

DATED

10TH MAY 2006

(1) YORKSHIRE FORWARD
(YORKSHIRE & HUMBER REGIONAL DEVELOPMENT AGENCY)

and

(2) SCARBOROUGH BOROUGH COUNCIL

YORKSHIRE FORWARD SINGLE PROGRAMME AGREEMENT
relating to
SCARBOROUGH HARBOUR PROJECT REFERENCE NUMBER 901799

CONTRACT NUMBER:

E/206

<u>TABLE OF CONTENTS</u>	<u>PAGE</u>
PARTICULARS	4
RECITALS:	6
1. <u>DEFINITIONS AND INTERPRETATION</u>	6
2. <u>CONTRACTOR'S WARRANTIES AND REPRESENTATIONS</u>	9
3. <u>DURATION</u>	10
4. <u>DELIVERY OF THE PROJECT</u>	10
5. <u>PROCUREMENT</u>	12
6. <u>PAYMENT OF GRANT</u>	13
7. <u>FUNDING SOURCES</u>	15
8. <u>PROJECT MANAGEMENT</u>	15
9. <u>ASSIGNMENT AND SUB-CONTRACTING</u>	16
10. <u>PROJECT RECORDS AND REPORTING</u>	16
11. <u>COMPLIANCE WITH LEGISLATION</u>	18
12. <u>CAPITAL ASSETS</u>	18
13. <u>INTELLECTUAL PROPERTY</u>	19
14. <u>GENERAL INDEMNITY AND INSURANCE</u>	20
15. <u>RECOVERY OF GRANT</u>	20
16. <u>TERMINATION</u>	21
17. <u>YORKSHIRE FORWARD PUBLICITY REQUIREMENTS</u>	23
18. <u>TRANSFER OF RESPONSIBILITY ON EXPIRY OR TERMINATION</u>	23
19. <u>SEVERABILITY</u>	23
20. <u>AMENDMENTS</u>	23
21. <u>EXCESS PROFITS AND DEVELOPMENTS</u>	23
22. <u>WAIVER</u>	24
23. <u>NOTICES</u>	24
24. <u>REPUTATION OF YORKSHIRE FORWARD</u>	24
25. <u>NON SOLICITATION AND CONFLICT OF INTEREST</u>	25

26.	NO PARTNERSHIP OR AGENCY	25
27.	GOVERNING LAW AND JURISDICTION	25
28.	ENTIRE AGREEMENT	25
29.	INTEREST ON LATE PAYMENTS	25
30.	VAT	25
31.	FREEDOM OF INFORMATION ACT 2000.....	25
32.	THIRD PARTY RIGHTS	26
	SCHEDULE 1 PROJECT OPERATIONAL PLAN.....	27
	SCHEDULE 2 SUMMARY OF QUALIFYING EXPENDITURE, TOTAL PROJECT EXPENDITURE AND FUNDING SOURCES.....	34
	SCHEDULE 3 PROFILE OF PLANNED MONTHLY FINANCIAL CLAIMS TO BE MADE AGAINST THE AGREEMENT.....	36
	SCHEDULE 4 PUBLICITY REQUIREMENTS	38

PARTICULARS

Terms	Definitions
1. DATE	: 8 th February 2006
2. YORKSHIRE FORWARD	: Yorkshire Forward (Yorkshire & Humber Regional Development Agency) of Victoria House, 2 Victoria Place, Leeds LS11 5AE
3. CONTRACTOR	: Scarborough Borough Council of Town Hall, St Nicholas Street, Scarborough, YO11 2HG
4. CONDITIONS PRECEDENT	: (a) Yorkshire Forward being satisfied that the Contractor has sufficient funding (whether from its own resources or otherwise) to carry out and complete the Project in accordance with this Agreement; (b) Yorkshire Forward shall have received such evidence as may be necessary to establish that the representations and warranties by the Contractor in this Agreement are true and accurate in all respects and are not misleading
5. CONDITIONS PRECEDENT END DATE	: Not applicable
6. CONTRACTOR'S BANK ACCOUNT	: Account Name: SBC Direct Credits Account No. 01012150 with HSBC of 33 St Nicholas Street, Scarborough, YO11 2HF Sort Code 40-40-22
7. CONTRACTOR'S MANAGER	: Douglas Kendall, Project Development Manager, Regeneration Services of Scarborough Borough Council, or any replacement from time to time agreed in writing by Yorkshire Forward in accordance with Clause 8
8. EFFECTIVE DATE	: 1 st February 2006
9. INSTALMENT PERIOD	: the period of one month from the Effective Date and each subsequent period of one month until 31 st December 2007

10. MAXIMUM AMOUNT

: The maximum amount available to be claimed by the Contractor under this Agreement being (subject to Clause 6.5 and any other provisions of this Agreement) one million, seven hundred and thirty six thousand pounds only (£1,736,000) including non-recoverable VAT which is allocated between the following Financial Years as follows:-

Financial Year	Allocation
2005-2006	£143,000
2006-2007	£1,578,000
2007-2008	£15,000

11. TERM

: The period from the Effective Date until 31st December 2007 or until termination in accordance with this Agreement (whichever is earlier)

12. PROJECT NAME

: The Harbour

13. PROJECT REFERENCE NUMBER

: 901799 being Yorkshire Forward's Project Reference Number for the Project

14. QUALIFYING EXPENDITURE

: Those items of expenditure (being part of the Project Expenditure) identified in the table in Schedule 2 as being funded by Yorkshire Forward but excluding all other Project Expenditure

15. YORKSHIRE FORWARD'S REPRESENTATIVE

: John Shepherd, Senior Urban Renaissance Manager, Urban Renaissance Towns & Cities Team of Yorkshire Forward, Victoria House, 2 Victoria Place, Leeds LS11 5AE, or such other person or persons from time to time appointed in replacement by Yorkshire Forward and notified in writing to the Contractor.

THIS AGREEMENT is made on the date set out in paragraph 1 of the Particulars

BETWEEN:

- (1) **YORKSHIRE FORWARD (YORKSHIRE & HUMBER REGIONAL DEVELOPMENT AGENCY)** whose head office is at Victoria House, 2 Victoria Place, Leeds, LS11 5AE ("Yorkshire Forward"); and
- (2) **THE CONTRACTOR** (as described in the Particulars)

RECITALS:

- (A) Sections 4 and 5 of the Regional Development Agencies Act 1998 give power to Yorkshire Forward to do anything that facilitates the objectives set out below:
 - (i) To further the economic development and regeneration of Yorkshire and the Humber;
 - (ii) To promote business efficiency, investment and competitiveness in the area;
 - (iii) To promote employment in the area;
 - (iv) To enhance the development application of skills relevant to employment in the area; and
 - (v) To contribute to the achievement of sustainable development in the United Kingdom.
- (B) Yorkshire Forward has prepared and published the Regional Economic Strategy which sets out an agenda and priorities for achieving the objectives set out above.
- (C) The Contractor has requested grant funding from Yorkshire Forward for the Project which falls within one or more of the objectives referred to above.
- (D) Yorkshire Forward has agreed to provide the Grant for the Project subject to and on the basis of the terms and conditions set out below.

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement unless the context otherwise requires the following words and expressions shall have the following meanings and the definitions set out on the Particulars pages at the front of this Agreement are incorporated into this Agreement:

"Approved Claim Form" means the standard claim form which the Contractor must submit to claim instalments of the Grant such document to be in the form from time to time specified by Yorkshire Forward;

"Base Interest Rate" means the base rate of Barclays Bank Plc (or the base rate of such other bank as Yorkshire Forward may from time to time stipulate) or if such base rate shall not be readily available at any time or times such other rate as Yorkshire Forward shall determine;

"Beneficiary Data" means information about an individual person or business directly benefiting from the Project ie the person or business who is or will be the ultimate recipient of a benefit;

"Capital Asset" means any item of equipment or other moveable asset which has a purchase value of £1,000 or more and which (a) on the date of its purchase by the Contractor has a useful life of more than one year, and (b) is purchased wholly or partly out of funds provided under this Agreement;

"Consents" means any approval, consent, exemption, licence, permission or registration by or from any governmental or other authority or any other person or authority in relation to the Project or any part of it or otherwise required to enable the same to be lawfully carried out and maintained;

"Control" means the ability to direct the affairs of the Contractor whether by virtue of ownership of shares, control of the board of directors, contract or otherwise;

"Developments" means all materials and information coming into existence during the Term relating to the Project including learning and training material, Intellectual Property, website design, source codes and software whether wholly or partly funded by Yorkshire Forward;

"Diversity" means, in the context of this contract, the promotion of a culture that values what people's individual differences can bring to an undertaking in the pursuit of a just and fair society within the framework of the Regional Economic Strategy;

"Environmental Information Regulations" means the Environmental Information Regulations 2004;

"Events of Default" means any of the events or circumstances described in clause 16.2;

"EU" means European Union;

"Financial Year" means Yorkshire Forward's financial year that runs from 1 April to 31 March;

"FOIA" means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued pursuant to or in relation to such legislation;

"Grant" means the amount to be provided by Yorkshire Forward as reimbursement of actual Qualifying Expenditure paid and incurred by the Contractor in relation to the Project up to the Maximum Amount and subject to the terms of this Agreement;

"Her Majesty's Government" means the duly elected Government for the time being during the reign of Her Majesty (and her successors) and/or any department, committee, office, agency, servant or officer of such Government;

"ICT" means information and communications technology;

"Information" has the meaning given under section 84 of the FOIA and shall include all environmental information within the meaning given to it in the Environmental Information Regulations;

"Intellectual Property" means any or all of the following: patents, trade marks, service marks, drawings, designs, registered designs, utility models, design right,

copyright (including copyright in computer software), database rights, inventions, trade secrets and other confidential information, technical information, know-how, business or trade names, rights to prevent passing off, and all other intellectual property rights and rights of a similar or corresponding nature in any part of the world, whether registered or not or capable of registration or not and including all applications and the right to apply for any of the foregoing rights;

"Outputs" means the Outputs listed in paragraph 13 of Schedule 1;

"Particulars" means the Particulars pages at the front of this Agreement;

"Project" means the activities and/or services to be performed and outputs to be achieved by the Contractor as described in Schedule 1;

"Project Expenditure" means the expenditure paid and incurred by the Contractor in relation to the Project;

"Project Intellectual Property" means all Intellectual Property arising from or which comes into existence as a result of carrying out the Project;

"Project Operational Plan" means the plan contained in Schedule 1;

"Public Sector Bodies" means all bodies, whether public, private, or mixed, in respect to the tasks they undertake that are paid by public funds including (without limitation) any government department or authority, any non departmental government body and any local and public authority;

"Quarter Day" means 30 June, 30 September, 31 December and 31 March in each Financial Year;

"Regional Brand Logo" means the 'Yorkshire Alive with Opportunity!' logo as specified in Schedule 4;

"Regional Economic Strategy" means the Regional Economic Strategy for Yorkshire and Humberside approved by Her Majesty's Government in January 2003 and as may from time to time be varied and/or replaced by Yorkshire Forward;

"Requests for Information" shall have the meaning set out in FOIA and shall in addition include all requests for environmental information made in accordance with the Environmental Information Regulations and/or pursuant to any other statutory requirements;

"Sustainable Development" means social progress that recognises the needs of everyone, effective protection of the environment, prudent use of natural resources and economic development that is inclusive, efficient and stable;

"Statement of Grant Expenditure" means a full summary of income and expenditure incurred by the Contractor within the terms and conditions of this Agreement given by Yorkshire Forward in the preceding Financial Year;

"Trade Marks" means any logos, marks, names (including trade names) and trade mark registrations and applications for registration made, owned or used by Yorkshire Forward including without limitation the Regional Brand Logo and the Yorkshire Forward Logo;

"VAT" means value added tax payable by virtue of the Value Added Tax Act 1994 and any similar tax from time to time in addition to it, replacing it or performing a similar fiscal function;

"Working Day" means a day on which clearing banks in the City of London are (or would be but for a strike, lock-out or other stoppage affecting a particular bank or banks generally) open during banking hours and "Working Days" shall be construed accordingly;

"Yorkshire Forward Logo" means the 'Yorkshire Forward' logo as specified in Schedule 4;

- 1.2 References to Clauses, sub-clauses and Schedules are to clauses, sub-clauses and schedules in this Agreement unless otherwise stated.
- 1.3 Headings are for convenience only and shall not affect the interpretation of this Agreement.
- 1.4 In this Agreement references to the masculine include the feminine and the neuter, and the singular shall include the plural, and vice versa as the context admits or requires.
- 1.5 In this Agreement references to any statute or statutory provision shall, unless the context otherwise requires, be construed as a reference to that statute or statutory provision as from time to time amended, consolidated, modified, extended, re-enacted or replaced.
- 1.6 Where there are two or more persons included in the expression "the Contractor" the obligations and warranties expressed to be entered into or given by the Contractor shall be deemed to be entered into or given by such persons jointly or severally.
- 1.7 Wherever in this Agreement there is a right of inspection for Yorkshire Forward in relation to the Project including (without limitation) a right to review, inspect and copy any documentation and right of entry on to any premises to review the Project or to inspect any documentation such rights shall extend to any agents, employees or licensees nominated from time to time by Yorkshire Forward.
- 1.8 All the schedules shall be part of this Agreement and all the obligations of the parties contained therein are legal and binding obligations in this Agreement.

2. CONTRACTOR'S WARRANTIES AND REPRESENTATIONS

The Contractor represents and warrants to Yorkshire Forward that:

- 2.1 the Contractor is validly existing and that the execution on behalf of the Contractor of this Agreement has been validly authorised and the obligations expressed as being assumed by the Contractor under this Agreement constitute valid legal and binding obligations of the Contractor enforceable against the Contractor in accordance with their terms;
- 2.2 neither the execution of this Agreement by the Contractor nor the performance or observation of any of its obligations under it will:
 - 2.2.1 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 Contractor is bound; or

- 2.2.2 cause any limitation on any of the powers whatsoever of the Contractor or on the right or ability of the directors of the Contractor to exercise such powers, to be exceeded;
- 2.3 the Contractor 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;
- 2.4 all Consents required in connection with the execution, delivery, issue, validity or enforceability of this Agreement have been obtained and have not been withdrawn;
- 2.5 no 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 Contractor) threatened against, or against any of the assets of the Contractor 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;
- 2.6 all information, documents and accounts of the Contractor submitted to Yorkshire Forward for its appraisal of the Project for the purposes of this Agreement are true 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, operations or prospects of the Contractor since such information was provided;
- 2.7 the Contractor has disclosed to Yorkshire Forward all information which would or might reasonably be thought to influence Yorkshire Forward in awarding the Grant to the Contractor or the amount thereof;
- 2.8 no person having any charge or other form of security over the assets of the Contractor has enforced or given notice of its intention to enforce such security;
- 2.9 the Contractor is not aware, after due enquiry, of anything which materially threatens the delivery and completion of the Project in accordance with this Agreement;
- 2.10 no Event of Default has occurred and is continuing; and
- 2.11 the representations in clauses 2.1 – 2.10 above will be deemed to be repeated by the Contractor when each claim for an instalment of Grant is submitted pursuant to clause 6 as if made with reference to the facts and circumstances existing at such date

and the Contractor acknowledges that Yorkshire Forward has relied on and will rely on this information in agreeing to pay the Grant.

3. DURATION

This Agreement shall commence on the Effective Date and (subject to clauses 6.1(c), 15, 16 and any of the other provisions of this Agreement) shall continue for the duration of the Term.

4. DELIVERY OF THE PROJECT

- 4.1 The Contractor agrees with Yorkshire Forward that:-

- (a) It shall commence the Project by the Effective Date;
 - (b) It shall diligently carry out and complete the Project promptly and efficiently in accordance with all the Consents and shall achieve all the aims and objectives of the Project Operational Plan as set out in Schedule 1; and
 - (c) It shall deliver all the Outputs by the relevant dates as set out in paragraph 13 of Schedule 1.
- 4.2 The Contractor shall:
- (a) Permit Yorkshire Forward at all reasonable times and upon such notice as is reasonable in all circumstances to inspect the Project and progress made;
 - (b) Attend regular review meetings with Yorkshire Forward to discuss progress. Such meetings may be required by Yorkshire Forward on a monthly basis but in any event will be no less than quarterly in each Financial Year;
 - (c) Cooperate fully and provide all information and assistance as required by Yorkshire Forward for the purpose of review and evaluation of the Project, the Grant and this Agreement, such reviews to be at Yorkshire Forward's discretion and may take place at any time and at reasonable notice to the Contractor.
- 4.3 The Contractor shall ensure that the Project promotes Diversity and demonstrates a commitment to equal opportunities. In order to capture the positive approach you are taking towards equality of opportunity within your organisation you should complete and return the Equalities and Diversity in your organisation form supplied by Yorkshire Forward prior to the date of this Agreement. Such report to be in a format from time to time prescribed by Yorkshire Forward and containing such information as may be reasonably required by Yorkshire Forward.
- 4.4 The Contractor shall ensure that the planning and operation of the Project reflect the principles of Sustainable Development to ensure sustainability within the region.
- 4.5 The Contractor shall promptly notify Yorkshire Forward in writing as soon as it becomes aware that it does not intend to claim the Maximum Amount of the Grant available for the Project.
- 4.6 If delivering business support services under this agreement, the Contractor shall operate within the Better Deal for Business framework, which has been supplied by Yorkshire Forward to the Contractor prior to the date of this agreement.
- 4.7 If delivering business support services under this Agreement the Contractor shall be fully compliant with the "Customer First" quality standard details of which have been supplied by Yorkshire Forward to the Contractor prior to the date of this Agreement. If not already fully compliant, the Contractor shall have made a formal commitment to meeting the "Customer First" quality standard and shall achieve full compliance within 12 months of the date of this Agreement.
- 4.8 Yorkshire Forward are committed to creating sustainable communities that are safer, greener, cleaner and more prosperous. Where applicable the Contractor shall ensure that the planning and operation of the Project reflect the concept of crime prevention through environmental design to prevent crime and disorder in the region.
- 4.9 The Contractor shall abide by all United Kingdom and EU State Aid laws that are

applicable. Where the Contractor is a public authority, it should satisfy itself whether State Aid laws apply to the Project in consultation with the Department of Trade and Industry. Recipients of illegal State Aid will risk being held responsible for meeting the cost of any penalty applied in the event that the Project is found to have infringed the State Aid laws and also risk actions for damages from third parties. The Contractor agrees to provide any information necessary to allow Yorkshire Forward to complete any returns required under the State Aid laws.

4.10 The Contractor shall ensure that implementation of the Euro shall not prejudice execution of the Project, such that the Contractor will:

- (a) comply with all legal requirements applicable to the Euro in the United Kingdom, including, but without limitation, the rules on conversion and rounding set out in the EU Regulation number 1103/97;
- (b) be capable of utilising all symbols and codes adopted by the EU Commission in relation to the Euro; and
- (c) act in accordance with the Yorkshire Forward's requirements for reporting both in Sterling and in the Euro.

4.11 If delivering Information Communications Technology projects the Contractor shall ensure that the component elements including, but without limitation, software, hardware, user interfaces, peripherals and documentation shall prior to the commencement of any transitional period prior to the implementation of the Euro by the United Kingdom government:

- (a) comply with all legal requirements applicable to the Euro in the United Kingdom, including, but without limitation, the rules on conversion and rounding set out in the EC Regulation number 1103/97;
- (b) incorporate in all relevant hardware and user interfaces, all symbols and codes adopted by the EU Commission in relation to the Euro as well as all symbols and codes normally included in systems developed for use in the UK; and
- (c) where applicable will perform all relevant functions set out in the Schedule 1 both for Sterling and for the Euro.

5. PROCUREMENT

5.1 All procurement of works, equipment, goods and services shall be based on value for money and in accordance with all relevant law including EU Procurement Directives if applicable.

5.2 For all purchases the Contractor shall comply with the requirements of this clause 5 unless it has the prior written consent of Yorkshire Forward.

5.3 All purchases by the Contractor with a contract value of over £10,000 shall be subject to competitive tendering in accordance with UK and EU public sector procurement rules including, where appropriate, through the Official Journal of the EU. At least three (and wherever feasible a minimum of five) written tenders should be obtained. In determining how this requirement should be met, the Contractor must take account of public sector accountability and probity, and shall document the decision making process.

5.4 The Contractor will not split purchases to fall below the thresholds set out in this

clause 5 nor extend existing contracts so that the total value of the contract for its duration exceeds these thresholds.

5.5 For all purchases the Contractor shall select a supplier from the potential suppliers on the basis of:

- (a) overall value for money;
- (b) suitable skills and experience
- (c) its equal opportunities obligations set out at clause 11; and

in making the selection of the supplier use a fair and documented decision making process and take account of public sector accountability and probity.

5.6 Yorkshire Forward reserves the right after reasonable notice to the Contractor to vary from time to time the requirements relating to procurement processes in line with Yorkshire Forward's own procurement guidelines and procedures.

6. PAYMENT OF GRANT

6.1 Unless paragraph (E) of the recitals to this Agreement shall contain a declaration by the parties that all the Conditions Precedent have been fulfilled as at the date of this Agreement:-

- (a) Yorkshire Forward shall not be obliged to pay any part of the Grant to the Contractor unless it is satisfied (acting reasonably) that the Conditions Precedent specified have been met.
- (b) Yorkshire Forward may in its absolute discretion and on such terms as it may specify agree to pay part of the Grant to the Contractor before some or all of the Conditions Precedent have been met but if Yorkshire Forward does so this will not prejudice its right to refuse to pay any further funding until the Conditions Precedent are met.
- (c) If any of the Conditions Precedent have not been fully complied with by the Conditions Precedent End Date or such later date as Yorkshire Forward may in its absolute discretion agree (whether or not the previous date fixed hereunder is past) Yorkshire Forward may by notice in writing to the Contractor determine this Agreement and all sums paid under this Agreement shall forthwith be repaid to Yorkshire Forward together with interest thereon at the Base Interest Rate from the date of demand until the date of repayment.

6.2 Subject to the provisions of this Agreement Yorkshire Forward shall make payments of the Grant into the Contractor's Bank Account specified in the Particulars (not exceeding in total the Maximum Amount) in instalments as follows:-

- (a) Each instalment will be paid within Thirty Working Days of receipt by Yorkshire Forward of a valid claim for an instalment of the Grant submitted in accordance with this clause;
- (b) Payments of instalments of the Grant shall (subject to the limits contained in this clause 6) be made by reference to the amount of Qualifying Expenditure to which the relevant claim relates;

PROVIDED THAT the total amount of all payments made by Yorkshire Forward under this Agreement shall not in any event exceed the Maximum Amount.

6.3 Unless Yorkshire Forward otherwise agree Yorkshire Forward shall not be liable to provide (or as the case may be continue to provide) the Grant (or any instalment thereof):-

(a) Unless a claim by the Contractor for an instalment of the Grant shall:-

(i) be submitted in the form of the Approved Claim Form and certify that the amount claimed is in accordance with this Agreement and that the claim does not include any Project Expenditure being claimed from any other person or from Yorkshire Forward within the terms of any other arrangement with Yorkshire Forward;

(ii) relate to Qualifying Expenditure in relation to which the Contractor has not submitted any other claim to Yorkshire Forward;

(iii) be submitted to Yorkshire Forward's Representative within 7 days of the end of the Instalment Period in respect of which the Qualifying Expenditure was paid;

(iv) include (to the reasonable satisfaction of Yorkshire Forward) evidence that the Qualifying Expenditure to which the claim relates has been incurred and that payment has been made by the Contractor;

(b) If an Event of Default has occurred and is continuing;

(c) If the representations and warranties made in clause 2 do not remain true and correct in all material respects;

6.4 If Yorkshire Forward shall reasonably determine that any expenditure instalment of the Grant paid is not Qualifying Expenditure or if at any time Yorkshire Forward has paid more than it is liable to pay under any provision of this Agreement the Contractor shall forthwith on demand in writing pay to Yorkshire Forward the amount stipulated by Yorkshire Forward as being overpaid.

6.5 Yorkshire Forward reserves the right to vary the Maximum Amount if the Contractor receives any public sector financial assistance for the Project (other than that specified in Schedule 2) or the acceptance of an offer thereof.

6.6 The Contractor acknowledges that:-

(a) The Qualifying Expenditure allocated to a particular activity heading in Schedule 2 is available for that activity heading only;

(b) The Grant allocated to a particular Financial Year by paragraph 10 of the Particulars is available for that Financial Year only; and

(c) The allocation of items of Qualifying Expenditure in the summary set out in Schedule 2 against which the payment of the Grant shall be made shall not be altered without the prior written consent of Yorkshire Forward.

6.7 The Contractor has submitted to Yorkshire Forward in Schedule 3 a profile of planned monthly financial claims it intends to submit for each instalment period. The Contractor shall submit to Yorkshire Forward with each claim a revised claim profile where this differs from the initial forecast set out in Schedule 3. For the avoidance of doubt Yorkshire Forward shall not be obliged to accept or approve any revised claim profile nor does any acceptance or approval of any revised claim profile amend or vary any of the other provisions in this clause 6.

6.8 The Contractor acknowledges that the summary of payments set out in Schedule 2 includes the amount (if any) set aside for administration of the Project. Unless expressly identified in the table in Schedule 2 as being funded by Yorkshire Forward it is agreed that no administration costs, management fees, project management fees or costs or overheads of the Contractor shall constitute Qualifying Expenditure for the purpose of payment of any part of the Grant.

6.9 For the avoidance of doubt the Contractor shall not claim or use any part of the Grant in respect of the following:-

- (a) Any activity other than the Project;
- (b) To support or assist activities which are political or of an exclusive religious nature or which may bring Yorkshire Forward into disrepute;
- (c) For work services or activities for which a person has a statutory duty to provide (except with the prior written consent of Yorkshire Forward);
- (d) Any amounts payable as a result of the default of the Contractor;
- (e) Any loss or damage resulting from an insured risk;
- (f) Any additional costs incurred due to increasing expenses of the Project;
- (g) Redundancy costs of staff; or
- (h) Any Project Expenditure other than Qualifying Expenditure.

7. FUNDING SOURCES

7.1 The Contractor warrants to Yorkshire Forward that the funding sources for the Project as set out in Schedule 2 are true and correct in all material respects.

7.2 The Contractor shall notify Yorkshire Forward's Representative in writing of the amounts of any other funding (additional to those described in Schedule 2) including any other public sector funding (if any) and/or guarantees secured or offered for the Project as soon as it is approved.

7.3 The Contractor shall not use the Project as a source of match funding to obtain EU grants or monies without the prior written consent of Yorkshire Forward.

8. PROJECT MANAGEMENT

8.1 The Contractor shall manage the Project in accordance with the terms of this Agreement and shall nominate the Contractor's Manager to manage the Project who is suitably qualified and experienced. The Contractor's Manager shall be Yorkshire Forward's main contact point for the Project. The Contractor shall be responsible to Yorkshire Forward for ensuring that the Contractor's Manager delivers the Project and provides all monitoring information required by Yorkshire Forward.

8.2 The Contractor shall notify Yorkshire Forward in writing of any changes to the Contractor's Manager.

8.3 The Contractor shall immediately notify Yorkshire Forward in writing of any circumstances that may result in a possible breach of any of the terms of this Agreement including, without limitation, any concerns relating to the financial stability of the Contractor, the management of the Project and probity issues.

8.4 The Contractor shall promptly comply with all reasonable requests or directions of Yorkshire Forward's Representative in respect of the Project.

9. ASSIGNMENT AND SUB-CONTRACTING

9.1 The Contractor's rights to the Grant pursuant to this Agreement are exclusive to the Contractor and are not assignable or transferable.

9.2 The Contractor shall not sub-contract any of its obligations under this Agreement without the prior written consent of Yorkshire Forward and such consent (if given) may be made subject to any conditions which Yorkshire Forward considers necessary and Yorkshire Forward may withdraw its consent to any sub-contractor where it has reasonable grounds to no longer approve of the sub-contractor or the sub-contracting arrangement and such grounds will be notified in writing to the Contractor.

9.3 Where Yorkshire Forward has on or prior to the date of this Agreement given its consent to the Contractor using any sub-contractor for any works the details of such sub-contractor and the extent of their involvement will be set out in paragraph 9 of Schedule 1 of this Agreement but Yorkshire Forward may withdraw its consent to any such sub-contractor at any time where it has reasonable grounds to no longer approve of the sub-contractor or the sub-contracting arrangement.

9.4 Any use by the Contractor of any sub-contractor approved by Yorkshire Forward shall not absolve or release the Contractor from its liabilities and obligations under this Agreement to comply with all the obligations contained herein.

10. PROJECT RECORDS AND REPORTING

10.1 Project Records

The Contractor shall:-

- (a) Keep a full, proper and auditable record of the progress of the Project and the Project Expenditure which shall be available at any time during the Term for inspection by Yorkshire Forward;
- (b) Keep full and accurate records of all Outputs, outcomes and other results achieved from the Project.
- (c) Collect and report on the Beneficiary Data as described in Schedule 1. The reports shall be included in the progress reports referred to in clause 10.2 below or in such other format and at such other time as shall be required by Yorkshire Forward. The Contractor must ensure that all Beneficiary Data is auditable (i.e. that they are able to trace the beneficiary outputs back to the source data).

10.2 Reporting

The Contractor shall:-

- (a) Use the Approved Claim Form provided by Yorkshire Forward for claiming instalments of the Grant under clause 6 which shall contain a monthly progress report which is completed by the Contractor describing the progress achieved on the Project. Such report to be in a format from time to time prescribed by Yorkshire Forward and containing such information as may be reasonably required by Yorkshire Forward.

- (b) Provide a more detailed written project report to Yorkshire Forward not less than once in every quarter during each Financial Year during the Term detailing progress on the Project by the dates specified in paragraph 10 of Schedule 1. Each such report shall be in a format from time to time prescribed by Yorkshire Forward but shall include:
- (i) Progress against the Project Operational Plan set out in Schedule 1;
 - (ii) Confirmation of the Project Expenditure and Qualifying Expenditure which has previously been incurred and which is likely to be incurred during the forthcoming Financial Year;
 - (iii) Confirmation of the Outputs actually achieved during the previous quarter and confirmation of the cumulative Outputs achieved since the Date of this Agreement;
 - (iv) An estimate of the Outputs which are likely to be achieved in the following Financial Year;
 - (v) The Contractor's estimate of any shortfall or expected shortfall in the delivery of any Outputs and the Contractor's proposal to rectify the position;
 - (vi) The Contractor's estimate of any shortfall or expected shortfall in the Project Expenditure and/or Qualifying Expenditure and/or any cost overruns or expected cost overruns in the Project; and the Contractor's proposal to rectify the position;
 - (vii) Such environmental and sustainability monitoring information which Yorkshire Forward shall require in relation to the Project; and
 - (viii) The Beneficiary Data collected which is referred to in clause 10.1(c).

10.3 Financial Records

- (a) The Contractor shall retain documentary evidence of:-
- (i) All capital and revenue purchases to support the amounts claimed from Yorkshire Forward. This shall include an invoice register of suppliers' and sub-contractors' invoices and all other documents relating to the purchase of all capital and revenue items funded by Yorkshire Forward.
 - (ii) Output generation to support the project progress reports, including those reports submitted on the Approved Claim Form for claiming instalments of Grant. Yorkshire Forward reserves the right to access and use any such output information held on databases, spreadsheets etc. by the Contractor for its own purposes.
- (b) The Contractor shall maintain full and accurate accounts for the Project. At the end of each Financial Year a 'Statement of Grant Expenditure' must be completed. This Statement has to be certified by the Chief Finance Officer for the Contractor. The Statement should also be certified by the Contractor's external auditor in accordance with the Audit Certification Instruction CI A1. The audited final accounts, certificate and auditor's report must reach Yorkshire Forward as soon as possible, and at the latest by the end of

September of each year of funding. The first year's accounts can be for a maximum of 15 months. If the audited Statement of Grant Expenditure has not been received by the end of September date, the Grant may be suspended until receipt of the form. Such accounts shall be retained for at least 6 years after the end of the Financial Year in which the last payment is made under this Agreement. Different sources and amounts of funding shall be identified and input and output VAT shall be included as separate items in such accounts.

- (c) The Contractor shall allow access to its business premises on 2 days notice during 9.00 a.m. – 5.00 p.m. to Yorkshire Forward's internal auditors or its other duly authorised staff or agents, Government Office, European Commission or the National Audit Office to inspect such documents as Yorkshire Forward considers necessary in connection with this Agreement. Yorkshire Forward shall be entitled to interview employees of the Contractor in order to obtain oral and/or written explanations of documents and the Contractor shall provide access to the relevant employees at such times as may be reasonably required to enable Yorkshire Forward to do so. Yorkshire Forward reserves the right to have such staff or agents carry out examinations into the probity, economy, efficiency and effectiveness with which the Contractor has used Yorkshire Forward's resources in the performance of this Agreement.

11. COMPLIANCE WITH LEGISLATION

In carrying out this Agreement the Contractor and sub-contractors shall comply in all respects with all relevant legislation, and in particular;

- 11.1 The Contractor shall not unlawfully discriminate within the meaning and scope of the provisions of the Race Relations Amendment Act 2000, the Sex Discrimination Act 1975, the Human Rights Act 2000, the Disability Discrimination Act 1975 or relating to discrimination in employment on the grounds of age, sexual orientation or religious beliefs.
- 11.2 Evidence should be shown of a policy covering equal opportunities so that there is no unfair discrimination on any unjustifiable grounds whatsoever both within the Project plans and within the roll out of the Project. Evidence should also be shown of the implementation of this policy. Unless there is justifiable exception, the Project shall comply with all regulations that pertain to the equal opportunities agenda.
- 11.3 The Contractor shall comply fully with the Data Protection Act 1998 and any subsequent amendments. Personal data arising as a result of the Project shall not be processed and/or transmitted to a third party without the written permission of Yorkshire Forward.
- 11.4 The Contractor shall comply with all relevant requirements contained in or having effect under the legislation relating to health, safety and welfare at work.
- 11.5 The Contractor will inform Yorkshire Forward of any environmental incident or infringement during the project lifetime at the earliest opportunity and will take all reasonable steps to minimise (and if required, remedy) the adverse environmental impacts of such an occurrence.

12. CAPITAL ASSETS

- 12.1 During its useful life, no Capital Asset should be sold, charged or otherwise disposed

of by the Contractor without prior written consent of Yorkshire Forward. At Yorkshire Forward's sole option such consent may be made conditional upon the refund to Yorkshire Forward of the whole or (as the case may be) proportionate part of the proceeds of sale of the asset less any necessary sale expenses.

- 12.2 All Capital Assets must be kept insured against loss or damage for their full replacement value, and with a reputable insurer. The Contractor shall, upon Yorkshire Forward's request, provide a copy of such insurance policy, together with the receipt for the payment of the last premium paid in respect of the policy. For the avoidance of doubt, in the event of any loss of, or damage to any Capital Asset, Yorkshire Forward will not be obliged to pay for its replacement or repair.
- 12.3 The Contractor should keep a register of all Capital Assets and their location, which should be accessible at all times. Where the Grant is used for the purchase of furniture and ICT equipment all items must be included on the asset register if their individual value is more than £500.

13. INTELLECTUAL PROPERTY

- 13.1 All Project Intellectual Property shall be proprietary to and owned by the Contractor immediately on its coming into existence and to the extent that it sub-contracts performance of the Project, the Contractor shall ensure that any Project Intellectual Property emanating from the work of its sub-contractor shall be assigned to it absolutely.
- 13.2 The Contractor hereby grants to Yorkshire Forward an irrevocable, world-wide, royalty-free transferable non-exclusive right and licence (with freedom to sublicense) of the Project Intellectual Property and to use and exploit all the Project Intellectual Property;
- 13.3 Notwithstanding termination of this Agreement for any reason whatsoever the Contractor shall at its expense do and execute, and shall procure that its employees and any sub-contractor engaged in the performance of the Project do and execute any further thing or document as may be required by Yorkshire Forward to give effect to this clause.
- 13.4 The Contractor warrants:
- (a) that the Project Intellectual Property will not infringe the rights of any third party and no third party has threatened or so far as it is aware is currently threatening proceedings in respect of such infringement; and
 - (b) that it is able to conduct the Project without breaching any obligations it may owe to any third party now or, as far as it is at present aware, in the future and hereby undertakes to carry out the Project without breaching any such obligations and further undertakes not to assume any obligations to any third party which would be inconsistent with such undertaking. Without limitation, it warrants that it shall acquire all rights in any Project Intellectual Property obtained or developed by any third party in the course of or in connection with the Project or shall be duly allowed to licence the same as contemplated under this Agreement.
- 13.5 The Contractor shall indemnify and hold Yorkshire Forward harmless (and keep indemnified and hold harmless notwithstanding termination of this Agreement) against any and all loss or damage (including without limitation any economic loss or other loss of profits, business or goodwill or any consequential loss) suffered by

Yorkshire Forward as a result of the Contractor's breach of any or all the warranties in Clause 13.

14. GENERAL INDEMNITY AND INSURANCE

14.1 The Contractor shall indemnify Yorkshire Forward in full from and against:-

- (a) all costs, claims, damages, liabilities, expenses and proceedings arising from or in connection with any breach or non performance of the terms of this Agreement or otherwise arising through the act or default of the Contractor; and
- (b) without prejudice to the generality of the foregoing, all costs, claims, damages, liabilities, expenses and proceedings arising under statute or at common law in respect of any personal injury to or death of any person whomsoever or loss or damage to property whether belonging to Yorkshire Forward or otherwise arising out of or in the course of or caused by the performance of the Project.

14.2 The Contractor shall ensure that it has and maintains at all times:-

- (a) adequate insurance cover with a insurer of good repute to cover all claims and liabilities under this Agreement or any other claims or demands which may be brought or made by it by any person suffering any injury, damage or loss in connection with the Project; and
- (b) employer's liability insurance cover with a reputable insurer for a sum of not less than £5,000,000.

14.3 The Contractor shall:-

- (a) upon request by Yorkshire Forward at any time produce to Yorkshire Forward a copy or copies of the policies of insurance referred to in this clause together with the receipt for or evidence of the payment of the last premium in respect of each such policy or other documentary evidence to the satisfaction of Yorkshire Forward that the policy or policies are properly maintained; and
- (b) comply with all legislation including (without limitation) the Employer's Liability (Compulsory Insurance) Regulations 1998 with regard to the disclosure and/or display of the insurance policies.

15. RECOVERY OF GRANT

15.1 Yorkshire Forward may reduce suspend or withhold the Grant or require all or part of the Grant to be repaid (or require Capital Assets to be transferred where the purchase was wholly funded by Yorkshire Forward) if:

- (a) it judges the performance of the Project to be unsatisfactory;
- (b) the Contractor fails to comply with any term or condition of this Agreement in any material respect;
- (c) the Grant is terminated in accordance with clause 16 (Termination);
- (d) there is a substantial change to the Project which Yorkshire Forward has not approved;

- (e) any attempt is made to transfer or assign any rights interests or obligations created under this Agreement without the prior written consent of Yorkshire Forward;
- (f) any information provided in the application for funding or in a claim for payment or in subsequent or supporting correspondence is found to be incorrect or incomplete to an extent which Yorkshire Forward considers to be material;
- (g) a charge is taken on a Capital Asset without the prior consent of Yorkshire Forward;
- (h) there is an unauthorised attempt to dispose of a Capital Asset;
- (i) there is a failure to keep and maintain the records required by Yorkshire Forward;
- (j) there is a failure by the Contractor to provide reports on time as required by this Agreement;
- (k) the Grant has not been used for the purpose for which it was given;
- (l) there is financial irregularity within the Contractor which is not rectified within the timescale specified by Yorkshire Forward;
- (m) there has been an overpayment of Grant;
- (n) there is a change in the Contractor's activities which are inconsistent with the Outputs;
- (o) Yorkshire Forward has to repay funding from which the Grant was allocated;
- (p) Yorkshire Forward is required to do so as a result of a decision by the EU or as a result of any obligation arising under EU Law.
- (q) Yorkshire Forward believes that all necessary approvals to lawfully deliver the Project have not been obtained or all relevant legislation has not been complied with;
- (r) Yorkshire Forward has consented to a change in the Project which in its opinion reduces the amount of Grant needed; and
- (s) any other circumstances or events that in the reasonable opinion of Yorkshire Forward are likely to adversely affect the Contractor's ability to deliver the Project in accordance with the terms of this Agreement or result in a risk that the Project as approved will not be completed.

15.2 The provisions of clause 15.1 are without prejudice to Yorkshire Forward's rights in clause 16.

15.3 The Contractor agrees that on receipt of notice requiring repayment of all or any part of the Grant that it will make such repayment within 20 Working Days of receipt of such notice.

16. TERMINATION

16.1 Without prejudice to any other rights to which it may be entitled, either party may give notice in writing to the other terminating this Agreement with immediate effect if the

other party commits a material breach of any of the terms of this Agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified of the breach.

16.2 Yorkshire Forward may give notice in writing to the Contractor terminating this Agreement with immediate effect if:

- (a) an order is made or a resolution is passed for the winding up of the Contractor or a provisional liquidator is appointed or if an order is made for the appointment of an administrator to manage the affairs, business and property of the Contractor or if a receiver is appointed of any of the Contractor's assets or undertaking or if circumstances arise which entitle the Court or a creditor to appoint a receiver or manager or which entitle the Court to make a winding up order or if the Contractor makes or proposes any composition or voluntary arrangement with its creditors or if the Contractor takes or suffers any similar or analogous action in consequence of debt or in any jurisdiction other than England;
- (b) there is a change of Control of the Contractor;
- (c) the Contractor purports to assign its rights or obligations under this Agreement;
- (d) Yorkshire Forward invokes the provisions described in clause 15;
- (e) the Contractor fails to achieve the Outputs set out in Schedule 1;
- (f) the Contractor ceases to carry on business;
- (g) the Contractor is convicted (or being a company, any officers or representatives of the Contractor are convicted) of a criminal offence related to the business or professional conduct of the Contractor;
- (h) the Contractor commits (or being a company, any officers or representatives of the Contractor commit) an act of grave misconduct in the course of its business;
- (i) the Contractor fails (or being a company, any officers or representatives of the Contractor fail) to fulfil his/its obligations relating to the payment of Social Security contributions;
- (j) the Contractor fails (or being a company, any officers or representatives of the Contractor fail) to fulfil his/its obligations relating to payment of taxes; or
- (k) the Contractor fails (or being a company, any officers or representatives of the Contractor fail) to disclose any serious misrepresentation in supplying information required by Yorkshire Forward in or pursuant to this Agreement.

16.3 Termination of this Agreement however caused shall be without prejudice to any rights or liabilities accrued at the date of termination, but for the avoidance of doubt Yorkshire Forward shall not be obliged to make any further payments to the Contractor after such termination.

16.4 Nothing in this clause 16 shall affect the coming into, or continuance in force of any provision of this Agreement that is expressly or by implication intended to come into force or continue in force upon termination of this Agreement.

17. YORKSHIRE FORWARD PUBLICITY REQUIREMENTS

- 17.1 The Contractor shall comply with all the obligations and requirements set out in Schedule 4.

18. TRANSFER OF RESPONSIBILITY ON EXPIRY OR TERMINATION

- 18.1 If upon or at any time within 6 months after the expiry or sooner determination of this Agreement Yorkshire Forward shall notify the Contractor that any nominee of Yorkshire Forward or any other person will be undertaking work which is a continuation of the Project or similar in nature to the Project then the Contractor shall, at no additional cost to Yorkshire Forward, promptly provide such information and assistance and comply with such timetable as Yorkshire Forward may reasonably require. Yorkshire Forward shall be entitled to require the provision of such information and assistance both prior to and for a reasonable period after, the expiry or other determination of this Agreement.

- 18.2 Such assistance may include (without limitation) the delivery of documents and data in the possession or control of the Contractor that relate to this Agreement, the Project and its results including the documents and data, if any, referred to in the Schedules.

19. SEVERABILITY

If any part of this Agreement becomes invalid, illegal or unenforceable the parties shall in such an event negotiate in good faith in order to agree the terms of a mutually satisfactory provision to be substituted for the invalid, illegal or unenforceable provision which as nearly as possible validly gives effect to their intentions as expressed in this Agreement. Failure to agree on such a provision within six months of commencement of those negotiations shall result in automatic termination of this Agreement. The obligations of the parties under any invalid, illegal or unenforceable provision of this Agreement shall be suspended during such a negotiation.

20. AMENDMENTS

Save as expressly provided in this Agreement, no amendment or variation of this Agreement shall be effective unless in writing and signed by a duly authorised representative of each of the parties to it. The Contractor shall comply with any formal procedures for amending or varying contracts that Yorkshire Forward may have in place from time to time.

21. EXCESS PROFITS AND DEVELOPMENTS

- 21.1 The Contractor shall immediately disclose to Yorkshire Forward and in such detail as Yorkshire Forward may reasonably require all Developments that it may create or put into use during the Term and the requirements of clauses 21.1 to 21.5 inclusive shall apply to all Developments, unless otherwise agreed in writing by Yorkshire Forward.
- 21.2 Developments shall remain the exclusive property of the Contractor but Yorkshire Forward shall have a non-exclusive perpetual irrevocable world-wide royalty-free licence to use and exploit all Developments with the right to grant sub-licences.
- 21.3 Developments arising from work carried out jointly with Yorkshire Forward shall belong to the parties equally (unless they otherwise agree) and each party shall be free to exploit jointly owned Developments including the right to grant sub-licences provided that prior to granting any sub-licence the other party shall be notified of the proposed

grant and shall notify the proposed licensee of the other party's interest in the rights to be licensed.

- 21.4 The Contractor shall pay to Yorkshire Forward a share of any capital or income receipts received by the Contractor from the Project or arising out of the Developments at any time during the Term such share to be determined by Yorkshire Forward and which may be the whole of the receipts up to the amount of the Grant unless Yorkshire Forward is satisfied that any such receipts are to be used by the Contractor solely for the benefit of the Project.
- 21.5 The Contractor shall immediately notify Yorkshire Forward of any capital and/or income receipts (including rental income) received at any time during the Term.
- 21.6 Pending an assessment of the amount to be so paid under clause 21.5 the Contractor shall create a separate account for the full value of such capital and/or income receipts and shall hold the same on trust for Yorkshire Forward.

22. WAIVER

No delay or omission by either party in exercising any right, power, privilege or remedy under this shall operate to impair such right, power, privilege or remedy or be construed as a waiver thereof. Any single or partial exercise of any such right, power, privilege or remedy shall not bar the exercise or enforcement of it at any time or times thereafter.

23. NOTICES

- 23.1 Any notice or communication required or given by either party to the other party in connection with this Agreement shall be in writing and delivered by hand or by first class or registered post to the relevant address or addresses prescribed in this Clause 23 of the party to whom the notice is to be given (or such other address as the recipient may have notified to the sending party in writing) and any notice so sent shall be deemed, if delivered by hand, to have been served at the time of delivery and if posted by first class or registered post to have been served on the second business day following the date of posting.
- 23.2 All notices or communications to Yorkshire Forward shall (unless Yorkshire Forward shall give notice to the Contractor otherwise) be delivered to Yorkshire Forward at the address stated in paragraph 15 of the Particulars and marked for the attention of Yorkshire Forward's Representative (with a copy delivered at the same time to Yorkshire Forward Victoria House 2 Victoria Place Leeds LS11 5AE marked for the attention of the Executive Director (Finance)).
- 23.3 All notices or communications to the Contractor shall (unless the Contractor shall give notice to Yorkshire Forward otherwise) be delivered to the Contractor at the address stated in paragraph 3 of the Particulars and marked for the attention of the Contractor's Manager.

24. REPUTATION OF YORKSHIRE FORWARD

- 24.1 The Contractor shall not, and shall use its best endeavours to procure that its employees, agents and/or sub-contractors shall not, knowingly do or omit to do, anything in relation to this Agreement or in the course of their other activities, that may bring the standing of Yorkshire Forward into disrepute or attract adverse publicity for Yorkshire Forward.

24.2 The Contractor shall at all times perform the Project 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.

25. NON SOLICITATION AND CONFLICT OF INTEREST

25.1 The Contractor undertakes and agrees that during the Term of the Agreement and for a period of six months thereafter, it shall not directly or indirectly entice away or attempt to entice away any employee of Yorkshire Forward. Further, during the Term of the Agreement, the Contractor shall not employ any person who during a period of 12 months beforehand had been an employee of Yorkshire Forward without obtaining the prior written consent of Yorkshire Forward.

25.2 The Contractor should not solicit knowledge or services from any Yorkshire Forward employee in any way directly or indirectly for favour that may compromise the relationship of the Contractor and that of Yorkshire Forward or any of its employees that may present a conflict of interest.

26. NO PARTNERSHIP OR AGENCY

This Agreement does not create a relationship of partnership or agency between the parties and the Contractor must not represent itself to others as an agent of Yorkshire Forward.

27. GOVERNING LAW AND JURISDICTION

This Agreement shall be governed by and construed in accordance with English law and each party hereby submits to the exclusive jurisdiction of the English courts.

28. ENTIRE AGREEMENT

This agreement constitutes the entire understanding between the parties with respect to the subject matter of this agreement and supersedes all prior agreements, negotiations and discussions between the parties relating to it.

29. INTEREST ON LATE PAYMENTS

If the Contractor fails to pay to Yorkshire Forward any sums due under this Agreement within 10 Working Days of demand interest shall accrue at the Base Interest Rate on the amount due to be paid from the due date until payment is made.

30. VAT

The Grant does not represent consideration for a taxable supply to the Contractor and is therefore not subject to VAT. In the event that HM Customs and Excise rule that VAT is payable, then the amount of the Grant shall be deemed to be inclusive of VAT. The Contractor acknowledges that Yorkshire Forward shall not be obliged to make any further payment in addition to the Grant in respect of any VAT which may be payable on Grant funded activities.

31. FREEDOM OF INFORMATION ACT 2000

31.1 Nothing in this Agreement shall prevent Yorkshire Forward from disclosing any Information whether relating to the Project or this Agreement or otherwise which Yorkshire Forward in its absolute discretion considers it is required to disclose in order to comply with FOIA and/or the Environment Information Regulations and any other statutory requirements whether or not existing at the date of this Agreement

and Yorkshire Forward reserves the right to make such disclosure without reference to the Contractor.

31.2 If Yorkshire Forward shall at any time notify the Contractor that it has received a Request for Information in respect of which Yorkshire Forward requires the Contractor's assistance then:-

- (a) the Contractor shall at its own cost provide and procure that its sub-contractors provide all necessary assistance required by Yorkshire Forward in order to allow Yorkshire Forward to comply with the Request for Information within the period or periods when it is obliged to respond to the Request for Information;
- (b) without limitation to the foregoing the Contractor shall at its own cost within 5 Working Days of request supply and procure that its sub-contractors supply to Yorkshire Forward such Information and documents requested by Yorkshire Forward in such form as reasonably prescribed by Yorkshire Forward; and
- (c) the Contractor shall ensure that all Information produced in the course of the Project in relation to the Project and/or this Agreement is retained for disclosure and shall permit Yorkshire Forward to inspect such records as required from time to time.

31.3 In the event that the Contractor shall at any time receive any Request for Information relating to the Project, this Agreement or any activities or business of Yorkshire Forward then:-

- (a) the Contractor shall supply the Request for Information to Yorkshire Forward within 2 Working Days of receipt;
- (b) Yorkshire Forward shall be responsible for determining in its absolute discretion as to whether such Information is obliged to be disclosed; and
- (c) the Contractor shall not respond to the Request for Information or disclose any such Information without the prior written consent of Yorkshire Forward (such consent not to be unreasonably withheld).

32. THIRD PARTY RIGHTS

Save as expressly provided in this Agreement, no term of this Agreement shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a third party (being any person other than the parties and their permitted successors and assignees).

SCHEDULE 1
Project Operational Plan

1. Background and Baseline Position

Yorkshire Forward's Urban Renaissance Programme spearheads a range of strategic innovative interventions designed to help create vibrant urban economies, promote best practice and innovation in urban design and the delivery of accessible and attractive urban environments. The Scarborough Renaissance Programme has been established to achieve a step change in the economic fortunes of Scarborough.

2. Scope

The scope of this project is detailed in The Harbour, Scarborough Stage 3 Full Business Plan submission for Yorkshire Forward Single Pot & European Structural Funds document detailed, approved and sponsored by Scarborough Borough Council.

3. Assumptions

Scarborough Borough Council will continue to engage with the Scarborough Town Team Executive.

Scarborough Borough Council will ensure that any revenue accrued from the new Inner Harbour Marina will be ring fenced for reinvestment into the Harbour area and facilities as confirmed in writing by Scarborough Borough Council in response to a condition of Yorkshire Forward investment in this project.

4. Aims

As detailed in the aforementioned Stage 3 Full Business Plan for this project.

5. Objectives

As detailed in the aforementioned Stage 3 Full Business Plan for this project.

6. Deliverables, Activities, Resources and Milestones

As detailed in the aforementioned Stage 3 Full Business Plan for this project. Incorporating:

Stage No.	Stage Description	Dependent on stage no.	Milestone	Date to be Achieved
1	Procurement for pontoon design and build.		Tender for pontoons to be sent out.	20 October 2005
			Return of tenders.	11 November 2005
			Selection of contractors for pontoon design and build.	End November 2005
			Award of contract.	December 2005

2	Funding applications.		Submission of Stage 3 full business plan and ERDF version 1.6 form. GOYH/PMF Project Appraisal Funding approvals.	31 October 2005 November 2005 December 2005
3	Procurement of Project Management consultants.	2	Procurement of Consultants. Detailed design works to be undertaken.	December 2005 – March 2006 April 2006 – September 2006
4	Listed Building Consents.		Submission of Listed Building Consent. Approval of Listed Building Consent.	End October 2005 December 2005
5	Traffic Regulation Orders.		Prepare Traffic Regulation Orders. Approval of Traffic Regulation Orders.	January 2006 April 2006
6	Procurement for Sandside/Harbourside works	2,3, (also 4 for works to Vincent Pier).	Tenders to go out for works Return of tenders Award of contract.	September 2006 October 2006 October 2006
7	Implementation of pontoon works including piling and dredging works.	1,2	Dredging works to Harbour. Piling works. Construction and installation of pontoons. Practical completion.	March 2006 April/May 2006 May/June 2006 June 2006
8	Implementation of Sandside/Harbourside works.	5,6	Start on site. Practical completion. Financial completion.	October 2006 July 2007 December 2007

7. Management Structure

As detailed in the aforementioned Stage 3 Full Business Plan for this project.

8. Quality Plan

As detailed in the aforementioned Stage 3 Full Business Plan for this project.

Ensured by full engagement with the community of Scarborough on all matters of detailed design resolution.

9. Sub-Contracting

As detailed in the aforementioned Stage 3 Full Business Plan for this project.

10. Progress Reporting

The Contractor shall produce written progress reports every quarter for Yorkshire Forward in accordance with Clause 10.2(b) commencing March 31st 2006 and continuing quarterly thereafter until the project reaches Practical Completion and a Making Good of Defects Certificate has been issued to the Contractor.

11. Risk Management Plan

As detailed in the aforementioned Stage 3 Full Business Plan for this project, incorporating the Project Risk Register, additionally evaluated as part of the overall construction programme, the responsibility rests with the Client, in this case the Contractor who is Scarborough Borough Council, under CDM Regulations for Health & Safety Issues, and with the key members of the whole delivery team, from a finance and delivery viewpoint.

12. Evaluation

As detailed in the aforementioned Stage 3 Full Business Plan for this project.

13. Outputs

The following table will be used to monitor progress with funding claims.

Direct Outputs	Year 1 2005/6	Year 2 2006/7	Year 3 2007/8	Year 4 2008/9*	Year 5 2009/10*	Total Project Outputs		Outputs attributable to 'Single Pot'**	
						Years 1-3	All Years	Years 1-3	All years
1) Job Creation Number of jobs created or safeguarded	Created Safe-guarded		6 1.5			6 1.5	6 1.5	4.5 1.5	4.5 1.5
2) Employment Support Number of people assisted to get a job									
3) Business Creation Number of new businesses created and demonstrating growth after 12 months and businesses attracted to the region			2			2	2	2	2
4) Business Support Number of businesses assisted to improve their performance 4a) To Include: Number of businesses within the region engaged in new collaborations with the UK knowledge base (knowledge base/business collaboration)									

5) Regeneration Public and private regeneration infrastructure investment levered (£m/% private) 5a) Reclamation and redevelopment of Brownfield land (hectares)	17,000	1,002,000	60,000			1,079,000	1,079,000	1,079,000	1,079,000
		1.25				1.25	1.25	1.25	1.25
6) Skills Number of people assisted in their skills development as a result of RDA Programmes. 6a) To Include: Number of adults gaining basic skills as part of the Skills for Life Strategy that count towards the Skills PSA Target. 6b) To Include: Number of adults in the workforce who lack a full Level 2 or equivalent qualification who are supported in achieving at least a full Level 2 qualification or equivalent									
7) Sustainable Development Reduce Green House Gas Emissions (Tonnes)									
8) Private Sector Investment Levered £m (exc. Regen.)									
9) Businesses with R&D levg'd by RDA engagement									

* These columns should only be used if Clause 33 is included in the Agreement: ie extending the funding beyond 3 years.

** Outputs due to Yorkshire Forward's Grant should be calculated on a 'gross attributable' basis. This is the share of the total outputs that emerge specifically because of Yorkshire Forward's funding and should be calculated based on the proportion of public sector funding for the project that comes from the Grant

14. Beneficiary Data

As part of the outputs monitoring for all Single Programme funded projects information on Beneficiary Data is required as follows:

Business Related: Business Creation, Business Support.

Individual Related: Skills, Job Creation, and Employment Support.

The term Beneficiary Data relates to an individual person or business directly benefiting from the project activity of Yorkshire Forward i.e. the person who is or will be the ultimate recipient of a benefit.

The Beneficiary Data will be used to allow Yorkshire Forward to analyse its interventions and monitor outputs. It is necessary to collect Beneficiary Data information at an individual output level for the following reasons:

- (a) for audit purposes each output should be traceable back to the individual output level. The recording of unique identifiers in the form of name, postcode and VAT registration numbers also alleviates any problems of double counting outputs;
- (b) the collection of the data is also necessary for the purpose of identifying and keeping under review the existence or absence of equality of opportunity or treatment between persons of different racial or ethnic origins, with a view to enabling such equality to be promoted or maintained, and will be carried out with appropriate safeguards for the rights and freedoms of data subjects;
- (c) the reporting to government, where outputs must be capable of disaggregation on a rural/urban basis and by disadvantaged areas;
- (d) The Beneficiary Data will provide management information that will be used by Yorkshire Forward to monitor progress of individual projects and its interventions. Any reporting based on the collected Beneficiary Data will be aggregated to Ward level to make sure no individuals are identifiable.

The Contractor shall:

- (a) provide the Beneficiary Data detailed in the proforma and guidance note supplied by Yorkshire Forward with this Agreement or in such other format and at such other time as shall be required by Yorkshire Forward. The proforma is available for business based or individual based outputs the relevant form should be completed for each output created. It is essential that the data is recorded in the format as specified in the guidance note;
- (b) collect the Beneficiary Data for each Output continuously during the project lifetime;
- (c) ensure that all Outputs are traceable back to the individual for audit purposes. It is acknowledged that this information could only be gained from self-assessment by the beneficiary and the individual whose details are to be recorded must be informed of the collection and processing of the data. To allow each individual's details to be recorded and processed, individuals must opt into the use of their details;
- (d) retain the original completed proforma as an auditable record of opt in to the use of details, if the individual does not opt in to the use of their personal details the name and postcode must still be supplied. Beneficiaries can choose not to answer some of the questions in the sample forms. These

essentially relate to information that the beneficiaries may find personal or sensitive and may not want to give. If this is the case the relevant section on the form should be left blank, this also applies to the website;

- (e) input the completed proforma details onto Yorkshire Forwards website dedicated to the collection and storage of beneficiary data, the layout and the fields will mirror those in the proforma. If the Contractor cannot access the website, a copy of the completed forms should be sent to the Yorkshire Forward project manager as part of the quarterly report. See guidance for the website link and for advice to Contractors who have implemented an alternative collection method;
- (f) Include the Beneficiary Data information in the progress reports referred to in paragraph 10 above;
- (g) adhere to the Data Protection Act 1998 and any subsequent amendments in terms of the processing and storage of the personal details of beneficiaries;
- (h) each Beneficiaries details recorded should be indicated with the relevant project number and output created;

SCHEDULE 2
Summary Of Qualifying Expenditure, Total Project Expenditure And Funding Sources

As detailed in the aforementioned Stage 3 Full Business Plan for this project.

EXPENDITURE ITEM	YORKSHIRE FORWARD QUALIFYING EXPENDITURE (£000s)						OTHER FUNDING SOURCES EXPENDITURE (£000s)			
	2005/06	2006/07	2007/08	2008/09/2009/10 1	Total	European ²	Project Sponsor's Own Funds	Other ³	Total	
1a) Revenue Costs										
Revenue Costs Sub-Total	0	0	0	0	0	0	0	0	0	
1b) Capital Costs										
Pontoons	30,000	440,000	0	0	470,000	0	170,000	0	170,000	
Environmental Improvements	0	1,885,000	60,000	0	1,945,000	250,000	509,000	0	759,000	
Fees	130,000	255,000	15,000	0	400,000	50,000	100,000	0	150,000	
Capital Costs Sub-Total	160,000	2,580,000	75,000	0	2,815,000	300,000	779,000	0	1,079,000	
TOTAL EXPENDITURE	160,000	2,580,000	75,000	0	2,815,000					
2) Funding Source:										
Project Sponsor's Own Funds	0	779,000	0	0	779,000					
YF Single Pot	143,000	1,578,000	15,000	0	1,736,000					
European Funds (Objective 1/2) ²	17,000	223,000	60,000	0	300,000					
Private Sector	0	0	0	0	0					
Income from project activities										
Total	160,000	2,580,000	75,000	0	2,815,000					

- ¹ These columns should only be used if Clause 33 is included in the Agreement: ie extending the funding beyond 3 years.
- ² Please insert any EU funding which the Contractor has applied for from sources other than Yorkshire Forward.
- ³ Replace the 'other partner' boxes with the name of relevant partners and complete the financial detail accordingly. Please extend the table if necessary
- ⁴ Please insert as many relevant main categories of project expenditure as appropriate and detail spend against each.
- ⁵ Use following codes to denote status of each funding source the project is seeking to use: 1 = confirmed in writing 2 = applied for 3 = to be determined

SCHEDULE 3
Profile Of Planned Monthly Financial Claims To Be Made By Scarborough Borough
Council Against The Agreement

As detailed in the aforementioned Stage 3 Full Business Plan for this project.

FINANCIAL YEAR	£ CAPITAL	£ REVENUE	£ TOTAL
2005/06			
April			
May			
June			
July			
August			
September			
October			
November			
December			
January			
February			
March	143,000		143,000
TOTAL TO BE CLAIMED (including non-recoverable VAT)	143,000		143,000
2006/07			
April			
May			
June	400,000		400,000
July			
August			
September	50,000		50,000
October			
November			
December	617,000		617,000
January			
February			
March	511,000		511,000
TOTAL TO BE CLAIMED (including non-recoverable VAT)	1,578,000		1,578,000
2007/08			
April			
May			
June			
July			
August			
September			
October			
November			
December	15,000		15,000

January			
February			
March			
TOTAL TO BE CLAIMED (including non-recoverable VAT)	15,000		15,000

TOTAL FORECAST ALL YEARS £1,736,000

SCHEDULE 4 Publicity Requirements

A Guide for Contractors delivering Yorkshire Forward funded Activities

Much of Yorkshire Forward's work is delivered by a wide variety of Contractors on our behalf. Through these initiatives Yorkshire Forward is joining up projects and making the best use of the region's resources to bring about real economic growth.

Your responsibility

As a recipient of funds from Yorkshire Forward you are contractually required to adhere to the requirements as stated in this guide. Any breach of these guidelines may result in you having to pay back some of the funding.

The Yorkshire Forward logo is the primary visual representation of Yorkshire Forward and it is vital that it is used and applied consistently and correctly in all applications. It is also important that Yorkshire Forward's involvement and support for your project is recognised through correct and prominent use of the mark and its prefixes.

Where the Yorkshire Forward logo appears on a third party project or initiative it must always be prefixed with the descriptor: **'Supported by'** to clarify Yorkshire Forward's role. **It is not acceptable to use alternative descriptors.**

Master artwork, which includes this descriptor, which should always be used, is contained on the CD which has prior to the date of this Agreement been delivered by Yorkshire Forward to the Contractor, the receipt of which the Contractor acknowledges.

In addition, the Regional Brand 'Yorkshire Alive with Opportunity!' should be used on all material which supports Yorkshire Forward funded projects. The guidelines are explained on the CD which has prior to the date of this Agreement been supplied by Yorkshire Forward to the Contractor. The CD also explains how the Yorkshire Forward logo and the Regional Brand should be positioned and prioritised when they appear together.

Examples of how to apply both logos and descriptor are also shown on the CD which has prior to the date of this Agreement been supplied by Yorkshire Forward to the Contractor.

Yorkshire Forward Recognition: Press, PR, Events

Yorkshire Forward requires full recognition for its involvement in a project or initiative, whether this recognition appears in a press release, or as branding at an event.

Press and PR

All press releases related to projects funded or partly funded by Yorkshire Forward must be approved by Yorkshire Forward's press office. They must include:

- a paragraph describing Yorkshire Forward's involvement
- and a quote from a Yorkshire Forward spokesperson.

The press office must also be informed of any press briefings or interviews scheduled to promote projects. Press releases, which contain quotes by Yorkshire Forward, must be signed off by a Yorkshire Forward Press Officer prior to release. Contact our press office on 0113 394 9710.

Marketing and PR Portfolio

You will be expected to provide Yorkshire Forward's Communications Team with copies of all marketing and PR materials which are produced as part of the project. This information should also be made available during monitoring and evaluation exercises. Incorrect use of Yorkshire Forward's branding or the Yorkshire Alive With Opportunity branding, may result in your material being withdrawn and/or reprinted at your cost.

Please contact the Communications Team on 0113 394 9904.

Events

Where an event is being organised that Yorkshire Forward has funded, or part funded, it is your responsibility to ensure that:

- the Yorkshire Forward Events team is notified in advance,
- the Yorkshire Forward and Yorkshire Alive With Opportunity logo must appear on pre-event promotional material, on the day materials, and event holding slides,
- a relevant Yorkshire Forward spokesperson must be invited to speak,
- if there is not a Yorkshire Forward speaker present, then verbal acknowledgement of the Agency's support must be clearly referenced at the event,
- Contractors should consult the Events Team to avoid clashes with other key regional events wherever possible

Please contact the Events Team on 0113 394 9712.

Internet sites

Where Yorkshire Forward funded projects have specific websites or web content on existing websites they should carry the Yorkshire Forward logo or descriptor on the home page and a link to the Yorkshire Forward website.

Logo application example

The Yorkshire Forward logo should be applied in a position that ensures it is immediately visible on a 15 inch monitor, set at a resolution of 800 x 600 pixels. Web pages should use web enabled versions of the Yorkshire Forward and Yorkshire Alive With Opportunity logos.

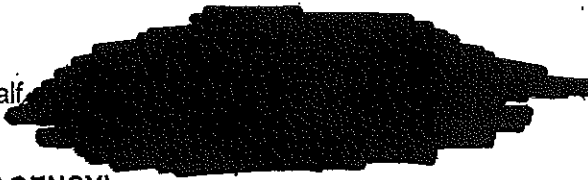
These should include links to the Yorkshire Forward websites. It is important for websites to observe minimum size

A full guide describing how Yorkshire Forward should be recognised for all projects and activities it funds or sponsors is included on the CD which has prior to the date of this Agreement been supplied by Yorkshire Forward to the Contractor. This includes Yorkshire Forward and Yorkshire Alive With Opportunity logos and gives guidance to Contractors delivering these projects. The guidelines provide a broad outline of Yorkshire Forward's requirements with specific examples of how these should be implemented.

AS WITNESS the hands of the duly authorised representatives of the parties hereto the day and year first above written.

SIGNED BY

Duly authorised for and on behalf of
**YORKSHIRE FORWARD
(YORKSHIRE & HUMBER
REGIONAL DEVELOPMENT AGENCY)**



DATE: 10TH MAY 2006

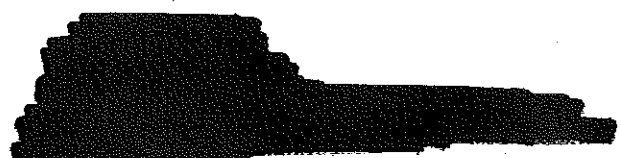
Name: J. ANDERSON

Position: EXEC DIRECTOR ENVIRONMENT

Address: Yorkshire Forward
Victoria House
2 Victoria Place
Leeds
LS11 5AE

SIGNED BY

Duly authorised for and on behalf of;
SCARBOROUGH BOROUGH COUNCIL



DATE:

Name: Iain Anderson

Position: Head of Legal Services

Address: Scarborough Borough Council
Town Hall
St Nicholas Street
Scarborough
YO11 2HG



Hsa Dixon
Principal Lawyer

For publicity and communications purposes, your contact details will be published in printed and electronic formats and will be included on Yorkshire Forward web sites. Please confirm this is acceptable by ticking this box.