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**Report to**  
Cabinet

20<sup>th</sup> September 2005

**Report of**  
Director of City Development and Director of Finance and ICT

**Title**  
Strategic Business Support Initiative

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### **1 Purpose of the Report**

- 1.1 The purpose of this report is to seek Cabinet approval to enter into contracts with both Advantage West Midlands (AWM) and Coventry and Warwickshire Chamber (the Chamber) to deliver business support services to companies in Coventry and Nuneaton Regeneration Zone (RZ). The first contract is a crucial element of the RZ's Strategic Business Support Package. It is the subject of a special funding arrangement between Advantage West Midlands and the City Council. The second contract between the City council and the Chamber will enable the City council to deliver specific services within the overall Business Support Package.

### **2 Recommendations**

Cabinet Member is recommended to:

- 2.1 Approve the signing of a contractual agreement issued by Advantage West Midlands for £813,040, which will then be passed to the Chamber to support the provision of the overall Strategic Business support Package.
- 2.2 Approve the signing of a contract issued by the Chamber and valued at £506,016, which is an element of the overall £813,040 contract within the £4million grant. This will enable the City Council's Investment and Business Team to supply support services to businesses in the RZ.
- 2.3 Approve the City Council's guarantor role in delivering the outputs for the overall contract in 2.1 and the sub contract in 2.2.

### **3 Information/Background - Contracting with AWM**

- 3.1 The Strategic Business Support Package is a key element of AWM's economic investment in the RZ and the sub region. The package involves £4million of AWM grant for business support for new businesses, micro businesses (1 to 9 employees) and small to medium sized businesses (10 to 250 employees) in the RZ. The Investment and Business Team will

extend its current support to manufacturing and technology-based businesses with funding from the package.

- 3.2 The Chamber holds the overall contract for the package and is sub contracting service delivery to local partners including the City Council. Although the package has been agreed and approved by AWM it is a programme using revenue funds. Due to an unforeseen change in how AWM accounts for its expenditure, they have an excess of capital funds and a shortage of revenue funds at the present time. AWM have therefore proposed that they increase the amount of grant given to us for the Belgrade Redevelopment project from £1.8million (approved by Cabinet on 16<sup>th</sup> November 2004) to £2.7 million.
- 3.3 The outcome of this is to reduce our own capital expenditure on that project. It is proposed that in consideration for this reduction, that we will provide an equal amount of revenue funds, £813,040 to the Chamber to enable the overall £4 million Business Support Package proceed in 2006/7.
- 3.4 Warwickshire County Council approved a similar mechanism for AWM capital funding for the Optima business Units to fund the revenue element of the Strategic Business Support Package in 2005/6.
- 3.5 The process Coventry City Council is now undertaking to cover 2006/2007 uses the legal framework and model that has been successfully used by Warwickshire.

#### **4 Additional Proposal - Contracting with the Chamber to provide Business Services**

- 4.1 The proposal to support the capital/revenue swap is critical to ensuring a successful and overall provision of Regeneration Zone businesses support to companies, which aims to create jobs and strengthen our local economy.
- 4.2 By providing this support to the overall package we are also ensuring that the City Council's Investment and Business Team can deliver additional support to manufacturing and technology based business in the RZ.
- 4.3 The Investment and Business Team currently delivers a range of business support programmes to business in the RZ in Coventry and RZ areas immediately adjoining the city including Bayton Road. These programmes are funded by the City Council, the European Regional Development Fund and other external funds and have stringent outcome requirements. As demand for services exceeds the funding currently available, the Strategic Business Support Package is an excellent opportunity to provide additional support in the RZ. The package requires demanding additional outcomes in return for it's funding. Using its database of manufacturing and high technology businesses located in the RZ, the Investment and Business Team will identify additional businesses that are looking to grow and invest. These businesses will be supported by the team's advisers on a one to one basis. Where appropriate investment opportunities are highlighted, the adviser will undertake to support the work with a grant from the Strategic Business Support Package. Rigorous systems are in place to ensure that key investment criteria are met.

The package will also enable the Investment and Business Team to extend its improvement Action Networks. These highly acclaimed networks allow businesses to undertake professionally led productivity improvement exercises that give real benefits to participating businesses and their staff.

- 4.4 The work will be promoted through the council's website, through its regular newsletters and through City Business. Successes will be publicised as part of the ongoing marketing campaign.
- 4.5 Without the agreement of the proposed contractual arrangements revenue support of £813,040 to businesses in the Regeneration Zone will be lost, together with the additional jobs and investment that would be created.

**5 Other specific implications**

5.1

	<b>Implications (See below)</b>	<b>No Implications</b>
Area Co-ordination		<input type="checkbox"/>
Best Value	<input type="checkbox"/>	
Children and Young People		<input type="checkbox"/>
Comparable Benchmark Data	<input type="checkbox"/>	
Corporate Parenting		<input type="checkbox"/>
Coventry Community Plan	<input type="checkbox"/>	
Crime and Disorder		<input type="checkbox"/>
Equal Opportunities	<input type="checkbox"/>	
Finance	<input type="checkbox"/>	
Health and Safety	<input type="checkbox"/>	
Human Resources	<input type="checkbox"/>	
Human Rights Act		<input type="checkbox"/>
Impact on Partner Organisations	<input type="checkbox"/>	
Information and Communications Technology		<input type="checkbox"/>
Legal Implications	<input type="checkbox"/>	
Property Implications		<input type="checkbox"/>
Race Equality Scheme		<input type="checkbox"/>
Risk Management	<input type="checkbox"/>	
Sustainable Development	<input type="checkbox"/>	
Trade Union Consultation		<input type="checkbox"/>
Voluntary Sector – The Coventry Compact		<input type="checkbox"/>

5.1 Best Value

The contracts will be managed and monitored by the Investment and Business Team for both the capital and revenue swap arrangement and the subsequent support services for business in the RZ.

5.2 Comparable Benchmark Data

Existing business support work includes a project being undertaken by the Investment and Business Team for Government Office West Midlands under the umbrella of the European Regional Development Fund. This project has been highly successful and is demonstrating good outputs in terms of new jobs and technological improvements. So far 115 Coventry businesses have been assisted and as a consequence 236 new manufacturing jobs have been created.

### 5.3 Coventry Community Plan

The work will deliver services and outputs, which will contribute to the achievement of the Jobs and Economy theme target of achieving a wider range of business and job opportunities by 2010.

### 5.4 Equal Opportunities

The delivery of the contract will be in accordance with the council's equal opportunities policy

### 5.5 Finance

The capital /revenue swap will total £813,040 which is contributing to a total contract value of £4million to deliver the Strategic Business support Package for the city and sub region.

The Chamber will provide funds back to the City council for the Business and Investment team for the provision of grants to businesses for projects improving competitiveness amounting to £315,000 over the period called off as in the table below. The delivery team will in turn allocate world-class manufacturing and marketing grants not exceeding £5000 in any one instance to companies that meet clearly defined investment criteria.

The Chamber will also provide for the salary of a Project Assistant amounting to £67,500 over the period. The initial salary will be set so that a 3% annual increase can be funded. In addition the Chamber will pay the council a maximum £123,516 for 63 businesses to be assisted and for associated outputs in order to provide for an additional Business Adviser to support the delivery of the programme.

The financial implications are summarised in the table below.

<b>Description</b>	<b>2005 2006</b>	<b>2006 2007</b>	<b>2007 2008</b>	<b>Total</b>
Grants	£45,000	£135,000	£135,000	£315,000
Salaries	£37,741	£87,713	£65,562	£191,016
Total Contract Value	£82,741	£222,713	£200,562	£506,016

### 5.6 Health and Safety

The Investment and Business Team adheres to the council's Health and Safety policies. Indeed it promotes best practice to engaged companies.

### 5.7 Human Resources

The contract will require the recruitment of a Project Assistant to support finance and outcome audit trails and to support the administration of the programme and a Manufacturing Adviser to provide additional specialist advice to businesses. Both full time posts will be funded by the contract.

### 5.8 Impact on Partner Organisations

This capital/revenue arrangement is seen as a major piece of creative partnership working to ensure that funds and opportunities can be maximised and enable all the key players to deliver a competitive and successful business community.

### 5.9 Legal Implications

5.9.1 Section 2 of the Local Government Act 2000 allows the Council to enter into agreements in order to promote the economic well being of the area.

5.9.2 In accordance with the Council's administrative procedures relating to contracts, the Director of Legal Services will be required to advise upon and execute the relevant contract.

#### 5.10 Risk management

The contractual arrangements between AWM and CCC will be based on a tested out approach and arrangement operating between AWM and Warwickshire County Council. It is anticipated that the legal arrangements therefore have stood the test of time resulting in reduced risks to CCC.

The contract covers the costs that will be incurred. Early termination of the Business and Investment contract could result in redundancy payments of up to £5000. The risk is small given the delivery team's expertise in this area and is manageable within the budget and external grant reserves of the Investment and business Team.

#### 5.11 Sustainable Development

The Investment and Business Team is committed to encouraging investment in the city with a view to creating long-term economic prosperity. This project contributes to that objective.

### 6 Monitoring

6.1 The contracts and the project will be subjected to the rigorous and well-proven monitoring procedures developed by the Investment and Business Team and those dictated by the requirements of receiving Regeneration Zone Funding. The Project Officer will lead this element of the work ensuring that Council guidelines are fully implemented. Quality procedures in accordance with ISO 9000 will be implemented. Clients will be surveyed and feedback will be reviewed to continuously improve the service.

### 7 Timescale and expected outcomes

7.1 The work will start immediately and run until March 2008.

7.2 There are key Outputs and Deliverables, which the capital/revenue arrangement swap will contribute towards in terms of the full £4 million SBS contract between the Chamber and AWM listed in the table below.

7.3 Project outcomes for the Investment and Business contract of £506,016 (2.2) are listed in the table below.

<i>Output</i>	<i>2005/6</i>	<i>2006/7</i>	<i>2007/8</i>	<i>Total</i>
Businesses Assisted	15	30	18	63
Jobs Created	3	15	15	33
Jobs Safeguarded	7	30	28	65
Bus Assists - Environmental	4	11	0	15
Bus Assists - Innovation	1	11		12
New Sales	£170,000	£890,000	£890,000	£1,947,000
Safeguarded Sales	£1,690,990	£1,641,255	£1,690,990	£5,023,235
Business Improved	16	16	17	49
Bus Impr'd - Product/Process	5	5	6	16
Bus Impr'd - Environmental	2	2	3	7
Private Sector Leverage	-	-	£120,000	£120,000

	<b>Yes</b>	<b>No</b>
<b>Key Decision</b>	√	
<b>Scrutiny Consideration (if yes, which Scrutiny meeting and date)</b>		√
<b>Council Consideration</b>		√

(if yes, date of Council meeting)		
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List of background papers	
Proper officer: Director of City Development	
Author: Graham Simpson, Projects Manager, Regeneration Services Division Paula Deas, Regeneration Strategy and Resources Manager (Any enquiries should be directed to the above)	Telephone 024 7683 2615
Other contributors:	
John Mcguigan 1201	
Carl Pearson 2001	
Stan Aldridge 1336	
Jayne Elrick 3016	
<i>Jas Bilen</i> 4865	
Ken Gould 2566	
Mark Smith 3037	
Papers open to Public Inspection	
<b>Description of paper</b> West Midlands Economic Development Strategy (2004 – 2010).	<b>Location WOH 1</b>

## **1.0 COVENTRY & WARWICKSHIRE REGENERATION ZONE SMALL BUSINESS SUPPORT PROJECT**

This appendix is subject to the full conditions as set out in the Single Framework Agreement dated 23<sup>rd</sup> September 2003

**It is also dependant on Coventry & Warwickshire Business Link reaching agreement with Warwickshire County Council and Coventry City Council in respect of the funding for the first two years of the project. Should such agreement not be forthcoming this variation will need to be withdrawn and/or re-negotiated**

### **1.1 SUMMARY**

This project will deliver a package of business support in the Coventry and Nuneaton Regeneration Zone. It is a strategic project which has as its objectives the promotion of enterprise in the zone, the broadening of the business base of the zone, the stimulation of growth in both traditional and non-traditional sectors of the zone economy and the development and support of structures for business engagement. The project will run for four years between April 2004 and March 2008 and involve three closely related strands to achieve these objectives

1. Business Engagement
2. Business Support
3. Programme Management

### **1.2 Strategic Policy**

The applicant must involve 'beneficiaries' (ie zone businesses) in the strategic management of the project to ensure that the project is both flexible and responsive to the needs of zone businesses. On this basis, a Strategic Business Support Package (SBSP) Management Group is to be established at the start of the project.

The Management Group will comprise at least 50% of zone 'beneficiaries' from the project and will include representation from:

- Young Businesses
- Micro Businesses
- SMEs
- Business Associations in the zone (eg Foleshill Business Association, Bayton Road Group)

Partners will take steps to ensure that disadvantaged groups and, specifically, ethnic minorities, are represented on the Management Group.

The balance of the Management Group will include representatives from Coventry & Warwickshire Chamber/Business Link (as the Accountable Body), Coventry City Council, Warwickshire County Council, the Regeneration Zone Secretariat and other providers of business support in the zone.

The Management Group will be chaired by one of the project 'beneficiaries'. In order to ensure that businesses will participate in the Management Group, it will be constituted on a partnership basis and so not carry legal liabilities.

The Management Group will meet in full session on a quarterly basis but also appoint an Executive that will meet monthly. The chair of the full Management Group will also chair the Executive.

### **1.3 OBJECTIVES**

#### **1.3.1. Business Engagement Strand**

This will establish structures and mechanisms for businesses in the zone to become involved in the management of the project and to influence business support providers in respect of existing and future programmes. This strand will also include a specific initiative to create sustainable structures for the engagement of ethnic minority businesses in zone activities.

#### **1.3.2 Business Support Projects Strand.**

a) Stimulate new business formation in the zone and enhance their associated survival rates.

b) Promote the development and growth of 'micro-businesses' (those with up to ten employees ) in the zone in order to provide greater balance to the zone business stock.

c) Support and encourage business competitiveness, growth and development amongst existing SMEs in the zone (which are mainly in the 'bedrock' sectors) through a targeted programme of business support in tandem with the development of collaborative networks.

#### **1.3.3 Programme Management Strand**

Provide support to the SBSP Management Group and convene the Delivery Team responsible for the implementation of the project.

Ensure effective integration of the Business Engagement and Business Support strands with other business support programmes in the sub-region and with wider zone development. This strand will also cover project monitoring and project evaluation



#### 1.4 KEY OUTPUTS AND DELIVERABLES

The Programme will be delivered as described in the original full application document and associated documents which form part of this agreement.

AWM Outputs will be as shown below: -

<b>Business Start Ups</b>	Total
New Start Ups	46
New Business supported	39
New Jobs	87
Businesses assisted	177
Women Receiving Support	133
<b>Micro Businesses</b>	
New Jobs	60
Safeguarded jobs	135
Businesses Assisted	807
New Sales	£481,830
Businesses Improved	298
Women Receiving Support	1
ICT & RIS Projects	46

<b>SME Support</b>	
New Jobs	58
Safeguarded jobs	119
Businesses Assisted	146
New Sales	£1,936,425
Businesses Improved	292
Women Receiving Support	61
ICT & RIS Projects	14
Safeguarded Sales	£297,402
<b>Other Outputs</b>	
Private Sector Leverage in Regeneration Zone	£500,000
Businesses Assisted in Eliot Park	24

If additional financing becomes available as described in the last paragraph of section 1.5 Funding, then additional outputs will be required and contracted by a Contract Variation.

The outputs are to be reported to AWM in the above detail every month.

All the outputs are to be forecasted on a monthly profile format for the complete duration of the project, for monitoring purposes.

## 1.5 FUNDING

	AWM Revenue	Warwickshire County Council	Coventry City Council	Applicants Own Funds	Other Public Sector	TOTAL
FY1 (2004/05)	0	566,664		87,000	1,305,086	1,958,750
FY2 (2005/06)	0		813,040	89,610	1,019,369	1,922,019
FY3 (2006/07)	600,000 (995,703)	0	0	92,298	798,107	1,490,405 (1,886,108)
FY4 (2007/08)	700,000 (1,832,207)	0	0	95,067	3,851	798,918 (1,931,125)
Total	1,300,000 (2,827,910)	566,664	813,040	363,975	3,126,413	6,170,092 (7,698,003)

Funding in brackets refers to original approved funding. (See paragraphs below)

The funding will be attributed to the various strands of the project as described in the project application.

A form of monthly reporting will be agreed between Coventry & Warwickshire Business Link and AWM which will allow expenditure against the various strands and sub strands to be identified and monitored.

The funding shown for the final two years in the above chart is limited by the level of revenue headroom available in the Coventry & Nuneaton Regeneration Zone budget

AWM have approved funding of £995,703 in 2006/07 and £1,832,207 in 2007/08. In the event that appropriate funding is found from elsewhere or the zone revenue allocation is increased for the final two years then this may be applied to ensure that the project proceeds as it is planned within the Project full application

## 1.6 Conditions

### 1.6.1 Delivery Plan

The delivery plan submitted is to be updated within three months of this Contract Variation and is to be approved by AWM. Failure to agree a delivery plan or subsequent failure, in the opinion of, AWM to work to the delivery plan may lead to the termination of the contract as per clause 19 of the Single framework agreement

### 1.6.2 Marketing Plan

The Marketing plan submitted is to be updated within three months of this Contract Variation and is to be approved by AWM. Failure to agree a marketing plan or subsequent failure, in the opinion of, AWM to work to the marketing plan may lead to the termination of the contract as per clause 19 of the Single framework agreement

### **1.6.3 Project Reviews**

The project will be subject to a [6monthly] review to be undertaken by [senior representatives] from Coventry & Warwickshire Chamber of Commerce and AWM

### **1.6.3 Outputs**

A review of outputs is to be undertaken in April of each year. This is to try and increase the value for money aspect of outputs based on the experience of the previous years.

### **1.6.4 Changes to the Project**

Any changes to the project which the SBSP Management group may wish to make to the project are to be agreed with AWM prior to such changes. Any major shifts in direction may require a reappraisal of the project.

### **1.6.5 Evaluations**

The mid term and final evaluations are to include the views of beneficiaries. Such evaluations are to be submitted to AWM

### **1.6.6 Performance Indicators**

Performance indicators must be developed and agreed with AWM to show the effectiveness of the scheme to make contact with its targeted clientele and then to convert such engagement into assistance. The indicators, once agreed, are to be included in the quarterly and annual project reports to AWM

## **1.7 TIMETABLE**

Start Date for Activity	1/04/04
Completion Date for Activity	31/03/08
Final Claim for this Project	10/04/08

## **1.8 PROJECT DOCUMENTS**

1. The Project (including the required objectives, outputs and deliverables) is further described in the following documents, which are appended to this letter and which form part of this agreement
  - Full project Application form
  - Full Project Appraisal & Approval Form

**THIS AGREEMENT** is made on

2005

Between

- (1) WARWICKSHIRE COUNTY COUNCIL of Shire Hall, Warwick, CV34 4RR ('the Council')
- (2) ADVANTAGE WEST MIDLANDS of 3 Priestly Wharf, Holt Street, Aston Science Park, Birmingham B7 4BN ('the Agency')
- (3) BUSINESS LINK COVENTRY AND WARWICKSHIRE a company limited by guarantee whose registration number is 03027428 and whose registered office is at Oak Tree Court, Binley Business Park, Harry Weston Road, Coventry, CV32 2UN ('Business Link')

## **BACKGROUND**

- (I) The Agency by a Single Framework Agreement dated 23<sup>rd</sup> September 2003 has committed to make funding available to Business Link for the Coventry and Nuneaton Regeneration Zone Small Business Support Project for a period of 4 years between April 2004 and March 2008 ('the Project').
- (II) By a Variation Agreement dated 7<sup>th</sup> December 2004 (attached hereto at Appendix 1) the Agency and Business Link have agreed to vary the terms of the Single Framework Agreement in respect of the funding to be made available during the first two years of the Project.
- (III) The Council has agreed to make funding up to a maximum sum of £566,664 available to Business Link for the Project during the period from 1<sup>st</sup> April 2004 to 31<sup>st</sup> March 2006.
- (IV) The parties have agreed to enter into this Agreement to regulate the terms under which the Council shall provide and Business Link shall receive such funding for the Project.

## **NOW IT IS AGREED THAT:**

### **1. DEFINITIONS AND INTERPRETATION**

- 1.1. In this Agreement the following words and phrases shall have the following meanings.

**"Agency Funding"** means the funding provided by the Agency to Business Link under the terms of the Single Framework Agreement dated 23<sup>rd</sup> September 2003 and the Variation Agreement dated 7<sup>th</sup> December 2004

**"Council Funding"** means the funding to be provided by the Council to Business Link under the terms of this Agreement

**"Event of Default"** means any of the events or circumstances described in clause 6.

**"Maximum Sum"** means five hundred and sixty-six thousand and six-hundred and sixty four pounds (£566,664) being the maximum amount of funding to be provided by the Council under the terms of this Agreement in

respect of the Project and for the avoidance of doubt the Council shall not be responsible for nor shall it make any payments in respect of any VAT in addition to or payable in respect of the Council Funding

**“Outputs”** means 24 “Business Assists” from activity directly in support of businesses located at the Eliot Park Innovation Centre Nuneaton and Private Sector Leverage to a value of £500,000 in the most deprived 20% of the Coventry and Nuneaton Regeneration Zone

**“Output Longstop Date”** shall mean 31<sup>st</sup> March 2006 or such later date as the Council in its absolute discretion may determine as being the date by which the Outputs are to be achieved

**“Private Sector Leverage”** means the total gross expenditure minus the total public sector investment including in-kind investment

**“Project”** means the Coventry and Nuneaton Regeneration Zone Small Business Support Project operating for a period of 4 years between April 2004 and March 2008

**“Steering Group”** means a group of nominated representatives of the Council, the Agency and Business Link who shall meet on a quarterly basis or such other frequency as they may agree to review progress of the Project

**“VAT”** means value added tax including tax of a similar nature that may be substituted for it or levied in addition to it

**“Working Days”** means any day which is not a Saturday Sunday or bank holiday.

- 1.2 Any reference to statute or legislation generally shall include any statutory extension or modification amendment or re-enactment of such statutes and include all instruments, orders, bye-laws and regulations for the time being made, issued or given thereunder or deriving validity therefrom.
- 1.3 This Agreement includes any variations hereto made from time to time and any agreement expressed to be supplemental hereto.
- 1.4 Words importing one gender shall include both genders and the singular shall include the plural and vice versa.
- 1.5 In the event of any conflict or difference in interpretation between the terms of the agreements referred to in this Agreement they shall take precedence in the following order: Single Framework Agreement dated 23<sup>rd</sup> September 2003; Variation Agreement dated 7<sup>th</sup> December 2004; this Agreement of above date.

## **2. THE OBJECTIVES OF THE PARTIES**

- 2.1 The principal aims and objectives of the parties under this Agreement are to facilitate economic development through the growth and support of small businesses within the Coventry and Nuneaton Regeneration Zone in order to meet the aims and objectives of the regional and sub-regional economic and regeneration strategies adopted by the parties from time to time.

- 2.2 The parties shall act in good faith and in a spirit of co-operation with one another in relation to the Project.

### **3. BUSINESS LINK'S REPRESENTATIONS AND WARRANTIES**

Business Link represents and warrants to the Council as follows:

- 3.1 Business Link is validly existing and that the execution on behalf of Business Link of this Agreement has been validly authorised and the obligations expressed as being assumed by Business Link under this Agreement constitute valid legal and binding obligations of Business Link enforceable against Business Link in accordance with their terms.
- 3.2 Neither the execution of this Agreement by Business Link nor the performance or observance of any of its obligations under it will:
- (a) conflict with or result in any breach of any relevant law or enactment or any deed agreement or other instrument obligation or duty to which Business Link is bound;
  - (b) cause any limitation on any of the powers whatsoever of Business Link, or on the right or ability of Business Link to exercise its powers, to be exceeded.
- 3.3 Business Link is not in default under any law or enactment or under any deed agreement or other instrument or obligation by which it is bound so as to affect adversely its ability to perform its obligations under this Agreement.
- 3.4 No litigation or administrative or arbitration proceedings before any court, tribunal, Government authority or arbitrator is presently taking place, pending or to the knowledge and belief of Business Link threatened against, or against any of the assets of Business Link which might have a material adverse effect on its ability to perform its obligations under this Agreement.
- 3.5 All information documents and accounts of Business Link submitted to the Council for its appraisal of the Project or payment of the Council Funding to the best of Business Link's belief are true and accurate and no change has occurred since the date on which such information was supplied which renders the same untrue or misleading in any respect and that there has been no material adverse change in the business, assets or operations or prospects of Business Link since such information was provided.
- 3.6 Business Link has disclosed to the Council all relevant information which would or might reasonably be thought to influence the Council in awarding all or any part of the Council Funding to Business Link.
- 3.7 The representations in clauses 3.1 to 3.6 inclusive above will be deemed to be repeated by Business Link when each claim for an instalment of Council Funding is submitted pursuant to clause 4 as if made to the facts and circumstances existing at such date.

### **4. PAYMENT OF FUNDING**

- 4.1 Subject to the provisions of this Agreement the Council shall pay the Council Funding to Business Link within 20 Working Days of receipt of an invoice for

an instalment of funding submitted in accordance with this clause 4 in three instalments as follows:

- (a) the first instalment shall be the sum of three hundred thousand pounds (£300,000) which shall be claimed not earlier than March 2005;
- (b) the second instalment shall be the sum of one hundred and thirty-three thousand three hundred and thirty-two pounds (£133,332) which shall be claimed not earlier than June 2005;
- (c) the third instalment shall be the sum of one hundred and thirty-three thousand three hundred and thirty-two pounds (£133,332) which shall be claimed not earlier than September 2005;

PROVIDED ALWAYS that the aggregated total of instalment payments made under this clause 4.1 does not exceed the Maximum Sum.

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

- (a) Unless a claim by Business Link for an instalment of Council Funding shall:
  - (i) be submitted by invoice in such form as shall be notified in writing by the Council to Business Link from time to time;
  - (ii) relate to expenditure or Outputs in relation to which Business Link has not submitted any other claim to the Council or the Agency or any other body with the power to provide funding to the Project;
  - (iii) include to the satisfaction of the Council evidence that any expenditure to which the claim relates has been incurred;
  - (iv) include to the satisfaction of the Council evidence that the Outputs claimed have been achieved; and
  - (v) be confirmed by the Agency in writing to the Council as being acceptable to the Agency and as being compatible with the terms of the Agency Funding of the Project.

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

4.3 Business Link shall be free at any time to obtain alternative funding from another source in substitution for all or any part of the funding provided or to be provided by the Council pursuant to this Agreement.

## **5. BUSINESS LINK'S OBLIGATIONS**

Business Link agrees with the Council as follows.



- 5.1 It shall procure that the Outputs are achieved to the satisfaction of the Council no later than the Output Longstop Date.
- 5.2 It shall provide monthly reports to the Council in relation to the Outputs achieved and the programme for overall achievement of the Outputs.
- 5.3 It shall provide accommodation and secretariat facilities for meetings of the Steering Group and shall assume responsibility for convening such meetings on a quarterly basis or in such frequency and manner as the Council and the Agency may reasonably determine from time to time.
- 5.4 It shall keep proper and accurate records of all matters relating to the Project and the Council Funding thereof and permit the Council or persons authorised by it at all times without charge to inspect audit and take copies of all reports books and accounting records which the Council considers relevant.
- 5.5 It shall not charge, assign or transfer or otherwise dispose of the benefit of this Agreement and no payment of funding shall be made by the Council to any person other than Business Link.
- 5.6 It shall notify the Council in writing forthwith on the occurrence of an Event of Default.
- 5.7 It shall notify the Council in writing as soon as practical thereafter in the event of any material change in the information provided for the appraisal of the Project or the Council Funding or in the event of an offer or future receipt by it of any other public sector financial assistance in respect of that element of the Project that is funded by the Council Funding.
- 5.8 It shall promptly procure the execution and delivery of any such further instruments and documents upon the written request of the Council which are requisite for the purpose of securing for the Council proper performance of the obligations on Business Link under this Agreement.

## **6. EVENTS OF DEFAULT**

- 6.1 An Event of Default occurs where:
  - (a) the Council determines that proper progress in achieving the Outputs is not being maintained so as to enable the Outputs to be achieved by the Output Longstop Date;
  - (b) Business Link is in material breach of its obligations contained in this Agreement unless the Council consents to such breach;
  - (c) any representation or warranty made or repeated by Business Link pursuant to this Agreement is incorrect when made or repeated.
- 6.2 Where an Event of Default has occurred the Council may by notice in writing to Business Link take any or all of the following actions:
  - (a) suspend the payment of the Council Funding under this Agreement for such period as the Council may determine;

- (b) vary the Maximum Sum in which case the payment of the Council Funding shall thereafter be made in accordance with the variation notified to Business Link;
- (c) terminate this Agreement whereupon the Council shall cease to be under any obligation to provide any further Council Funding to Business Link under this Agreement and;
- (d) if this Agreement terminates pursuant to clause 6.2 (c) such termination shall be without prejudice to any other rights or remedies of any of the parties in respect of breach or non-performance under this Agreement.

6.3 Provided always that the Council shall not by reason only of the occurrence of an Event of Default which is, in the opinion of the Council, capable of remedy, exercise its rights under sub-clause 6.1(a) or 6.1(b) or 6.1(c) unless the Council shall have first given notice in writing to Business Link requiring the relevant breach to be remedied within such period as the Council shall determine to be reasonable and Business Link shall have failed to remedy such breach to the satisfaction of the Council within the said period.

## **7. DISPUTE RESOLUTION**

If any dispute or difference arises out of or in connection with this Agreement which the parties, using reasonable endeavours, are unable to resolve by negotiation such dispute shall be referred to a mediator agreed by the parties (or, in the absence of agreement, nominated by the current President of the Law Society). The cost of any such mediation or other agreed dispute resolution process shall be borne equally by the parties, unless the parties agree otherwise.

## **8. NOTICES**

Any written notice required to be served under this Agreement shall be served by personal delivery or by sending it by recorded postal delivery to the respective addresses of the parties specified in this Agreement or such other addresses as shall from time to time be notified in writing by the parties to one another in the same manner; any such written notice shall (where sent by post) be deemed to have been served and received on the second business day following the day of posting and where delivered personally be deemed to have been given when received.

## **9. JURISDICTION AND GOVERNING LAW**

This Agreement shall be governed by and construed in accordance with English law and the parties submit to the jurisdiction of the English courts.

## **10. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

For the purposes of the Contracts (Rights of Third Parties) Act 1999 it is agreed that nothing in this Agreement shall confer on any third party any right to enforce or any benefit of any term of this agreement

## **11. WAIVER**

The failure by any party to enforce at any time or for any period any one or more of the terms or conditions of this Agreement shall not be a waiver of them or of the right at any time subsequently to enforce or comply with all terms and conditions of this Agreement

**12. NO PARTNERSHIP**

Nothing in this Agreement shall constitute a partnership or joint venture between the parties hereto

**13. VARIATIONS**

This Agreement may only be amended by a deed duly executed by the parties hereto

**14. SEVERANCE**

If at any time any of the provisions of this Agreement become illegal, invalid or unenforceable in any respect under any law or regulation of any jurisdiction, neither the legality, validity nor enforceability of the remaining provisions of this Agreement shall be in any way affected or impaired as a result and the parties shall work together in good faith to amend such provision so that it is not illegal, invalid or unenforceable

**EXECUTED AS A DEED** by the parties and delivered on the date first above written.

**EXECUTED AS A DEED**  
by affixing **THE COMMON SEAL** of  
**ADVANTAGE WEST MIDLANDS**  
in the presence of:

.....  
Authorised Signatory

**EXECUTED AS A DEED**  
by affixing **THE COMMON SEAL** of  
**WARWICKSHIRE COUNTY COUNCIL**  
in the presence of:

.....  
Authorised Signatory

**SIGNED AS A DEED**

On behalf of the

**BUSINESS LINK COVENTRY  
AND WARWICKSHIRE**

By two authorised signatories:

.....  
Director/Secretary

In the presence of:

.....  
Director/Secretary

In the presence of:

**APPENDIX 1**

**VARIATION AGREEMENT DATED 7<sup>TH</sup> DECEMBER 2004**