

Dated

2009

- (1) **BLACKBURN WITH DARWEN BOROUGH COUNCIL**
- (2) **BURNLEY BOROUGH COUNCIL**
- (3) **HYNDBURN BOROUGH COUNCIL**
- (4) **LANCASHIRE COUNTY COUNCIL**
- (5) **THE BOROUGH COUNCIL OF PENDLE**
- (6) **RIBBLE VALLEY BOROUGH COUNCIL**
- (7) **ROSSENDALE BOROUGH COUNCIL**
- (8) **PENNINE LANCASHIRE DEVELOPMENT COMPANY**

Members' Agreement
relating to Pennine Lancashire Development Company Limited

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BETWEEN

- (1) **BLACKBURN WITH DARWEN BOROUGH COUNCIL** of Town Hall, Blackburn BB1 7DY ("**Blackburn with Darwen**");
- (2) **BURNLEY BOROUGH COUNCIL** of Town Hall, Manchester Road, Burnley BB11 1JA ("**Burnley**");
- (3) **HYNDBURN BOROUGH COUNCIL** of Scaitliffe House, Omerod Street, Accrington BB5 0PF ("**Hyndburn**");
- (4) **LANCASHIRE COUNTY COUNCIL** of County Hall, Fishergate, Preston, Lancashire PR1 8XJ ("**Lancashire**");
- (5) **THE BOROUGH COUNCIL OF PENDLE** of Market Street, Nelson, Lancashire BB9 7LG ("**Pendle**");
- (6) **RIBBLE VALLEY BOROUGH COUNCIL** of Council Offices, Church Walk, Clitheroe, Lancashire BB7 2RA ("**Ribble Valley**");
- (7) **ROSSENDALE BOROUGH COUNCIL** of PO Box 74, Bacup, OL13 0WU ("**Rossendale**");
- (8) **PENNINE LANCASHIRE DEVELOPMENT COMPANY LIMITED** a company registered in England and Wales registered under company registration number 05310616 whose registered office is County Hall, Fishergate, Preston, Lancashire PR1 8XJ ("**the Company**").

BACKGROUND

- (A) The Company was incorporated on 10 December 2004 as a company limited by guarantee registered in England and Wales.
- (B) The Members have agreed to participate in the Company for the purpose of pursuing the Objectives in accordance with the Key Documents.

OPERATIVE CLAUSES

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement (including the Background) the following expressions have the following meanings unless inconsistent with the context:

"Annual Business Plan" the annual business plan to be prepared and adopted by the Company from time to time pursuant to **clause 6.4** with the consent of the

Governing Body showing the detailed steps, objectives and outputs to be achieved in each Financial Year in order to procure the implementation of the Corporate Plan priorities for the relevant Financial Year;

“Applicable Law”

any applicable law (whether criminal, civil or administrative), whether common law, judgment, court order, statute (including, without limitation, the Statutes), statutory instrument, regulation, directive, European Community decision (insofar as legally binding), by-law or treaty;

“the Articles”

the Articles of Association in the agreed terms adopted by the Company on or around the date of this Agreement and as amended from time to time in accordance with this Agreement;

“Bank”

the bank of the Company from time to time as appointed by the Board;

“Board”

the Directors of the Company, or such of those Directors present at a duly convened meeting of the Directors at which a quorum is present in accordance with the Articles;

“Board Chair”

the chair of the Board appointed from time to time by the Governing Body in accordance with this Agreement and the Articles;

“Business”

the business of the Company which shall be to implement and deliver such economic development and housing renewal strategies as are agreed from time to time by the Members by Unanimous Consent;

“Business Day”

any day other than a Saturday or Sunday or a bank or a public or bank holiday in England;

“Business Plan Period”

each period of 36 months commencing on 1 April and ending on 31 March 36 months thereafter during the period of this Agreement, or any such shorter period as the Governing Body shall agree, the first Business Plan Period commencing on the date of this Agreement and ending on 31 March

2011;

“Business Plans”	the Corporate Plan and the Annual Business Plan;
“Chief Executive”	such person who for the time being is appointed Chief Executive of the Company pursuant to clause 9.4 of this Agreement;
“Committees”	the HR Committee, the Remuneration Committee and such other committee(s) as may be established pursuant to clause 9.7 and the Articles (or any of them as the context shall require);
“Completion”	the performance by the parties of their respective obligations under clause 3 ;
“Corporate Plan”	the corporate plan to be prepared and adopted by the Company from time to time pursuant to clause 6.4 with the consent of the Governing Body showing the strategic priorities of the Company for the relevant Business Plan Period in procuring the achievement of the Objectives;
“Director”	any duly appointed director of the Company from time to time and the term “Directors” shall be construed accordingly;
“Direct Losses”	means all damages, direct losses (which shall not, for the avoidance of doubt, include, without limitation, consequential loss and/or loss of profit and/or opportunity), liabilities, claims, actions, reasonable and proper costs, reasonable and proper expenses (including the cost of legal or professional services, legal costs being on an agent/client, client paying basis), proceedings, demands and charges whether arising under statute, contract or at common law;
“Financial Regulations”	the financial rules, regulations and policies to be adhered to and/or adopted by the Company pursuant to clause 7.2.2 of this Agreement;
“Financial Year”	each financial year of the Company following the date of this Agreement commencing on 1 April

and ending on 31 March and, in the case of the first Financial Year, commencing on the date of this Agreement and ending on 31 March 2009;

“Governing Body”

the group through which the duly authorised representatives of the Members shall consider any matters requiring the attention of the Members pursuant to the Statutes, this Agreement and the Articles as such group shall be constituted and governed in accordance with the Articles;

“Governing Body Chair”

the chairperson of the Governing Body from time to time, as such person is appointed by the Governing Body;

“HR Committee”

a human resources committee established pursuant to **clause 9.7**, the terms of reference for which shall be as determined by the Board from time to time but whose remit shall include advising the Board in relation to any staffing issues and/or considerations of the Company;

“Initial Period”

the period commencing on the date of Completion and ending on the third anniversary of such date;

“Key Documents”

this Agreement, the Memorandum, the Articles and the Business Plans;

“Management Team”

such persons who for the time being are appointed members of the Management Team of the Company pursuant to **clause 9.3** of this Agreement such team being responsible for delivery of the Business Plans;

“Members”

each of Blackburn with Darwen, Burnley, Hyndburn, Lancashire, Pendle, Ribble Valley and Rossendale and/or any other member admitted in accordance with the provisions of the Articles and this Agreement or any of them as the context shall require;

“Memorandum”

the memorandum of association of the Company in the agreed terms adopted by the Company on incorporation and as amended from time to time

in accordance with this Agreement;

“Objectives”	the objectives of the Company as set out in clause 6.1 , as such Objectives may be amended, supplemented and/or varied from time to time with the prior written Unanimous Consent of the Governing Body;
“Pennine Lancashire Area”	the administrative areas of Blackburn with Darwen, Burnley, Hyndburn, Pendle, Ribble Valley and Rossendale;
“Procurement Standing Orders”	the standing orders to regulate the letting of contracts and the selection and evaluation of contractors to be adhered to and/or adopted by the Company pursuant to clause 7.2.1 of this Agreement;
“Public Sector Directors”	has the meaning given to the expression in the Articles;
“Qualified Majority”	the affirmative vote of the Members with no more than two Members voting against the resolution in question;
“Remuneration Committee”	the remuneration committee established pursuant to clause 9.7 , the terms of reference for which shall be as determined by the Board time; and
“Secretary”	the secretary of the Company or any other person appointed to perform the duties of the secretary of the Company, including a joint assistant or deputy secretary;
“Statutes”	the Companies Acts 1985 and 2006 and every other statute, order, regulation, instrument, or other subordinate legislation for the time being in force relating to companies and affecting the Company;
“Unanimous Consent”	the affirmative vote of all of the Members;

1.2 Any reference to a statutory provision in this Agreement includes a reference to:

1.2.1 any modification, consolidation, amendment or re-enactment of the provision for the time being in force;

1.2.2 all statutory instruments, orders, bylaws or regulations made under it or deriving validity therefrom; and

1.2.3 any statutory provisions of which it is a modification, consolidation or re-enactment,

provided that the provisions of this **clause 1.2** shall not operate so as to increase the liability of any party hereto beyond that which would have existed had this **clause 1.2** been omitted from this Agreement.

1.3 In this Agreement references to:

1.3.1 persons will be construed so as to include individuals, firms, bodies corporate, unincorporated associations, partnerships government, trust or state (whether or not having a separate legal personality);

1.3.2 parties will be construed as references to the parties to this Agreement (or any of them as the context may require);

1.3.3 a document being "in the agreed terms" will be construed as references to that document in the form agreed and initialled by or on behalf of the parties;

1.3.4 clauses are to clauses of this Agreement and the headings to the clauses of this Agreement will not affect its construction;

1.3.5 the masculine includes the feminine and the neuter and the singular includes the plural and vice versa; and

1.3.6 to "indemnify" shall be construed as references to keep indemnified and hold harmless the indemnified party from and against all costs (including the costs of enforcement), expenses, liabilities (including any tax liability), injuries, direct loss, damages, claims, demands, proceedings or legal costs (on a full indemnity basis) and judgments which the indemnified party incurs or suffers and "indemnity", "indemnities" and "indemnifies" shall have a corresponding meaning.

1.4 Any reference in this Agreement to a clause or the Schedule is a reference to a clause or the Schedule of this Agreement and any reference in any Schedule to paragraphs relate to the paragraphs in that Schedule.

1.5 The Schedules form part of this Agreement and will have the same force and effect as if expressly set out in the body of this Agreement and any reference to this Agreement will include the Schedules.

1.6 The index and headings to the Clauses and Schedules of this Agreement will not affect its construction.

- 1.7 In this Agreement, unless the context otherwise requires, words in the singular include the plural and vice versa and words in one gender include any other gender.
- 1.8 Any phrase in this Agreement introduced by the term “include”, “including”, “in particular” or any similar expression will be construed as illustrating and will not limit the sense of the words preceding that term.
- 1.9 Any matter in this Agreement requiring the approval of the Governing Body shall require such approval in accordance with the provisions of **clauses 12 and 15** and shall be evidenced in writing.

2. CONSIDERATION

In consideration of the mutual agreements and undertakings herein set out the parties have granted the rights and obligations set out in this Agreement.

3. COMPLETION

- 3.1 Completion shall take place immediately after the execution of this Agreement when (to the extent not already done) the parties shall take, or procure to be taken at Board meetings and/or meetings of the Governing Body (as appropriate) the following steps, to the extent not already taken:

- 3.1.1 the appointment and/or designation of the following persons by the Members as Public Sector Directors of the Company:

<u>Name</u>	<u>Appointer</u>
[Name]	Blackburn with Darwen
[Name]	Burnley
[Name]	Hyndburn
[Name]	Lancashire
[Name]	Pendle
[Name]	Ribble Valley
[Name]	Rossendale

- 3.1.2 the appointment of the County Secretary and Solicitor of Lancashire County Council as the Secretary;

- 3.1.3 the appointment of the Governing Body Chair and the Board Chair; and

- 3.1.4 the appointment of the Chief Executive and the Management Team.
 - 3.1.5 the adoption of the Articles and approval of amendments to the Memorandum; and
 - 3.1.6 the admission of Ribble Valley as a Member of the Company.
- 3.2 The Members hereby unanimously approve the first Annual Business Plan and first Corporate Plan as the first Business Plans of the Company.

4. WARRANTIES

The parties severally warrant and undertake to each other that they have the capacity and have obtained all necessary consents to enable them to enter into this Agreement and to execute and perform the obligations that are contained in this Agreement.

5. DIRECTORS UNDERTAKINGS

Following the execution of this Agreement, the Members shall procure (to the extent not already achieved) that each of the Directors shall enter into an undertaking with the Company and the Members in the form set out in the Schedule and shall deliver an executed copy of the same to the Company.

6. ACTIVITIES OF THE COMPANY

- 6.1 The parties agree and acknowledge that the Objectives of the Company shall be the objects set out in the Memorandum and such other objectives as may be agreed by the Members from time to time in accordance with the provisions of the Articles and this Agreement.
- 6.2 The Business shall be carried out by the Company in accordance with the Business Plans.
- 6.3 Each Member agrees that it will adhere to and act in accordance with the Annual Business Plan during the Financial Year to which such Annual Business Plan relates and the Corporate Plan during the Business Plan Period to which such Corporate Plan relates.
- 6.4 The Board and the Members shall procure that the Corporate Plan and Annual Business Plan are prepared, reviewed and updated in accordance with the provisions of this **clause 6.4** such that:
 - 6.4.1 the Chief Executive and the Management Team shall in each Financial Year review and update the Corporate Plan and Annual Business Plan for the then current Financial Year in order to produce a draft Corporate Plan and Annual Business Plan for the following Financial

Year and shall provide copies of such draft Business Plans to the Board;

- 6.4.2 the Board shall (if it considers it appropriate to do so) provide comments on and/or approve the relevant draft Corporate Plan and Annual Business Plan having, where applicable consulted with any funder to the Company;
 - 6.4.3 the Chief Executive and the Management Team shall present an amended draft of the relevant Corporate Plan and Annual Business Plan to the Governing Body;
 - 6.4.4 the Governing Body shall (if it considers it appropriate to do so) approve such relevant draft Corporate Plan and Annual Business Plan for the next Financial Year and the then current Business Plan Period such approval to be by Qualified Majority.
- 6.5 The Governing Body shall be entitled to amend the Corporate Plan and/or the Annual Business Plan by a Qualified Majority at such times as the Governing Body considers necessary and/or on prior recommendation of the Board.
- 6.6 The Chief Executive and the Management Team shall provide to the Board and the Governing Body reports of the Company's progress against the Business Plans not less than three times in each Financial Year or at such other times as are agreed between the Chief Executive, the Management Team and the Board and/or the Governing Body (as applicable).
- 6.7 Notwithstanding any other provision of this **clause 6**, following the requisite approval of the updated Business Plans by the Governing Body, such Business Plans shall update the relevant existing Business Plans for the current Financial Year and/or Business Plan Period (as applicable and in respect of any review pursuant to **clause 6.5**) and/or the forthcoming Financial Year (in respect of the review set out in **clause 6.4**). For such period as the updated Business Plans (or any of them) are not approved and adopted by the Company in accordance with this Agreement, the relevant existing Corporate Plan and/or Annual Business Plan shall continue to be the Corporate Plan and/or Annual Business Plan of the Company.
- 6.8 The Business Plans shall include a revenue and capital expenditure budget, cash flow projections and such other item or items as the Governing Body may from time to time specify together with a summary of the assumptions on which they are based.

7. PROCUREMENT STANDING ORDERS AND FINANCIAL REGULATIONS

7.1 The Company shall adhere to the standing orders and financial rules, regulations and policies of such Member(s) as the Governing Body shall determine by Qualified Majority from time to time.

7.2 At such time as the Governing Body determines (acting by Qualified Majority), the Company shall, and the Members shall procure (insofar as lies within their powers):

7.2.1 that the Company shall adopt standing orders to regulate the letting of contracts and the selection and evaluation of contractors consistent with the obligations imposed on the Members in relation to procurement ("Procurement Standing Orders") and that the Company's procurement of works, suppliers and services complies with all laws which relate to the EU public procurement framework; and

7.2.2 that the Company shall adopt financial rules, regulations and policies to which the Company will be subject in a form approved by the Governing Body (acting by Qualified Majority) setting out the financial authorisation processes and authorised expenditure limits (the "**Financial Regulations**") of the Company (including an operating manual and code of conduct).

8. FUNDING

8.1 Any expenditure by the Company in any form (electronic or otherwise) must be made in accordance with the Financial Regulations (to be adopted by the Company pursuant to **clause 7.2.2** of this Agreement) and must only relate to matters covered by the Business Plans. For such time as the Company shall not have adopted the Financial Regulations any expenditure made by the Company shall require the prior approval of the Governing Body (acting by Qualified Majority).

8.2 No new accounts will be opened by the Company, or amendments made to the mandate under which the Company operates its account with the Bank or any other account or facility opened with the Bank or any other bank or financial institution without the prior written consent of the Board.

9. CONDUCT OF THE COMPANY'S AFFAIRS

9.1 Each Member (insofar as it is within its power to do so) covenants with the other Members that so long as this Agreement remains in full force and effect it will

9.1.1 comply with (and procure compliance by any Director appointed by such Member) with this Agreement, the Memorandum of Association,

the Articles, the Financial Regulations and Procurement Standing Orders (to be adopted by the Company pursuant to **clause 7** of this Agreement);

- 9.1.2 be just, true and transparent to the other Members and the Company and act in good faith;
 - 9.1.3 promptly notify the other Members of any matters of which it becomes aware which may affect the Company, the Business or the Objectives;
 - 9.1.4 generally do all things reasonably necessary to give effect to the terms of the Key Documents;
 - 9.1.5 take all steps available to it to ensure that any meeting of the Board or any committee (including for the avoidance of doubt the Committees) of the Board or any general meeting has the necessary quorum throughout; and
 - 9.1.6 give notice from time to time to the Secretary of the identity of such Member's duly authorised representative(s) for the purposes of meetings of the Governing Body. Each Member shall also procure that a duly authorised representative of such Member is present at each meeting of the Governing Body and that such duly authorised representative has the requisite authority to attend, vote and speak at such meeting of the Governing Body on all matters before such meeting of the Governing Body. For the avoidance of doubt, although each Member will be entitled to have more than one duly authorised representative from time to time, only one authorised representative will be entitled to attend any meeting of the Governing Body on behalf of such Member.
- 9.2 The management of the Company shall be vested in the Board provided that the day to day management of the Company, within the terms of the Business Plans (subject to **clause 15**), will be the responsibility of the Chief Executive subject always to the responsibilities of the Committees and the Management Team. Without prejudice to the generality of the foregoing, the Board will determine the general policy of the Company and the manner in which that is to be carried out including any terms of reference for the Chief Executive and/or the Management Team (subject to the express provisions of this Agreement and the Articles).
- 9.3 The Board may appoint and remove the Management Team from time to time subject always to the Governing Body being entitled (by Qualified Majority) to require the appointment of an individual or group of individuals as the Management Team and/or the removal or replacement of any member of the Management Team from office from time to time.

- 9.4 The Governing Body shall appoint and remove the Chief Executive from time to time by Qualified Majority.
- 9.5 The Chief Executive and the Management Team will and the Members and the Company shall procure (so far as they are able) that the Chief Executive and the Management Team will:
- 9.5.1 perform such duties as may be delegated to them by the Board;
 - 9.5.2 report to the Board on a monthly basis in accordance with **clause 13.2.2** and in such manner as may be required by the Board;
 - 9.5.3 comply with all decisions and directions of the Board;
 - 9.5.4 comply with the Memorandum of Association, the Articles, this Agreement and the Financial Regulations and Procurement Standing Orders (to be adopted by the Company pursuant to **clause 7** of this Agreement); and
 - 9.5.5 use all reasonable endeavours to procure that the Company complies with the timescales in respect of the activities set out in **clause 6**.
- 9.6 The Members shall exercise all voting rights and the powers of control available to them so as to procure (so far as each Member is legally able) that:
- 9.6.1 the Company shall transact all its business on arm's length terms (including, for the avoidance of doubt, any business it transacts with the Members or any of them);
 - 9.6.2 the Company shall at all times comply with the Business Plans and carry out its duties 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 corporate governance;
 - 9.6.3 the Company carries out and conducts its business and affairs in a proper and efficient manner in accordance with its objects and the provisions of this **clause 9**;
 - 9.6.4 all business of the Company other than routine day to day business shall be undertaken and transacted by the Directors of the Company, (save where the Directors have delegated management responsibilities to the Chief Executive and/or the Management Team in accordance with **clause 9.2**);
 - 9.6.5 the Company shall not enter into any agreement or arrangement restricting its competitive freedom to provide and take goods and

services by such means and from and to such persons as it may think fit;

- 9.6.6 the Company shall maintain, with a well-established and reputable insurer, adequate insurance against all risks usually insured against by companies carrying on the same or a similar business and (without prejudice to the generality of the foregoing) for the full replacement or reinstatement value of all its assets of an insurable nature;
- 9.6.7 the Company shall purchase and maintain for any Director (including an alternate), officer or auditor of the Company insurance against any such liability as is referred to in section 310(1) of the Companies Act 1985 and sections 232-237 of the Companies Act 2006, subject to the provisions of the Companies Act 1985 and the Companies Act 2006, against any other liability which may attach to him or loss or expenditure which he may incur in relation to anything done or alleged to have been done or omitted to be done as a Director (including an alternate), officer or auditor;
- 9.6.8 the business of the Company consists exclusively of the Business;
- 9.6.9 the Company shall not acquire, dispose, hire, lease, license or take licences of any assets, goods, rights or services otherwise than at the best value reasonably obtainable in the circumstances;
- 9.6.10 the Company shall keep proper books of account and therein make true and complete entries of all its dealings and transactions and in relation to its business and financial affairs;
- 9.6.11 the Company shall provide each Member with unaudited management accounts and cash flow forecast for the subsequent 3 month period in a form acceptable to the Members by 2 days prior to each board meeting of the Company and in any event no less than once every 3 months;
- 9.6.12 the Company shall prepare its accounts in accordance with the Companies Act 1985 and the Companies Act 2006 and in accordance with historical cost convention and with all applicable accounting standards and principles and practices generally acceptable in the United Kingdom;
- 9.6.13 the Company shall prepare such accounts in respect of each accounting reference period as are required by statute and procure that such accounts are audited as soon as practicable and in any event not later than 3 months after the end of the relevant accounting reference period;

- 9.6.14 the Members, their duly authorised employees and/or any duly authorised employee of a Governmental body shall each be entitled to examine the separate books and accounts to be kept by the Company and be supplied with all relevant information, including management accounts (as referred to in **clause 9.6.11**) and operating statistics and such other trading and financial information in such form as they may reasonably require to keep each of them properly informed about the Business and the affairs of the Company;
- 9.6.15 each Member shall prioritise any actions falling to such Member in connection with the activities of the Company such that it shall use its reasonable endeavours to ensure that the timetables agreed by the parties in relation to the implementation of the Objectives shall be achieved;
- 9.6.16 the Company fully complies with any obligations which it may from time to time have under or pursuant to this Agreement and/or pursuant to Applicable Law. For the avoidance of doubt, the Members acknowledge that each Member will be responsible for ensuring its own compliance with all Applicable Law to which such Member may from time to time be subject;
- 9.6.17 the Company opens a current account with the Bank and that such account shall not be used for any purpose other than for a purpose directly related to the Business and all money transactions relating to the Business shall be recorded and conducted by means of credits to or withdrawals from such account;
- 9.6.18 if the Company requires any approval, consent or licence for or in connection with the carrying on the Business, the Company will use all reasonable endeavours to obtain and maintain the same in full force and effect and without prejudice to their statutory obligations as a local planning authority or local licensing authority the Members shall provide such assistance as the Company may reasonably require to facilitate the Company obtaining and maintaining the requisite approval, consent or licence;
- 9.6.19 the Company conducts the Business in accordance with the Key Documents; and
- 9.6.20 the activities of the Company are at all times consistent with the functions which may be performed by the Members in their respective capacities as public sector bodies and that such activities are performed on the same basis on which those functions would be performed by the Members.

- 9.7 The Board may establish a HR Committee and a Remuneration Committee which shall (unless the Governing Body determines otherwise) consist of at least 4 individuals, including at least three Public Sector Directors, in accordance with such terms of reference as the Governing Body shall determine from time to time. The Board, in accordance with best practice, may establish such other committees it shall deem necessary from time to time, consisting of such individuals as it deems appropriate provided always that such committees shall (unless the Governing Body determines otherwise) consist of at least 4 individuals, including at least three Public Sector Directors, in accordance with such terms of reference as the Governing Body shall determine from time to time. Save where the Governing Body otherwise agrees and/or where the provisions of this Agreement and/or the Articles otherwise require, decisions of any Committee shall require a majority vote.
- 9.8 Each Director shall be entitled whilst he or she holds that office to make full disclosure to the Member appointing him or her of any information relating to the Company which may come into his or her possession as a Director, but each Member shall only use such information in connection with its interest in the Company and the Business and shall not (unless it is under a legal or regulatory obligation to do so and then only to the extent so required) use that information in any way which is or may be detrimental to the Company or the other Members.
- 9.9 The Members agree that nothing in the Objectives and Business Plans will permit the Company to do anything that the Members do not have the legal powers to do.

10. DIRECTORS AND BOARD MEETINGS

- 10.1 Board meetings shall be held at regular intervals as the Board shall determine from time to time provided that at least one meeting of the Board is to be held in each quarter of a year and that any Director may call a board meeting at any time by not less than 7 days' notice in writing to the Company.
- 10.2 The Board shall be entitled to require a representative of the Management Team to attend Board meetings to report on the Company's progress against the Business Plans.
- 10.3 The Board Chair shall be appointed and removed from time to time by the Governing Body in accordance with the Articles.

11. EXPENSES AND REMUNERATION

- 11.1 The Company may in accordance with the terms of Article 16:
- 11.1.1 pay reasonable and proper expenses to the Board Chair; and/or

11.1.2 pay remuneration to the Board Chair and/or the Chief Executive;

but no other director of the Company shall be entitled to be paid any remuneration or expenses.

12. MEETINGS OF THE GOVERNING BODY

12.1 Meetings of the Governing Body shall be held in accordance with the Articles.

12.2 Each Member shall have one vote on any decision or recommendation on which a resolution (whether by Unanimous Consent, Qualified Majority or simple majority or otherwise) of the Members is required.

12.3 A resolution of the Governing Body will only be valid if passed in accordance with this **clause 12**.

12.4 Any resolution in respect of any matter set out in **Schedule 2** shall require the approval of the Members by Unanimous Consent or Qualified Majority as specified in **Schedule 2**. The Members may from time to time vary **Schedule 2** provided that no variation shall be made unless all Members have agreed such variation by Unanimous Consent.

12.5 The Governing Body shall be entitled to require a representative of the Board to attend meetings of the Governing Body to report on the Company's progress against the Business Plans.

12.6 The Board shall report at least once each quarter of a year to the Governing Body on the Company's progress against the Business Plans.

13. MANAGEMENT TEAM

13.1 The Company and each Member which is the employer of any member of the Management Team (such member being hereinafter referred to as the "**Employee**") will:

13.1.1 (to the extent requested by the Company and/or any Member as the case may be) use all reasonable endeavours to agree appropriate arrangements in respect of the Employee; and

13.1.2 co-operate (so far as reasonably practicable) in respect of any matter concerning the Employee or his employment or the termination of his employment, including any disciplinary and/or grievance procedure in relation to the Employee or any redeployment or redundancy relating to the Employee.

- 13.2 The Members and the Company agree that the Management Team will and shall use their reasonable endeavours to procure (insofar as they are able to do so) that the Management Team will:
- 13.2.1 be responsible for programme management and delivery of the Objectives by reference to the current Business Plans;
 - 13.2.2 report at least once each quarter of a year to the Board on the Company's progress against the Business Plans and any other relevant reporting requirements from time to time;
 - 13.2.3 have the power to act within the terms of the Business Plans subject always to any direction and/or instructions of the Board;
 - 13.2.4 comply at all times with the Financial Regulations, Procurement Standing Orders and any other policies to be adhered to and/or adopted by the Company from time to time;
 - 13.2.5 comply with its obligations under or otherwise specified in the Key Documents;
 - 13.2.6 perform all duties delegated by and all proper directions of the Board;
 - 13.2.7 not undertake any action where such action requires the approval of the Governing Body until such action has been approved by the Governing Body in accordance with the terms of this Agreement and the Articles; and
 - 13.2.8 comply with all Applicable Law.

14. ACCOUNTS

- 14.1 Unless otherwise agreed by the Governing Body (acting by Qualified Majority):
- 14.1.1 the Management Team will prepare or procure the preparation of draft audited accounts in respect of each Financial Year ("**Draft Accounts**") and shall deliver such Draft Accounts to the Board within 3 months of the end of such Accounting Year;
 - 14.1.2 the Board will approve and deliver such Draft Accounts to the Members for approval (together with such other background information relating to the financial position and affairs of the Company as any Member may reasonably require) within 5 months of the end of such Financial Year.
- 14.2 The Accounts shall be prepared in accordance with the Act and all generally accepted accounting policies and principles in the United Kingdom.

14.3 The Draft Accounts for each Financial Year will be considered and shall require approval by Qualified Majority of the Governing Body prior to adoption by the Company.

14.4 Each Member shall use all reasonable endeavours to agree the Draft Accounts submitted to them for agreement as soon as reasonably practicable.

15. MATTERS REQUIRING GOVERNING BODY APPROVAL

15.1 The Members hereby agree that any decision requiring their approval shall be determined in the Governing Body forum (unless the Members agree with Unanimous Consent otherwise) and that the Governing Body shall meet at such times and intervals in accordance with the provisions of the Articles.

15.2 The Company will not, and the Members shall exercise their powers in relation to the Company to procure that (save as otherwise provided or contemplated in this Agreement) the Company will not carry out or enter into any decision or agreement to carry out any of the activities listed in **Schedule 2** without the prior consent of the Members through the Governing Body, such matters requiring Unanimous Consent or Qualified Majority as set out in **Schedule 2**. Subject always to the Statutes, any matters requiring the approval of the Governing Body shall require a simple majority unless listed in **Schedule 2** as requiring Unanimous Consent or a Qualified Majority.

15.3 Where the Members by reason of disagreement between themselves are unable to arrive at a decision in relation to any matters reserved under this **clause 15** or any other matter requiring the Unanimous Consent of the Members under this Agreement, the Members shall:

15.3.1 each prepare and provide to the other Members a written paper setting out their respective positions in relation to the matter under consideration and the reasons for adopting such positions;

15.3.2 use reasonable endeavours to resolve the dispute in accordance with **clause 19** (Disputes);

and where resolution is not reached then the matter before the Members shall not be approved.

15.4 Where a resolution or approval (whether by Unanimous Consent, Qualified Majority or otherwise) of the Members (or any of them) is required pursuant to this Agreement or the Articles, such resolution or approval shall not be valid unless it has been signed by the respective duly authorised officers of the Members notified from time to time by the Members to the Secretary pursuant to **clause 9.1.6**.

16. SERVICES AND INDEMNITY

16.1 The Members and the Company acknowledge that Lancashire and Blackburn with Darwen have agreed to provide accountable body functions to the Company for the purposes of receiving any grant monies on behalf of the Company.

16.2 The Governing Body may (acting by Qualified Majority) from time to time agree in writing the terms upon which any Member provides services to the Company.

16.3 The Members agree that:

16.3.1 until such time as the Governing Body (acting by a Qualified Majority) determines otherwise:

16.3.1.1 Lancashire shall provide audit services, company secretarial services and accountable body functions to the Company;

16.3.1.2 Blackburn with Darwen shall provide employer services and accountable body functions to the Company;

16.3.2 before commencing any of the services set out in **clause 16.3**, Lancashire and Blackburn with Darwen shall each agree with the Company the extent of the services to be provided together with appropriate service levels;

16.3.3 the Board shall procure that the Company prepares an annual report detailing the services provided by the Members to the Company, which shall be presented to the Governing Body at the same time as the draft Corporate Plan and Annual Business Plan are presented in accordance with **clause 6.4**;

16.3.4 where a Member provides any services to the Company, any decision of the Company which relates to the status of such Member as the provider of such service(s) shall be invalid without the consent of that Member save where:

16.3.4.1 such decision substantially relates to a material failure by that Member to deliver the service(s) in accordance with any relevant service levels agreed with the Company;

16.3.4.2 or relates to the agreement of any fees or fee payable to that Member in respect of services provided;

provided that nothing in this clause shall prevent a Member from recovering their reasonable costs for providing services to the Company.

- 16.4 The Members agree that where a resolution (the **"Relevant Resolution"**) is passed by the Governing Body by Qualified Majority and one or more Members has voted against such resolution (each a **"Dissenting Member"**) the provisions of this **clause 16.4** shall apply:
- 16.4.1 where, by reason of the Company passing the Relevant Resolution, any such Dissenting Member breaches any legal obligation that it owes to a third party and which:
- 16.4.1.1 it has entered into in good faith;
- 16.4.1.2 in respect of any legal obligation to be entered into on or after the date of this Agreement, has been approved by the other Members; and
- 16.4.1.3 in respect of any legal obligation entered into before the date of this Agreement, has been fully and fairly disclosed in writing to the other Members;
- such Dissenting Member shall not be required to contribute to any loss suffered by the Company as a result of such Relevant Resolution being passed and shall be indemnified by those Members which voted in favour of the Relevant Resolution (the **"Approving Members"**) on the terms set out in **clause 16.4.2**;
- 16.4.2 subject always to **clause 16.4.1**, the Dissenting Member(s) shall be jointly and severally indemnified by the Approving Members for any Direct Losses incurred by any such Dissenting Member(s) as a result of the Company passing the Relevant Resolution;
- 16.5 Where a Member is in breach of an obligation pursuant to the Key Documents or any relevant funding agreement relating to the Company, which causes another Member to suffer any Direct Loss, the Member in breach of such obligation shall indemnify the relevant Member suffering such loss against any such Direct Losses suffered.
- 16.6 Ribble Valley shall be jointly and severally indemnified by the other Members against all Direct Losses suffered by it as a result of any liabilities incurred or arising from the period prior to the date of this Agreement.
- 16.7 Until such time as the Governing Body determines by Unanimous Consent, the Company shall not directly employ any person but shall utilise the services of employees of the Members where such services are made available to the Company from time to time (on such terms as may be agreed by the relevant Member and the Company) and in such circumstances the provisions of **Schedule 4** shall apply.

17. RESTRICTIONS

- 17.1 Save with the prior written consent of the other Members through the Governing Body, no Member shall:
- 17.1.1 enter into any agreement or arrangement (whether legally binding or not) in the name of or on behalf of the Company or execute any document in the name of the Company except to the extent that it is expressly authorised to do so pursuant to this Agreement; or
 - 17.1.2 use the name of the Company otherwise than in matters strictly relating to the Company; or
 - 17.1.3 engage in any contract or commitment on behalf of the Company; or
 - 17.1.4 assign, mortgage, transfer or otherwise dispose of its interest in the Company or any part thereof (including all rights, obligations and liabilities under the Key Documents or any of them).
- 17.2 The Company shall not unless expressly authorised in writing to do so by a Member:
- 17.2.1 enter into any agreement or arrangement (whether legally binding or not) in the name of or on behalf of that Member; or
 - 17.2.2 execute any document in the name of that Member; or
 - 17.2.3 use the name of that Member otherwise than in matters strictly relating to the Company; or
 - 17.2.4 engage in any contract or commitment on behalf of that Member.

18. ADMISSION TO AND RETIREMENT FROM MEMBERSHIP

- 18.1 Each of the Members will take such steps as for the time being lie within their power (including the exercise of their voting rights for the time being in the Company) to procure that no admission to membership is made unless such admission has the prior Unanimous Consent of the Governing Body and until the applicant has executed a deed of adherence in substantially the same form as is set out in **Schedule 3**.
- 18.2 Each of the Members (each a "**Retiring Member**") shall following expiry of the Initial Period be entitled to retire from membership of the Company on giving the Company no less than 12 months written notice of such retirement (save where the Governing Body agrees by Qualified Majority that a shorter period of notice may be given) (a "**Retirement Period**") provided always that:

- 18.2.1 the Retiring Member shall indemnify the Company against any costs and/or expenses reasonably and properly incurred by the Company as a result of the Retiring Member's retirement;
- 18.2.2 any funding that a Retiring Member has committed to the Company pursuant to any relevant funding agreement, the Business Plans or otherwise for the Retirement Period (the "**Committed Amount**") shall remain payable (to the extent that the full Committed Amount has not been fully advanced) to and for the account of the Company and the Retiring Member shall not be entitled to any reimbursement (save as provided for in any relevant funding agreement) in respect of such Committed Amount. For the avoidance of doubt, the Retiring Member shall not be obliged to commit or advance any sums for such period which exceed the Committed Amount; and/or
- 18.2.3 where the Company has provided funding (or will provide such funding during the Retirement Period) to the Retiring Member for the purpose of funding projects and/or initiatives that will extend beyond the Retirement Period, the Governing Body shall be entitled to require (by Qualified Majority) that the Retiring Member reimburse the Company for the portion of such funding that relates to activities to be carried out after expiry of the Retirement Period, save for funding which has been reasonably and properly spent on, or contractually committed to, such projects and/or initiatives;

and the Retiring Member shall not be entitled to vote on any decision required to be taken by the Governing Body pursuant to this **clause 18.2** but shall, for the avoidance of doubt, be entitled to vote on such other matters to be determined by the Governing Body to the extent that such Retiring Members is entitled to do so in accordance with this Agreement and the Articles.

19. DISPUTES

- 19.1 All disputes or differences which shall at any time arise between the Members in respect of the construction or effect of this Agreement, or the rights, duties and liabilities of the parties hereunder, or any matter or event connected with or arising out of this Agreement (a "**Relevant Event**") shall be resolved by the Members by negotiating in good faith. If the Members fail to resolve such dispute(s) within 20 Business Days from the date such dispute arose, then any party may refer the matter for determination in accordance with **clause 19.2**.
- 19.2 A dispute referred for determination under **clause 19.1** shall be resolved as follows:
- 19.2.1 following a cooling off period of 7 Business Days, by referral in the first instance to the Leaders of the Members for a decision;

- 19.2.2 if a dispute is not resolved within 15 Business Days of its referral pursuant to **clause 19.2.1**, such dispute shall be referred to mediation in accordance with **clause 19.3**.
- 19.3 To initiate a mediation, a Member must give notice in writing ("**the Mediation Notice**") to the other parties to the dispute in accordance with **clause 27**. Where a mediation is initiated, the parties will attempt to settle the dispute by mediation in accordance with the model mediation procedures ("**the Procedures**") published by the Centre for Effective Dispute Resolution, CEDR Solve ("**the Service Provider**").
- 19.4 The Members will seek to agree the appointment of a mediator but, failing agreement within 28 days of the service of the Mediation Notice, any Member may ask the Service Provider to nominate a mediator.
- 19.5 In the event that there are no such Procedures available for nominating a mediator and the Service Provider is unable or unwilling to nominate a mediator, any Member may ask the President of the Law Society of England & Wales (or its successor body) to nominate a mediator and to recommend a mediation procedure. The parties will accept such nomination under either this or the preceding sub clause and also the recommended mediation procedure.
- 19.6 If any Member refuses at any time to participate in the mediation procedure and in any event if the dispute is not resolved within 60 days of the service of the Mediation Notice, then any Member may commence proceedings in accordance with **clause 35**.

20. CONFIDENTIALITY

- 20.1 Subject to the exceptions provided in **clause 20.2**, none of the parties shall, at any time, whether before or after the expiry or sooner termination of this Agreement without the consent of each of the other parties, divulge or permit its officers, employees, agents, advisers or contractors to divulge to any person (other than to any respective officers or employees of a party or a person to whom, in each case, disclosure of information is permitted by this Agreement and who require the same to enable them properly to carry out their duties):
- 20.1.1 any of the contents of this Agreement or any other document referred to in this Agreement;
- 20.1.2 any information which it may have or acquire (whether before or after the date of this Agreement) relating to the Business of the Company or otherwise in relation to the assets or affairs of the Company;
- 20.1.3 any information which, in consequence of the negotiations relating to this Agreement or any other document referred to in this Agreement or

of a party being involved in the Company or its business in a manner whatsoever (including as a Member and as an appointor of a director) or performing or exercising its rights and obligations under this Agreement or any other document referred to in this Agreement, any party may have acquired (whether before or after the date of this Agreement) with respect to the customers, business, assets or affairs of any other party.

20.2 The restrictions imposed by **clause 20.1** shall not apply to the disclosure of any information by a party ("**the Disclosing Party**"):

20.2.1 which is now in or comes into the public domain otherwise than as a result of a breach of such undertaking of confidentiality; or

20.2.2 which is required by law (including, without limitation, by virtue of the Freedom of Information Act 2000 and/or the Environmental Information Regulations 2004) to be disclosed to any person who is authorised by law to receive the same; or

20.2.3 such information is disclosed to any department or office of the Government or their advisors; or

20.2.4 which is required to be disclosed by the regulations of any recognised exchange upon which the share capital of the Disclosing Party is or is proposed to be from time to time listed or dealt in; or

20.2.5 to its legal advisors provided that such legal advisors are made aware of the confidentiality obligations contained in this Agreement and undertake to the Disclosing Party to maintain such information as confidential and further provided that such disclosure is only made to such legal advisors where legal advice is required to be taken by the Disclosing Party; or

20.2.6 to a court, arbitrator or administrative tribunal in the course of proceedings before it to which the Disclosing Party is a party in a case where such disclosure is required by such proceedings.

21. DURATION AND TERMINATION

21.1 This Agreement shall continue in full force and effect without limit in point of time until the earlier of:

21.1.1 the Members agreeing by Unanimous Consent in writing to terminate this Agreement; or

21.1.2 an effective resolution is passed or a binding order is made for the winding up of the Company.

- 21.2 The provisions of this Agreement shall cease to have effect against any Member upon such Member ceasing to be a member of the Company, save for any accrued rights of such Member under this Agreement, or any accrued rights of any other Member against such Member under this Agreement, as at the date of cessation of such Member's membership of the Company.
- 21.3 Termination of this Agreement (or cessation of this Agreement against any Member pursuant to **clause 21.2**) shall be without prejudice to any accrued rights and liabilities owed to any party under this Agreement.
- 21.4 In the event that an effective resolution is passed or a binding order is made for the winding up of the Company any surplus will be allocated in accordance with the Memorandum and Articles, unless otherwise agreed by the Governing Body by Unanimous Consent.
- 21.5 The following clauses shall continue to apply after termination of this Agreement:
- 21.5.1 **clause 9.8** (disclosure of information by directors);
 - 21.5.2 **clause 20** (Confidentiality); and
 - 21.5.3 **clause 33** (Law and Jurisdiction).

22. ANNOUNCEMENTS

- 22.1 No announcement, advertisement, circular or other publication concerning or relating to:
- 22.1.1 the subject matter of this Agreement shall be made by any party (save as required by law) without the prior approval in writing of each of the Members as to the contents, form and timing thereof; or
 - 22.1.2 the business of the Company except in accordance with any communications strategy of the Company adopted by the Board from time to time.

23. NO PARTNERSHIP OR AGENCY

Nothing in this Agreement shall constitute a partnership between the parties hereto or constitute one the agent of another and none of the parties shall do or suffer anything to be done whereby it shall or may be represented that it is the partner or agent of a party hereto (save as aforesaid) unless such party is appointed partner or agent of that other party with the consent in writing of that party.

24. WAIVER

The waiver by any party of any default by any other party in the performance of any obligation of such other party under this Agreement shall not affect such party's rights in respect of any other default nor any subsequent default of the same or of a different kind nor shall any delay or omission of any party to exercise any right arising from any default, affect or prejudice that party's rights as to the same or any future default. For the avoidance of doubt and without prejudice to the generality of the foregoing, any failure by any party to comment upon or raise any objection to the fact that any matter referred to in **clause 15** has been effected without the required consent of the Members shall not be deemed to constitute consent to such action and nor shall the taking of any such action on any two or more occasions without such comment or objection be deemed to constitute accepted general practice.

25. VARIATION

Any variation of any term of this Agreement shall be in writing duly signed by the Members and the Company, provided always that, prior to consenting to the variation of any material provision of this Agreement, the Members will have obtained any necessary consents and/or approvals (where such consents and/or approvals are required to such variation) and such consent shall not be unreasonably withheld or delayed. Where a Member wishes to request a variation to the provisions of this Agreement, such Member shall provide written proposals for consideration by the other Members who shall negotiate on any such proposals in good faith with a view to accommodating any reasonable requirements.

26. CONFLICT WITH ARTICLES

If any provisions of the Memorandum or the Articles at any time conflict with any provisions of this Agreement, this Agreement shall (for so long as it remains in force) prevail and the Members shall, whenever necessary, exercise all voting and other rights and powers available to them to procure the amendment, waiver or suspension of the relevant provision of the Memorandum or Articles to the extent necessary to permit the Company and its affairs to be administered as provided in this Agreement.

27. NOTICES

- 27.1 Any demand, notice or other communication given or made under or in connection with this Agreement will be in writing.
- 27.2 Any such demand, notice or other communication will, if given or made in accordance with this **clause 27**, be deemed to have been duly given or made as follows:

- 27.2.1 if sent by prepaid first class post, on the second Business Day after the date of posting; or
- 27.2.2 if delivered by hand, upon delivery at the address provided for in this **clause 27**; or
- 27.2.3 if sent by facsimile, on the day of transmission provided that a confirmatory copy is, on the same Business Day that the facsimile is transmitted, sent by pre-paid first class post in the manner provided for in this **clause 27**; or
- 27.2.4 if delivered by email, at the time of sending, provided that a confirming copy is sent by first class post to the other party within 24 hours after sending and that no notification informing the sender that the message has not been delivered has been received by the sender;

provided however that, if it is delivered by hand or sent by facsimile or sent by e-mail on a day which is not a Business Day or after 4.00 pm on a Business Day, it will instead be deemed to have been given or made on the next Business Day.

- 27.3 Any such demand, notice or other communication will, in the case of service by post or delivery by hand, be addressed to the recipient at the recipient's address stated in this Agreement or at such other address as may from time to time be notified in writing by the recipient to the sender as being the recipient's address for service.
- 27.4 Any such demand, notice or other communication will, in the case of service by facsimile, be sent to the recipient using a facsimile number then used by the recipient as identified in the recipient's official stationery.
- 27.5 For the avoidance of doubt, where proceedings have been issued in the Courts of England and Wales, the provisions of the Civil Procedure Rules must be complied with in respect of the service of documents in connection with those proceedings.

28. UNLAWFUL FETTER ON THE COMPANY'S STATUTORY POWERS

- 28.1 Notwithstanding any other provision contained in this Agreement the Company shall not be bound by any provision of this Agreement to the extent that it would constitute an unlawful fetter on any statutory power of the Company, but any such provision shall remain valid and binding as regards all other parties to which it is expressed to apply.
- 28.2 The parties recognise that it is a rule of public law that it is unlawful for the Members to fetter their discretion in carrying out their statutory duties and that they agree that notwithstanding anything apparently to the contrary in this

Agreement the terms of this Agreement shall not have that effect on the Members' statutory duties.

29. CLAIMS BY OR AGAINST MEMBERS

29.1 Where any Member asserts any claim against the Company, the remaining Member(s) shall be entitled to defend such claim in the name and at the expense of the Company without its further authority.

29.2 Where it appears that a Member is in breach of any obligation which it owes to the Company (the "Defaulting Member") under this Agreement, the Members agree that the prosecution of any right of action which the Company may have in respect thereof shall be passed to the Directors other than the Directors appointed by or representing the Defaulting Member, who shall have full authority on behalf of the Company to negotiate, litigate and settle any claim arising there out and the Defaulting Member shall take all steps within its power to give effect to the provisions of this clause and the provisions of **clause 15** and **Articles 6.1** and **12.2** shall not apply in such circumstances (or where necessary the Defaulting Member shall be deemed to have given the relevant consent) so that a meeting shall be quorate and resolutions may be passed by the Members other than the Defaulting Member or Directors other than those appointed by or representing the Defaulting Member (but only to the extent that such meetings or resolutions relate to such breach by the Defaulting Member).

29.3 The Company hereby covenants with each Member that any monies or property which the Company may recover or receive as a result of the operation of this clause shall be applied by it in a proper and efficient manner and for its own benefit.

30. EXERCISE OF POWERS

Where any Member is required under this Agreement to exercise its powers in relation to the Company to procure a particular matter or thing, such obligation shall be deemed to include an obligation to procure that any Director appointed by it shall procure such matter or thing, subject to the Director acting in accordance with his fiduciary duty to the Company.

31. ENTIRE AGREEMENT

This Agreement, the Articles and the Memorandum constitute the entire contractual relationship between the parties in relation thereto and there are no representations, promises, terms, conditions or obligations between the parties other than those contained or expressly referred to therein. This clause does not restrict liability of any party for representations made fraudulently.

32. COUNTERPARTS

This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same document, and any party may execute this Agreement by signing any one or more of such counterparts.

33. SUCCESSORS AND ASSIGNS

Except as otherwise specified in this Agreement, the provisions of this Agreement shall be binding on and ensure to the benefit of the successors, statutory successors and assigns of the respective parties to this Agreement.

34. CONTRACT (RIGHTS OF THIRD PARTIES) ACT

The parties to this Agreement do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

35. LAW AND JURISDICTION

This Agreement shall be governed by and construed in accordance with the laws of England and each of the parties hereto submits to the exclusive jurisdiction of the English Courts.

SIGNED BY the parties (or their duly appointed representatives) on the date stated at the beginning of this Agreement.

SCHEDULE 1

Directors' Undertaking

To: Pennine Lancashire Development Company Limited
[Address]

Blackburn with Darwen Borough Council
Town Hall
Blackburn BB1 7DY

Burnley Borough Council
Town Hall
Manchester Road
Burnley BB11 1JA

Hyndburn Borough Council
Scaitliffe House
Omerod Street
Accrington BB5 0PF

Lancashire County Council
County Hall
Fishergate
Preston
Lancashire PR1 8XJ

The Borough Council of Pendle
Market Street
Nelson
Lancashire BB9 7LG

Ribble Valley Borough Council
Council Offices
Church Walk
Clitheroe
Lancashire BB7 2RA

Rossendale Borough Council
PO Box 74
Bacup
OL13 0WU

From: [*name of director*]

Dated []

1. I hereby confirm that I have been supplied with a copy of the Members' Agreement made between (1) Blackburn with Darwen Borough Council (2) Burnley Borough Council (3) Hyndburn Borough Council (4) Lancashire County Council (5) The Borough Council of Pendle (6) Ribble Valley Borough Council (7) Rossendale Borough Council and (8) the Company dated 2009 ("the Members Agreement") and undertake to the Company and separately with each of the other parties to the Members Agreement from time to time that I will, so

far as may be permitted by law and so long as I remain a Director of the Company, be bound by and comply with the terms and conditions of the Members Agreement (as the same may hereafter be amended from time to time) insofar as the same relate to me and to act in all respects as contemplated thereby, and I will (so far as aforesaid) do everything within my power as a Director to ensure that the Company complies with all its obligations thereunder.

2. I agree that compliance with this Deed shall be a term of my service with the Company and/or appointment to the Board, material breach of which will entitle the Company to terminate my employment with the Company summarily and/or my appointment to the Board with immediate effect.

EXECUTED AND DELIVERED AS)
A DEED BY [*name of director*])
On the date stated above)
in the presence of: -)

Witness Signature:

Witness Name:

Witness Address:

Witness Occupation:

SCHEDULE 2

Matters Requiring Governing Body Approval

The matters set out in this **Schedule 2** shall require the approval of the Governing Body by Unanimous Consent or Qualified Majority (as the case may be):

	Matter requiring approval	Approval required
2.1	decisions to amend, vary and/or supplement the Objectives of the Company;	Unanimous Consent
2.2	determining the other areas beyond the Pennine Lancashire Area that the Company may work within pursuant to Objectives of the Company from time to time;	Unanimous Consent
2.3	determining the economic development strategies to be implemented and delivered by the Company in undertaking the Business;	Unanimous Consent
2.4	alteration of the nature/scope of the Business;	Qualified Majority
2.5	approval, adoption and/or making any material amendments to the Business Plans;	Qualified Majority
2.6	extension of the activities of PLDC and/or taking any activity outside the scope and parameters of the Business Plans;	Qualified Majority
2.7	any alteration to the length of the Business Plan Period;	Qualified Majority
2.8	determining the standing orders and financial rules, regulations and policies to which the Company shall adhere in accordance with clause 7.1 ;	Qualified Majority
2.9	determining the form of, and time at which, the Company shall adopt Procurement Standing Orders and Financial Regulations in accordance with clause 7.2 ;	Qualified Majority

	Matter requiring approval	Approval required
2.10	authorisation of any expenditure for such time as PLDC has not adopted any Financial Regulations;	Qualified Majority
2.11	undertaking activities outside the scope or parameters of or in breach of (as the case may be) the Financial Regulations or Procurement Standing Orders;	Qualified Majority
2.12	approval and adoption of any schemes of delegation applicable to PLDC;	Qualified Majority
2.13	making any petition or resolution to wind up PLDC or any petition for an administration order or any order having similar effect in a different jurisdiction in relation to PLDC unless in any case PLDC is at the relevant time insolvent and the Directors reasonably consider (taking into account their fiduciary duties) that it ought to be wound up;	Unanimous Consent
2.14	agreeing that any surplus of the Company following a winding up of the Company should be allocated otherwise than in accordance with the Memorandum and Articles;	Unanimous Consent
2.15	taking any action which constitutes a material variation to the costs set out in the budget section of the Business Plans (or any of them);	Qualified Majority
2.16	acquiring, disposing or agreeing to acquire or dispose of any asset of PLDC save where such acquisition or disposal is set out in the Business Plans (or any of them);	Qualified Majority
2.17	entering into or agreeing to enter into any arrangement to form a subsidiary of PLDC, acquiring any shares or other interest in any other company (subscription or transfer) such that PLDC acquires a subsidiary, entering into joint ventures or partnerships;	Qualified Majority

	Matter requiring approval	Approval required
2.18	admission of Members to PLDC;	Unanimous Consent
2.19	determining the notice period required for retirement of a Retiring Member in accordance with clause 18.2 ;	Qualified Majority
2.20	determining the reimbursement of funding by a Retiring Member in accordance with clause 18.2 ;	Qualified Majority
2.21	making any variation and/or agreeing to waive or delay any of the rights of PLDC pursuant to any of the Key Documents;	Qualified Majority
2.22	undertaking significant new borrowing or lending;	Qualified Majority
2.23	appointment and removal of the Board Chair;	Qualified Majority
2.24	appointment and removal of the Governing Body Chair;	Qualified Majority
2.25	appointment and removal of the Chief Executive;	Qualified Majority
2.26	determining the remuneration to be paid to the Board Chair and/or the Chief Executive;	Qualified Majority
2.27	employment, secondment and/or dismissal of any employees of PLDC;	Unanimous Consent
2.28	exercising the entitlement to require the appointment of an individual or group of individuals as the Management Team and/or the removal or replacement of any member of the Management Team from office from time to time;	Qualified Majority
2.29	determining whether an employee is a Relevant Employee for the purpose of Schedule 2	Unanimous Consent
2.30	establishment of committees (including the	Qualified Majority

	Matter requiring approval	Approval required
	HR Committee and the Remuneration Committee) and determining the composition and terms of reference of such committees;	
2.31	determining the process and responsibility for the preparation of the Draft Accounts	Qualified Majority
2.32	approval and adoption of the Draft Accounts;	Qualified Majority
2.33	establishment of and/or participation in a pension scheme together with settling the terms of such pension scheme;	Qualified Majority
2.34	commencing and/or defending proceedings;	Qualified Majority
2.35	alteration of the length of the Initial Period;	Qualified Majority
2.36	agreeing the terms upon which any Member provides services to the Company;	Qualified Majority
2.37	decisions affecting the provision of the audit services, the secretarial services and the accountable body functions by Lancashire and the employer services by Blackburn with Darwen pursuant to clause 16.3 ;	Qualified Majority
2.38	the determination of any matter as a matter requiring Unanimous Consent, a Qualified Majority or a simple majority and/or any variation to this Schedule;	Unanimous Consent

SCHEDULE 3

Deed of Adherence

THIS DEED OF ADHERENCE is made on [DATE] by [*name, address, details*] (the "New Member").

BACKGROUND:

- (A) This Deed is supplemental to a Members' Agreement dated [DATE] and made between (1) Blackburn with Darwen Borough Council (2) Burnley Borough Council (3) Hyndburn Borough Council (4) Lancashire County Council (5) The Borough Council of Pendle (6) Ribble Valley Borough Council (7) Rossendale Borough Council and (8) Pennine Lancashire Development Company Limited [*as amended by [DETAILS]*] (the "Members' Agreement");
- (B) The New Member has agreed to become bound by the rights and obligations set out in the Members' Agreement on the terms as set out in this Deed.

OPERATIVE PROVISIONS

1. The New Member agrees severally with the other parties to the Members' Agreement (including such other parties as have entered into a Deed of Adherence under which they have become bound by the rights and obligations set out in the Members' Agreement) from time to time to observe, perform and be bound by the terms of the Members' Agreement which are capable of applying to the New Member and which have not been performed on or before the date of this Deed, to the intent and effect that the New Member shall be deemed with effect from the date on which the New Member is registered as a member of Pennine Lancashire Development Company Limited to be a party to the Members' Agreement as if he were named as a Member therein.
2. This Deed and all matters arising from or connected with it are governed by English Law and subject to the exclusive jurisdiction of the English Courts.

THIS DOCUMENT is executed as a deed and delivered on the date stated at the beginning of this Deed.

SIGNED as a deed by)
[NAME OF DIRECTOR])
in the presence of:)

Witness signature:

Name:

Address:

Occupation:

SCHEDULE 4

HR Provisions

1. RELEVANT EMPLOYEES

- 1.1 Subject to **paragraph 1.2**, where a Member provides the services of one or more of its employees (each such employee being a “**Relevant Employee**”) to the Company in accordance with **clause 16.7** (each such Member being an “**Employing Authority**”) the terms of **paragraph 2** shall apply.
- 1.2 Where a Member provides the services of any of its employees to the Company in accordance with **clause 16.7** for part only of his/her contractual hours of employment, the Governing Body shall (in its absolute discretion) determine by Unanimous Consent whether that employee is deemed to be a Relevant Employee for the purposes of this **Schedule 4**.

2. INDEMNITY

- 2.1 Where in relation to any of its Relevant Employees an Employing Authority:
- 2.1.1 subject to **paragraph 2.2**, acts in accordance with a direct request of the Company, the Employing Authority shall be entitled to the benefit of the provisions of **paragraphs 2.3 to 2.6** (inclusive);
- 2.1.2 acts otherwise than in accordance with **paragraph 2.1.1** such Employing Authority shall not be entitled to the benefit of the provisions of **paragraphs 2.3 to 2.6** (inclusive) and, for the avoidance of doubt, the Employing Authority shall be responsible for any financial liability arising as a result of any act or omission committed by it otherwise than in accordance with a direct request of the Company.
- 2.2 The Employing Authority shall only be entitled to the benefit of the provisions of **paragraphs 2.3 to 2.6** (inclusive) provided that:
- 2.2.1 the Employing Authority uses reasonable skill and care to ensure that all Relevant Employees are suitably qualified and experienced persons in carrying out duties of a similar scale and scope to those which they are engaged to carry out on behalf of the Company;
- 2.2.2 in relation to each Relevant Employee, the Employing Authority acts in accordance with good employee management practice and uses its best endeavours to minimise the number and level of claims brought under the terms of this **paragraph 2**; and

- 2.2.3 the Employing Authority shall not be entitled to make any claim under this **paragraph 2** in respect of any insured loss and/or any liability which arises as a direct result of negligence or default on the part of the Employing Authority.
- 2.3 Prior to commencing any action to pursue a claim pursuant to this **paragraph 2**, the Employing Authority shall in the first instance seek reimbursement for any financial liability incurred in connection with the employment, dismissal, redundancy or retirement of any Relevant Employee from any funds held by or on behalf of the Company excluding funds that are held for the purposes of awarding grants or project delivery or funds with other legal or third party constraints and/or conditions on their application ("**Excluded Funds**").
- 2.4 Where the funds (other than Excluded Funds) referred to at **paragraph 2.3** are insufficient to discharge the Employing Authority's claim in full the Employing Authority shall be indemnified by the other Members in respect of any financial liability which it shall incur or has incurred in connection with the employment, dismissal, redundancy and/or retirement (as the case may be) of any Relevant Employee.
- 2.5 In the event of a claim being made by an Employing Authority in accordance with the terms of this **paragraph 2**, the other Members shall each pay to the Employing Authority an equal proportion of the outstanding balance provided always that if any Member shall be unable to meet its obligations under this paragraph then each of the remaining Members shall pay to the Employing Authority an equal proportion of the defaulting Member's liability.
- 2.6 Any claim made by an Employing Authority pursuant to this **Schedule 5** shall be paid by each Member against whom it is made within sixty (60) days of such claim being notified in writing to that Member.
- 2.7 Any sum due from a Member which is not paid on the due date referred to in **paragraph 2.5** shall bear interest from day to day at an annual rate equivalent to the base lending rate of the National Westminster Bank PLC during the period between the date due for payment and the date on which the due sum is received by the Employing Authority.
- 2.8 Any dispute arising in relation to this Schedule shall be resolved in accordance with **clause 19**.

SIGNED by)
the duly authorised officer of)
Blackburn with Darwen Borough Council)

SIGNED by)
the duly authorised officer of)
Burnley Borough Council)

SIGNED by)
the duly authorised signatory of)
Hyndburn Borough Council)

SIGNED by)
the duly authorised signatory of)
Lancashire County Council)

SIGNED by)
the duly authorised officer of)
The Borough Council of Pendle)

SIGNED by)
the duly authorised signatory of)
Ribble Valley Council)

SIGNED by)
the duly authorised signatory of)
Rosendale Borough Council)

SIGNED by)
the duly authorised signatory of)
Pennine Lancashire Development Company)
Limited)