out and completion of the Scheme or any part thereof;
- 5.10.4 of the Start Date;
- 5.10.5 if there are any delays to the Scheme or it is unable to submit a claim in accordance with the timescales set out in this Agreement;
- 5.10.6 on the occurrence of an Event of Default.

5.11 Further assurance

at any time upon the written request of the Agency it shall promptly execute and deliver or procure the execution and delivery of any and all such further instruments and documents as may be necessary for the purpose of obtaining for the Agency the full benefit of this Agreement and of the rights and powers herein granted.

5.12 Good faith and co-operation

it shall at all times act with the utmost good faith towards and co-operate with the Agency.

5.13 Indemnity

it shall:

5.13.1 be liable for and shall indemnify the Agency in full against any expense, liability, loss, claim or proceedings arising under statute or at common law in respect of personal injury to or death of any person whomsoever or loss of or damage to property whether belonging to the Agency or otherwise or any claim by any third party arising out of or in the course of or caused or contributed to by the Scheme and/or the performance or non-performance or delay in performance by the Applicant of its obligations under this Agreement;

5.13.2 be liable for and shall indemnify the Agency against any expense, liability, loss, claim or proceedings arising as a result of or in connection with any breach of the terms of this Agreement by or otherwise through the default or negligence of the Applicant.

5.14 Delivery

it will:

5.14.1 send the Annual Performance Plan to the Agency on or before the 1st day of April in each year for approval and following approval by the Agency it shall deliver the Scheme in accordance with the Annual Performance Plan

5.14.2 carry out and complete the Scheme in accordance with the Agency's Single Programme Guidelines and without limiting the generality of the foregoing it will ensure that the Projects are appraised in accordance with Single Programme Guidelines;

5.14.3 provide the Agency with a proposal and detailed appraisal in respect of the Projects and unless otherwise agreed in writing by the Agency where a Project involves greater than £500,000.00 in aggregate of Agency funding and/or the Applicant (or any of its members or shareholders) is a private sector organisation an independent appraisal will be required such appraisal to be carried out to the satisfaction of and by an appraiser satisfactory to the Agency;

5.14.4 enter into and then enforce Project Grant Funding Agreements with any recipients of funding in respect of the Projects and not to proceed with such Projects until such arrangements are in place to the satisfaction of the Agency;

5.14.5 ensure that any Project is submitted to and approved by the Approvals Board

5.14.6 ensure that where any Projects are to be directly delivered by the Applicant a separate Project Grant Funding Agreement will be entered into between the Agency and the Applicant.

5.15 Act of Circumvention

it shall not enter into any Act of Circumvention

5.16 Payment to the Agency

it is their intention and understanding that any monies received, paid or payable to the Applicant (whether directly or indirectly) by way of any Project Grant Funding Agreements (including pursuant to any clawback provisions) or in connection with or as a result of the Scheme or any Project shall be paid to the Agency within twenty Working Days of either receipt by the Applicant or of such monies falling due to the Applicant (whichever is the sooner).

5.17 Bowers Business Park Site

upon any disposal of the Bowers Business Park Site (or any part thereof) whether before, on or after the date of this Agreement the Applicant will provide details to the Agency as soon as reasonably practicable of the proceeds of any disposal or disposals and the amount of the Derelict Land Grant Clawback Sum paid by the Applicant.

5.18 Halton People into Jobs Project

it shall continue funding and delivering the Halton People into Jobs Project to the satisfaction of the Agency to the end of December 2008.

6 SCHEME MONITORING

6.1 Provision of information by the Applicant

the Applicant shall:

- 6.1.1 provide quarterly progress reports to the Contract Manager in the format annexed to this Agreement as **Annexure 3** (subject to such amendments to such format as the Agency may require from time to time);
- 6.1.2 procure that the Scheme Manager and/or any other officers of the Applicant as may reasonably be requested by the Agency shall attend such meetings as the Agency may reasonably request with the Agency and any third parties invited by the Agency to review progress in relation to the Scheme;
- 6.1.3 provide no more often than once in every calendar month the Agency with such information as the Agency may require in connection with the Scheme or any permitted variations thereto from the date hereof to the End Date;
- 6.1.4 from the date of this Agreement until the End Date:
 - 6.1.4.1 provide the Agency with such information as is available as to the number of persons employed or to be employed on the Site and with such other information as may be requested by the Agency as to the benefits derived from the provision of funding for the Scheme;
 - 6.1.4.2 include in any instrument giving effect to any disposal of the Site or any part thereof obligations on the person to whom the disposition is made to provide to the Agency information of the kind referred to in **sub-clause 6.1.4.1**.

6.2 Inspection and audit facilities

The Applicant shall:

- 6.2.1 until the End Date or, if relevant, for such longer period as may be required by law retain documentary evidence of all capital and revenue purchases to support all amounts claimed from the Agency. These records shall include an invoice register of suppliers' and contractors' invoices and all other documents relating to the purchase of any assets and the carrying on of any works funded by the Agency or other amounts claimed under this Agreement;

- 6.2.2 allow access to its business premises on 2 Working Days notice during the Applicant's office working hours to the Agency's internal auditors or its other duly authorised staff or agents, Government Office, European Commission or the National Audit Office to inspect such documents and take copies thereof as the Agency considers necessary in connection with this Agreement. The Agency shall be entitled to interview employees of the Applicant in order to obtain oral and/or written explanations of documents and the Applicant shall provide access to the relevant employees at such times as may be reasonably required to enable the Agency to do so. The Agency reserves the right to have such staff or agents carry out examinations into the probity, economy, efficiency and effectiveness with which the Applicant has used the Agency's resources in relation to the Scheme and the performance of this Agreement;
- 6.2.3 permit the Agency or persons authorised by it to inspect the Site and to inspect, audit and take copies of all reports, books, accounting records and vouchers which the Agency considers relevant;
- 6.2.4 maintain full and accurate accounts for the Scheme in accordance with all applicable law and accounting standards and (to the extent that no accounting standard is applicable) use generally accepted accounting principles and practices of the United Kingdom then in force. For the purposes of this clause 6.2.4 "Accounting Standards" means the statements of standard accounting practice referred to in section 256 of the Companies Act 1985 issued by the Accounting Standards Board;
- 6.2.5 On an annual basis submit audited accounts and an auditors report in the format set out in **Annexure 4** to the Agency. These must be certified by the Chief Financial Officer of the Applicant and audited by its external auditors. If the audited accounts, certificate and auditors report have not been received within the above timescale, any payment of funding may be suspended until receipt of the relevant documentation and/or previous payments of funding shall, if required by the Agency, be repaid to the Agency forthwith on demand by the Agency.

7 PAYMENT OF FUNDING

7.1 Maximum Grant

Subject to the provisions of this Agreement the Agency shall pay funding into the bank account of the Applicant (Account No. 98682164 at Natwest Bank Plc, Sort Code No.60-19-24) (not exceeding in total the Maximum Sum) in accordance with the Annual Performance Plan on the items of Qualifying Expenditure to which the claim relates.

7.2 **Conditions**

Unless the Agency otherwise agrees, the Agency shall not be liable to provide (or as the case may be to continue to provide) funding (or any instalment thereof):

7.2.1 unless a claim by the Applicant for an instalment of funding shall:

7.2.1.1 be submitted and properly completed in the form annexed to this Agreement as **Annexure 3** or such revised form as shall be notified in writing by the Agency to the Applicant from time to time;

7.2.1.2 relate solely to Qualifying Expenditure in relation to which the Applicant has not submitted any other claim to the Agency;

7.2.1.3 include evidence to the satisfaction of the Agency that the expenditure to which the claim relates has been incurred and that payment has been made by the Applicant;

7.2.1.4 (save in relation to expenditure incurred and paid by the Applicant prior to the date of this Agreement) be submitted within three months of the expenditure being incurred;

7.2.2 if an Event of Default has occurred and is continuing;

7.2.3 if the representations and warranties made in **clause 3** do not remain true complete and accurate;

7.2.4 in relation to expenditure to make good damage occasioned by insurable risks or to make good any defects in works carried out as part of the Scheme;

7.2.5 if the Agency is not satisfied that the relevant part of any works in relation to which funding is being claimed has been satisfactorily undertaken.

7.2.6 for any Qualifying Expenditure incurred by the Applicant as pursuant to any Project after the 31st March 2009.

7.2.7 if the Applicant has not obtained prior approval of the expenditure to which the claim relates from the Agency where expenditure is in connection with a Project which is or could lead to Agency funding of greater than £500,000.00 and/or relates to Speculative Development

7.3 Repayment

7.3.1 If the Agency shall determine that any expenditure previously defrayed and the subject of a prior instalment is not Qualifying Expenditure or if at any time the Agency has paid more than it is liable to pay under any provision of this Agreement, the Applicant shall forthwith on demand in writing pay to the Agency the amount stipulated by the Agency as having been overpaid.

7.3.2 The Agency may vary or withhold any or all of the payments of funding under this Agreement and/or require repayment of any or all funding already paid to the extent that:

7.3.2.1 repayment is required under or by virtue of any European Union State aid laws (including without limitation under any of Articles 86 to 89 inclusive of the Treaty of Rome (as amended) and/or any applicable judgment, court order, statute, statutory instrument, regulation, directive or decision (insofar as legally binding) (“State Aid Law”); and/or

7.3.2.2 the Agency is otherwise required to repay or recover such funding in whole or in part to or by the European Commission.

Any funding required to be repaid in accordance with this **clause 7.3.3** shall bear interest at such rate as required under or by virtue of State Aid Law from the date of the Agency’s notice requiring repayment to the date of repayment (both before and after judgment) or such other period as may be required under or by virtue of State Aid Law.

7.4 Variations

7.4.1 The Agency reserves the right to vary the Maximum Sum in any of the circumstances mentioned in **sub clause 7.4.2**:

7.4.2 The circumstances mentioned in **sub-clause 7.4.1** are as follows:

7.4.2.1 the issue of a consent by the Agency under **Clause 5.8**;

7.4.2.2 the receipt of any other Public Sector Financial Assistance or guarantees or the acceptance of an offer thereof by the Applicant as mentioned in **sub-clause 5.10.2**;

7.4.2.3 following any disposal of the Bowers Business Park Site (or any part thereof)

8 EVENTS OF DEFAULT, REMEDIES AND TERMINATION

8.1 An Event of Default occurs where:

8.1.1 the Start Date has not occurred within 6 months of the date of this Agreement (time being of the essence) or such extended period (if any) as the Agency may in its absolute discretion allow (in each case time being of the essence);

8.1.1 the completion of the Scheme has not been achieved by the Longstop Date (time being of the essence) or the Agency determines that proper progress in carrying out the Scheme or any part thereof is not being maintained;

8.1.2 the Agency is not satisfied that any part of the Scheme has not been carried out in a good and workmanlike manner or in accordance with the Consents or otherwise in compliance with all relevant legislation;

8.1.3 the Applicant fails materially to perform or observe or is in material breach of any obligation or restriction on its part contained in or implied by this Agreement;

8.1.4 any Consent is withdrawn or revoked or expires or is modified or made subject to any condition which in the Agency's opinion may materially or adversely affect the Applicant's ability to perform and observe its obligations under this Agreement;

8.1.5 any representation or warranty made or repeated by the Applicant pursuant to this Agreement or in any statement delivered or made pursuant to it, is untrue, incomplete or inaccurate when made or repeated;

8.1.6

8.1.6.1 the Agency is of the opinion that, taking into account the funding to be provided under this Agreement, the Applicant no longer has the necessary resources and funding to complete the Scheme; or

8.1.6.2 the Applicant is convicted (or any officers of the Applicant at Director level who are directly involved in the preparation or execution of the Scheme are convicted) of a criminal offence related to the business or professional conduct of the Applicant; or

- 8.1.6.3 the Applicant commits (or any officers or representatives of the Applicant at Director level who are directly involved in the preparation or execution of the Scheme commit) an act of which in the reasonable opinion of the Agency constitutes serious misconduct in the course of the business of the Applicant;
 - 8.1.7 the Applicant is in the opinion of the Agency in material default under any other agreement with the Agency and such default has not been remedied to the satisfaction of the Agency;
 - 8.1.8 the Applicant has not achieved the outputs and milestones set out in the Monitoring and Evaluation Plan.
 - 8.1.9 an Act of Circumvention takes place;
 - 8.1.10 the Applicant does not enter into Project Grant Funding Agreements with the recipients of funding in respect of the Projects;
 - 8.1.11 the Applicant ceases to fund or deliver the Halton People into Jobs Project in accordance with the requirements of **clause 5.18**.
- 8.2 Where an Event of Default has occurred the Agency may by notice in writing to the Applicant:
- 8.2.1 suspend the payment of funding under this Agreement for such period as the Agency shall determine;
 - 8.2.1 vary the Maximum Sum in which case the payment of funding shall thereafter (subject to the provisions of **clause 7** and provided no other Event of Default has occurred and is continuing) be made in accordance with the variation notified to the Applicant;
 - 8.2.2 terminate this Agreement whereupon the Agency shall cease to be under any obligation to provide any further funding to the Applicant under this Agreement and (in addition) the Agency may require the Applicant to repay the whole or any part of the funding previously paid to the Applicant and the Applicant agrees that upon receipt of notice requiring repayment it shall repay the sums required within 28 days of receipt of such notice.
- 8.3 Provided always that:

- 8.3.1 if the Agency shall suspend the payment of funding pursuant to **sub-clause 8.2.1** by reason only of the occurrence of an Event of Default specified in **sub-clause 8.1.4** which is, in the opinion of the Agency, capable of remedy and the Applicant shall, after notice in writing from the Agency, remedy the relevant breach to the satisfaction of the Agency within such period (as shall be specified in the notice) as the Agency shall determine to be reasonable (or such extended period as the Agency may thereafter determine in its discretion) the Agency shall not (subject to the other provisions of this Agreement) continue such suspension after the Applicant shall have remedied the relevant breach within such period specified by the Agency as aforesaid;
- 8.3.2 (subject to **sub-clause 8.3.3**) the Agency shall not by reason only of the occurrence of an Event of Default specified in **sub-clause 8.1.4** which is, in the opinion of the Agency, capable of remedy, exercise its rights under **sub-clause 8.2.2 or 8.2.3** unless the Agency shall have first given notice in writing to the Applicant requiring the relevant breach to be remedied within such period (as shall be specified in the notice) as the Agency shall determine to be reasonable (or such extended period as the Agency may thereafter determine in its discretion) and the Applicant shall have failed to remedy the said breach to the satisfaction of the Agency within the said period;
- 8.3.3 unless the Agency shall otherwise determine, the provisions of **sub-clause 8.3.1 and 8.3.2** above shall not apply where the Agency has prior to the occurrence of an Event of Default had occasion to give notice on the occurrence of a previous Event of Default to the Applicant under either **sub-clause 8.3.1 or 8.3.2**;
- 8.3.4 the exercise by the Agency of its rights under **sub-clause 8.2.1** in respect of an Event of Default shall not preclude the exercise thereafter by the Agency of any other rights which it may have under **sub-clause 8.2** in respect of the same Event of Default;
- 8.3.5 the exercise by the Agency of its rights under **sub-clause 8.2** shall be without prejudice to any other right of action or remedy of the Agency in respect of any breach by the Applicant of the provisions of this Agreement.

9 **POST COMPLETION**

The Applicant shall provide to the Agency a final report within 3 months of the completion of the Scheme. This report must be in the form of the draft contained in **Annexure 6**.

10 **PUBLICITY**

10.1 **Marketing Material**

The Applicant shall:-

- 10.1.1 comply fully at all times with the provisions of the Branding Guide;
- 10.1.2 acknowledge the receipt of funding from the Agency in such manner as the Agency may from time to time require to enable the Agency to publicise its involvement in the Scheme in accordance with the Branding Guide;
- 10.1.3 inform the Agency at least 10 Working Days prior to any promotional event relating to the Scheme and, for the avoidance of doubt, otherwise comply with the provisions of the Branding Guide in respect of such events;
- 10.1.4 provide in accordance with the Branding Guide signs which are approved by the Agency in terms of size, design and content and which otherwise comply with the Branding Guide which recognise the Agency's involvement in the Scheme and display such signs at a location on or immediately adjacent to the Site which is highly visible in accordance with the Branding Guide. The costs of providing signs pursuant to this **clause 10.1.4** shall be the responsibility of the Applicant provided that such costs may be recoverable from the Agency pursuant to this Agreement to the extent that they constitute Qualifying Expenditure;
- 10.1.5 procure that there shall be permanently maintained at the Applicant's cost in a prominent position on the Site and affixed in a location to be approved in writing by the Agency (usually within a reception area or foyer area) a plaque which complies with the Branding Guide recognising the Agency's involvement in the Scheme in accordance with the Branding Guide.

10.2 **NWDA Logo and England's Northwest Brand**

- 10.2.1 The Agency grants the Applicant during the term of this Agreement a non-exclusive licence to use the NWDA Logo and England's Northwest Brand

only for the purposes set out in **sub-clause 10.1**. The Applicant shall not assign or grant sub-licences of this licence or any part of it and shall not use the NWDA Logo or England's Northwest Brand for any other purpose.

10.2.2 The Applicant acknowledges that the NWDA Logo and England's Northwest Brand are owned by and shall remain the property of the Agency. The Applicant shall not acquire any further or other rights in respect of the NWDA Logo or England's Northwest Brand by reason of the exercise of the rights granted by this Agreement.

11 INTELLECTUAL PROPERTY RIGHTS

- 11.1 The Intellectual Property Rights created by the Applicant under the Project ("Project Intellectual Property Rights") remain the property of the Applicant, but subject always to the following provisions of this **clause 11**.
- 11.2 The Applicant acknowledges that it is a condition of the Agency's funding of the Scheme that the Agency shall be entitled to make information and know-how relating to or derived from Scheme which Agency regards as "best practice" ("Scheme Related know-how") publicly available notwithstanding that this Scheme Related know-how may constitute Intellectual Property Rights belonging to the Applicant or a third party and that such Scheme Related know-how will as a result enter the public domain.
- 11.3 The Applicant agrees to provide the Agency at the Completion Date and at all other times upon request with complete copies (where relevant) and access to full details of information and know-how relating to or derived from the Scheme (including the methods by which the Scheme was conducted) and all Project Intellectual Property Rights. The Applicant shall provide whatever assistance and explanation is required by Agency to enable it effectively to exercise the right referred to in **clause 11.2**.
- 11.4 The Agency shall not be obliged, when exercising the right referred to in **clause 11.2**, to identify the Applicant or anybody who has contributed to the Scheme unless the Agency publishes work belonging to the Applicant or a material part thereof without amendment in which case due credit shall be given.
- 11.5 The Agency's decision as to what constitutes best practice shall be final. The Agency shall have the right to amend the Scheme Related know-how or to combine information and know-how from two or more projects as it thinks fit to when compiling and publishing what it regards as best practice in exercise of the right referred to in **clause 11.2**. Where the Agency has amended Scheme Related know-

how or combined information and know-how from two or more projects it shall not identify the Applicant as a contributor without the Applicant's prior written consent.

- 11.6 The Applicant warrants to the Agency that neither the Scheme Intellectual Property Rights nor any publication by the Agency of the Scheme Related know-how will infringe, in whole or in part, any Intellectual Property Right of any other person and agrees to indemnify and hold the Agency harmless against any and all claims, demands and proceedings arising directly or indirectly out of the Agency's publication or use of the Project Related Know-how where this gives rise to or is alleged to give rise to an infringement of third party Intellectual Property Rights.

12 REPUTATION OF THE AGENCY

- 12.1 The Applicant shall not, and shall use all its reasonable endeavours to procure that its suppliers and contractors shall not, knowingly do or omit to do, anything in relation to this Agreement, the Scheme or in the course of their other activities, that may bring the standing of the Agency into disrepute or attract adverse publicity for the Agency.

- 12.2 The Applicant shall at all times perform its obligations in relation to the Scheme and any agreement entered into in relation to the Scheme with due regard to the need for those in a public service environment to observe the highest standards of efficiency, economy, probity, courtesy, consideration and hygiene.

13 ASSIGNMENT AND SUBCONTRACTING

- 13.1 This Agreement is personal to the Applicant who shall not, without the prior written consent of the Agency (in its absolute discretion), assign, transfer, charge or deal in any other manner with this Agreement or its rights under it or part of it, or purport to do any of the same, or sub-contract any or all of its obligations under this Agreement. Any such consent if given, may be made subject to any conditions which the Agency considers necessary.
- 13.2 The Agency may withdraw its consent to any sub-contracting where it has reasonable grounds to no longer approve the sub-contract or the sub-contracting arrangement and where these grounds have been presented in writing to the Applicant.
- 13.3 The Applicant shall be liable for the acts, omissions and negligence of its sub-contractors.

14 **CONFIDENTIALITY**

14.1 Unless the Agency notifies the Applicant otherwise, this Agreement and all documents and information provided by or to the Agency to the Applicant under or in connection with the performance of this Agreement or during its negotiation shall be treated as confidential (“the Confidential Information”). The Confidential Information shall not be used by the Applicant except for the purposes for which they were made available and such documents and such Confidential Information shall not be disclosed by the Applicant to any other person without the prior written consent of Agency. The Applicant shall use all reasonable endeavours to ensure that its employees, agents and sub-contractors are under a similar obligation of confidentiality in respect of the relevant documents and Confidential Information. The above restriction shall not apply to Confidential Information which:

14.1.1 the Applicant can demonstrate to the Agency’s satisfaction it is already in the public domain other than as a result of a breach of this **Clause 14**; or

14.1.2 is disclosed to the Applicant without any obligation of confidence by a third party who has not derived it directly or indirectly from Agency; or

14.1.3 is trivial or cannot reasonably be considered to be confidential.

14.2 The obligations of confidentiality contained in this **clause 14** shall continue after expiry or termination of this Agreement howsoever occasioned.

14.3 Nothing in this Agreement shall operate so as to prevent the Applicant from complying with its obligations under the Freedom of Information Act 2000.

15 **STATUS OF APPLICANT**

15.1 In carrying out its obligations under this Agreement the Applicant agrees that it will be acting for its own account as principal and not as the agent or partner of Agency.

15.2 The Applicant shall not say or do anything which may pledge the credit of or otherwise bind the Agency or that may lead any other person to believe that the Applicant is acting as the agent of Agency.

16 **NOTICES**

16.1 Any notice required to be served under this Agreement shall be in writing, served, in the case of notice served upon the Agency, by personal delivery or by sending it by recorded postal delivery to Renaissance House, P.O. Box 37, Centre Park, Warrington,

Cheshire, WA1 1XB or such other address as shall from time to time be notified in writing by the Agency to the Applicant, and in the case of notice to be served upon the Applicant by delivering or sending it to the address specified in this Agreement or such other address as shall from time to time be notified in writing by the Applicant to the Agency in the same manner.

- 16.2 Any such written notice shall (where sent by post) be deemed to have been served and received on the second business day following the day of posting and where delivered personally be deemed to have been given at the time of delivery.

17 **VALUE ADDED TAX**

- 17.1 The payment of the funding by the Agency under this Agreement is believed to be outside the scope of Value Added Tax but if any Value Added Tax shall become chargeable all payments of funding shall be deemed to be inclusive of all Value Added Tax and the Agency shall not be obliged to pay any Value Added Tax over and above the funding.

- 17.2 All sums or other consideration payable to or provided by the Applicant to the Agency at any time shall be deemed to be exclusive of all Value Added Tax payable and where any such sums become payable or due or other consideration is provided the Applicant shall at the same time or as the case may be on demand by the Agency in addition to such sums or other consideration pay to the Agency all the Value Added Tax so payable upon the receipt of a valid Value Added Tax invoice.

18 **JURISDICTION**

- 18.1 This Agreement shall be governed by and construed in accordance with the Law of England and the parties submit to the jurisdiction of the English Courts.

19 **MISCELLANEOUS**

- 19.1 Nothing in this Agreement shall constitute a partnership or joint venture between the parties hereto for any purpose whatsoever.
- 19.2 A certificate by the Agency as to any sum payable hereunder by the Applicant shall be conclusive save in the case of manifest error.
- 19.3 Without prejudice to **clause 7.4** this Agreement may only be amended by a Deed duly executed by the Agency and the Applicant.

- 19.4 If at any time any of the provisions of this Agreement become illegal, invalid or unenforceable in any respect under any law or regulation of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions of this Agreement shall be in any way affected or impaired as a result.
- 19.5 Save as provided in **clause 7.3.3**, where any amount is due to be paid by the Applicant to the Agency under this Agreement, the Applicant shall pay interest thereon at the rate of 4% p.a. above the Base Interest Rate compounded with rests on the usual quarter days for the period between the date on which the relevant amount should have been paid and the date on which it is paid (as well after as before judgment).
- 19.6 No failure or delay on the part of the Agency in exercising any right or power or remedy and no course of dealing between the parties hereto shall operate as a waiver nor shall any single or partial exercise of any right or power or remedy of the Agency prevent or restrict any other or further exercise thereof or the exercise of any other right or power or remedy of the Agency. The rights powers and remedies of the Agency are cumulative and not exclusive of any rights powers or remedies which the Agency would otherwise have.
- 19.7 Nothing contained in or done under this Agreement and no consents given by the Agency shall prejudice any the Agency's rights, powers remedies or duties and/or obligations in the exercise of its functions or under any statutes, bye-laws, instruments orders or regulations.
- 19.8 Nothing in this Agreement or any other document shall impose any obligation or liability on the Agency with respect to any actions of or obligations or liabilities assumed or incurred by the Applicant or its agents, contractors or employees whether under contract, statute or otherwise.
- 19.9 Any approval by the Agency or any person on behalf of the Agency pursuant to this Agreement of any matter submitted by the Applicant for approval shall not be deemed to be an acceptance by the Agency of the correctness or suitability of the contents of the subject of the approval or consent.
- 19.10 The Agency shall not be liable to the Applicant for any advice given by a representative of the Agency. In addition, the Agency gives no assurance as to the suitability or viability of the Scheme and no endorsement of the same.
- 19.11 Nothing in this Agreement shall confer any rights or obligations on any person who has not executed this Agreement nor shall the consent of any person who has not so

executed this Agreement be needed to make any modification, amendment, variation or release of the terms hereof. The parties to this Agreement expressly agree for the purposes of the Contracts (Rights of Third Parties) Act 1999 that they do not intend any person other than a party to this Agreement to be able to enforce any term of this Agreement.

19.12 Any consent, agreement or approval of the Agency shall be in the Agency's absolute discretion and may be given subject to such restrictions, terms or conditions as the Agency may impose.

19.13 This Agreement and the documents referred to in it, constitute the entire agreement between the parties and supersede and replace any previous agreement, understanding, representation or arrangement of any nature between the parties relating to the subject matter of this Agreement.

IN WITNESS of which this Agreement has been executed by the parties as a Deed and is intended to be and is delivered on the date first above written

SCHEDULE 1

Projects

[Drafting note: Project Proformas to be inserted from Proposal]

SCHEDULE 2

Clawback Provisions

Part I

1. DEFINED TERMS

In this Schedule, the following words and expressions have the following meanings:

- “Base Value”** means the sum of £[]
- “the Calculation Date”** means the earliest of the following dates, that is to say:
- (a) the Relevant Date;
 - (b) the date when the Applicant shall have completed the disposal or disposals of all its estate and interest in the Site;
 - (c) the date when the Applicant shall have completed disposals (whether by sale or letting) of all the buildings on the Site intended for occupation;
- “Market Value”** in relation to the Site or any part thereof (including in each case the Works (or the relevant part thereof) thereon) on the Calculation Date means the “Open Market Value” as defined in the Practice Statement Number 4(PS4) of the RICS Appraisal and Valuation Manual published in September 1995 as varied from time to time;
- BUT (in addition to the assumptions mentioned in that definition) on the following further assumptions

- (a) the Site or the relevant part thereof is sold subject to and with the benefit of any subsisting leases thereof or agreements therefor but otherwise sold - free from all charges and other encumbrances;
- (b) the Applicant has a good and marketable title to the Site or relevant part thereof;
- (c) all necessary Consents for any buildings or other works on the Site have been obtained and the same can be lawfully used;
- (d) any damage to the Site or buildings thereon caused by fire or any other insurable risk has been made good;
- (e) the Site or the relevant part thereof has the benefit of all the easements and rights necessary for the beneficial use and occupation thereof

“Proceeds”

means the total amount of all proceeds received or receivable or the amount or value of all consideration received or receivable from the disposal of the Site or any part or parts thereof (other than rents payable under leases) excluding that part of such proceeds (if any) as shall be attributable to the value of any fixtures and fittings not forming part of or contained in the Works that may with the prior written approval of the Agency be installed by the Applicant at the request and cost of any purchaser or lessee of the whole or any part of the Site, the amount of such part of the proceeds to be determined by the Agency having due regard to all evidence as shall be supplied by the Applicant in relation

thereto;

“in the Prescribed Manner”

where provision is made for any matter or value to be ascertained or any dispute to be determined “in the Prescribed Manner” the same shall be determined by agreement between the Agency and the Applicant or in default of such agreement by an independent chartered surveyor or (as appropriate) independent valuer (being a member of the Incorporated Society of Valuers and Auctioneers) to be appointed by agreement between the Agency and the Applicant or in the absence of such agreement upon the application of the Agency or the Applicant by the President (or other appropriate officer) of the Royal Institution of Chartered Surveyors and any such independent chartered surveyor or independent valuer shall act as an expert and afford to the Agency and the Applicant a reasonable opportunity to make representations (but not so as to prejudice the expert’s rights to reach his decision solely on the basis of his own expertise); and determine who shall bear the fees and expenses of the expert and the costs of his appointment;

“Relevant Date”

means the date of the expiration of the period of [] months after the Date of Practical Completion of the Works;

2. PAYMENTS TO THE AGENCY ON INCREASES IN VALUE

- 2.1 Within 28 days of the Calculation Date the Applicant shall notify the Agency of all disposals of the whole or any part of the Site up to that date together with details and evidence of the consideration obtained therefor and where required by the Agency copies of all relevant documentation
- 2.2 The Applicant shall pay to the Agency a sum calculated as at the Calculation Date in accordance with the following formula:

$$50\% \times ((P + MV) - BV) \text{ if positive}$$

together with Notional Interest

Where:

“P” means all Proceeds;

“MV” means the Market Value of all the estates and interests in the Site and each and every part thereof then remaining vested in the Applicant to be determined in the Prescribed Manner (save any estate or interest which is then the subject of a subsisting contract for a disposal as mentioned in **paragraph 2.6** and in respect of which the amount or value of the consideration for such disposal forms part of the Proceeds for the purpose of **paragraph 2.2**);

“BV” means the Base Value.

“Notional Interest” means in relation to any relevant sum to be paid to the Applicant under this **paragraph 2.2** a sum equal to interest thereon at the Base Interest Rate compounded with rests on the usual quarter days for the period from the Calculation Date down to the relevant date for payment (or if earlier the date on which payment is made by the Applicant to the Agency in cleared funds)

- 2.3 Subject as provided in **paragraph 2.4** the sum calculated under **paragraph 2.2** (with Notional Interest) shall be paid by the Applicant within 56 days after the Calculation Date or if later within 14 days after the ascertainment of the said sum
- 2.4 If the Applicant shall fail to comply with **paragraph 2.1** the Agency shall be entitled to make its own estimate of the sum due under **paragraph 2.2** (“the Estimated Sum”) and the Applicant shall pay to the Agency the Estimated Sum (together with Notional Interest) within 14 days after receipt of written notice
- 2.5 Where the Applicant has paid to the Agency the Estimated Sum, the Applicant shall pay any amount unpaid to the Agency (with Notional Interest) or the Agency shall repay to the Applicant any sums overpaid by it within 14 days after the sum to be calculated under **paragraph 2.2** has been finally ascertained
- 2.6 If on the Calculation Date there is a subsisting contract for a disposal of the Site or any part thereof which has not been completed the amount or value of the consideration payable under such contract shall form part of the Proceeds for the purpose of **paragraph 2.2**.
- 2.7 Without prejudice to any other right or remedy of the Agency if the Applicant shall be in breach of any of the obligations on its part contained in this Agreement and in

consequence thereof the Agency shall be of the opinion that the amount of the Proceeds or of Market Value is lower than it would otherwise have been, there shall be substituted for Proceeds and/or Market Value such higher amount as the Agency shall determine.

3. RESTRICTIONS ON DISPOSAL

3.1.1 prior to the Calculation Date the Applicant shall not, without the prior written consent of the Agency, dispose of the whole or any part of the Site:

3.1.1.1 for a consideration which is less than the best that can reasonably be obtained in the open market in an arms length transaction on normal market terms (whether by means of a sale or letting) at the time of such disposal;

3.1.1.2 for a consideration which in the case of a disposal other than by means of a letting at a rack rent] is less than the Base Value in the case of a disposal of the whole of the Site or in the case of a disposal of part of the Site less than such proportion of the Base Value as is equal to the proportion which the [Gross] [Net] Area of the buildings comprised in the part of the Site to be disposed of bears to the total [Gross] [Net] Area of the buildings comprised or to be comprised in the Scheme on the Site];

3.1.1.3 otherwise than by means of such kinds of disposal, upon such terms and in accordance with such marketing strategy as shall be previously approved in writing by the Agency from time to time;

3.1.2 it shall not without the prior written consent of the Agency dispose of the Site or any part thereof to any person connected with the Applicant;

3.1.3 it shall in accordance with the marketing strategy previously approved by the Agency take all reasonable steps to dispose of the relevant parts of the Site intended for disposal in accordance with **paragraph 3.1.1.4** and in any event to commence marketing of the Site no later than the Date of Practical Completion;

3.1.4 it shall not without the prior written consent of the Agency complete a disposal or enter into a contract in respect of the Site or any part thereof for a disposal which is to be completed before the Date of Practical Completion of the Works or (as the case may be) the part of the Works to be carried out on the relevant part of the Site;

3.1.5 it shall keep the Agency informed of progress being made generally in effecting disposals of the Site or any part thereof and shall provide to the Agency at such intervals as the Agency may reasonably require a marketing report including details of progress in effecting disposals;

3.1.6 prior to the discharge of its obligations under **paragraph 2:-**

3.1.6.1 it shall not without the prior written consent of the Agency charge the Site or any part thereof save only as security for funding for the Scheme

3.1.6.2 it shall notify the Agency of any charge of the Site or any part of it within 27 days thereof

3.1.6.3 shall notify the Agency of a disposal of the Site or any part of it within 7 days thereof

ANNEXURES

1. Monitoring and Evaluation Plan
2. Plan
3. Progress Report
4. Auditors Report
5. Single Programme Guidelines
6. Exit Report

EXECUTED (but not delivered until the)
date hereof) AS A DEED by affixing)
THE COMMON SEAL of the)
NORTHWEST DEVELOPMENT AGENCY)
in the presence of :

Member/Authorised signatory

EXECUTED (but not delivered until the)
date hereof) AS A DEED by affixing)
THE COMMON SEAL of)
HALTON BOROUGH COUNCIL)
in the presence of :

Council Solicitor