

DATED

**JOINT VENTURE
AGREEMENT**

relating to

the promotion and operation of the New
Generation Transit System for the Leeds
Metropolitan District

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THIS JOINT VENTURE AGREEMENT is made on

BETWEEN

- (1) **WEST YORKSHIRE PASSENGER TRANSPORT EXECUTIVE** of Wellington House, 40-50 Wellington Street, Leeds, LS1 2DE ("**METRO**"); and
- (2) **LEEDS CITY COUNCIL** of Civic Hall, Leeds, LS1 1UR (the "**Council**").

RECITALS¹

- A In response to the previously identified transport needs in Leeds arising from the withdrawal of funding for the Leeds Supertram project ("**Supertram**") in November 2005, METRO (in conjunction with the Council) has submitted an Initial Business Case and (in conjunction with the Council) are preparing a major scheme business case to the Department for Transport to formally commence the process of developing a funding bid in respect of a new generation transit system within the Leeds Metropolitan District (the "**NGT System**").
- B METRO and the Council have agreed to enter into this Agreement to set out their joint commitment to promote and procure the construction, operation and maintenance of the NGT System (the "**Project**").
- C. METRO and the Council have agreed that, following Programme Entry, they shall enter into a further agreement with each other which will confirm the detailed working arrangements for the Project.
- D. The Project has been granted a Phase 1 allocation of £150million and Phase 2 allocation of £98.8 million by the Regional Transport Board subject to satisfaction of the Department of Transport's approval process for major schemes (including but not limited to Programme Entry, Conditional Approval and Full Approval).

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

"**1999 Act**" means the Local Government Act 1999 and any guidance issued by the Secretary of State pursuant to Section 3 (and any amendments thereto);

¹ Recitals to be developed in line with up-to-date procurement position

"2002 Joint Venture Agreement" means the joint venture agreement dated 2 August 2002 between the Parties relating to the Supertram;

"Adjudicator" has the meaning given to it in clause 8.3 (*Adjudication*);

"Advance Works" means such works as the Parties may agree in writing from time to time as works to be carried out by the Council;²

"Agreement" means this agreement (including its Schedules [and Appendices]);

"Audit Commission" means ♦ ;

"Building Fixing Agreement" means the building fixing agreement more particularly described in clause 5.2 (*Advanced Works and Building Fixings*);

"Commercially Sensitive Information" means the Confidential Information listed in Schedule 1 in each case for the period specified in Schedule 1;³

"Conditional Approval" means the approval granted by the Department for Transport which represents a firm commitment to funding in respect of the Project;

"Confidential Information" means:

(a) information that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) and may include information whose disclosure would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either party and all personal data and sensitive personal data within the meaning of the Data Protection Act 1998; and

(b) Commercially Sensitive Information;

"Council Land" means any land in which the Council has an interest (excluding any Highway Land for which the Council is Highway Authority);

"Effective Date" means the date of this Agreement;

² consider whether this definition requires further development

³ To be deleted if there is no Commercially Sensitive Information (see clause 10.1.2)

"Environmental Information Regulations" means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such regulations;

"Fees Regulations" means the Freedom of Information and Data Protection (Appropriate Limits and Fees) Regulations 2004;

"FOIA" means the Freedom of Information Act 2000 and any subordinate legislation (as defined in section 84 of the Freedom of Information Act 2000) made under the Freedom of Information Act 2000 from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such Act;

"Full Approval" means the approval granted by the Department for Transport which, once granted, enables the promoter to commence construction and draw down grant funds in respect of the Project;

"Future Agreement" means the agreement entered into by the Parties pursuant to clause 12 (*Future Agreement*);

"Highway and Highway Authority" shall have the meanings ascribed to them in the Highways Act 1980;

"Information" has the meaning given under section 84 of the Freedom of Information Act 2000;

"Information Commissioner" has the meaning given to it under section 6 of Data Protection Act 1998;

"Intellectual Property Rights" means any and all patents, trade marks, service marks, copyright, database rights, moral rights, rights in a design, know-how, confidential information and all or any other intellectual or industrial property rights whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world together with all or any goodwill relating or attached thereto;

"NGT Project Team" means the team established by METRO and the Council to manage the Project;⁴

"Programme Entry" means the approval granted by the Department for Transport which indicates the Department for Transport's intention to provide funding towards the construction of the Project but is not a commitment that funding will be provided in respect of the Project;

"Parties" means METRO and the Council;

"Regional Transport Board" means the board which carries out transport related activities in the Yorkshire and Humberside areas including the review of transport funding priorities as part of the regional funding allocation process;

"Requests for Information" shall have the meaning set out in the FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term "request" shall apply);

"Working Day" means a day (other than a Saturday or Sunday) on which banks are open for domestic business in the city of London;

1.2 Interpretation

In this Agreement, unless otherwise stated:

- 1.2.1 the masculine includes the feminine and vice versa;
- 1.2.2 the singular includes the plural and vice versa;
- 1.2.3 a reference to any clause, sub-clause, paragraph, schedule, recital, appendix annex or protocol is, except where expressly stated to the contrary, a reference to such clause, sub-clause, paragraph, schedule, recital, appendix or protocol of and to this Agreement;
- 1.2.4 save where stated to the contrary, any reference to this Agreement or to any other document shall include any permitted variation, amendment or supplement to such document;

⁴ METRO and the Council to consider the composition of the NGT Project Team. Should clause 6 be expanded to relate to the NGT Project Team's responsibilities/meeting structure/decision making procedure?

- 1.2.5 any reference to any enactment, order, regulation or other similar instrument shall be construed as a reference to the enactment, order, regulation or other similar instrument as amended, replaced, consolidated or re-enacted;
- 1.2.6 a reference to a person includes firms, partnerships and corporations and their successors and permitted assignees or transferees;
- 1.2.7 headings are for convenience of reference only;
- 1.2.8 words preceding "include", "includes", "including" and "included" shall be construed without limitation by the words which follow those words; and
- 1.2.9 references to a document being "in the Agreed Form" is reference to the form of document agreed between the Parties and for the purpose of identification initialled by each of them on their behalf.

2. CONTRACT DURATION

- 2.1 This Agreement shall commence on the Effective Date and shall continue until the earlier of:
 - 2.1.1 the Parties entering into the Future Agreement; and
 - 2.1.2 termination by either Party in accordance with clause 13 (*Termination*).

3. POWERS AND PROMOTION

- 3.1 The Parties shall jointly promote the NGT System to the Department for Transport and shall develop a strategy for publicising the NGT System and gaining public support for the Project.
- 3.2 The Parties shall each use reasonable endeavours to provide co-operation and assistance and pro-active support to each other in relation to:
 - 3.2.1 any applications to the Department for Transport that are necessary for Programme Entry;
 - 3.2.2 obtaining all consents, statutory powers and approvals which are required for implementation of the Project;

- 3.2.3 exercising such powers and approvals (including without limitation any compulsory purchase powers);
 - 3.2.4 obtaining conditional and full approval from the Department of Transport for the NGT System; and
 - 3.2.5 obtaining any funding necessary for the Project (including, without limitation, any funding from central government, the Regional Transport Board (or like body) and third party developers).
- 3.3 The Parties shall work together with regard to handling any objections to the NGT System. Any negotiations or settlement of any terms of any agreements made with objectors shall be approved by METRO following consultation with the Council and taking into account all reasonable representations made by the Council.
- 3.4 Neither METRO nor the Council will, in complying with this Agreement, be required to breach their statutory duties or unlawfully fetter their discretion in the exercise of any statutory function.

4. COUNCIL LAND⁵

4.1 General

- 4.1.1 Various parcels of Council Land will be required for the NGT system.
- 4.1.2 the Council and METRO have entered into the following contracts ("**Existing Land Agreements**") for the transfer of the freehold estate in the relevant parcels of Council Land ("**Contracted Sites**") to METRO in anticipation of them being required for Supertram:
 - 4.1.2.1 agreement dated 26 March 2002 in respect of land at Stourton;
 - 4.1.2.2 agreement dated 31 March 2003 in relation to various sites in Leeds;
 - 4.1.2.3 agreement dated 31 March 2003 in relation to various sites in Leeds;
 - 4.1.2.4 agreement dated 31 March 2003 in relation to land at 14 Eldon Terrace, Leeds; and

⁵ Provisions relating to Council Land to be discussed further between METRO and the Council.

- 4.1.2.5 agreement dated 31 March 2003 in respect of land at Shire Oak Road/6 Wood Lane, Headingley, Leeds;
- 4.1.3 the Existing Land Agreements were exchanged on the dates above and deposits equal to 100% of the purchase prices were paid;
- 4.1.4 the Existing Land Agreements have not been completed by the transfer of the freehold estate to METRO. Each of the Existing Land Agreements contain provisions for the transfer of the freehold interest to be deferred until the relevant site is required for Supertram;
- 4.1.5 the Council and METRO have agreed to amend the Existing Land Agreements to reflect that the Contracted Sites are and will continue to be held on a similar basis as previously but in connection with the proposed NGT System;
- 4.1.6 certain other Council Land will be required for the purposes of the NGT System but the full extent of such Council Land required has not been settled.
- 4.2 Duties of the Parties in relation to Council Land
- 4.2.1 The Parties shall:
- 4.2.1.1 work together in identifying the Contracted Sites which will be required for the NGT System and agreeing appropriate arrangements for them to be used for purposes of the NGT System and, if not required, agreeing variations to the Existing Land Agreements to reflect the requirements of the NGT System and the Parties;
- 4.2.1.2 cooperate in relation to the continued management of the Contracted Sites;
- 4.2.1.3 on or as soon as practicable after the date hereof enter into separate agreements to record that the Existing Land Agreements are to continue in force and are not to be completed pending the conclusion of the process referred to at clause 4.2.1.1 above;
- 4.2.1.4 work together in identifying which further parcels of Council Land will be required for the NGT System;

4.2.1.5 include the arrangements in respect of Council Land in the Future Agreement (as defined in clause 12) or a separate agreement or agreements.

4.2.2 [The Council shall not deal with the Council Land identified in Schedule [] (being Council Land which has been identified as potentially being required for the NGT System) until the arrangements for the use of Council Land have been agreed and documented as aforesaid between the Parties].

5. ADVANCED WORKS AND BUILDING FIXINGS

5.1 The Council shall submit all necessary applications and use its reasonable endeavours to obtain any planning permissions and other consents which are or may be required to enable the Council to carry out the Advance Works. Prior to the submission of any such applications, the Council shall consult with and obtain the consent of METRO (such consent not to be unreasonably withheld or delayed) in respect of the form of such application and any subsequent variations and additions thereto.

5.2 The Council shall (where requested by METRO) enter into Building Fixing Agreements with METRO in the form attached at Schedule 2⁶ within ♦ days of such request.

5.3 When considering all applications for planning consents for new building(s) on or near to the proposed routes of the NGT System, the Council shall give consideration to the imposition of a direction requiring the applicant to permit any necessary building fixings relating to the Project to be attached to the proposed new building(s).

5.4 The Council shall use reasonable endeavours to notify METRO of any proposed developments and/or works which may affect the Project.

6. STAFF AND CONSULTANTS

6.1 Notwithstanding the provisions set out below in clauses 6.2 and 6.3, the Parties shall provide such reasonable staffing and resources as may be required in relation to the Project.

⁶ Form of building fixing agreement to be attached (and to be assignable to the successful bidder)

- 6.2 The Council shall nominate a person who shall act as the main point contact within the Council for the NGT Project Team (the "**Council's Representative**"). The Council shall ensure that the Council's Representative coordinates all arrangements between the NGT Project Team and the Council (including dealing with appropriate personnel across all Council departments).
- 6.3 The Council shall ensure that it provides suitable resources and personnel with planning and highways expertise to work with the NGT Project Team on such a basis as is agreed between the Parties from time to time.
- 6.4 METRO shall nominate a person who shall act as the main point contact within METRO for the NGT Project Team (the "**METRO's Representative**"). METRO shall ensure that METRO's Representative coordinates all arrangements between the NGT Project Team and METRO).

7. PROJECT COSTS

- 7.1 Subject to clause 8.7, (*Adjudicators Costs*) and until the Parties enter into the Future Agreement:
- 7.1.1 METRO shall following 31 March 2009 and on each subsequent year submit an invoice to the Council for fifty (50) percent of all external costs incurred by METRO in respect of the development and promotion of the Project (including without limitation the costs of external advisors and consultants) which are not met by central government, the Regional Transport Board or any other third parties ("**Invoice**") and shall provide to the Council all documentary evidence reasonably required by the Council verifying that such costs have been reasonably and properly incurred by METRO (including without limitation copies of invoices in respect of external advisors and consultants fees); and
- 7.1.2 the Council shall promptly pay to METRO the Invoice submitted by METRO pursuant to clause 7.1.1.

8. DISPUTE RESOLUTION

8.1 Consultation

If a dispute arises in relation to any aspect of this Agreement, the Parties shall use all reasonable endeavours to attempt to come to an agreement in relation to the disputed matter.

8.2 Meeting

If the Parties fail to resolve any dispute within [15 (fifteen)] Working Days of one Party giving the other Party notice of the dispute, the Parties shall convene a meeting between the [chief executive]⁷ of the Council and [Director General]⁸ (or employee of similar seniority) of METRO for resolution and such individuals shall use reasonable endeavours to resolve the dispute.

8.3 Adjudication

If the meeting pursuant to clause 8.2 (*Meeting*) fails to resolve the dispute (or any aspect of the dispute) within [15 (fifteen)] Working Days of convening, either Party may give the other notice of intention to refer the dispute to adjudication and an adjudicator shall be selected in accordance with clause 8.4 (*Identity of Adjudicator*) (the "**Adjudicator**").

8.4 Identity of Adjudicator

8.4.1 The Parties shall select and agree an Adjudicator provided always that the Adjudicator shall be suitably qualified and experienced (having regard to the nature of the dispute).

8.4.2 If the Parties are unable to agree on the identity of the expert to be appointed as the Adjudicator, the President for the time being of the Chartered Institute of Arbitrators shall appoint such expert within [2 (two)] Working Days of any application for such appointment by either Party.

⁷ To be confirmed by the Council

⁸ To be confirmed by METRO

8.5 Submission of Arguments

Within [5 (five)] Working Days of his/her appointment in relation to a particular dispute, the Adjudicator shall require the Parties to submit in writing their respective arguments. The Adjudicator shall, in his/her absolute discretion, consider whether a hearing is necessary in order to resolve the dispute.

8.6 Adjudicator's Decision

In any event, the Adjudicator shall provide to both Parties his/her written decision on the dispute, within [20 (twenty)] Working Days of appointment (or such other period as the Parties may agree after the reference). Unless the Parties otherwise agree, the Adjudicator shall give reasons for his/her decision⁹. Unless and until revised, cancelled or varied by the Arbitrator, the Adjudicator's decision shall be binding on both Parties who shall forthwith give effect to the decision.

8.7 Adjudicator's Costs

The Adjudicator's costs of any reference shall be borne as the Adjudicator shall specify or, in default, equally by the Parties. Each Party shall bear its own costs arising out of the reference, including legal costs and the costs and expenses of any witnesses.¹⁰

8.8 Adjudicator as Expert

The Adjudicator shall be deemed not to be an arbitrator but shall render his decision as an expert, and the provisions of the Arbitration Act 1996 and the law relating to arbitration shall not apply to the Adjudicator or his determination or the procedure by which he reached his determination.

8.9 Adjudicator's Powers

The Adjudicator shall act impartially and may take the initiative in ascertaining the facts and the law. The Adjudicator shall have the power to open up, review and revise any matter arising under this Agreement.

⁹ The Parties to consider whether they want the Adjudicator to give reasons for his/her decision

¹⁰ The Parties to confirm whether this is what they require.

8.10 Confidentiality

All information, data or documentation disclosed or delivered by a party to the Adjudicator in consequence of or in connection with his appointment as Adjudicator shall be treated as confidential. The Adjudicator shall not, save as permitted by clause 10.2.3 (*Freedom of Information*), disclose to any person or company any such information, data or documentation and all such information, data or documentation shall remain the property of the party disclosing or delivering the same and all copies shall be returned to such party on completion of the Adjudicator's work.

8.11 Liability of Adjudicator

The Adjudicator is not liable for anything done or omitted in the discharge or purported discharge of his functions as Adjudicator unless the act or omission is in bad faith.

9. CO-OPERATION

9.1 The Parties shall co-operate fully with each other and shall use their utmost good faith in their dealings with each other in order to achieve the implementation of the Project.

9.2 The Parties shall, subject to clause 10.1 (*Duty of confidentiality*), supply information to each other as requested in connection with the Project in order to show compliance with their respective obligations under this Agreement.

9.3 Neither Party shall be responsible to the other for failure to meet their obligations to each other or liability to each other if that failure or liability is due to an event which is outside their reasonable control.

9.4 The Parties shall each undertake to carry out all acts or execute any document required to give full effect to this Agreement.

10. CONFIDENTIALITY AND FREEDOM OF INFORMATION

10.1 Duty of Confidentiality

10.1.1 The Parties agree that the provisions of this Agreement shall, subject to clause 10.1.2 (*Duty of Confidentiality*) below, not be treated as Confidential Information and may be disclosed without restriction.

10.1.2 [The Parties agree that clause 10.1.1 (*Duty of Confidentiality*) above shall not apply to provisions of this Agreement designated as Commercially Sensitive Information and listed in Schedule ◆ (*Commercially Sensitive Information*) to this Agreement which shall, subject to clause 10.2 (*Permitted Disclosure*) below, be kept confidential for the periods specified in Schedule ◆ (*Commercially Sensitive Information*)]¹¹

10.1.3 The Parties shall keep confidential all Confidential Information received by one Party from the other Party relating to this Agreement or the Project and shall use all reasonable endeavours to prevent their employees and agents from making any disclosure to any person of any such Confidential Information.

10.2 Permitted Disclosure

Clauses 10.1.2 and 10.1.3 (*Duty of Confidentiality*) shall not apply to:

10.2.1 any disclosure of information that is reasonably required by any person engaged in the performance of their obligations under this Agreement for the performance of those obligations;

10.2.2 any matter which a party can demonstrate is already or becomes generally available and in the public domain otherwise than as a result of a breach of this clause 10 (*Freedom of Information*);

10.2.3 any disclosure to enable a determination to be made under clause 8 (*Dispute Resolution*);

10.2.4 any disclosure which is required pursuant to any statutory, legal (including any order of a court of competent jurisdiction) or Parliamentary obligation placed upon the party making the disclosure or the rules of any governmental or regulatory authority having the force of law or if not having the force of law, compliance with which is in accordance with the general practice of persons subject to the governmental or regulatory authority concerned;

10.2.5 any disclosure of information which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party;

¹¹ The Parties to consider whether there will be any Commercially Sensitive Information or whether clause 10.1.2 can be deleted

- 10.2.6 any provision of information to the Parties' own professional advisers,
- 10.2.7 [any registration or recording of the consents and property registration required];
- 10.2.8 any disclosure of information by the Council to any other department, office or agency of the Government or their respective advisers or to any person engaged in providing services to the Council for any purpose related to or ancillary to this Agreement;
- 10.2.9 any disclosure of information which is reasonably required to facilitate formal decisions by the Council in relation to the subject matter of the Agreement providing that the Council takes account of whether the information should reasonably be regarded as exempt under the Local Government Act 1972; or
- 10.2.10 any disclosure for the purpose of:
 - 10.2.10.1 the examination and certification of the Council's or METRO's or the West Yorkshire Integrated Transport Authority's accounts;
 - 10.2.10.2 any examination pursuant to the 1999 Act of the economy, efficiency and effectiveness with which the Council, METRO or the West Yorkshire Integrated Transport Authority's has used its resources;
 - 10.2.10.3 complying with a proper request from either party's insurance adviser, or insurer on placing or renewing any insurance policies; or
 - 10.2.10.4 (without prejudice to the generality of clause 10.2 (*Permitted Disclosure*) above) compliance with the FOIA and/or the Environmental Information Regulations,

10.3 Obligations Preserved

Where disclosure is permitted under clause 10.2 (*Permitted Disclosure*), other than clauses 10.2.2, 10.2.4, 10.2.5, 10.2.7 and 10.2.10, the Party providing the information

shall procure that the recipient of the information shall be subject to the same obligation of confidentiality as that contained in this Agreement.

10.4 Audit

For the purposes of the National Audit Act 1983 the Comptroller and Auditor General (both as defined in the National Audit Act 1983) may examine such documents as he may reasonably require which are owned, held or otherwise within the control of METRO or the Council and may require METRO or the Council to produce such oral or written explanations as he considers necessary. For the avoidance of doubt it is hereby declared that the carrying out of an examination under Section 6(3)(d) of the National Audit Act 1983 in relation to METRO or the Council is not a function exercisable under this Agreement.

10.5 Exploitation of Information

Neither Party shall make use of this Agreement or any information issued or provided by or on behalf of the other Party in connection with this Agreement otherwise than for the purpose of this Agreement, except with the written consent of the relevant party.

10.6 Freedom of Information

10.6.1 The Parties acknowledge that METRO and the Council are subject to the requirements of the FOIA and the Environmental Information Regulations and shall facilitate each other's compliance with its Information disclosure requirements pursuant to the same in the manner provided for in clauses 10.6.2 to 10.6.7 (*Freedom of Information*) (inclusive) below.

10.6.2 Where either Party receives a Request for Information ("**Receiving Party**") in relation to Information that the other Party is holding on its behalf and which the Receiving Party does not hold itself it shall refer to the other Party such Request for Information that it receives as soon as practicable and in any event within [5 (five)] Working Days of receiving a Request for Information and the other Party shall:

10.6.2.1 provide the Receiving Party with a copy of all such Information in the form that the Receiving Party reasonably requires as soon as (and as far as reasonably) practicable and in any event within [10 (ten)]

Working Days] (or such other period as the party acting reasonably may specify) of the Receiving Party's request; and

10.6.2.2 provide all necessary assistance as reasonably requested by the Receiving Party in connection with any such Information, to enable the Receiving Party to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.

10.6.3 Following notification under clause 10.6.2 (*Freedom of Information*), and up until such time as the other Party has provided the Receiving Party with all the Information specified in clause 10.6.2.1 (*Freedom of Information*), the other Party may make representations to the Receiving Party as to whether or not or on what basis Information requested should be disclosed, and whether further information should reasonably be provided in order to identify and locate the information requested, provided always that the Receiving Party shall be responsible for determining at its absolute discretion:

10.6.3.1 whether Information is exempt from disclosure under the FOIA and the Environmental Information Regulations;

10.6.3.2 whether Information is to be disclosed in response to a Request for Information, and

10.6.3.3 in no event shall the other Party respond directly to a Request for Information unless expressly authorised to do so by the Council.

10.6.4 METRO shall ensure that all Information held on behalf of the Council is retained for disclosure for at least [5 (five) years] (from the date it is acquired) and shall permit the Receiving Party to inspect such Information as requested from time to time.

10.6.5 The Parties acknowledge that any lists which list or outline Confidential Information, are of indicative value only and that either Party may nevertheless be obliged to disclose Confidential Information in accordance with the requirements of the FOIA and the Environmental Regulations.

10.6.6 In the event of a request from the Receiving Party pursuant to clause 10.6.2 (*Freedom of Information*) above, the other Party shall as soon as practicable,

and in any event within [5 (five)] Working Days of receipt of such request, inform the Receiving Party of the other Party's estimated costs of complying with the request to the extent these would be recoverable if incurred by the Receiving Party under Section 12(1) of the FOIA and the Fees Regulations. Where such costs (either on their own or in conjunction with the Receiving Party's own such costs in respect of such Request for Information) will exceed the appropriate limit referred to in Section 12(1) of the FOIA and as set out in the Fees Regulations ("**Appropriate Limit**") the parties shall agree whether the Receiving Party still requires the other Party to comply with the request (and which party shall bear the additional costs) and where it does require the other Party to comply with the request the 10 (ten) Working Days period for compliance shall be extended by such number of additional days for compliance as the Receiving Party is entitled to under Section 10 of the FOIA. In such case, the Receiving Party shall notify the other Party of such additional days as soon as practicable after becoming aware of them.

10.6.7 Where a Party receives a Request for Information which is for Commercially Sensitive Information or Confidential Information relating to the other Party, it shall inform the other Party of the Request for Information as soon as practicable after receipt and in any event within [five] Working Days of receiving such a Request for Information. The Receiving Party shall use reasonable endeavours to consult the other Party about the Request for Information and to take account of its views. If the Receiving Party determines that such Commercially Sensitive Information and/or Confidential Information must be disclosed pursuant to FOIA or the Environmental Information Regulations, it shall notify the other Party of that decision at least [two] Working Days before disclosure. The Receiving Party shall be responsible for determining at its absolute discretion whether the Commercially Sensitive Information and/or Confidential Information is exempt from disclosure under the FOIA or the Environmental Information Regulations or is to be disclosed in response to a Request for Information.

10.6.8 the Parties acknowledge that (notwithstanding the provisions of clause 10.6 (*Freedom of Information*)) either Party ("**Disclosing Party**") may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under Part I of the

Freedom of Information Act 2000 ("**Code of Practice**"), be obliged under the FOIA, or the Environmental Information Regulations to disclose Information concerning the Project:

10.6.8.1 in certain circumstances without consulting with the other Party; or

10.6.8.2 following consultation with the other Party and having taken their views into account,

provided always that where clause 10.6.7 above applies the Disclosing Party shall, in accordance with the recommendations of the Code of Practice, draw this to the attention of the other Party prior to any disclosure.

11. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the Parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings (including, for the avoidance of doubt, the 2002 Joint Venture Agreement which the parties hereby agree shall be formally terminated).

12. FUTURE AGREEMENT

Following Programme Entry, the Parties shall enter into a further agreement (the "**Future Agreement**") confirming working arrangements for the Project.

13. TERMINATION

In the event that the Project is permanently abandoned by either party, either party may terminate this Agreement by giving 20 days written notice to the other.

14. CONTINUING OBLIGATIONS

14.1.1 The provisions of clause 7 (*Project Costs*) are continuing and shall survive the termination of this Agreement and continue in full force and effect.

15. NOTICE

All notices under this Agreement shall be in writing and shall be served by sending the same by first class post, facsimile or by hand, or leaving the same at the following addresses (or such other address as either party may from time to time notify the other):

METRO	COUNCIL
<i>[DAVE HASKINS]</i>	<i>[INSERT NAME]</i>
<i>[PHOENIX HOUSE 3, SOUTH PARADE LEEDS LS1 5QX]</i>	<i>[PHOENIX HOUSE 3, SOUTH PARADE LEEDS LS1 5QX]</i>
<i>[Dave Haskins@wypte.gov.uk]</i>	<i>[Francis Linley@LCC.gov.uk]</i>

16. LAW AND JURISDICTION

16.1 This Agreement and any document completed or to be completed in accordance with its provisions is to be governed by and construed in accordance with the law of England.

16.2 The Parties agree to submit to the exclusive jurisdiction of the Courts of England in relation to this Agreement and any document completed or to be completed in accordance with its provisions.

17. RIGHTS OF THIRD PARTIES

A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement. The rights and remedies of any person which do not arise under that Act are not affected by this clause.

18. CHANGES

Unless this Agreement expressly provides otherwise, no changes to or waivers of any of the provisions of this agreement are to be effective unless they are in writing and signed by or on behalf of the Party against which the enforcement of such change or waiver is sought.

19. SEVERANCE

If any term of this Agreement is held to any extent to be illegal or unenforceable, that term will be deemed not to form part of this agreement to that extent and the remainder of this Agreement will not be affected.

20. EXECUTED AS A DEED

- 20.1 This Agreement is a deed within the meaning of section 1 of the Law of Property (Miscellaneous Provisions) Act 1989 and is executed as such.
- 20.2 The Parties intend that this Agreement is to be delivered on the date stated at the top of the first page.

SCHEDULE 1

Commercially Sensitive Information¹³

¹³To be listed (if appropriate)

SCHEDULE 2

Form of Building Fixing Agreement¹⁴

¹⁴To be inserted